

SPECIAL ADOPTION

ENVIRONMENTAL PROTECTION

(a)

SITE REMEDIATION

Administrative Requirements for the Remediation of Contaminated Sites

Special Adopted Repeal and New Rules: N.J.A.C. 7:26B-1.5 and 4.1; 7:26C; and 7:26E-1.5, 1.7, 3.12 and 5.2

Special Adopted New Rules: N.J.A.C. 7:14B-1.8; 7:26B-4.3 and 5.9; 7:26D-7.5; and 7:26E-1.9, 1.14 through 1.19 and 7.2

Special Adopted Amendments: N.J.A.C. 7:1E-5.7 and 6.5; 7:1I-1.5, 2.6 and 3.3; 7:1J-1.4, 2.7 and 6.3; 7:7A-5.4 and 15.4; 7:8-5.4; 7:9C-1.1 and 1.6; 7:14A-3.1, 7.4, 7.5 and 9.10; 7:14B-1.6, 1.7, 2.4, 3.5, 3.6, 3.8, 4.2, 5.5, 5.6, 7.2, 7.4, 8.3, 8.4, 8.5, 8.7, 9 and 10.2; 7:22-3.4, 3.11, 3.17, 4.11 and 4.17; 7:26B-1.4, 1.6, 1.8 through 1.11, 3.3, 3.4, 4.2, 5.1, 5.3, 5.5, 6.1 through 6.5, 6.7, 8.1, 8.2, 8.3; 7:26D-1.1, 1.5, 7.1, 7.3, 7.4 and 7:26D Appendix 5; 7:26E-1.2, 1.3, 1.4, 1.6, 1.8, 1.11, 1.12, 2.1, 2.2, 3.1 through 3.5, 3.7, 3.9, 3.13, 4.1, 4.2, 4.4, 4.5, 4.6, 4.8, 5.1, 6, 7.1, 8 and 7:26E Appendix H; 7:38-1.4, 2.4, 6.6, 9.2 and 9.6; and 7:45-8.5

Special Adopted Repeals: N.J.A.C. 7:1J-6.9; 7:26B-2.2, 2.3, 3.1 and 7:26B Appendix A; 7:26D Appendix 6; and 7:26E Appendices B and F

Adopted: November 4, 2009 by the Department of Environmental Protection, Mark N. Mauriello, Acting Commissioner.
Filed: November 4, 2009 as R.2009 d.361.

Authority: N.J.S.A. 13:1K-8; 58:10B-1 through 4, 8, 11, 12, 13, 17.1, 20, 26, 28, 29, 31; 58:10C-1 et seq.; and 58:23-11b, 11e2, 11f, 11g and 16.

DEP Docket Number: 18-09-11/739.

Effective Date: November 4, 2009.

Expiration Date: May 4, 2011.

These rules are adopted pursuant to P.L. 2009, c. 60 (the Act), effective May 7, 2009, which contains the new Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and related amendments to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act, 58:23-11 et seq., and the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., and pursuant to N.J.S.A. 58:10C-29, became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4). As required by N.J.S.A. 58:10C-29, the Department gave notice of its intention to adopt these rules by publishing a Notice of Intent to Adopt Interim Rules in the New Jersey Register on November 16, 2009 (see 41 N.J.R. 4324(a)). The interim rules will be effective immediately upon filing with the Office of Administrative Law, for a period not to exceed 18 months. They will be proposed to be readopted within that time period. That proposal will be subject to public comment and thereafter be adopted before the expiration date of the specially adopted interim rules.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies that adopt, readopt,

or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. Following are analyses for each rule that is being amended by this special adoption.

Discharge of Petroleum and Other Hazardous Substances (DPOHS) Rules.

N.J.A.C. 7:1E

N.J.A.C. 7:1E is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. However, there are Federal standards or requirements to which a meaningful comparison can be made, and the Department has performed such comparison of the adopted amendments to N.J.A.C. 7:1E with analogous Federal regulations.

The effect of amending the DPOHS rules to add a cross-reference to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules is that the remediation of a discharge will have to be conducted according to the ARRCS rules, including the use of a licensed site remediation professional as applicable. To the extent that the Federal regulations do not require the use of a licensed site remediation professional, the addition of the requirement to comply with the ARRCS rules may be perceived as making the DPOHS rules more stringent than their Federal analogues.

The Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional. It is unlikely that the remediation of a discharge under the rules that existed prior to these amendments could be performed without the aid of a professional who is trained in site remediation. The Department has no data on whether fees to be charged by a licensed site remediation professional will be higher or lower than the fees currently charged by existing site remediation professionals. However, the underlying purpose of the Act is to help streamline the remediation process and the Department anticipates that added efficiencies may offset any costs that may result from the requirement to use a licensed site remediation professional.

Processing of Damage Claims Pursuant to the Sanitary Landfill Facility

Closure and Contingency Fund Act Rules, N.J.A.C. 7:II

N.J.A.C. 7:II is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, no further analysis is required.

Processing of Damage Claims Pursuant to the Spill Compensation and Control

Act Rules, N.J.A.C. 7:1J

N.J.A.C. 7:1J is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

Freshwater Wetlands Protection Act (FWPA) Rules, N.J.A.C. 7:7A

A comparison of the adopted amendments with the Federal regulations is appropriate in the case of the Freshwater Wetlands Protection Act rules, because the Department is also obligated under Federal law to ensure that its program is at least as stringent as the Federal 404 program. As discussed above in connection with the amendments to the DPOHS rules, to the extent that the Federal regulations do not require the use of a licensed site remediation professional, the addition of the requirement to comply with the ARRCS rules may be perceived as making the FWPA rules more stringent than their Federal analogues. However, as discussed above, the Department is unable at this time to determine whether the

requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional.

Stormwater Management Rules, N.J.A.C. 7:8

There are no current, analogous Federal requirements for stormwater management planning; however, there are several Federal programs concerning stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act (33 U.S.C. §§1251 et seq.) requires permits under Section 402 of that Act for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, rather than in the Stormwater Management rules. Section 319 of the Clean Water Act authorizes a Federal grant-in-aid program to encourage states to control nonpoint sources. The Department developed a management program for nonpoint source control under which the Department issues grants to local, regional, State, and interstate agencies as well as to nonprofit organizations to, for example, develop or monitor best management practices to control stormwater. Under Section 6217(g) of the Coastal Zone Management Act Reauthorization and Amendments of 1990 (CZARA), P.L. 101-508, the U.S. Environmental Protection Agency (EPA) has published "Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters" (CZARA 6217(g) Guidance). States may opt to participate or not participate in the overall coastal zone management program, with no penalty for non-participation other than the loss of Federal grants for this program. No mandatory Federal standards or requirements for nonpoint sources pollution control are imposed. The CZARA 6217(g) Guidance includes management measures for stormwater runoff and nonpoint source pollution control from land development as well as many other source types. The Department has developed a coastal zone management program, including a component addressing coastal nonpoint pollution control. The Stormwater Management Rules at N.J.A.C. 7:8 are one means by which the Department implements its nonpoint pollution control program.

The Department has determined that the adopted amendments that now prohibit recharge of stormwater that is inconsistent with an approved remedial action workplan or landfill closure plan (as opposed to only plans approved by the Department) do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Rather, this amendment takes into account that, with the adoption of the ARRCs rules, there will be plans that are approved by both the Department and by licensed site remediation professionals, thus making the two sets of rules consistent with each other. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

Ground Water Quality Standards, N.J.A.C. 7:9C

The Ground Water Quality Standards (GWQS) provide the basis for protection of ambient ground water quality in New Jersey by establishing constituent standards for ground water pollutants. These constituent standards are applicable to the development of effluent limitations and discharge requirements pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDDES), N.J.A.C. 7:14A; to develop minimum ground water remediation standards pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State. The authority for setting these standards comes solely from New Jersey law and has no Federal counterpart. The GWQS are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. The GWQS do not contain any standards or requirements that exceed those required by Federal law. The GWQS provides the associated ground water standards that are relevant to the New Jersey Underground Injection Control program, RCRA D, and RCRA C ground water monitoring programs at 40 CFR 144 through 146, 258 and 264. These Federal programs are implemented through the New Jersey Pollutant Discharge Elimination System program.

New Jersey Pollutant Discharge Elimination System (NJPDDES) Rules,

N.J.A.C. 7:14A

The NJPDDES rules are developed partly under the National Pollutant Discharge Elimination System as authorized by the Federal Clean Water Act (including surface water and sludge management programs), under the underground injection control (UIC) program as authorized under the Federal Safe Drinking Water Act, and under ground water monitoring and corrective action portions of the municipal solid waste landfill and hazardous waste programs as authorized under the Resource Conservation and Recovery Act (RCRA).

The authority for regulating the types of discharges to ground water covered by Subchapter 7 comes primarily from State statutes including N.J.S.A. 58:10A-1 et seq., and has no Federal counterpart (except in regard to injection wells as discussed below). N.J.A.C. 7:14A-7 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements (except as discussed below).

Some of the units regulated under N.J.A.C. 7:14A-7 are injection wells that are also regulated under N.J.A.C. 7:14A-8. An underground injection control (UIC) permit issued in accordance with N.J.A.C. 7:14A-8 is a DGW permit that is also subject to certain provisions of N.J.A.C. 7:14A-7. In addition, injection wells are regulated under USEPA rules for the Federal Underground Injection Control Program created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§300(f) et seq.). These USEPA rules are found mainly at 40 CFR Parts 144 through 148. To the extent that some N.J.A.C. 7:14A-7 provisions regulate injection wells, N.J.A.C. 7:14A-7 might be considered one of the means by which the Department participates in the UIC program established under Federal law. However, all NJPDDES rule provisions that impose standards or requirements specific to injection wells are found in N.J.A.C. 7:14A-8 rather than in N.J.A.C. 7:14A-7. To the extent that some N.J.A.C. 7:14A-7 provisions affect injection wells, those provisions implement Federal UIC mandates; they do not go beyond them.

Underground Storage Tank Rules, N.J.A.C. 7:14B

Although there is a Federal Underground Storage Tank program pursuant to 42 U.S.C. §6991, which regulates the operation, closure and upgrade of regulated underground storage tanks, there are no provisions in the Federal statute or regulations requiring a certification program for contractors performing services on underground storage tanks. The Federal rules at 40 CFR 280.20(e) encourage states to certify individuals to perform services on regulated underground storage tank systems.

N.J.A.C. 7:14B-1.7 contains certification statements to be signed by tank owners and consultants upon submission of documents to the Department. There is no Federal counterpart to this requirement. However, requiring certification does not increase any costs associated with the operation of an UST.

New N.J.A.C. 7:14B-1.8, which requires an owner or operator of an underground storage tank to conduct all site investigation and tank closure activities required in this chapter in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using the services of a licensed site remediation professional, has no Federal counterpart. Accordingly, as discussed above in connection with the amendments to the DPOHS rules, to the extent that the Federal regulations do not require the use of a licensed site remediation professional, the addition of the requirement to comply with the ARRCs rules may be perceived as making the UST rules more stringent than their Federal counterpart. However, as discussed above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional.

Financial Assistance Programs to Environmental Infrastructure Facilities

(FAPEIF) Rules, N.J.A.C. 7:22

The amendment to the FAPEIF rules do not exceed the standards imposed by Federal law. The Federal government provides monies to the State in the form of capitalization grants under the Environmental Infrastructure Financing Program, which is administered pursuant to the

provisions of the rules contained within N.J.A.C. 7:22. Federal regulations have been adopted at 40 CFR Part 35, Subpart K, which establish requirements applicable to States for the implementation and management of State Revolving Funds (SRF). The regulations define eligible activities of the SRF and the types of projects that the SRF can finance, establish requirements that apply to recipients of SRF assistance, specify capitalization grant agreement requirements, environmental review requirements and financial requirements (including cash draw procedures, annual reports, audits and others). Extensive policy documents have also been issued by the US Environmental Protection Agency with respect to the SRF program including the "Initial Guidance for State Revolving Funds (January 1988)," which better defines the applicability of the project-level requirements, and elaborates on other Federal laws that impact the SRF program. Other requirements applicable to SRF recipients are also included as conditions to the award of the Federal capitalization grant agreements. N.J.A.C. 7:22 is designed to achieve conformance with these Federal requirements and to protect the use of public funds to ensure the self-perpetuating nature of the SRF. The Department is updating those portions of the FAPEIF rule concerning disclosure of whether a site is being remediated to cross reference the Administrative Requirements for the Remediation of Contaminated Sites rules. The requirement that disclosure be made, however, is not changing.

Industrial Site Remediation Act (ISRA) Rules, N.J.A.C. 7:26B

The ISRA rules do not contain any standards or requirements that exceed those imposed by Federal law. ISRA was not enacted under the authority of, or in order to implement, comply with, or participate in, a program established under Federal law. Moreover, the ISRA rules do not incorporate Federal law, standards or requirements.

ISRA does, however, contain several references to remediation programs established by Federal law. These references grant equivalent status to those remediations performed under Federal law for the purpose of determining an owner or operator's compliance requirements pursuant to ISRA. The references to Federal law in these rules are not the type of references that require further analysis pursuant to Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. because they are incidental to the administration of the ISRA program. In fact, the inclusion of equivalent Federal approvals in these rules promotes the policy objectives outlined in Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. Therefore, the Department has determined that the amendments to the ISRA rules do not contain any standards or requirements which exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rules, N.J.A.C. 7:26C

The new ARRCs rules do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the ARRCs rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 CFR Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site, with or without Department oversight. Therefore, there are no Federal provisions with which to compare the provisions of the Administrative Requirements for the Remediation of Contaminated Sites rules. Based on this analysis, the Department has determined that the rules proposed for re-adoption with amendments do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Remediation Standards Rules, N.J.A.C. 7:26D

The Remediation Standards, N.J.A.C. 7:26D, are adopted under the authority of the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. These State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. Thus, in

accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department compared the adopted rules to the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) 42 U.S.C. §§9601 et seq., the Resource Conservation and Recovery Act (RCRA) of 1980; 42 U.S.C. §§6901 and 6991 et seq., and the Federal Safe Drinking Water regulations 40 U.S.C. §§141, 142 and 143.

The Department has determined that the amendments made to implement the Act do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

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

The Technical Requirements for Site Remediation, N.J.A.C. 7:26E, were promulgated under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and these State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. In addition, the EPA has delegated its Underground Storage Tank program to New Jersey pursuant to 40 CFR 280. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department has compared this adoption to the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§9601 et seq., and the Resource Conservation and Recovery Act (RCRA) of 1980, 42 U.S.C. §§6901 and 6991 et seq.

The Department has determined that, with the exception of the provisions that are described in the following paragraphs, the Technical Requirements for Site Remediation and these adopted amendments, repeals and new rules do not require any specific action that is more stringent than any requirement of comparable Federal rules. The implementing regulations for the Federal laws listed above provide only generic procedural requirements on how to investigate and remediate contaminated sites. For example, the National Contingency Plan (NCP), 40 CFR 300, the implementing regulations for CERCLA, provides possible options for conducting the remedial investigation, but the NCP does not detail the minimum steps that must be taken before an area of concern can be considered to have been adequately evaluated.

The Department has incorporated several amendments to the Technical Requirements for Site Remediation that differentiate requirements for a site that is being remediated with a Licensed Site Remediation Professional from sites that are being remediated without a licensed site remediation professional, and establish regulatory timeframes for the completion and submission of the receptor evaluation, and the submission of a preliminary assessment/site investigation report within 270 days of discovering a discharge or an Industrial Site Recovery Act triggering event. As discussed in the Federal Standards Analysis for the Administrative Requirements for the Remediation of Contaminated Sites rules provided above, the Department has determined that the rules that establish the Licensed Site Remediation Professional program do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required. The establishment of regulatory timeframes for the completion of certain remedial work is more stringent than equivalent Federal programs. Like the Federal remediation programs, the Department allowed the remediation of contaminated sites to be conducted on site specific schedules. The Department has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. As described in the section concerning the DPOHS rules above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional. However, the Department believes that there will be an overall cost savings associated with the time frames. When contamination

is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated which often adds to the overall cost of remediation. If the remediation of contaminated sites is completed in a more timely manner, such sites can be put to better use and often may generate more taxes for local and state government.

The Department has adopted requirements for the person responsible for conducting remediation to submit information on reporting forms or submit technical reports with cover forms that will be provided by the Department. Because there are no equivalent requirements for the Federal remediation programs, this is considered a more stringent requirement. The Department has developed these forms as a part of the licensed site remediation professional program and will allow the Department to more quickly and efficiently enter information about the person that is conducting remediation, and technical and administrative information about contaminated sites into its databases. The use of forms will help ensure that technical reports are delivered to the proper section within the Site Remediation Program so that they can be reviewed as effectively as possible. Again, as described above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional.

The Department is working toward the submission of the majority of site remediation related information electronically so that the Site Remediation Program can be run as efficiently as possible and so that that same information can be easily shared with the public, the Federal and local governments and any other interested party.

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

The Highlands Act delineates a contiguous area in the northwest of the State of New Jersey as the "Highlands Region" based on common physical and geographic features. It further divides the Region into two parts: the preservation and planning areas. The Highlands Act mandates that the Department's rules provide enhanced environmental standards for development in the preservation area to protect its important water, ecological and cultural resources. By inference, the planning area is deemed to have fewer critical resources and may be more suitable for development.

The enhanced standards in the preservation area apply to all aspects of potential development. They include strict limitations on obtaining new sources of potable water and constructing new wastewater facilities, and preclude development in areas containing statutorily-identified, environmentally sensitive features. Further, the Highlands rules require a comprehensive analysis of the environmental impact of all project components.

A comprehensive regional approach to regulation is not common in Federal environmental regulation. The Federal Environmental Protection Agency (EPA) establishes one set of standards nationwide and then requires individual states to establish their own, comparable standards. States often retain the ability to devise more stringent or regional standards if appropriate. There is no requirement to apply all Federal standards to a single site in a comprehensive manner. That is, certain aspects of a proposed development may comply with a standard and be approved while other aspects may not comply and may be denied. There are no comprehensive Federal standards that apply specifically to the Highlands Region like the State rules readopted herein. Therefore, there is no basis for comparison between these rules in their entirety and any one specific Federal regulation. While some of the individual standards comprising a Highlands preservation area approval do have comparable Federal regulations, the Department has determined that the amendments made to implement the Act do not amend any provision that has a comparable Federal Regulation. No further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Rules for the Review Zone of the Delaware and Raritan Canal State Park, N.J.A.C. 7:45

There are no current, analogous Federal requirements for the regulation of a State Park as a recreation area, source of potable water and as an historic district; however, the Federal Clean Water Act does

concern stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act, 33 U.S.C. §§1251 et seq., requires permits under Section 402 of that Act (33 U.S.C. §1342) for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the New Jersey Pollutant Discharge Elimination System Rules, N.J.A.C. 7:14A, rather than in Rules for the Review Zone of the Delaware and Raritan Canal State Park. Accordingly, the within rules do not conflict with, and are not more stringent than, the Federal Clean Water Act. Therefore, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

Full text of the special adopted new rules and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus], except for the proposed amendments to N.J.A.C. 7:26E Appendix H, where deletions indication in cursive brackets {thus}):

CHAPTER IE

DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES

SUBCHAPTER 5. DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

7:1E-5.7 Discharge response

(a) Any person responsible for a discharge shall:

1. (No change.)

2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by either:

i. (No change.)

ii. Remediating the discharge pursuant to the [Technical Rules for Site Remediation, N.J.A.C. 7:26E] **Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C**; and

3. (No change.)

(b) (No change.)

(c) Upon learning that a discharge of a hazardous substance has occurred, the Department may:

1. (No change.)

2. Take any other action to require any person responsible for the discharge to remediate the discharge pursuant to:

i. [The Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C**; and

ii. (No change.)

(d) (No change.)

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1E-6.5 Civil administrative penalty determination—general

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

(c) The Department may assess a civil administrative penalty, pursuant to the [Department Oversight] **Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-[10]9**, for a person's violation of an obligation to cleanup and remove a discharge pursuant to N.J.A.C. 7:1E-5.

CHAPTER II

PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SANITARY LANDFILL FACILITY CLOSURE AND CONTINGENCY FUND ACT

SUBCHAPTER I. GENERAL PROVISIONS

7:II-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 [document defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C] **covenant pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31**.

...

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-1.3.

...

["No further action letter" means a letter as defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C.]

...

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 [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or **58:10C-31** for a remediation that involves the use of engineering controls at a sanitary landfill facility, or who acquired the sanitary landfill facility after the [Department issued a no further action letter] **issuance of a final 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 [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or **58:10C-31** 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 [Department issued a no further action letter] **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) Notwithstanding (b), (d) and (e) above, an owner or operator may be eligible for damages if such owner or operator can establish to the satisfaction of the Department that the claim satisfies one of the following requirements:

1.-3. (No change.)

4. The claimant acquired the sanitary landfill facility after the [Department issued a No Further Action letter] **issuance of a final remediation document** concerning the sanitary landfill facility or a portion of the sanitary landfill facility and all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] **final remediation document** involves the use of an institutional control only;

ii.-iii. (No change.)

SUBCHAPTER 3. CLAIMS PROCEDURE

7:11-3.3 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 [if one has been issued by the Department] **pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31** for the sanitary landfill facility at issue and why;

12.-13. (No change.)

14. A statement that the claimant is the owner of a sanitary landfill facility for which [the Department issued a no further action letter] **a final remediation document was issued** for the entire sanitary landfill facility or any part thereof, and that all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] **final remediation document** involved the use of an institutional control and not an engineering control;

ii.-iii. (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.-ii. (No change.)

iii. Whether [the Department ever issued a no further action letter] **a final remediation document was issued** concerning the sanitary landfill facility or a portion thereof, and whether the remediation at the sanitary landfill facility involved an institutional control and/or engineering control;

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

...

“Covenant not to sue” means a [document defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C] **covenant pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31.**

...

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

["No further action letter" means a letter as defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C.]

...

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) (No change.)

(b) If, after a discharge occurs, a person purchases or otherwise voluntarily acquires or obtains title to the land from which the discharge emanated, claims by such purchaser in connection with the discharge are ineligible for compensation from the Fund, unless such purchaser can establish to the satisfaction of the Department that the claim satisfies one of the following requirements:

1.-2. (No change.)

3. The claimant acquired the subject property after the [Department issued a No Further Action letter] **issuance of a final remediation document** concerning the subject property or a portion of the subject property and all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] **final remediation document** involves the use of an institutional control only;

ii.-iii. (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 [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or **58:10C-31** for a remediation that involves engineering controls at the property, or acquired the subject property after the [Department issued a no further action letter] **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 [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or **58:10C-31** for a remediation that involves only the use of institutional controls at the subject property, or acquired the subject property after the [Department issued a no further action letter] **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

(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 [if one has been issued by the Department] **pursuant to N.J.S.A. 58:10B-13.1 or 58:10C-31** for the subject property and why;

10. (No change.)

11. A statement that the claimant is the purchaser of a subject property for which [the Department issued a No Further Action letter] **a final remediation document has been issued** for the entire property or any part thereof, and that all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] **final remediation document** involved the use of an institutional control and not an engineering control;

ii.-iii. (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. Whether [the Department ever issued a No Further Action letter] **there is a final remediation document** concerning the subject property or a portion thereof, and whether the remediation at the subject property involved an institutional control and/or engineering control;

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

iii. (No change.)

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

CHAPTER 7A

FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 5. ADOPTED GENERAL PERMITS

7:7A-5.4 General permit 4-Hazardous site investigation and cleanup

(a) General permit 4 authorizes activities in freshwater wetlands, transition areas, and State open waters, which are undertaken by the Department or expressly approved [in writing by the Department's Division of Remediation Management and Response] **pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C**, for the investigation, cleanup or removal of:

1.-2. (No change.)

(b) There is no acreage limit on activities under general permit 4. However, disturbance shall be the minimum that is necessary for compliance with the Department's [technical requirements for site remediation] **Technical Requirements for Site Remediation, N.J.A.C. 7:26E**, and mitigation shall be performed for all disturbances of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit except that mitigation is not required to compensate for disturbance of wetlands or State open waters that have formed as a direct result of the remediation activities. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.

(c) The mitigation proposal required under (b) above may be incorporated into the document [by which the Department approves the cleanup] **approved pursuant to the Administrative Requirements for**

the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and/or it may be submitted as part of the [General] **general** permit application. The Department shall not issue an authorization under general permit 4 until the mitigation proposal, or an equivalent document that ensures that the requirements of N.J.A.C. 7:7A-15 are met, is approved. Mitigation shall be performed prior to or concurrently with cleanup activities.

(d) (No change.)

SUBCHAPTER 15. MITIGATION

7:7A-15.4 Property suitable for mitigation and the criteria for addressing contaminated sites

(a)-(g) (No change.)

(h) The Department shall not approve mitigation in an area that contains contamination until all potential contaminated areas have been identified, and all remediation of the area(s) is completed so that there is no potential for the mitigation activities to result in the reintroduction of contamination to ecological communities or exposure of humans to contamination, and there is no potential for the mitigation site to be contaminated by the belated discovery of new areas of contamination requiring remediation. The Department will determine on a case by case basis whether it is feasible on a site containing contamination to conduct onsite mitigation.

1. If the Department determines that there is reason to suspect contamination on the proposed mitigation area, the site must be properly characterized and assessed to ensure there is no ecological risk associated with the proposal. To obtain this characterization, the mitigator shall [establish a memorandum of agreement with the Department's Division of Remediation Management and Response in accordance with N.J.A.C. 7:26C in order to obtain a review of the submitted data] **remediate the site pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.**

2. (No change.)

(i) (No change.)

CHAPTER 8

STORMWATER MANAGEMENT

SUBCHAPTER 5. DESIGN AND PERFORMANCE STANDARDS FOR STORMWATER MANAGEMENT MEASURES

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 [Department approved] **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 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.)

iv. (No change.)

3. (No change.)

(b) (No change.)

CHAPTER 9C
GROUND WATER QUALITY STANDARDS

SUBCHAPTER 1. GROUND WATER QUALITY STANDARDS

7:9C-1.1 Scope of chapter

(a) (No change.)

(b) This chapter provides the basis for protection of ambient ground water quality, through the establishment of constituent standards for ground water pollutants. These constituent standards are applicable to the development of: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A); ground water remediation standards; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including non-point and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1 et seq.), **the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.)**, the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

(c) (No change.)

7:9C-1.6 Exceptions to the classification system

(a) The Department may establish a Classification Exception Area only when the Department determines that constituent standards for a given classification are not being met or will not be met in a localized area due to: natural quality; localized effects of a discharge approved through a NJPDES permit action; pollution caused by human activity within a contaminated site as defined by the Department in the context of an applicable regulatory program (for example, Site Remediation Program [Oversight Document]); or an ACL as approved by the Department pursuant to NJPDES. In the context of an applicable regulatory program, the Department shall determine or describe appropriate boundaries for each Classification Exception Area and include the written description of the boundaries in the appropriate [oversight document or] permit action along with specifications as to which constituents the exception applies. Classification Exception Areas may only be established when constituent standards are not being met or will not be met due to the conditions set forth above and shall not be established for the purpose of sanctioning violations of constituent standards.

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

(d) Where a discharge has resulted or will result in localized ground water quality that contravenes one or more constituent standards, the Department may define that area as a Classification Exception Area for specified constituents pursuant to (or in accordance with) a NJPDES permit action or [a Department-approved remedial action] **the remediation of a contaminated site** in the context of an applicable regulatory program. All other constituent standards shall apply within the Classification Exception Area. All designated uses in each Classification Exception Area will be suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents. The Department shall restrict or require the restriction of potable ground water uses within any Classification Exception Area where there is or will be an exceedance of the Primary Drinking Water Quality Standards (in N.J.A.C. 7:10). Where the Department defines the Classification Exception Area through a NJPDES permit action, the Classification Exception Area shall have the same life as the approved NJPDES permit action, after which the original classification, designated uses and constituent standards shall apply. Other regulatory actions creating the Classification Exception Area shall specify the longevity of the exception, after which the original classification, designated uses and constituent standards shall be applicable.

CHAPTER 14A
NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 3. DETERMINATION OF PERMIT FEES

7:14A-3.1 Fee schedule for NJPDES permittees and applicants

(a)-(j) (No change.)

(k) The fee for discharges to groundwater required for conducting remediation, as defined by N.J.A.C. 7:26E, of contaminated sites, and for any NJPDES discharge to groundwater permits issued by the Site Remediation Program, is calculated and billed through requirements specified in N.J.A.C. 7:26C-[9.3]4.5.

(l)-(m) (No change.)

Tables I-III (No change.)

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; 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 [Department approved] 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 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. A contaminated site, as defined in N.J.A.C. [7:26C-1.3] **7:26E-1.8**, is being remediated pursuant to the rules at N.J.A.C. 7:14B implementing the Underground Storage of Hazardous Substances Act (N.J.S.A. 13:1K-6 et seq.), the requirements of the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the requirements of the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11), or the [Procedures for Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites rules** at N.J.A.C. 7:26C; and

2.-3. (No change.)

(c) (No change.)

SUBCHAPTER 9. GROUND WATER MONITORING REQUIREMENTS FOR SANITARY LANDFILLS

7:14A-9.10 Selection of remedy

(a)-(f) (No change.)

(g) When ground water contamination is known to have migrated outside the sanitary landfill boundary, the sanitary landfill shall [request to conduct] **implement** a cleanup in accordance with the [Procedures for Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites rules** at N.J.A.C. 7:26C within 90

days unless it can be demonstrated that a source other than the MSWLF caused the contamination, or that the statistically significant increase resulted from an error in sampling, analysis, statistical evaluation, or from natural variation in ground water quality. A report documenting this demonstration shall be certified by a qualified ground water scientist or approved by the Department and placed in the records maintained by the facility.

CHAPTER 14B
UNDERGROUND STORAGE TANKS

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.6 Definitions

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

...
“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

...
“Licensed site remediation professional” means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

7:14B-1.7 Certifications

(a)-(f) (No change.)

(g) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who conducts or directs activities and prepares documents in accordance with N.J.A.C. 7:14B-[8.5 or] **7.2(b), 7.4 and 9.5**, shall sign, date and submit to the Department the following certification:

“I certify under penalty of law that the work was performed under my oversight and I have reviewed the report and all attached documents, and the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.”

(h) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who prepares documents pursuant to N.J.A.C. 7:14B-[8.5] **7.2(b), 7.4, 8** or 9.5 for another certified subsurface evaluator who conducted or directed onsite activities, shall sign, date and submit to the Department the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I certify under penalty of law that the onsite work was performed by a certified subsurface evaluator. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.”

7:14B-1.8 [(Reserved)] **General requirements**

(a) **The owner or operator of an underground storage tank system shall comply with the regulatory timeframes in this chapter or in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, when indicated, and shall:**

1. Conduct all site investigation and tank closure activities required by this chapter using the services of an individual certified in subsurface evaluation and/or closure in accordance with N.J.A.C. 7:14B-13 when site investigation and tank closure activities were initiated, as determined pursuant to Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.2(a), prior to November 4, 2009; or

2. Conduct all site investigation and tank closure activities required by this chapter in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using the services of a licensed site remediation professional, when site investigation and tank closure activities are initiated, as determined pursuant to N.J.A.C. 7:26C-2.2(b), on or after November 4, 2009.

SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

7:14B-2.4 Changes to registration

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

(d) Upon receipt of an amended New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to (a) above, the Department will remove an underground storage tank system from its registrant list when the Department receives a final remediation document.

SUBCHAPTER 3. FEES

7:14B-3.5 Program fees and oversight [cost fees] costs

(a) The owner or operator of an existing, former or proposed underground storage tank system shall **pay all required fees and costs pursuant to this chapter and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4, as applicable, and shall:**

1.-3. (No change.)

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

(e) [The] **When required, the owner or operator shall submit oversight [cost fees] costs** pursuant to the provisions found in the [rules for Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-[9.3]4.5** and submit payment pursuant to N.J.A.C. 7:26C-[9.5]4.7. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.

7:14B-3.6 Payment for Department services

[(a) All fees submitted in compliance with N.J.A.C. 7:14B-3.2 shall be made by check or money order, payable to “Treasurer, State of New Jersey,” and submitted to:

New Jersey Department of Environmental Protection
Division of Remediation Support
Oversight Resources Allocation Element
PO Box 028
401 East State Street
Trenton, NJ 08625-0028

All other fee payments shall be made by check or money order, payable to “Treasurer, State of New Jersey” and submitted to the address at N.J.A.C. 7:14B-2.2(b).]

(a) The person responsible for conducting the remediation shall make all payments of fees and oversight costs required by this subchapter:

1. By either:

i. Certified check, attorney check, money order, or personal check made payable to “Treasurer, State of New Jersey”; or

ii. E-check or credit card after the Department posts a notice for either on its website at www.nj.gov/dep/srp/srra or in the New Jersey Register that the Department’s portal for making payments by E-check or credit card is available.

2. Payments shall be mailed to the following address unless otherwise indicated on the first page of a billing invoice:

DEP/Bureau of Case Assignment & Initial Notice
PO Box 434
Trenton, NJ 08625-0434

(b) (No change.)

7:14B-3.8 Oversight cost review

To contest on oversight cost imposed pursuant to the [rules for Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites[.] rules at N.J.A.C. 7:26C-[9.3]4**, the contestor shall follow the procedures found in N.J.A.C. 7:26C-[9.4]4.6.

SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEMS:
DESIGN, CONSTRUCTION AND
INSTALLATION

7:14B-4.2 Upgrading of existing underground storage tank systems

(a) All existing underground storage tank systems shall comply with one of the following requirements:

1.-2. (No change.)

3. Closure requirements under N.J.A.C. 7:14B-9, including applicable requirements [for corrective action under] **pursuant to N.J.A.C. 7:14B-8 and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C.**

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

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.5 Release response plan

(a) The owner or operator of an underground storage tank system shall prepare a release response plan which includes the following information:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline 1-877 WARN DEP or 1-877-927-6337, and any other appropriate local or State agencies;

2.-3. (No change.)

4. The procedures to be followed [pursuant to N.J.A.C. 7:14B-8] in the event of a leak **or discharge of a hazardous substance, pursuant to N.J.A.C. 7:14B-7.3 and 8 and N.J.A.C. 7:26C-2,** [or discharge from the facility] and N.J.A.C. 7:14B-9 if the underground storage tank system must be closed.

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

7:14B-5.6 Recordkeeping

(a) Owners and operators shall maintain the following information until the owner [of] **or operator** receives the Department's written permission to discard the records pursuant to (c) below:

1.-3. (No change.)

[4. Results of all site investigations and remedial investigations conducted pursuant to N.J.A.C. 7:14B-8 and 9;]

4. All remediation documents prepared or required pursuant to this chapter;

5.-6. (No change.)

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

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.2 Investigating a suspected release

(a) (No change.)

(b) If the investigation conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator shall [within 60 calendar days of discovery of a suspected release], **in accordance with the schedule at N.J.A.C. 7:26E-3.3(e),** conduct and complete a site investigation designed to confirm or disprove a suspected discharge in accordance with N.J.A.C. 7:26E-3.3. If a discharge is confirmed, the owner or operator shall initiate action pursuant to N.J.A.C. 7:14B-7.3. Documentation of an investigation in accordance with this section which disproves a suspected discharge shall be kept at the facility and made available for inspection by the Department for the operational life of the underground storage tank system.

7:14B-7.4 Unknown sources

If the [Department] **owner or operator of a facility** has information indicating that a facility may be the source of a discharge, the [Department shall require the] owner or operator of the facility [to] **shall** perform a site investigation of the underground storage tank system(s) at the facility in accordance with N.J.A.C. 7:26E-3.3 [and to], prepare a site investigation report in accordance with **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3.13,** [within 90 calendar days after the Department's written request for a site investigation] **and submit the report to the Department within the timeframe indicated at N.J.A.C. 7:26E-3.3(e).** The [Department shall require the] owner or operator of a facility that is the suspected source of a discharge [to] **shall**

perform additional investigation(s) as the Department determines to be necessary **and shall remediate any discharge discovered during the additional site investigation(s).**

SUBCHAPTER 8. REMEDIATION ACTIVITIES

7:14B-8.3 Reporting requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall provide the local health department and the Department with a remedial investigation report prepared and presented pursuant to N.J.A.C. 7:26E-4.8, [accompanied by all applicable fees required in N.J.A.C. 7:14B-3] **and shall pay all required fees and costs pursuant to this chapter and the Administrative Requirements for the Remediation of Contaminated Sites Rules at N.J.A.C. 7:26C-4, as applicable,** within [120] 270 calendar days after the notification required by N.J.A.C. 7:14B-7.3(a) **or by November 26, 2010, which ever is later.**

1. (No change.)

(b) For all confirmed releases from an underground storage tank subject to regulation at 40 CFR Part 280, the owner or operator shall report to the Department the source and cause of the confirmed release on a Confirmed Discharge Notification form available from the Department at <http://www.nj.gov/dep/srp/srra/forms/> in accordance with the timeframe applicable for submittal of the site investigation or remedial investigation report, regardless of whether the remediation is being conducted pursuant to N.J.A.C. 7:14B-1.8(a)1 or 2.

[(b) The] (c) As required pursuant to N.J.A.C. 7:14B-1.8, the report described in (a) above, and the form described in (b) above if applicable, shall be prepared **either** by an individual certified in subsurface evaluation pursuant to N.J.A.C. 7:14B-13 **or by a licensed site remediation professional.** The report(s) shall include the name and address for both the owner and the operator.

[(c) In] (d) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, in addition to the requirements listed in (a) and (b) above, the owner or operator of an underground storage tank system which has discharged a hazardous substance shall submit one of the documents listed in [(c)1] **(d)1** through 3 below, and all of the appropriate fees pursuant to N.J.A.C. 7:14B-3.5 with the remedial investigation report to the address specified in N.J.A.C. 7:14B-2.2(b):

1.-3. (No change.)

[(d) Within] (e) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, within 90 calendar days after the Department's approval of the remedial investigation workplan submitted pursuant to [(c)2] (d)2 above, the owner or operator shall submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8 and [(c)] **(d)** above that presents all the data and information collected in accordance with the approved remedial investigation workplan, or any other sampling conducted in accordance with N.J.A.C. 7:26E, **accompanied by the applicable fee required in N.J.A.C. 7:14B-3.**

[(e)] (f) (No change in text.)

[(f)] (g) If the Department determines that any submittal made under this section is inadequate or incomplete, the Department shall provide the owner or operator with written notification of the deficiencies, and the owner or operator shall [revise] **correct the deficiencies** and resubmit the required information within 30 calendar days of receipt of the notification unless otherwise specified by the Department. If the revision does not address the deficiency(ies) to the Department's satisfaction, the Department shall disapprove the submittal and require the owner or operator to present a new submittal pursuant to [(c)] **(d)** above and a new fee pursuant to N.J.A.C. 7:14B-3.5.

[(g)] If the Department notes any deficiencies in any of the items submitted in accordance with (c)2 and 3 above, the Department may conditionally approve the submittal. Within the timeframe specified by the Department, the owner or operator shall, in writing, accept or reject the Department's conditions. If the owner or operator rejects any one of the Department's conditions, the owner or operator shall submit a revision to the remedial investigation workplan or remedial action

workplan within 30 calendar days of receipt of the conditional approval, unless otherwise specified by the Department, addressing the noted deficiencies. If the revision does not address the deficiency(ies) to the Department's satisfaction, the Department shall disapprove the submittal and require a new submittal pursuant to (c) above and a new fee pursuant to N.J.A.C. 7:14B-3.5.]

(h) [The] **When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the owner or operator may request an extension of time to submit the remedial investigation report [in accordance with (d)] required in (e) above. The request shall be in writing and include a justification for such a change and outline a new detailed schedule for the submission of the report. All requests for extensions shall be [received by the Department at least 14 calendar days prior to any schedule deadline. The Department shall approve or disapprove the extension request in writing] submitted pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3.2(b).**

(i) (No change.)

(j) If the Department approves a revised remedial investigation workplan submitted pursuant to [(c)] (d) above, the owner or operator shall perform the additional work in accordance with the timeframes specified therein.

(k) If the Department determines that a remedial action for affected media at or emanating from any portion of the facility is necessary prior to full contaminant delineation due to a discharge posing an immediate threat to public health or the environment, the owner or operator shall[, within 45 calendar days of the request from the Department, submit to the Department a detailed remedial action workplan that shall be prepared and presented in accordance with N.J.A.C. 7:26E-6.2 and be specific to the discharge to the affected media identified by the Department] **comply with N.J.A.C. 7:26E-1.14.**

(l) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2, the owner or operator shall implement the remedial investigation and submit reports pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4 and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4, within the timeframe specified at (a) above.

7:14B-8.4 Implementation of the remedial action requirements

(a) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the following requirements shall apply:

[(a)] **1.** After written Department approval of the remedial action workplan, including any workplan amendments, the owner or operator shall implement the remedial action workplan and any amendments thereto in accordance with the timeframes specified therein. The owner or operator shall obtain any necessary permits in accordance with N.J.A.C. 7:26E-7[.];

[(b)] **2.** The owner or operator may request, in writing, an extension of time to complete implementation of the remedial action workplan. The request shall include a justification for such a change and outline a new detailed schedule for the submission of the remedial action report. All requests for extensions shall be received by the Department 14 calendar days prior to any schedule deadline. The Department shall approve or disapprove the extension request in writing[.];

[(c)] **3.** The owner or operator shall submit an amendment to the approved remedial action workplan at any time during the implementation of the workplan, if new information, such as a new discharge, becomes available which was not adequately addressed in the original workplan. All remedial action workplan amendments shall be accompanied by a revised schedule and the appropriate additional fee pursuant to N.J.A.C. 7:14B-3.5[.];

[(d)] **4.** The owner or operator of the facility shall submit progress reports to the Department in the time frame specified by the remedial action workplan approval letter. The progress reports shall contain the information required in accordance with N.J.A.C. 7:26E-[6.5]6.6 and the remedial action workplan approval letter[.]; **and**

[(e)] **5.** The Department may conduct inspections of the facility that is subject to a remedial action workplan to determine compliance with the workplan.

(b) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2, the owner or operator shall implement the remedial action and submit reports as required pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, pay all required fees and costs pursuant to N.J.A.C. 7:26C-4, and if necessary, submit any request for an extension of a regulatory timeframe in this subchapter in accordance with the procedures and timeframes at N.J.A.C. 7:26C-3.1(b).

7:14B-8.5 Remedial action reports

(a) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the following requirements shall apply:

[(a)] **1.** After the remedial action workplan is fully implemented, the owner or operator of the facility shall submit a remedial action report to the Department. The remedial action report shall be prepared and presented in accordance with N.J.A.C. 7:26E-[6.6]6.7, and discuss all the data and information collected in accordance with the approved remedial action workplan. The remedial action report shall compare the proposed remedial actions described in the remedial action workplan and actual action undertaken to perform the remediation[.];

[(b)] **2.** If the Department notifies the owner or operator that the remedial action workplan has not been fully completed, the owner or operator of the facility shall correct any deficiencies, and amend the remedial action report, in the time frames specified by the Department[.]; **and**

[(c)] **3.** The Department shall issue a no further action determination to the owner or operator of the facility upon satisfactory completion of the remedial action workplan and submission of the remedial action report.

(b) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2, the owner or operator shall implement the remedial action and submit reports, and address any deficiencies identified by the Department in accordance with N.J.A.C. 7:26C-2.4, and shall submit a response action outcome issued by the licensed site remediation professional hired by the owner or operator to conduct the remediation.

7:14B-8.7 Health and safety requirements

All remedial investigation and remedial action activities required under this chapter shall be undertaken in accordance with N.J.A.C. 7:26E-[1.9]1.10.

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 Out-of-service underground storage tank systems

(a) The owner or operator of an underground storage tank system which is out-of-service shall:

1. Notify the Department of such in writing, on forms obtained from the Department within [30] **five** calendar days of the tank becoming out of service. The information shall include:

i.-iv. (No change.)

2.-5. (No change.)

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

(e) An individual certified in subsurface evaluation or a licensed site remediation professional shall be involved as follows:

[(e)] **1.** An individual certified in subsurface evaluation in accordance with N.J.A.C. 7:14B-13 shall be on site during the removal or abandonment-in-place of the underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities[.] **when those activities were initiated prior to November 4, 2009; and**

2. A licensed site remediation professional shall supervise all tank closure and site investigation activities required under this section, and shall ensure that those activities are conducted in accordance with the Administrative Requirements for the Remediation of

Contaminated Sites rules at N.J.A.C. 7:26C-2.4, when those activities are initiated on or after November 4, 2009.

7:14B-9.2 Closure requirements for underground storage tank systems containing hazardous substances which are not hazardous wastes

(a) The owner or operator of an underground storage tank system containing hazardous substances which are not hazardous wastes who intends to close the underground storage tank system shall:

1. Notify the Department and all applicable municipal and county health departments of the closure activity in writing on forms provided by the Department at least 30 calendar days prior to the anticipated closure date. This notification shall include:

i.-iii. (No change.)

iv. The certification numbers and categories of service of the business firm(s) performing the closure activities and subsurface evaluation required pursuant to N.J.A.C. 7:14B-13 **or the license number of the licensed site remediation professional, if applicable;**

v. (No change.)

2.-4. (No change.)

(b) (No change.)

(c) [The] **When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the owner or operator of an underground storage tank system may choose to submit a closure plan to the Department for review. The appropriate fees pursuant to N.J.A.C. 7:14B-3.5 shall accompany the closure plan. [A variance from the site investigation requirements of N.J.A.C. 7:26E may be requested pursuant to N.J.A.C. 7:26E-1.6(d) and included with the closure plan.]**

(d) The owner or operator of an underground storage tank system shall ensure the system is closed by [an] **either:**

1. **An individual certified for closure in accordance with N.J.A.C. 7:14B-13 when closure was initiated prior to November 4, 2009; or**

2. **A licensed site remediation professional when closure is initiated on or after November 4, 2009.**

7:14B-9.3 Closure requirements for underground storage tank systems containing hazardous wastes

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

(c) The owner or operator of an underground storage tank system shall ensure the system is closed by [an] **either:**

1. **An individual certified for closure in accordance with N.J.A.C. 7:14B-13 when closure was initiated prior to November 4, 2009; or**

2. **A licensed site remediation professional when closure is initiated on or after November 4, 2009.**

(d) An individual certified in subsurface evaluation **or a licensed site remediation professional shall be involved as follows:**

1. **An individual certified in subsurface evaluation** in accordance with N.J.A.C. 7:14B-13 shall be on site during the removal or abandonment-in-place of the underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities **when those activities were initiated prior to November 4, 2009; and**

2. **A licensed site remediation professional shall supervise all tank closure and site investigation activities required under this section, and shall ensure that those activities are conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, when those activities are initiated on or after November 4, 2009.**

7:14B-9.4 Change in service to a nonregulated substance

(a) The owner or operator of an underground storage tank system in which the substance being stored is being changed to a substance not regulated by this chapter shall:

1.-2. (No change.)

3. Submit a site investigation report prepared and presented in accordance with N.J.A.C. 7:26E-3.13 within [120] **270** calendar days after the tank cleaning.

(b) Should a discharge of hazardous substances be identified during (a) above, the owner or operator shall notify the Department's Environmental Action Hotline in accordance with N.J.A.C. 7:14B-7.3(a) and **shall conduct [a remedial investigation] remediation** in accordance

with the requirements of **the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. [7:14B-8] 7:26C.**

(c) The owner or operator shall submit a New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.5(c) **that documents the change of substance.**

7:14B-9.5 Reporting and recordkeeping requirements

(a) The owner or operator of an underground storage tank shall, within [120] **270** calendar days of initiation of closure activities, such as breaking ground for removal or cleaning for abandonment, submit to the Department a site investigation report prepared and presented in accordance with **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3.13, accompanied by the appropriate fees required pursuant to N.J.A.C. 7:14B-3.5 and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4, as applicable.**

(b) [The] **As required pursuant to N.J.A.C. 7:14B-1.8, the report described in (a) above shall be prepared either by an individual certified in subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or by a licensed site remediation professional.** The report shall include the name and address for both the owner and the operator, the underground storage tank system facility registration number, and all applicable case numbers or tank closure approval numbers.

(c) (No change.)

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.2 Permits required in wellhead protection areas

(a) (No change.)

(b) Prior to submitting a permit application for the upgrade or substantial modification of underground storage tank systems in wellhead protection areas, a site investigation of the underground storage tank system shall be performed in accordance with the requirements of N.J.A.C. 7:26E.

1. If the site investigation report indicates that a discharge has occurred, the Department shall not issue a permit for the upgrade of the underground storage tank system unless owner or operator:

i. (No change.)

ii. Submits a remedial investigation **report/remedial action workplan** in accordance with **the requirements of the Technical Requirements for Site Remediation rules at N.J.A.C. [14B-8 and] 7:26E; and**

iii. (No change.)

CHAPTER 22

FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE FACILITIES

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.4 Definitions

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

...
"Final remediation document" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-1.3.

...
"Licensed site remediation professional" means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-1.3.

...
"Remedial action activities" means all actions that are required in a remedial action workplan developed pursuant to N.J.A.C. 7:26E and approved by the Department **or by a licensed site remediation professional** that are considered water quality-related.

...

7:22-3.11 Application procedures

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

(d) The following must be submitted when applying for a Fund loan, as applicable:

1.-4. (No change.)

5. A complete Project Report/Facilities Plan, which must include:

i.-vii. (No change.)

viii. For remedial action activities, the following items shall also be submitted:

(1) A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to [an oversight document] **the Administrative Requirements for Site Remediation rules, N.J.A.C. 7:26C**, including, as applicable, case number, **program interest number**, Known Contaminated Site List number, **name and license number of licensed site remediation professional**, [and] or the name of the Department case manager **as applicable** for the case; and

(2) (No change.)

ix. (No change.)

6.-24. (No change.)

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

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, permits, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1.-32. (No change.)

33. For land acquisition and conservation projects, the recipient shall also comply with the following:

i.-iii. (No change.)

iv. The recipient shall submit a [no further action letter] **final remediation document** issued [by the Department] pursuant to N.J.A.C. 7:26C-[2.6]6, if a preliminary assessment report or site investigation report prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

v.-vi. (No change.)

34. (No change.)

(b)-(g) (No change.)

SUBCHAPTER 4. ENVIRONMENTAL INFRASTRUCTURE TRUST PROCEDURES AND REQUIREMENTS

7:22-4.11 Application procedures

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

(d) The following must be submitted when applying for a Trust loan, as applicable:

1.-4. (No change.)

5. A complete Project Report/Facilities Plan, which must include:

i.-vii. (No change.)

viii. For remedial action activities, the following items must also be submitted:

(1) A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to [an oversight document] **the Administrative Requirements for Site Remediation rules, N.J.A.C. 7:26C**, including, as applicable, case number, **Program Interest number**, Known Contaminated Site List number, **name and license number of licensed site remediation professional** and the name of the Department case manager for the case; and

(2) (No change.)

ix. (No change.)

6.-24. (No change.)

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

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, permits, terms and conditions which may be applicable to particular loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1.-32. (No change.)

33. For land acquisition and conservation projects, the recipient shall also comply with the following:

i.-iii. (No change.)

iv. The recipient shall submit a [no further action letter] **final remediation document** issued [by the Department] pursuant to N.J.A.C. 7:26C-[2.6]6, if a preliminary assessment report or site assessment prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

v.-vi. (No change.)

34. (No change.)

(b)-(g) (No change.)

CHAPTER 26B INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.4 Definitions

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

...

“Final remediation document” means a document defined as such pursuant to the **Administrative Requirements for the Remediation of Contaminated Sites rules** at N.J.A.C. 7:26C-1.3.

...

“Licensed site remediation professional” means a person defined as such pursuant to the **Administrative Requirements for the Remediation of Contaminated Sites rules** at N.J.A.C. 7:26C-1.3.

...

“Remediation agreement” means a document the Department [issues] issued before November 4, 2009 for the transfer of an industrial establishment prior to the completion of the remediation.

“Remediation certification” means a certification prepared pursuant to N.J.A.C. 7:26B-4.3 which, when submitted to the Department by the owner or operator of an industrial establishment, authorizes the owner or operator to transfer ownership or operations prior to the approval of a negative declaration or remedial action workplan.

...

“Response action outcome” means a document defined as such pursuant to the **Administrative Requirements for the Remediation of Contaminated Sites rules** at N.J.A.C. 7:26C-1.3.

...

7:26B-1.5 Forms and submissions

[Any forms or applications required by this chapter may be obtained from and returned to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection
401 East State Street
PO Box 432
Trenton, NJ 08625-0432]

(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 or by contacting the Department at the address 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) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and
2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

7:26B-1.6 Certifications and signatories

(a) Any person submitting an application, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include [the] a certification [provided at (c) below, as applicable. The person submitting the certification provided at (c) below shall sign the certification in accordance with (e) below] **that is executed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.5.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) [The] **In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the** Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

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

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

1. [The Department's issuance of a remediation agreement or remediation agreement amendment] **The owner's or operator's submission of a remediation certification** pursuant to N.J.A.C. 7:26B-4.3;

2.-3. (No change.)

4. The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e); [and]

5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d)[.]; **and**

6. The Department's approval of a de minimus quantity exemption pursuant to N.J.A.C. 7:26B-5.9.

[(d)] (e) (No change in text.)

7:26B-1.9 Right of entry and inspection

(a) (No change.)

(b) The buyer or transferee of the industrial establishment that has been sold subsequent to obtaining an approved remedial action workplan or remediation agreement from the Department, **or the owner or operator of the industrial establishment that has submitted a remediation certification**, shall:

1. Allow the Department and/or its authorized representatives, upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records related to environmental issues, and to take samples from the site, photograph the site and the buildings and to make copies of the records; where the Department takes samples from the site, the buyer [or], transferee **or owner or operator** shall be provided with split samples upon his or her request; and

2. Allow access to the transferred premises by the duly authorized representatives of the seller or transferor to implement a duly approved remedial action workplan, or comply with the conditions of a remediation agreement **or remediation certification**.

(c) (No change.)

7:26B-1.10 Liability for ISRA compliance

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

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

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

1. The Department has issued a no further action letter, **or a licensed site remediation professional has issued a remedial action outcome**, for the industrial establishment pursuant to N.J.A.C. [7:26B-1.8(a)] **7:26C-6**;

2. The Department has approved **or a licensed site remediation professional has certified** a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);

3. The owner or operator has executed **prior to November 4, 2009** a remediation agreement or remediation agreement amendment [issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b)], **or, on or after November 4, 2009, has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3**; or

4. (No change.)

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

Recodify existing (e) and (f) as (d) and (e) (No change in text.)

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

[(h)] (g) (No change in text.)

7:26B-1.11 Civil penalties

(a) (No change.)

(b) The Department may assess a civil administrative penalty, pursuant to the [Oversight] **Administrative Requirements for the Remediation of Contaminated Sites** rules, at N.J.A.C. 7:26C-[10]9, against any

person who violates the requirements of this chapter to remediate contamination.

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

SUBCHAPTER 2. APPLICABILITY

7:26B-2.2 and 2.3 (Reserved)

SUBCHAPTER 3. GENERAL INFORMATION NOTICE

7:26B-3.1 (Reserved)

7:26B-3.3 General information notice

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), **on a General Information Notice form available from the Department, which is certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided [at N.J.A.C. 7:26B-1.5] on the form**, which includes the following:

1.-9. (No change.)

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

i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3, **and in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.15**; or

ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department; **except that no schedule may allow for more time than is established in the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3**;

11.-14. (No change.)

(b) (No change.)

(c) [The] **For a General Information Notice submitted to the Department prior to November 4, 2009, the Department shall review the General Information Notice**, and shall respond in writing to the authorized agent as follows:

1.-2. (No change.)

(d) **For a General Information Notice submitted to the Department on or after November 4, 2009, the owner or operator shall comply with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.**

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

(a) An owner or operator may withdraw the notice required pursuant to N.J.A.C. 7:26B-3.2(a) if the owner or operator determines [it is no longer necessary to obtain a no further action letter or authorization letter from the Department. Such withdrawal, stating the reason for the withdrawal, shall be made in writing and certified in accordance with N.J.A.C. 7:26B-1.6] **that none of the transactional events listed in N.J.A.C. 7:26C-3.2(a) will occur; provided, however, that any such owner or operator may have statutory liability for conducting the remediation pursuant to other statutes, including, without limitation, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. The withdrawal of the notice does not alter or affect any statutory liability of the owner or operator for conducting the remediation.**

(b) (No change.)

SUBCHAPTER 4. REMEDIATION AGREEMENT AND REMEDIATION CERTIFICATION

7:26B-4.1 Remediation agreement

An owner or operator who entered into a remediation agreement with the Department prior to November 4, 2009 shall remediate the industrial establishment in accordance with that agreement and the

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

7:26B-4.2 Remediation agreement amendment

(a) An owner or operator of an industrial establishment [may request] **who, prior to November 4, 2009, entered into** an amendment to the remediation agreement [to allow a transfer of ownership or operations, subsequent to the transaction described in the remediation agreement, to occur prior to the Department's approval of a negative declaration or remedial action workplan for the industrial establishment] **shall proceed to remediate the industrial establishment pursuant to the terms of the remediation agreement and the remediation agreement amendment, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.**

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

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

7:26B-4.3 Remediation certification

(a) An owner or operator of an industrial establishment who wishes to transfer ownership or operations of the industrial establishment prior to completion of all applicable requirements of ISRA and this chapter shall submit to the Department a completed Remediation Certification form, available at the Department's website at www.nj.gov.dep/srp/srra/forms, that includes the following:

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;
2. A certification by the owner or operator of the industrial establishment describing:
 - i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;
 - ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;
 - iii. The requirement of the owner or operator to perform the remediation the Department requires;
 - iv. The requirement of the owner or operator to allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A. 13:1K-10;
 - v. The requirement of the owner or operator to comply with the provisions of the Site Remediation Reform Act, N.J.S.A. 58:10C, and this chapter; and
 - vi. The requirement of the owner or operator to prepare and submit any document the Department requires for the remediation of the industrial establishment;
3. Evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with N.J.A.C. 7:26B-6.4; and
4. Evidence of the payment of all applicable fees in accordance with N.J.A.C. 7:26B-8.

SUBCHAPTER 5. [EXPEDITED] ALTERNATE COMPLIANCE OPTIONS

7:26B-5.1 Expedited review

(a) [An] **In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.**

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

7:26B-5.3 Regulated underground storage tank waiver

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

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

1.-2. (No change.)

3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance, pursuant to N.J.A.C. 7:26B-5.3(d), with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B for all underground storage tanks at the industrial establishment that are covered by that act; [and]

4. A copy of proof of financial responsibility pursuant to N.J.A.C. 7:14B-15; and

[4.] 5. (No change in text.)

(d)-(e) (No change.)

7:26B-5.5 Limited site review

(a) [The] **In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a limited site review in accordance with (c) below.**

(b)-(e) (No change.)

7:26B-5.9 De minimis quantity exemption

(a) An owner or operator to whom the Department grants a de minimis quantity exemption is exempt from the provisions of this chapter, except as provided at N.J.A.C. 7:26B-8.1, based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.

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

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;
2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;
3. The total quantity of hydraulic or lubricating oil, in the aggregate, does not exceed 220 gallons at any one time during the owner's or operator's period of ownership or operation; and
4. The industrial establishment is not contaminated above any standard set forth in the Remediation Standards, N.J.A.C. 7:26D.

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

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

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

1. A completed de minimis quantity exemption application form, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5; and

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

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.

SUBCHAPTER 6. REMEDIATION PROCEDURES

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

(a) (No change.)

(b) The owner or operator shall complete the preliminary assessment [report] in accordance with **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3[.2]** and submit a **preliminary assessment report and a negative declaration**, if applicable, within [35 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a)] **the timeframe indicated at N.J.A.C. 7:26E-3.1(e)**.

(c) The owner or operator shall complete a site investigation [report], if applicable, in accordance with **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3[.13]** and submit a **site investigation report and a negative declaration**, if applicable, within [120 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a)] **the timeframe indicated at N.J.A.C. 7:26E-3.3(e)**.

(d) The owner or operator shall complete a remedial investigation workplan, if applicable, in accordance with N.J.A.C. 7:26E-4.2 within [180] **270** calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B- 3.2(a).

(e) The owner or operator shall complete the remedial investigation report in accordance with N.J.A.C. 7:26E-4.8 and submit a negative declaration, if applicable, within [300] **420** calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) [or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan, whichever occurs last].

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

(a) [The] **Except as provided in (h) below, the owner or operator** required to conduct a soil remedial action at the industrial establishment or at any area of concern shall not implement a remedial action prior to the Department's approval of a remedial action workplan for the site unless [the]:

1. **The owner or operator is remediating the industrial establishment pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4; or**

2. **The soil remedial action satisfies the criteria established in (b) below.**

(b)-(g) (No change.)

(h) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

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

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

(b) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

7:26B-6.4 Remediation funding source requirement

The owner or operator shall submit a remediation funding source in accordance with N.J.A.C. 7:26C-[7]5 upon the Department's approval **or a licensed site remediation professional's certification** of a remedial action workplan for the industrial establishment.

7:26B-6.5 Compliance with remediation schedules

(a) (No change.)

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

1. A summary of remediation completed to date and the status of each area of concern;

2. The proposed remediation pursuant to N.J.A.C. 7:26E, to be conducted at each area of concern and the revised schedule of for the completion of proposed remediation; and

3. Any additional information which is relevant to the Department's evaluation of the proposed remediation schedule.]

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

(a) [Unless otherwise provided by this chapter.] **In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009,** the owner or operator, subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment, shall submit a negative declaration, executed and certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. The Department shall approve a negative declaration by the issuing a no further action letter.

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

(g) An owner or operator who initiates remediation on or after November 4, 2009 and conducts remediation pursuant to N.J.A.C. 7:26C-2.4 is not required to comply with this section.

SUBCHAPTER 8. [FEE SCHEDULE AND DIRECT BILLING FEES] PROGRAM FEES AND OVERSIGHT COSTS

7:26B-8.1 Fee schedule

(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

[1. Applicability determination application \$300.00]
Recodify existing 2.-12. as 1.-11. (No change in text.)

[13. Remediation agreement application \$1,500

14. Remediation agreement amendment application \$750.00]

Recodify existing 15.-16. as 12.-13. (No change in text.)

(b) The cost for the Department review of any remediation document not listed in (a) above shall be assessed pursuant to N.J.A.C. 7:26C-[9]4 **and 5.**

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

7:26B-8.2 Oversight costs

The owner or operator conducting the remediation of an industrial establishment pursuant to ISRA and this chapter shall submit payment to the Department pursuant to the provisions found in the **Administrative Requirements for the Remediation of Contaminated Sites** rules [for Department Oversight of the Remediation of Contaminates Sites] at N.J.A.C. 7:26C-[9.3 and submit payment pursuant to N.J.A.C. 7:26C-9.5]4.

7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the **Administrative Requirements for the Remediation of Contaminated Sites** rules [for Department Oversight of the Remediation of Contaminates Sites] at

N.J.A.C. 7:26C-[9.3]4.7, the contestor shall follow the procedures found in N.J.A.C. 7:26C-[9.4]4.8.

Appendix A
(RESERVED)

CHAPTER 26C
ADMINISTRATIVE REQUIREMENTS FOR THE
REMEDICATION OF CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope of subchapter

(a) This subchapter establishes the administrative procedures and requirements for the remediation of a contaminated site, including:

1. General requirements, in N.J.A.C. 7:26C-1.2;
2. Definitions, in N.J.A.C. 7:26C-1.3;
3. Exemptions, N.J.A.C. 7:26C-1.4;
4. Certifications, N.J.A.C. 7:26C-1.5;
5. Forms and submissions, N.J.A.C. 7:26C-1.6;
6. Liberal construction, N.J.A.C. 7:26C-1.7; and
7. Severability, N.J.A.C. 7:26C-1.8.

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.

(b) Any person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4.

7:26C-1.3 Definitions

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

"Applicant" means any person that has applied to the Department for a loan or grant.

"Area of concern" means any location defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

"Authority" means the New Jersey Economic Development Authority.

"Child care center" means a facility, as defined at N.J.S.A. 30:5B-3.

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

"Conditional hardship grant" means a grant to an eligible owner or operator as provided in N.J.S.A. 58:10A-37.5.

"Contaminated site" means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Contamination" or "contaminant" means any discharged hazardous substance, hazardous waste or pollutant defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Day" shall mean a calendar day.

"Deed notice" means a document defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Department" means the New Jersey Department of Environmental Protection.

"Directive" means a document the Department issues pursuant to N.J.S.A. 58:10-23.11 et seq. and 13:1D-1 et seq. to, among other things, notify the recipient thereof that the Department has determined that it is necessary to clean up and remove or arrange for the cleanup and removal of a discharge and that the Department believes the recipient is a person who may be liable for the hazardous substance that was discharged.

"Discharge" means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Engineering control" means a physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Environmental medium" means any medium defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Environmental opportunity zone" means any qualified real property that has been designated by the governing body as an environmental opportunity zone pursuant to N.J.S.A. 54:4-3.153.

"Final remediation document" means a no further action letter or a response action outcome.

"Grace period" means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

"Hazardous substance" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances rules, at N.J.A.C. 7:1E-1.7.

"Hazardous waste" means any hazardous waste as defined in the Hazardous Waste rules, at N.J.A.C. 7:26G-5.

"Immediate environmental concern" means a condition defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Industrial establishment" means any place defined as such pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-1.4.

"Innovative remedial action technology" means a technology defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Institutional control" means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Licensed site remediation professional" means an individual who has been issued a license pursuant to N.J.S.A. 58:10C-1 seq.

"Limited restricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Natural resources" means all resources defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"No further action letter" means a written determination by the Department that, based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no contaminants present at the site, at the area of concern or areas of concern, or 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 statutes, rules and guidance and all applicable permits and authorizations have been obtained.

"Operator" means any person defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

"Oversight costs" means all cleanup and removal costs as defined by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, that the Department incurs in overseeing the remediation conducted by the person responsible for conducting the remediation or in overseeing the remediation conducted by a contractor on behalf of the Department, established pursuant to N.J.A.C. 7:26C-4.

"Person" means any individual or entity, including, without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of or found within the State of New

Jersey, or any of the other meanings which apply to the common understanding of the term.

“Person responsible for conducting the remediation” means:

1. Any person who executes or is otherwise subject to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order to remediate a contaminated site;

2. The owner or operator of an industrial establishment subject to N.J.S.A. 13:1K-6 et seq. for the remediation of a discharge;

3. The owner or operator of an underground storage tank subject to N.J.S.A. 58:10A-21 et seq. for the remediation of a discharge;

4. Any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance, pursuant to N.J.S.A. 58:10-23.11g, that was discharged at a contaminated site, or

5. Any other person who is remediating a site.

“Petroleum” means petroleum defined pursuant to the Underground Storage Tanks rules, at N.J.A.C. 7:14B-1.6.

“Pollutant” means any substance defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Preliminary assessment” means a preliminary assessment as defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Public entity” means any State, county, municipality, or public school district, but shall not include any authority created by those entities.

“Regulated tank system” means an underground storage tank system defined pursuant to Underground Storage Tank rules, N.J.A.C. 7:14B.

“Remedial action” means an action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Remedial action workplan” or “RAW” means a plan defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Remedial investigation” means actions defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Remediation agreement” means an agreement defined as such pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-1.4.

“Remediation certification” means a certification defined as such pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-1.4.

“Remediation costs” means all costs associated with the development and implementation of a remediation including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and legal, administrative and capital costs.

“Response action outcome” or “RAO” means a written determination by a licensed site remediation professional that the site was remediated in accordance with all applicable statutes, rules and guidance, 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, at the area of concern or areas of concern, or 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 statutes, rules and guidance and all applicable permits and authorizations have been obtained.

“Restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Restricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Sanitary landfill” or “landfill” means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that the term sanitary landfill shall not include any waste facility approved for disposal of hazardous waste regulated pursuant to N.J.A.C. 7:26G. A facility is a sanitary landfill regardless of when solid waste was deposited or whether the facility was properly registered, permitted, approved or otherwise authorized to conduct such activity, by the Department or other State agency.

“Site investigation” means those actions defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Small business” means a business entity that does not acquire property for development or redevelopment, and that, during the prior three tax years, employed not more than 50 full-time employees or the equivalent thereof, and qualifies as a small business concern within the meaning of the Federal “Small Business Act,” 15 U.S.C. §§631 et seq.

“Spill Act” means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

“Timely filing” means an application filed within the review time goals as set forth in the Permit Activity Report published on the Department’s website at <http://www.nj.gov/dep/opppe/reports.html> or in the specific rule concerning an application for a grant or loan.

“Underground storage tank” means an underground storage tank defined as such pursuant to the Underground Storage Tank rules, at N.J.A.C. 7:14B-1.6.

“Unregulated heating oil tank” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Unrestricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

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);

2. Remediating a landfill, unless:

i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;

ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, A Brownfield Redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or

iii. The person conducting the remediation wants a final remediation document;

3. Responding to a discharge pursuant to a discharge prevention, containment, and countermeasures plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility;

4. Remediating a discharge pursuant to a New Jersey Pollutant Discharge Elimination System Underground Injection Control permit issued pursuant to N.J.A.C. 7:14A; or

5. Remediating a discharge from an unregulated heating oil tank, except that the requirements of N.J.A.C. 7:26C-4 and 13 shall apply to a person responsible for remediating a discharge from an unregulated heating oil tank.

(b) Unless notified in writing by the Department that additional remediation is necessary, a person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirement at N.J.A.C. 7:26C-2.4 to use the services of a licensed site remediation professional or to submit documents to the Department:

1. A petroleum surface spill of less than 100 gallons that does not reach the waters of the State of New Jersey;

2. A discharge that results from a passenger motor vehicle accident; or

3. A discharge that the Department refers to its Bureau of Emergency Response, to the New Jersey Office of Emergency Management, or to a County Environmental Health Agency.

7:26C-1.5 Certifications

(a) The person responsible for conducting the remediation of a site pursuant to N.J.A.C. 7:26C-2.3(b) and 2.4 shall:

1. Certify all submissions in accordance with certification instructions on the applicable form; and

2. Ensure that each form submitted to the Department by the person or by a licensed site remediation professional on behalf of the person is certified by a licensed site remediation professional in accordance with the applicable form.

(b) The person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a) shall certify all submissions as follows:

1. For all documents that are required to be certified pursuant to the applicable provisions of the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, the person responsible for conducting the remediation shall include the following certification with the document.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. In addition to the certification requirement in (b)1 above, the person responsible for conducting the remediation of a site who is required to establish a remediation funding source pursuant to N.J.A.C. 7:26C-5 shall include the following certification with the remediation funding source instrument:

"I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am

aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties."

(c) The certifications required in (a) and (b) above shall be signed and dated original certifications, not photocopies.

(d) The person submitting a certification required by either (a) or (b) above shall ensure that the certification is signed as follows:

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

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

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

(e) A duly authorized representative of the person described in (d)1 through 3 above may sign the certification required in (a) or (b) above. A person is deemed to be a duly authorized representative only if:

1. The authorization is made in writing by a person described in (d) above;

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

3. The written authorization is submitted to the Department along with the certification; and

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

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 or by contacting the Department at the address 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) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and

2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

7:26C-1.7 Liberal construction

These rules, being necessary to promote the public health and welfare, and protect the environment, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et

seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10B-1 et seq. and 58:10C-1 et seq.

7:26C-1.8 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

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

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

1. Criteria for determining when a person has initiated remediation in N.J.A.C. 7:26C-2.2;
2. Requirements for a person who initiated remediation prior to November 4, 2009, in N.J.A.C. 7:26C-2.3;
3. Requirements for a person who initiated remediation on or after November 4, 2009, in N.J.A.C. 7:26C-2.4; and
4. Requirements for a person to retain records, in N.J.A.C. 7:26C-2.5.

7:26C-2.2 Criteria for determining when a person has initiated remediation

(a) A person has initiated remediation prior to November 4, 2009 only when the criteria in both (a)1 and 2 below have occurred prior to November 4, 2009.

1. A person has notified the Department of a discharge or an obligation to remediate prior to November 4, 2009, pursuant to:
 - i. The Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E-5;
 - ii. The Underground Storage Tanks rules, N.J.A.C. 7:14B-7.3; or
 - iii. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2; and
2. The person has continuously conducted the remediation since the person notified the Department pursuant to one of the rules cited in (a)1 above.

(b) A person initiates remediation on or after November 4, 2009 when a person initiates or resumes remediation in response to any of the following which occur on or after November 4, 2009:

1. The person takes over the remediation from any other person or from the Department;
2. The person submits a document to the Department concerning a site for which the Department has rescinded a no further action letter or has invalidated a response action outcome, prior to the submission of the document;
3. The person discovers or becomes liable in any way for a discharge;
4. The owner or operator of a regulated tank system:
 - i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B; or
 - ii. Is required to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.21;
5. The person is liable for compliance with the Industrial Site Recovery Act rules pursuant to N.J.A.C. 7:26B-1.10; or
6. When additional remediation or other activities would result in the need to file a new deed notice or replace a declaration of environmental restrictions, associated with the real property.

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

(a) The person responsible for conducting the remediation who initiated remediation prior to November 4, 2009 shall conduct the remediation pursuant to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order, as applicable, and in accordance with all applicable statutes, rules, and guidance, including this chapter, and shall:

1. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;
2. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;
3. Provide the Department access to the contaminated site;
4. Submit to the Department all applicable documents and forms concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, applicable guidance, or upon request of the Department, and proceed with remediation only upon the Department's approval;
5. Meet the timeframes in this chapter, the Underground Storage Tank rules, N.J.A.C. 7:14B, Industrial Site Recovery Act rules, N.J.A.C. 7:26B, Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or Administrative Order, except that the mandatory remediation timeframes and the expedited site specific remediation time frames established pursuant to N.J.A.C. 7:26C-3 and the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, supersede any other conflicting remediation timeframes; and
6. Obtain and comply with all permits necessary for the remediation.

(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, and the Department determines that all outstanding fees and costs not contested have been paid and approves that request;

2. Upon receiving approval from the Department pursuant to (b)1 above, performs the remediation pursuant to N.J.A.C. 7:26C-2.4; and

3. By maintaining any remediation funding source previously required to have been maintained under the applicable administrative consent order, remediation agreement administrative order, court order or directive, and by paying the remediation funding source surcharge, if required.

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. Hire a licensed site remediation professional;
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. Of the occurrence of the earliest of the events listed at N.J.A.C. 7:26C-2.2(b);
 - ii. The person receives written approval from the Department of that person's request to continue remediation without the Department's pre-approval pursuant to N.J.A.C. 7:26C-2.3(b); or
 - iii. The person receives written notification from the Department that the Department is taking direct oversight of the remediation of the site, area of concern, or site condition pursuant to N.J.S.A. 58:10C-27;

3. Conduct the remediation of the discharge:

- i. Without prior Department approval, except if the Department has undertaken direct oversight of a site, area of concern or site condition pursuant to N.J.S.A. 58:10C-27;
- ii. In accordance with all applicable statutes, rules and guidance; and
- iii. Address all deficiencies identified by the Department in any submittals made by the person or by a licensed site remediation professional on behalf of the person;

4. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;

5. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;

6. Provide the Department access to the contaminated site pursuant to N.J.A.C. 7:26C-8;

7. Provide the Department copies of all applicable documents concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and guidance, or upon request of the Department;

8. Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E; and

9. Obtain and comply with all permits necessary for the remediation.

7:26C-2.5 Record retention

(a) The person responsible for conducting the remediation shall maintain and preserve all data, documents and information concerning remediation of a contaminated site, including, but not limited to, technical records and contractual documents, and raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or that person's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site.

(b) Upon the receipt of a written request from the Department, the person responsible for conducting the remediation shall submit to the Department all data and information, including technical records and contractual documents concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information were developed as part of the remediation. The person responsible for conducting the remediation may reserve its right to assert a privilege regarding such documents, except that no claim of confidentiality or privilege may be asserted with respect to any data related to site conditions, sampling or monitoring.

(c) The person responsible for conducting the remediation shall submit three electronic copies of all records referenced in (a) above, to the Department at the time of the issuance of a final remediation document.

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. Complying with, and requesting an extension from, regulatory timeframes pursuant to N.J.A.C. 7:26C-3.2;

2. Complying with mandatory remediation timeframes pursuant to N.J.A.C. 7:26C-3.3;

3. Complying with expedited site specific remediation timeframes pursuant to N.J.A.C. 7:26C-3.4; and

4. Requesting an extension of mandatory or site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.2 Regulatory timeframes

(a) The person responsible for conducting the remediation shall comply with the regulatory timeframes established by all applicable statutes, rules and guidance, including, but not limited to, the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter.

(b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:

1. Complete a Remediation Timeframe Extension Request form, available from the Department at www.nj.gov/dep/srp/srra/forms, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:

i. The end date of the regulatory timeframe;

ii. The amount of time beyond the end date of the regulatory timeframe needed to complete the required work, but not in an amount that would exceed any mandatory remediation timeframe in N.J.A.C. 7:26C-3.3 or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4;

iii. A description of the cause or causes of the need for the extra time needed to complete the work; and

iv. The steps taken to minimize the extra time needed to complete the work; and

2. Submit any additional information the Department requests.

(c) The request for an extension of a regulatory timeframe submitted in accordance with (b) above shall be deemed to be approved by the Department unless the Department notifies the person in writing that the extension request is denied.

(d) If the person responsible for conducting the remediation expects to or has missed a regulatory timeframe that may result in the person exceeding a mandatory remediation timeframe as established in N.J.A.C. 7:26C-3.3, or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4, the regulatory timeframe extension request shall not be deemed to be approved pursuant to (c) above.

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation shall:

1. Submit the preliminary assessment, site investigation report, as applicable, and the initial receptor evaluation within one year from the later of the following dates:

i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or

ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b) occurs;

2. Complete the delineation of the immediate environmental concern contaminant source, initiate immediate environmental concern contaminant source control and submit to the Department an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14, no later than one year from the later of the following dates:

i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or

ii. The date the person was required to report the immediate environmental concern to the Department pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14; and

3. Complete the installation of a light non-aqueous phase liquid (LNAPL) recovery system, initiate operational monitoring and submit an interim remedial action report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), no later than one year from:

i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or

ii. The date the person identified the presence of LNAPL free product.

(b) The timeframes set forth in (a) above shall not be extended based on the fact that a person other than the person who initiated the remediation assumes responsibility for the remediation pursuant to N.J.A.C. 7:26C-2.2(b)1.

(c) When the Department determines that a person responsible for conducting the remediation has failed to meet a mandatory remediation timeframe, that person shall become subject to direct oversight of the Department pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the mandatory remediation timeframe applies.

(d) A person responsible for conducting the remediation may request an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.4 Expedited site specific remediation timeframes

(a) The Department may establish an expedited site specific remediation timeframe that shall apply to a particular site, based upon the following criteria:

1. The risk to the public health and safety, or to the environment; and

2. The compliance history of the person responsible for conducting the remediation.

(b) The Department shall notify in writing the person responsible for conducting the remediation when the Department has established an expedited site specific remediation timeframe for a site for which the person is responsible for conducting the remediation.

(c) The person responsible for conducting the remediation shall comply with every expedited site specific remediation timeframe.

(d) When the Department determines that a person responsible for conducting the remediation has failed to meet an expedited site specific remediation timeframe, that person shall be subject to the direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the expedited site specific remediation timeframe applies.

(e) A person responsible for conducting the remediation may request an extension of an expedited site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

(a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:

1. The person shall provide a written rationale for the request in a completed Remediation Timeframe Extension Request Form available from the Department at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:

i. The end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe;

ii. The amount of time beyond the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe needed to complete the required work;

iii. A description of the cause or causes for the extra time needed to complete the work; and

iv. The steps taken to minimize the extra time needed to complete the work; and

2. The person shall provide any other information the Department requests.

(b) The person responsible for conducting the remediation shall continue any remediation during the time that the Department reviews the extension request submitted pursuant to (b) above, unless the Department directs otherwise.

(c) An extension request submitted pursuant to (a) above shall be deemed to be granted in the following circumstances with limitations as indicated:

1. A delay by the Department in reviewing or granting a permit or required submittal, provided that:

i. The person responsible for conducting the remediation timely filed a technically and administratively complete permit application or submittal; and

ii. The period of extension shall equal the actual duration of the delay; or

2. A delay in the provision of Federal or state funding for remediation, provided that the person responsible for conducting the remediation timely filed a technically and administratively complete application for funding and that the period of extension shall equal the actual duration of the delay.

(d) The Department may grant an extension of a mandatory remediation timeframe or of an expedited site specific timeframe by granting the approval in writing if appropriate and adequate rationale has been provided pursuant to (a) above and when an extension is needed as a result of the following:

1. A delay in obtaining access to property in accordance with N.J.A.C. 7:26C-8, provided that the person responsible for

conducting the remediation demonstrates that good faith efforts have been undertaken to gain access, access has not been granted by the property owner, and, after good faith efforts have been exhausted, a complaint was filed in the Superior Court to gain access;

2. Other site-specific circumstances that may warrant an extension, as the Department may determine, including but not limited to:

i. On-going litigation, the outcome of which will have a direct bearing on the person's ability to meet the mandatory remediation or expedited site specific timeframe;

ii. The fact that the person is an owner of a small business who can demonstrate to the Department's satisfaction that he or she does not have sufficient monetary resources to meet the mandatory remediation or expedited site specific timeframe; or

3. Other circumstances beyond the control of the person responsible for conducting the remediation, such as fire, flood, riot, or strike.

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. The payment of an annual remediation fee for the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4, pursuant to N.J.A.C. 7:26C-4.2;

2. The payment of the applicable individual fees for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.3;

3. The payment of remedial action permit fees, pursuant to N.J.A.C. 7:26C-4.4;

4. The methodology the Department will use to calculate its costs in overseeing remediation and the payment of those costs, pursuant to N.J.A.C. 7:26C-4.5;

5. The procedures by which a person may request a review of an oversight cost invoice from the Department, pursuant to N.J.A.C. 7:26C-4.6; and

6. How a person is to make payments to the Department of the fees and costs in this subchapter, pursuant to N.J.A.C. 7:26C-4.7.

7:26C-4.2 Annual remediation fee for a person initiating remediation on or after November 4, 2009

(a) Except as provided in (h) below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4 shall submit the applicable annual remediation fee to the Department pursuant to this section.

1. A person subject to this section shall pay a nonrefundable annual remediation fee, which shall be the sum of the applicable category fee as determined pursuant to (a)2 below, and the total contaminated media fee as calculated pursuant to (a)3 below.

2. The applicable category fee shall be assessed as follows:

i. The fee for zero to one contaminated areas of concern where the number of contaminated areas of concern is undetermined, determined to be one, or where the site is limited to historic fill: \$450.00;

ii. The fee for:

(1) Two through 10 contaminated areas of concern: \$900.00; and

(2) Any number of contaminated regulated underground storage tank system areas, excluding regulated heating oil tank systems, provided there are no other contaminated areas of concern at the site: \$900.00;

iii. The fee for 11 through 20 contaminated areas of concern, or one or more landfills: \$5,000; and

iv. The fee for more than 20 contaminated areas of concern: \$9,500.

3. The total contaminated media fee is as follows. A fee shall be assessed for each separate contaminated medium that is present at the site as determined from the following list. The total contaminated media fee shall be the sum of the individual contaminated medium fees.

- i. Ground water \$1,400;
- ii. Surface water sediment \$1,400; and
- iii. Ground water contaminated above an applicable Surface Water Quality Standard that is an unpermitted discharge to surface water \$1,400.

- 1. Preliminary assessment report \$375.00;
- 2. Site investigation report \$750.00;
- 3. Remedial action report for unregulated heating oil tank system \$400.00;
- 4. Biennial certification, unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification \$375.00; and
- 5. Child care center remedial action outcome or child care center renewal certification \$225.00.

4. The person responsible for conducting the remediation shall submit the first annual remediation fee and a completed Annual Remediation Fee Reporting form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the address noted on the form upon the earliest of the following:

- i. The submittal of a preliminary assessment report;
- ii. The submittal of a site investigation report;
- iii. The submittal of the first remedial phase document; or
- iv. Two hundred and seventy days after any event listed at N.J.A.C. 7:26C-2.2(b).

5. For each subsequent year, the Department shall invoice the person responsible for conducting the remediation for the annual remediation fee on the anniversary date of the first year that the annual fee was submitted pursuant to (a)4 above.

(b) The person responsible for conducting the remediation shall identify all contaminated areas of concern individually and shall not combine contaminated areas of concern or contaminated media for the purpose of determining the amount of the annual remediation fee.

(c) The person responsible for conducting the remediation that receives an RAO for a contaminated area of concern may submit a new Annual Remediation Fee Reporting form 90 days prior to the annual remediation fee anniversary date.

(d) The person responsible for conducting the remediation that discovers an additional contaminated area of concern shall submit a new Annual Remediation Fee Reporting form 90 days prior to the annual remediation fee anniversary date.

(e) The person responsible for conducting the remediation shall continue to pay an annual remediation fee to the Department until a response action outcome for all of the contaminated areas of concern and contaminated media at the site have been filed with the Department.

(f) If the Department makes a determination that it will undertake direct oversight of a portion or condition of the site pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall pay the annual remediation fee every year and the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.5.

(g) If the Department makes a determination that it will undertake direct oversight of the entire site pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall continue to pay the annual remediation fee until it submits the first direct oversight document required by the Department and at that point shall pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.5.

(h) The person responsible for conducting the remediation does not have to pay the annual remediation fee in the following circumstances:

- 1. Upon receipt of notice from the Department that it has assigned a full time case manager to the entire site;
- 2. If that person is remediating a child care center; or
- 3. If that person is the owner or operator of an unregulated heating oil tank system.

7:26C-4.3 Individual review fees

(a) The person responsible for conducting the remediation shall submit to the Department, at the address noted on the appropriate document submission form or questionnaire, provided by the Department at www.nj.gov/dep/srp/srra/forms, the applicable nonrefundable document review fee pursuant to this section each time that the person submits any of the following documents to the Department unless the person is subject to an annual remediation fee:

(b) If the person responsible for conducting the remediation does not submit a document review fee with a document pursuant to this section, the Department will not review, or otherwise process, the submitted document.

(c) The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall pay the following fees, as applicable:

- 1. \$350.00 fee for a discharge to ground water proposal pursuant to N.J.A.C. 26C-13.5(b)1;
- 2. \$400.00 for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3; and
- 3. All applicable fees pursuant to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A.

7:26C-4.4 Remedial action permit fees

(a) The person responsible for conducting remediation shall submit to the Department the applicable remedial action permit fees as required by this chapter and the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, pursuant to the following table:

Remedial Action Permit Fees	Soil Remedial Action Permit	Ground Water Remedial Action Permit
Remedial Action Permit Application Fee	\$550.00	\$750.00
Remedial Action Permit Modification Fee	\$550.00	\$750.00
Remedial Action Permit Transfer Fee	\$100.00	\$100.00
Remedial Action Permit Termination Fee	\$550.00	\$750.00

(b) For each year after it issues a remedial action permit, the Department shall invoice the permittees the amount of the annual remedial action permit fee.

1. The annual soil remedial action permit fee for a remedial action:

- i. With a deed notice without engineering controls: \$100.00; and
- ii. With a deed notice and engineering controls: \$250.00.

2. The annual ground water remedial action permit fee is as follows:

- i. For a natural attenuation remedial action: \$250.00; and
- ii. For any other ground water remedial action: \$750.00.

(c) The permittees shall continue to pay the annual remedial action permit fee to the Department until the Department terminates the permit.

7:26C-4.5 Oversight costs

(a) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to this section whenever the Department assesses those costs against the person

responsible for conducting the remediation that is subject to any of the following circumstances:

1. N.J.A.C. 7:26C-2.4, and the Department incurs those costs when a case manager is assigned pursuant to the criteria in N.J.S.A. 58:10C-21b or c;
2. N.J.A.C. 7:26C-2.3, unless an individual review fee applies pursuant to N.J.A.C. 7:26C-4.3 or other applicable rules; or
3. N.J.S.A. 58:10C-27.

(b) The person responsible for conducting the remediation shall pay the Department's oversight costs by the date indicated on the invoice for the Department's oversight costs.

(c) The Department shall include the following information on the bill for the Department's oversight costs referenced in (b) above:

1. The case Program Interest ID and associated Job Code(s);
2. The name of each staff member performing work on the site during the respective two week pay period, with a work activity description;
3. The number of hours spent by each staff member working on the site; and
4. The dollar amount of the oversight costs calculated pursuant to (e) below.

(d) The Department shall send a bill based on the formula in (e) below to the designated fee billing contact for the person responsible for conducting the remediation periodically throughout the remediation.

(e) The Department shall calculate its oversight costs based upon the following:

Oversight Costs = direct program costs + indirect program costs + expenses

or for persons signing the Developer's Certification found in chapter Appendix A, incorporated herein by reference, and for persons responsible for conducting the remediation of discharged substances at their primary residence:

Oversight Costs = direct program costs + expenses
where:

1. Direct program costs = (number of coded hours X hourly salary rate) X (1 + salary additive factor) X (1 + fringe benefit factor), where:

i. Number of coded hours represents the sum of hours each Departmental employee has coded to the site specific job number. Actual hours for all Departmental employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to Departmental employees' reimbursable "down time" salary expenses. Reimbursable "down time" expenses includes costs for vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive rate is the sum of the reimbursable "down time" expenses divided by the net Department regular salary for a given fiscal year. The net Department regular salary cost is calculated by subtracting the Department employees' reimbursable "down time" expenses from the Department's regular salary; and

iv. The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, unemployment insurance, temporary disability insurance, unused sick leave, FICA and Medicare. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States

Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs; and

2. Indirect program costs = (number of coded hours X hourly salary rate) X (indirect program cost rate factor), where:

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in Site Remediation. This indirect rate is developed by the Department on an annual basis in accordance with the applicable New Jersey Department of Treasury OMB Circular Letters and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments" (2 CFR Part 225); and

ii. The methodology for computing the indirect program cost rate involves the following basic processes:

(1) Identification of Site Remediation expenditures that cannot be assigned directly to a specific Site Remediation cost objective. These expenditures include indirect labor coded as such by employees, and approved by supervisors, on their timesheets. Also included are expenses such as the Site Remediation's proportionate share of costs associated with upper management offices, and individual costs such as rent, general equipment use charges, office supplies, training, etc. that cannot be identified to a specific Site Remediation cost objective;

(2) Site Remediation indirect expenditures identified above are adjusted for any expenses not allowed by the Federal Cost Principles such as interest expense;

(3) The adjusted Site Remediation's indirect expenditures are then reduced by the amount of any funds received by the Program from Federal Grants or New Jersey State Fee Reimbursements; and

(4) The resulting total unreimbursed Site Remediation indirect expenditures is then divided by the total unreimbursed Site Remediation direct labor expenditures to arrive at the indirect program cost rate.

7:26C-4.6 Oversight cost review

(a) The person responsible for conducting the remediation may contest an oversight cost the Department has assessed, pursuant to N.J.A.C. 7:26C-4.5, by submitting a written request to the Department, pursuant to (c) and (d) below, within 30 days after the billing date indicated on the oversight cost invoice that person received from the Department.

(b) The Department shall deny an oversight cost review request if the request is based on the following:

1. An employee's hourly salary rate;
2. The Department's salary additive rate, fringe benefit or indirect rate; or

3. Management decisions of the Department, including decisions regarding who to assign to case, how to oversee the case or how to allocate resources for case review.

(c) The person responsible for conducting the remediation shall submit an oversight cost review request to the Department at the following address:

New Jersey Department of Environmental Protection
Site Remediation
Office of Direct Billing and Cost Recovery
401 East State Street
PO Box 413
Trenton, NJ 08625-0413

(d) The person responsible for conducting the remediation shall include the following information in a request for an oversight cost review:

1. A copy of the invoice;
2. Payment of all uncontested charges, including salary, additives, and fringe and indirect rate calculations, as applicable, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address, email address, and telephone number of the person making the request; and

6. Information supporting the request or other written documents relied upon to support the request.

(e) If any information or the payment required by (d) above is not included, the Department shall deny a request for an oversight cost review.

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a corrected invoice or have the revision in the next invoice, which shall be due and payable according to the corrected or next invoice.

(g) The Department may, if it determines that the factual issues involving an oversight cost dispute cannot be resolved informally, determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(h) If the Department does not determine the matter to be a contested case and, therefore, not subject to an adjudicatory hearing, the Department shall issue written notification for this determination. This determination shall be considered a final agency action.

(i) If the objector does not file a request for an oversight cost review within 30 days after the billing date shown on the invoice for the Department's oversight costs, the full amount of the oversight costs shall be due and owing. If the invoice is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-4.7.

7:26C-4.7 Payment of fees and oversight costs

(a) The person responsible for conducting the remediation shall pay all fees and costs pursuant to an invoice the Department issues or as otherwise required pursuant to this chapter.

(b) The person responsible for conducting the remediation shall make all payments of fees and oversight costs required by this chapter:

1. By either:

i. Certified check, attorney check, money order, or personal check made payable to "Treasurer, State of New Jersey"; or

ii. E-check or credit card after the Department posts a notice for either on its website at www.nj.gov/dep/srp/srra or in the New Jersey Register that the Department's portal for making payments by E-check or credit card is available; and

2. By mailing payments to the following address unless otherwise indicated on the first page of a billing invoice:

New Jersey Department of Environmental Protection
Bureau of Case Assignment & Initial Notice
401 East State Street
PO Box 434
Trenton, NJ 08625-0434

(c) If the person responsible for conducting the remediation fails to pay any fee or cost pursuant to this chapter, the person responsible for conducting the remediation:

1. Shall pay interest on the unpaid fees beginning at the end of the period when payment is due as stated in an invoice issued by the Department, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey;

2. May be subject to enforcement pursuant to N.J.A.C. 7:26C-9, including penalties for each day the fee is not paid;

3. May have its property subject to a lien on all real and personal property of the person responsible for conducting the remediation, including a first priority lien on the property subject of the remediation; and

4. Shall not receive a final remediation document until all the costs and fees are paid in full.

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE

7:26C-5.1 Scope

(a) This subchapter establishes the requirements for:

1. Who has the obligation to establish and maintain a remediation funding source, in N.J.A.C. 7:26C-5.2;

2. The dollar amount that the person responsible for conducting the remediation has to establish and maintain in a remediation funding source, in N.J.A.C. 7:26C-5.3;

3. The financial mechanisms available as remediation funding sources, in N.J.A.C. 7:26C-5.4 through 5.9;

4. The annual cost reviews, in N.J.A.C. 7:26C-5.10;

5. The procedures for adjusting the amount of the remediation funding source, in N.J.A.C. 7:26C-5.11;

6. The disbursement of funds from a remediation funding source, in N.J.A.C. 7:26C-5.12;

7. The return of the remediation funding source, in N.J.A.C. 7:26C-5.13; and

8. The procedures the Department will use to draw on the funding in the remediation funding source when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.14.

7:26C-5.2 Establishing a remediation funding source

(a) Except provided in (b), below, the following persons responsible for conducting the remediation shall establish and maintain a remediation funding source pursuant to this subchapter:

1. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq.;

2. A person liable for cleanup and removal costs pursuant to the Spill Act, N.J.S.A. 58:10-23.11 et seq., if:

i. The Department has issued a Spill Act directive to that person;

ii. A State agency has issued an order to that person; or

iii. That person has entered into an administrative consent order with a State Agency; and

3. A person who has been ordered by a court to clean up and remove a discharge pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

(b) The following persons are not required to establish a remediation funding source pursuant to this subchapter:

1. A person who performs a remediation in an environmental opportunity zone;

2. A person who uses an innovative remedial action technology, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the innovative technology;

3. A person who implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the unrestricted use remedial action or the limited restricted use remedial action;

4. A government entity;

5. A person who undertakes a remediation at their primary or secondary residence;

6. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs a remediation at the licensed child care center; or

7. The person responsible for conducting a remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.

(c) Any person who is required to establish a remediation funding source shall establish and maintain a remediation funding source in an amount specified in N.J.A.C. 7:26C-5.3, until:

1. The Department or the licensed site remediation professional issues an unrestricted use or limited restricted use final remediation document for the site; or

2. The person responsible for conducting the remediation obtains a remedial action permit for an engineering control and submits to the Department evidence of compliance with the requirement to

establish financial assurance pursuant to N.J.A.C. 7:26C-7 prior to the termination of the existing remediation funding source.

(d) Any person required to establish a remediation funding source that elects to apply for a loan and/or a grant from the Hazardous Discharge Site Remediation Fund to satisfy all or a portion of the remediation funding source requirements shall submit all the information required in N.J.A.C. 7:26C-11.2 to the Department.

(e) In the event the New Jersey Economic Development Authority denies the application for a loan and/or grant from the Hazardous Discharge Site Remediation Fund, the person required to establish a remediation funding source shall establish the full amount of the remediation funding source in accordance with this subchapter within 14 days after the person's receipt of notice from the New Jersey Economic Development Authority that the application has been denied.

(f) Except as provided in (g) below, the person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter may use any one or any combination of the following instruments:

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-5.5;
3. A line of credit agreement in accordance with N.J.A.C. 7:26C-5.6;
4. A letter of credit in accordance with N.J.A.C. 7:26C-5.7;
5. A self-guarantee in accordance with N.J.A.C. 7:26C-5.8; or
6. A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12.

(g) Notwithstanding (f) above, any person subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27 shall establish and maintain a remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4.

(h) The person responsible for conducting the remediation required to establish and maintain a remediation funding source shall submit evidence of the establishment of a remediation funding source to the Department no later than the following deadlines as applicable, unless the Department approves an extension of that deadline:

1. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to ISRA, N.J.S.A. 13:1K-6 et seq., shall submit evidence of the remediation funding source:

- i. No more than 14 days after either Department approval of a remedial action workplan or Department receipt of a remedial action workplan certified by a licensed site remediation professional; or
- ii. Upon submission to the Department of a remediation certification pursuant to N.J.A.C. 7:26B-4;

2. A discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., shall submit evidence of the remediation funding source according to the following:

- i. As required by a directive the Department issues pursuant to the Spill Compensation and Control Act, at N.J.S.A. 58:10-23.11f;
- ii. As required by an order the Department issues pursuant to the Spill Compensation and Control Act, at N.J.S.A. 58:10-23.11u, or the Water Pollution Control Act, N.J.S.A. 58:10A-10;
- iii. Along with signed copies of an administrative consent order; or
- iv. As required by a court; and

3. A person who has received notice from the Department that the Department will undertake direct oversight of the remediation of the contaminated site pursuant to N.J.S.A. 58:10C-27 shall submit evidence of a remediation trust fund agreement established in accordance with N.J.A.C. 7:26C-5.4, no later than 30 days after receipt of such notification.

(i) Any person may establish, on behalf of any person required to establish a remediation funding source, any type of remediation funding source listed at (f)4 above except for a self-guarantee.

7:26C-5.3 Determination of remediation funding source amount

(a) The person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter shall establish and maintain the remediation funding source in an amount that is equal to or greater than:

1. The amount calculated in a cost estimate of the implementation of the remediation, including the Department's fees and oversight costs, but excluding the estimated cost to operate, maintain and inspect engineering controls as part of a remedial action permit as provided in N.J.A.C. 7:26C-7, as approved by the Department or as certified by the licensed site remediation professional and the person responsible for conducting the remediation, as applicable;

2. The amount to which the person responsible for conducting the remediation has agreed in an administrative consent order, remediation agreement, or remediation certification;

3. The amount that the Department has required in an order or directive;

4. The amount that the Department requires when it undertakes direct oversight of remediation pursuant to N.J.S.A. 58:10C-27; or

5. The amount that a court has required.

(b) The person responsible for conducting the remediation shall, within 30 days after a request from the Department, submit a revised cost estimate if the Department determines that the documentation offered to support the cost estimate is incomplete, inaccurate or deficient, and shall submit any additional documentation that the Department requests to enable the Department to evaluate the cost of the remediation, including, but not limited to, any workplans or reports that were used to determine the cost estimate submitted pursuant to (a)1 above.

7:26C-5.4 Remediation trust fund requirements

(a) Any person who is required or chooses to establish a remediation trust fund agreement as a remediation funding source pursuant to this subchapter shall submit to the Department the original remediation trust fund agreement. The remediation trust fund agreement must:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;

2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

3. Specify that the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;

4. Indicate that the trustee may only disburse those funds from the remediation trust fund:

i. If the entire site or portion of the site is under direct oversight by the Department pursuant to N.J.S.A. 58:26C-27, the Department approves in writing be disbursed; or

ii. For all other sites, the Department or the licensed site remediation professional approves in writing be disbursed;

5. Specify that the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation approved by either the Department or the licensed site remediation professional; and

6. Identify the Department as the sole beneficiary of the remediation trust fund.

(b) Any person responsible for conducting the remediation that uses a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved or a licensed site remediation professional has certified, and confirming that the trust shall continue to exist for the next consecutive 12-month period.

7:26C-5.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source pursuant to this

subchapter shall submit to the Department the original insurance policy. The environmental insurance policy must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey;

2. Include the applicable case number, the program interest name and program interest number (preferred ID), site name, and site address;

3. Indicate that the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department except for failure to pay the premium;

4. Specify that the issuer of the environmental insurance policy may revoke or terminate the policy for failure to pay the premium, but only after notifying the person who established the remediation funding source and the Department by certified mail of the decision to revoke or terminate the policy at least 120 days before termination, beginning from the date of receipt by the Department as shown on the signed return receipt;

5. Indicate that the insurer may only disburse those funds from the environmental insurance policy that the Department or the licensed site remediation professional approves in writing may be disbursed pursuant to N.J.A.C. 7:26C-5.12;

6. Indicate the funds in the environmental insurance policy will be utilized solely for the purposes of conducting the remediation; and

7. Specify that the Department, or another party that may subsequently be designated by the Department pursuant to N.J.A.C. 7:26C-5.13(d), may access the environmental insurance policy to pay for the cost of conducting the remediation.

(b) Any person responsible for conducting the remediation using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source, submit to the Department a written statement from the insurance company confirming the value of the environmental insurance policy in an amount that the Department has approved or a licensed site remediation professional has certified, and that the environmental insurance policy has been renewed for the next consecutive 12-month period.

7:26C-5.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit agreement as a remediation funding source pursuant to this chapter shall submit to the Department an original of a line of credit. The line of credit must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;

2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended for a period of at least one year;

4. Indicate that, if the issuer of the line of credit decides not to extend the line of credit beyond the then current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of a decision not at least 120 days before the current expiration date beginning from the date of receipt by the Department as shown on the signed return receipt;

5. Indicate that the person providing the line of credit shall only disburse those funds from the line of credit that the Department or licensed site remediation professional approves in writing to be disbursed pursuant to N.J.A.C. 7:26C-5.12;

6. Indicate that the funds in the line of credit shall be utilized solely for the purposes of conducting the remediation; and

7. Specify that the Department, or another party that may subsequently be designated by the Department pursuant to N.J.A.C. 7:26C-5.13(d), may access the line of credit to pay for the cost of remediation.

(b) Any person responsible for conducting the remediation using a line of credit to satisfy the requirements of this subchapter shall

annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved or a licensed site remediation professional has certified, and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

7:26C-5.7 Letter of credit

(a) Any person who chooses to provide a letter of credit as a remediation funding source to guarantee the availability of funds pursuant to this subchapter shall submit to the Department an original letter of credit. The letter of credit must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;

2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

3. Indicate that letter of credit is irrevocable, issued for a period of at least one year, and that it will be automatically extended for a period of at least one year;

4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and

5. Indicate that the Department may access the letter of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-5.13(d).

7:26C-5.8 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall complete and submit to the Department a Self-guarantee Remediation Funding Source Form available on the Department's website at www.nj.gov/dep/srp/srra/forms that contains the following information:

1. The applicable case number, the program interest name, and program interest number (preferred ID), site name and site address;

2. Information that demonstrates that the estimated cost of the remediation that the Department has approved or that a licensed site remediation professional has certified does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;

3. Information that demonstrates that the individual or entity possesses the required cash flow and has sufficient net cash provided by operating activities, as defined by the American Institute for Certified Public Accountants, to pay for the remediation during the next 12-month period. Cash flow and net cash will be deemed sufficient if:

i. The individual's or entity's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made; and

ii. The individual or entity possess a net cash provided by operating activities in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made;

4. Audited financial statements, in which the auditor expresses an unqualified opinion for the preceding fiscal year that ended closest in time to the date of the self guarantee statement, prepared in accordance with the American Institute for Certified Public Accountants guidelines, including, but not limited to, income statement, balance sheet and consolidated statement of cash flow; and

5. A statement from the chief financial officer or similar officer that the information in the written statement submitted pursuant to this subchapter is true to the best of the officer's information, knowledge and belief, and that it meets the requirements of N.J.S.A. 58:10B-3(f).

(b) A parent company may provide a self guarantee for a wholly owned subsidiary that is the person responsible for conducting the remediation when the wholly owned subsidiary does not have its own audited financial statements and its financial statements are reported through that parent company. The parent company must comply with all the requirements of this section.

(c) In the case of a special purpose entity created specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant.

(d) The self-guarantee shall be valid for one year from the date of the submittal required in (a) above. Thereafter, the person shall:

1. Comply with the requirements of (a) above, and if applicable (b) and (c) above, annually, to provide a self-guarantee for each successive year that that person is required to maintain a remediation funding source and wishes to continue to provide a self-guarantee; and

2. Submit the information required by (a) above, and if applicable (b) and (c) above, to the Department 30 days prior to the date of expiration of the existing statement.

7:26C-5.9 Remediation funding source surcharge

(a) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter that elects to establish the remediation funding source by one or any combination of the following shall submit to the Department a remediation funding source surcharge pursuant to (b) below:

1. A remediation trust fund pursuant to N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy pursuant to N.J.A.C. 7:26C-5.5;
3. A line of credit pursuant to N.J.A.C. 7:26C-5.6; or
4. A letter of credit pursuant to N.J.A.C. 7:26C-5.7.

(b) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter and who is required to pay a surcharge pursuant to (a) above, shall submit the remediation funding source surcharge to the Department, and shall:

1. Pay, by cashier's or certified check payable to the Treasurer, State of New Jersey, a remediation funding source surcharge in an amount equal to one percent of the amount of the remediation funding source; and

2. Submit the remediation funding source surcharge with the remediation funding source as required in N.J.A.C. 7:26C-5.2 and annually thereafter on the same date until the Department or a licensed site remediation professional issues a final remediation document.

7:26C-5.10 Remediation cost review

(a) The person responsible for conducting the remediation shall submit to the Department 365 days after the date that that person is required to submit a remediation funding source pursuant to N.J.A.C. 7:26C-5.2(h), and annually thereafter on the same calendar day, a detailed cost review on a Remediation Cost Review Form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that is certified by the person responsible for conducting the remediation and by the licensed site remediation professional if applicable, that includes the following:

1. A detailed summary of all monies spent to date to remediate the contaminated site;
2. A detailed estimate of the remaining costs to complete the remediation pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, excluding the cost to operate, maintain and inspect engineering controls as part of a remedial action permit pursuant to N.J.A.C. 7:26C-7; and
3. An explanation of any changes from the most recently submitted cost review.

7:26C-5.11 Changes in the remediation funding source amount or type and return of the remediation funding source

(a) A person required to establish a remediation funding source pursuant to this subchapter who wishes to decrease the amount of the remediation funding source shall submit a Remediation Cost Review Form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, that provides a revised estimate of the cost of the remediation and that indicates why that cost is less than previously estimated.

(b) The person required to establish a remediation funding source pursuant to this subchapter may reduce the amount of the remediation funding source to the amount of the estimate submitted to the Department pursuant to (a) above upon either:

1. Receipt from the Department of written approval in response to a request submitted pursuant to (a) above provided, however, that the Department will respond to requests within 45 calendar days after the Department's receipt of the request; or

2. Submission to the Department of a Remediation Cost Review Form pursuant to (a) above, but only if that submission includes a certification by the licensed site remediation professional justifying the revised cost estimate.

(c) The person required to establish the remediation funding source pursuant to this subchapter shall increase the remediation funding source amount within 30 days after:

1. Submission to the Department of any remediation cost review, required pursuant to N.J.A.C. 7:26C-5.10, that indicates that the cost of remediation has increased to an amount greater than the existing remediation funding source;

2. Receipt of a demand from the Department to increase the amount of the remediation funding source to match the amount of the estimated costs; or

3. Receipt of written certification, with a copy provided to the Department, from a licensed site remediation professional that the estimated cost of the remediation has increased.

(d) The person responsible for conducting the remediation may decrease the amount of the remediation funding source, pursuant to (a) above, to the extent that the remediation includes:

1. An innovative remedial action technology;
2. A limited restricted use remedial action; or
3. An unrestricted use remedial action.

(e) The person responsible for conducting remediation that is required to establish a remediation funding source pursuant to this subchapter may at any time submit a written request to the Department on a Remediation Cost Review Form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, to substitute another type of remediation funding source specified in this subchapter for the existing remediation funding source. The Department shall return the original remediation funding source documents after such proof is provided that an acceptable alternate mechanism has been established.

(f) The Department shall return the remediation funding source to the person responsible for conducting the remediation when either the Department or a licensed site remediation professional has issued a final remediation document for the entire site pursuant to N.J.A.C. 7:26C-6.

7:26C-5.12 Disbursements from the remediation funding source

(a) Except those persons subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27, a person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter, and who has established a remediation trust fund, an environmental insurance policy or a line of credit, in satisfaction of the requirements of this subchapter, may submit, no more frequently than once every three months, a written request to use the remediation funding source to pay for the actual cost of remediation. The request may be submitted to the Department, or directly to the provider of the remediation funding source with a copy provided to the Department if the information specified in (a)2i through iv below is prepared and

certified by a licensed site remediation professional if applicable, and must include the following information:

1. Identification of the site, including name, address, case number (if applicable), program interest name, program interest number (preferred ID), and status of the remediation;

2. Information related to remediation costs, prepared and certified by a licensed site remediation professional, if applicable, including:

i. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed under this request;

ii. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request;

iii. The total amount of disbursement being requested; and

iv. An updated, detailed estimate of the cost of implementing the remaining remediation; and

3. A certification by the person responsible for conducting the remediation, and by the licensed site remediation professional, if applicable, that the disbursement request represents actual remediation costs of the subject site, incurred or to be incurred, and does not include legal fees.

(b) If the disbursement request is submitted to the Department rather than directly to the provider of the remediation funding source, within 30 days after the Department's receipt of the written request submitted pursuant to (a) above, the Department will respond to a disbursement request as follows:

1. The information submitted is complete and the disbursement amount represents actual remediation costs and, therefore, the disbursement is approved;

2. The information submitted is complete; however, the requested disbursement amount includes remediation costs that has neither been approved by the Department nor has been certified by a licensed site remediation professional, and therefore, the Department will only allow disbursement of funds for the approved remediation costs; or

3. The information submitted is incomplete, including a list of the missing information and a statement that the Department shall give no further consideration to the disbursement request until the requestor submits all the required information.

(c) If the disbursement request is submitted directly to the provider of the remediation funding source in accordance with (a) above, the person responsible for conducting the remediation shall provide the Department with notice of the disbursement or denial and the amount of the remaining remediation funding source within 30 days of disbursement or denial.

7:26C-5.13 Failure to perform the remediation

(a) The Department shall notify in writing the person required to establish a remediation funding source pursuant to this subchapter if the Department determines that the person has failed to perform the remediation as required. The person shall have 30 days after receipt of such notice, unless otherwise extended in writing by the Department, to perform any obligation not performed.

(b) The Department shall provide a copy of the notification required in (a) above, to the current owners and operators of the site when the person required to establish the remediation funding source has failed to remediate the site.

(c) Thirty calendar days after the person's receipt of the notification in (a) above, the Department may, in its sole discretion, perform the remediation of a site using the funds in the remediation funding source.

(d) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the moneys in the remediation funding source established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the monies to the petitioner.

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.1 Scope

(a) This subchapter establishes the requirements for:

1. Response action outcomes, in N.J.A.C. 7:26C-6.2;

2. No further action letters, in N.J.A.C. 7:26C-6.3;

3. Modification, rescission, and invalidation of final remediation documents, in N.J.A.C. 7:26C-6.4; and

4. Scope of a final remediation document and covenant not to sue, in N.J.A.C. 7:26C-6.5.

7:26C-6.2 Response action outcomes

(a) The licensed site remediation professional shall issue a response action outcome:

1. To the person who has conducted the remediation when, in the opinion of the licensed site remediation professional, the site or area of concern has been remediated pursuant to all applicable statutes, rules, and guidance, including, but not limited to, this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and the Remediation Standards rules, N.J.A.C. 7:26D;

2. After the Department has issued all remedial action permits required for the remedial action;

3. After all fees and oversight costs have been paid to the Department;

4. For an entire site or one or more areas of concern, including all areas to which a discharge originating at the site or area of concern may have migrated; and

5. According to specific tax block and lot or, if no block and lot are available, then other specific identification of the property that was remediated.

(b) The licensed site remediation professional shall:

1. Prepare the response action outcome pursuant to:

i. This section; and

ii. The Guidance for the Issuance of Response Action Outcomes (RAO) found on the Department's website at www.nj.gov/dep/srp/srra/guidance; and

2. File each response action outcome with the Department:

i. With a Response Action Outcome form available from the Department at www.nj.gov/dep/srp/srra/forms, when the licensed site remediation professional issues the response action outcome to the person who has conducted the remediation; and

ii. Three electronic copies, pursuant to N.J.A.C. 7:26C-1.6, of all data, documents and information concerning remediation, including but not limited to, technical records and contractual documents, raw sampling and monitoring data, whether or not the data and information relate in any way to the site or area of concern, including technical records and contractual documents, developed by the licensed site remediation professional, the licensee's divisions, employees, agents, accountants, contractors, or attorneys, or a prior licensed site remediation professional for the remediation to the extent that the subsequent licensed site remediation professional relied on the work of the earlier licensed site remediation professional.

(c) The licensed site remediation professional shall base his or her opinion as to whether to issue the response action outcome on the following, in effect at the time of the response action outcome:

1. All applicable New Jersey statutes, including:

i. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; and

ii. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4; and

2. All applicable New Jersey rules, including, without limitation:

i. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;

ii. The Remediation Standards rules at N.J.A.C. 7:26D; and

iii. Any other applicable standards adopted pursuant to law;

3. The Department's technical guidelines concerning site remediation at www.nj.gov/dep/srp/srra/guidance; and

4. If there is no specific requirement provided by any technical standard the Department has adopted, or the Department's guidance is not appropriate or necessary, the licensed site remediation professional may use the following additional technical guidance to

make decisions regarding remediation, and shall specifically identify all such guidance used and set forth the rationale for such use:

- i. Relevant guidance from the United States Environmental Protection Agency or other states; and
- ii. Other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and of the environment.

(d) The licensed site remediation professional may rely on a remedial action workplan or other equivalent plan the Department has approved for a site for the remedial action to be implemented at that site.

(e) The licensed site remediation professional shall correct all deficiencies identified by the Department in the Department's inspection and review findings.

(f) If the licensed site remediation professional issues a response action outcome that is based upon either a preliminary assessment or site investigation, the licensed site remediation professional shall certify that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standards in the Remediation Standards rules, at N.J.A.C. 7:26D;
2. The applicable ground water remediation standards in the Remediation Standards rules, at N.J.A.C. 7:26D; and
3. All other applicable remediation guidance, criteria, and standards.

(g) The licensed site remediation professional shall issue a response action outcome after the licensed site remediation professional has determined that the remediation has been completed pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, including, without limitation, the following, as applicable:

1. All contaminated soil has been remediated:
 - i. To the most stringent soil remediation standard; or
 - ii. Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard and the Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and
2. All contaminated groundwater has been remediated:
 - i. To the applicable ground water quality standard;
 - ii. The licensed site remediation professional has:
 - (1) Determined, based upon the most recent eight consecutive quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C, and that a natural attenuation ground water remedial action is therefore appropriate;
 - (2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;
 - (3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and
 - (4) Determined that the Department has issued a ground water remedial action permit for the remediation, unless the site is in an area of regional historic fill; or
 - iii. The licensed site remediation professional has:
 - (1) Approved a ground water remedial action that utilizes an engineering control;
 - (2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;
 - (3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and
 - (4) Determined that the Department has issued a ground water remedial action permit for the remediation.

7:26C-6.3 No further action letters

(a) The Department will issue a no further action letter to the person responsible for conducting the remediation when that person is:

1. Remediating an unregulated heating oil tank; or
2. Subject to N.J.A.C. 7:26C-2.3 and completes the remedial action prior to May 7, 2012.

7:26C-6.4 Modification, rescission and invalidation of a final remediation document

(a) The Department may modify or rescind a no further action letter or invalidate a response action outcome under the following circumstances if it determines that the remedial action is no longer protective of public health and safety:

1. A discharge that occurred prior to the issuance of a final remediation document is discovered after the issuance of the final remediation document and the remediation of that discharge should have been addressed in the remediation to which the final remediation document pertains;
2. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude and the person responsible for conducting the remediation fails to conduct further remediation;
3. A contaminant exposure pathway from a discharge that predates the final remediation document is identified after the issuance of the final remediation document and was not addressed in the remediation to which the final remediation document pertains;
4. Any person who is obligated to comply with the conditions of the final remediation document fails to do so;
5. The permittees fail to comply with a remedial action permit;
6. The Department concludes that the remediation was not performed in compliance with applicable statutes, rules and guidance; or
7. Other factors exist that demonstrate that the remediation is not protective of the public health, safety and the environment.

(b) The Department may invalidate a response action outcome when it determines that the person responsible for conducting the remediation:

1. Implemented a remedial action that will render the property unusable for future redevelopment or recreational use; or
2. Failed to implement a presumptive remedy or alternative presumptive remedy when required.

(c) Upon the Department's rescission of a no further action letter or the invalidation of a response action outcome, the person responsible for conducting the remediation shall perform all additional remediation, according to expedited site specific remediation timeframes, as the Department may require.

7:26C-6.5 Scope of final remediation document and covenant not to sue

(a) The scope of a final remediation document is limited by the scope of the remediation addressed in that document. Likewise, the scope of a covenant not to sue that accompanies a final remediation document is also limited by the scope of the remediation addressed in the final remediation document.

(b) Any covenant not to sue that accompanies a final remediation document is without prejudice to any rights that the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund may have against the person responsible for conducting the remediation and any person in any way responsible for a discharge, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, with respect to liability for:

1. Cleanup and removal costs, damages (including primary and compensatory restoration damages and the costs of any natural resource damage assessments) and injunctive relief, for injury to, destruction of, or loss of natural resources;
2. Cleanup and removal costs, damages, and injunctive relief available to the Plaintiffs in the United States District Court for the District of New Jersey, in the case captioned *NJDEP et al. v. Amerada*

Hess Corp. et al., C.A. No. 3:07-5284, and subsequently pending in the United States District Court for the Southern District of New York, captioned as *In Re; Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, MDL No. 1358; and

3. Cleanup and removal costs, damages, and injunctive relief available to the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund in any litigation or claim pending as of the date of a final remediation document.

SUBCHAPTER 7. REMEDIAL ACTION PERMITS

7:26C-7.1 Purpose and scope

(a) The purpose of this subchapter is to establish a permit program for implementing remedial actions that require institutional or engineering controls, or that include operation and maintenance systems.

(b) More specifically, this subchapter establishes:

1. A regulatory mechanism for the:
 - i. Operation and maintenance of certain remedial actions;
 - ii. Monitoring the effectiveness of certain remedial actions; and
 - iii. Submission of biennial certifications of engineering and institutional controls;
2. The permittees of a remedial action permit, pursuant to N.J.A.C. 7:26C-7.2;
3. Remedial action permits, pursuant to N.J.A.C. 7:26C-7.3;
4. The general conditions that apply to each remedial action permit, pursuant to N.J.A.C. 7:26C-7.4;
5. The specific conditions that apply to each soil remedial action permit involving a deed notice, pursuant to N.J.A.C. 7:26C-7.5;
6. The specific conditions that apply to each ground water remedial action permit, pursuant to N.J.A.C. 7:26C-7.6;
7. The financial assurance requirements for a remedial action permit that include an engineering control, pursuant to N.J.A.C. 7:26C-7.7;
8. The procedures for transferring a remedial action permit, pursuant to N.J.A.C. 7:26C-7.8;
9. The procedures for the Department to modify a remedial action permit, pursuant to N.J.A.C. 7:26C-7.9; and
10. The procedures for the Department to terminate a remedial action permit, pursuant to N.J.A.C. 7:26C-7.10.

(c) A remedial action permit pursuant to this subchapter does not:

1. Authorize any person to discharge any pollutant or hazardous substance; or
2. Relieve any person from the obligation to comply with all other applicable Federal, State, and local laws, rules, and regulations.

7:26C-7.2 Permittees of remedial action permits

(a) Each of the following persons shall comply with this subchapter, including any applicable remedial action permit the Department issues pursuant to this subchapter:

1. The permittees for a remedial action permit include, without limitation, each of the following statutory permittees:
 - i. Each owner and operator of an underground storage tank facility who is liable for the remediation pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;
 - ii. Each owner and operator of an industrial establishment who is liable for the remediation pursuant to Industrial Site Remediation Act, N.J.S.A. 13:1K-6 et seq.; and
 - iii. Any other person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for any hazardous substance that was discharged; and
 - iv. Any other person who is remediating a site; and

2. The permittees for a remedial action permit also include certain persons due to their position as owners, operators, or tenants of the property that is being, or has been remediated, including, without limitation, each of the following:

- i. Each owner of the property, where the discharge occurred, at the time of implementation of the remedial action that includes an

engineering or institutional control or operation and maintenance requirements for the remedial action; and

ii. Each subsequent owner, operator and tenant of the property of the discharge during that person's ownership or operation.

(b) If there is more than one person responsible for compliance with a remedial action permit pursuant to (a) above, each such person, as a co-permittee, is jointly and severally liable for:

1. Compliance with the conditions of a remedial action permit pursuant to this subchapter;
2. Payment of all remedial action permit fees pursuant to N.J.A.C. 7:26C-4;
3. Payment of penalties for violations of a remedial action permit pursuant to N.J.A.C. 7:26C-9; and
4. Maintenance of financial assurance for engineering controls pursuant to N.J.A.C. 7:26C-7.8.

7:26C-7.3 Remedial action permits

(a) The Department will issue a remedial action permit pursuant to this subchapter whenever the Department receives, after January 15, 2010, any of the following as part of a remedial action:

1. A copy of a deed notice stamped as being properly recorded and a completed Soil Remedial Permit Application Form available from the Department at www.nj.gov/dep/srp/srra/forms; and
2. A ground water workplan that includes:
 - i. Natural attenuation as part of the remedial action;
 - ii. An engineering control as part of the remedial action; or
 - iii. Requirements for monitoring, maintenance and evaluation of any institutional or engineering control as part of the remedial action.

7:26C-7.4 General conditions applicable to all remedial action permits

(a) The permittees for a remedial action permit shall comply with all maintenance, monitoring, and evaluation requirements in any or all of the following that pertain to the remediation that is the subject of the permit:

1. Every remedial action workplan and remedial action report that either the Department or a licensed site remediation professional has approved;
2. Every final remediation document that either the Department or a licensed site remediation professional has approved; and
3. Any subsequent modification of any document referenced in (a)1 or 2 above, that either the Department or a licensed site remediation professional approves.

(b) The permittees shall:

1. Prepare and submit to the Department a biennial certification as required by this subchapter every two years following the anniversary of the date of the earliest of the following:
 - i. The date the owner of property records a deed notice as part of a remedial action;
 - ii. The date the Department establishes a ground water classification exception area pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-8.3; or
 - iii. The date the Department or the licensed site remediation professional approves a ground water remedial action report for a ground water remedial action;
2. If there is more than one remedial action permit for a site:
 - i. Submit a separate biennial certification for each remedial action permit; and
 - ii. Submit all of the biennial certifications at the same time, when the first biennial certification is due to the Department pursuant to (b)1 above, and biennially thereafter on that same date;
3. Maintain financial assurance, if applicable pursuant to N.J.A.C. 7:26C-7.7; and
4. Pay all applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.5 Specific conditions applicable to soil remedial action permits

(a) The permittees of a soil remedial action permit shall comply with:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.4;

2. The conditions in each deed notice recorded for the property pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;

3. The biennial certification requirements pursuant to N.J.A.C. 7:26E-8.5(a) through (d); and

4. All other conditions that the Department includes in the soil remedial action permit.

7:26C-7.6 Specific conditions applicable to ground water remedial action permits

(a) The permittees of a ground water remedial action permit shall comply with:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.4;

2. The ground water monitoring reporting requirements in any remedial action workplan or remedial action report approved by either the Department or a licensed site remediation professional;

3. The well restrictions associated with each ground water classification exception area for the site;

4. The biennial certification pursuant to N.J.A.C. 7:26E-8.6; and

5. All other conditions that the Department includes in the ground water remedial action permit.

7:26C-7.7 Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided in (b) below, the permittees for a remedial action permit for a remedial action that includes an engineering control shall:

1. Submit to the Department, on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.4(b)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls part of any remedial action at the site; and

2. Maintain financial assurance in accordance with the remediation funding source options established in N.J.A.C. 7:26C-5.4, 5.5, 5.6, and 5.7:

i. In an amount equal to or greater than the most recent estimated full cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit as most recently estimated based upon applicable guidance published by the Department or other sound basis for estimating those costs; and

ii. Until the Department terminates the permit pursuant to N.J.A.C. 7:26C-7.10.

(b) The following persons are not required comply with this section:

1. A government entity;

2. A person who is not otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, who purchased a contaminated site prior to May 7, 2009, and is remediating, or has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g,d;

3. A person who undertakes remediation at that person's primary or secondary residence;

4. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs remediation at the licensed child care center;

5. The person responsible for performing remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.; and

6. The owner or operator of a small business who is responsible for performing a remediation at his or her business property.

(c) The remediation funding source surcharge payable in accordance with N.J.A.C. 7:26C-5.9 is not applicable to the financial assurance posted pursuant to this subsection.

(d) A permittee may change the amount of the financial assurance in accordance with N.J.A.C. 7:26C-5.11.

(e) A permittee may disburse monies from the funding posted in accordance with N.J.A.C. 7:26C-5.12.

(f) If any permittee fails to comply with the actions required pursuant to a remedial action permit or this subchapter, the Department, or another party as the Department may authorize, may draw on the financial assurance to achieve compliance.

7:26C-7.8 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.2(a)2) may, prior to changing such status, request that the Department transfer the permit to a new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-4.4 and has the burden of showing that its permittee status is so limited by law.

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit by providing the following information on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department at www.nj.gov/dep/srp/srra/forms:

1. Contact information of the current permittee intending to transfer the permit;

2. Contact information of the prospective permittee, if any;

3. Site identification;

4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and

5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:

i. Is the new owner, operator, or tenant of or at the contaminated site;

ii. Has acknowledged in writing that it accepts its responsibility as a permittee; and

iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.8, if applicable.

(c) The Department shall not rescind a person's status as a permittee until all of the following occur:

1. The permittee requesting transfer of the permit complies with the notice requirements in (b) above;

2. The permittee requesting transfer of the permit actually terminates its status as subsequent owner, operator, or tenant; and

3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.7.

7:26C-7.9 Modification of specific requirements in a remedial action permit

(a) The Department may modify a remedial action permit as needed to protect the public health and safety and the environment.

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after any of the following, by submitting a completed 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, which includes the following:

1. A statement that the permittee has completed a protectiveness evaluation required in its permit and has determined that the remedial action is not adequately protective of the public health and safety and of the environment, and stating the reasons for coming to this conclusion;

2. The size, duration, or contaminants of a classification exception area need to be modified;

3. Any person proposes to change the engineering controls applicable to the site, as described in the deed notice filed for the property;

4. The municipality has revised the lot and block designations of the property; or

5. The permittee changes its name or address.

(c) To request modification of any remedial action permit pursuant to (b) above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit modification to the Department as follows:

1. 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, which includes:

- i. Identification of the contaminated site; and
 - ii. Identification and contact information of the applicant;
2. A copy of the following as applicable:
- i. The filed copy of a new deed notice;
 - ii. A revised ground water classification exception area application; or
 - iii. A revised remedial action workplan; and
3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4.

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

(a) The Department may terminate a remedial action permit upon request of a permittee if the Department finds that the remedial action:

1. Meets all applicable remediation standards without the need for the remedial action permit; and
2. Is protective of the public health and safety and of the environment without the presence of the remedial action permit.

(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. The name, address and telephone number of the permittee requesting termination of the permit;
2. The name, address and telephone number of the prospective permittee;
3. Site identification;
4. A detailed written rationale on why the permittee believes that the engineering or institutional controls, the remediation systems, or the remedial action implemented for the site no longer require oversight over time in order to be protective of the public health and safety and the environment;
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; and
6. Confirmation that the permittee requesting termination of the remedial action permit does not have any outstanding fees pursuant to N.J.A.C. 7:26C-4.

(c) Upon written notice that the Department has terminated a remedial action permit, the permittee may cease compliance with the remedial action permit that the Department has terminated and have the owner of the property file the termination of deed notice, if applicable.

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

This subchapter identifies the minimum requirements for the person responsible for conducting the remediation of real property not owned by that person, to obtain access to that property.

7:26C-8.2 Site access

(a) The person responsible for conducting remediation shall take all appropriate actions, as outlined in (b) below, to obtain the access to property, not owned by that person, which is necessary to implement the remediation.

(b) The person responsible for conducting the remediation that requires access to the property of another shall send to each owner a written request, via certified mail, for access to the property. The person responsible for conducting remediation shall include the following information in the written request:

1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;

2. A site map indicating each area for which access is needed;
3. A description of the reason access is needed and the extent of access needed;
4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and
5. A request that the property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

(c) If the owner of the property does not respond, the person responsible for conducting the remediation shall send a second written request to the property owner by certified mail. The person responsible for conducting the remediation shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the property owner does not grant access, the person responsible for conducting the remediation shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The person responsible for conducting the remediation shall provide written confirmation to the Department of the filing of such action. Upon request by the Department, the person responsible for conducting the remediation shall submit a copy of the court order that indicates that the Superior Court denied access to the property.

(e) The person responsible for conducting the remediation shall provide to the Department all appropriate information as detailed in this section when applying for an extension of a regulatory, mandatory, or expedited site specific timeframe, pursuant to N.J.A.C. 7:26C-3.

(f) Nothing contained in this section shall be construed to relieve any person conducting the remediation of that person's obligations to conduct remediation at any portion of a site or area of concern to which the person has access.

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.1 Scope

(a) This subchapter governs administrative enforcement actions the Department may take for a person's violation of any of the following:

1. An administrative order issued pursuant to any of the Department's statutory authorities;
2. An administrative consent order;
3. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., including any of the following:
 - i. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; and
 - ii. A remediation agreement issued pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
4. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and this chapter;
5. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1.3, and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; or
7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.

(b) This subchapter:

1. Identifies those violations where a grace period will be afforded;
2. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period;
3. Governs the procedures the Department will follow when it issues an administrative order;
4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; and

5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.

7:26C-9.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a rule, or a remedial action permit constitutes an additional, separate, and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Each day during which a violation continues constitutes an additional, separate, and distinct offense.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by any other statute or rule in connection with the violation for which the assessment is levied.

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty provisions may request in writing that the Department amend its document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-9. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

7:26C-9.3 Administrative orders

(a) Whenever the person responsible for conducting the remediation fails to comply with any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial action permit, or guidance the Department may issue an administrative order that:

1. Specifies the provision or provisions of any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial permit or guidance of which that person is in violation;

2. Cites the action or omission that caused the violation;

3. Requires compliance with such provision or provisions; and

4. Gives notice to that person of a right to an administrative hearing to contest a notice of an administrative order issued pursuant to this subchapter.

7:26C-9.4 Grace period applicability; procedures

(a) Each violation identified in the penalty table at (c) below by an "M" in the Type of Violation column, for which conditions at (c) below are satisfied, is a minor violation and is subject to a grace period, the length of which is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty table at (c) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department shall provide a grace period for any violation identified as minor under this section, provided that the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department;

3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for a violation of the same requirement within the preceding 12-month period; and

4. The person responsible for the violation has not been identified by the Department as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department will issue a notice of violation to the person responsible for a minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation and in addition, shall not consider the minor violation as an offense pursuant to N.J.A.C. 7:26C-9.2(b).

3. The person responsible for a violation shall submit to the Department, at the address indicated in the notice of violation, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26C-1.5(b)1, and signed by the person responsible for conducting the remediation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, certified in accordance with N.J.A.C. 7:26C-1.5, no later than one week before the end of the specified grace period and shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. If the person is unable to meet this deadline due to extenuating circumstances, the person may still request the extension, which request shall explain the reason for the delay in requesting the extension. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose an additional risk to the public health, safety and the environment; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within the approved extension, if any, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation was issued pursuant to (d)1 above.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

7:26C-9.5 Civil administrative penalty determination

(a) The amount of a civil administrative penalty shall be determined as follows:

1. The Department shall identify the violation listed in the table in (c) below;

2. The Department shall determine whether the violation is identified by an "M" or "NM" in the Type of violation column;

3. For a violation identified by an "M" as minor in the "Type of Violation" column, the Department shall apply the provisions of N.J.A.C. 7:26C-9.4; and

4. For a violation identified by an "NM" as non-minor in the "Type of Violation" column, or for a violation that is identified by an "M" as minor in the "Type of Violation" column, but for which the conditions at N.J.A.C. 7:26C-9.3 are not satisfied, the Department:

i. Shall identify the corresponding base penalty dollar amount for the rule violated as listed in (c) below;

ii. Shall adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-9.6 (a), as applicable; and

iii. May multiply the penalty calculated pursuant to subparagraph (a)4 above by the number of days the violation existed.

(b) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict

between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
<u>Discharges of Petroleum and Other Hazardous Substances N.J.A.C. 7:1E</u>				
Failure to conduct remediation in accordance with N.J.A.C. 7:26C.	7:1E-5.7(a)2ii	NM		\$20,000
<u>Underground Storage Tanks N.J.A.C. 7:14B</u>				
1 General Information				
Failure to submit proper certifications.	7:14B-1.7(a)	M	30	\$4,000
Failure to conduct all site investigation and tank closure activity, using an individual certified in subsurface evaluation and/or closure in accordance with N.J.A.C. 7:14B-13 when required.	7:14B-1.8(a)1	NM		\$8,000
Failure to conduct all site investigation and tank closure activities in accordance with N.J.A.C. 7:26C-2.4, including using a licensed site remediation professional, when required.	7:14B-1.8(a)2	NM		\$8,000
Failure to comply with the regulatory timeframes in this chapter.	7:14B-1.8(a)3	NM		\$8,000
3 Fees				
Failure to pay fees or oversight costs.	7:14B-3.5(a)	M	30	20 percent of outstanding amount; \$1,000 minimum
7 Release Reporting and Investigation				
Failure to perform an investigation of a suspected release, in accordance with N.J.A.C. 7:14B-7.2(a) within seven days of discovery of the suspected release.	7:14B-7.1(a)	NM		\$8,000
Failure to perform a Site Investigation within the required timeframe, in accordance with N.J.A.C. 7:26E-3.3, when the seven-day investigation was inconclusive in confirming or disproving a suspected release.	7:14B-7.2(b)	NM		\$8,000
Failure to immediately report a confirmed discharge as required.	7:14B-7.3(a)	NM		\$8,000
Failure to perform the remedial actions set forth in N.J.A.C. 7:14B-8.	7:14B-7.3(c)	NM		\$8,000
Failure to implement the release response plan when a discharge has been confirmed.	7:14B-7.3(d)	NM		\$8,000
Failure to report a discharge of a reportable quantity of hazardous substances other than petroleum or waste oil to the National response Center per 40 CFR Part 302.	7:14B-7.3(e)	M	30	\$4,000
Failure to perform a site investigation within the required timeframe in accordance with N.J.A.C. 7:26E-3.3 and submit a site investigation report in accordance with N.J.A.C. 7:26E-3.13 when required due to a suspected discharge.	7:14B-7.4	NM		\$8,000
8 Remediation Activities				
Failure to take immediate action upon confirming a release.	7:14B-8.1(a)	NM		\$8,000
Failure to take immediate action to determine the source of the discharge upon confirming a release.	7:14B-8.1(a)1	NM		\$8,000
Failure to take immediate action to cease use of the underground storage tank system upon confirming a release.	7:14B-8.1(a)2	NM		\$8,000
Failure to take immediate action to mitigate any fire, safety or health hazard upon confirming a release.	7:14B-8.1(a)3	NM		\$20,000

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Failure to take immediate action to conduct a visual inspection to detect and mitigate the effects of evident discharges upon confirming a release.	7:14B-8.1(a)4	NM		\$8,000
Failure to take immediate action to properly remove all hazardous substances from the underground storage tank system upon confirming a release.	7:14B-8.1(a)5	NM		\$20,000
Failure to take immediate action to repair, replace or close the underground storage tank system upon confirming a release.	7:14B-8.1(a)6	NM		\$8,000
Failure to take immediate action to comply with the reporting requirements at N.J.A.C. 7:14B-7.3 upon confirming a release.	7:14B-8.1(a)7	NM		\$8,000
Failure to perform a remedial investigation in accordance with N.J.A.C. 7:26E-4.	7:14B-8.2(a)1	NM		\$8,000
Failure to perform a remedial action in accordance with the requirements of N.J.A.C. 7:26E-6.	7:14B-8.2(a)2	NM		\$8,000
Failure to determine the classification of any wastes that are generated during the remedial investigation or remedial action.	7:14B-8.2(a)3	M	60	\$4,000
Failure to remove all non-hazardous wastes from the site or treat soils on site in accordance with N.J.A.C. 7:26E-5 and 6, or reuse soils in accordance with N.J.A.C. 7:26E-6.2(b) upon Department approval, within six months after generation.	7:14B-8.2(a)4	M	90	\$4,000
Failure to remove all hazardous wastes from the site within 90 days of generation.	7:14B-8.2(a)5	M	30	\$4,000
Failure to submit the remedial investigation Report to the Department and local health agencies within the required timeframe.	7:14B-8.3(a)	NM		\$8,000
Failure to submit a Remedial Action Selection report prepared in accordance with N.J.A.C. 7:26E within the required timeframe.	7:14B-8.3(a)1	NM		\$8,000
For tanks subject to regulation at 40 CFR Part 280, failure to report to the Department the source and cause of the confirmed release.	7:14B-8.3(b)	M	30	\$4,000
Failure to have a remedial investigation report prepared by a Department certified subsurface evaluator or licensed site remediation professional as required.	7:14B-8.3(c)	NM		\$8,000
Failure to submit a request for No Further Action, a remedial investigation workplan, or a remedial action workplan with the remedial investigation report when required.	7:14B-8.3(d)	NM		\$8,000
Failure to submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8, within 90 days of the approval of the remedial investigation workplan when required.	7:14B-8.3(e)	NM		\$8,000
Failure to conduct additional sampling and analysis as required by the Department and/or submit a remedial investigation workplan in the timeframe required by the Department.	7:14B-8.3(f)	NM		\$8,000
Failure to revise inadequate or incomplete submittals and resubmit the required information to the Department within 30 days or in the timeframe specified.	7:14B-8.3(g)	M	30	\$8,000
Failure to provide the Department with 14 calendar days notice prior to initiation of remedial activities.	7:14B-8.3(i)	M	30	\$4,000
Failure to allow the Department site access to observe remedial activities.	7:14B-8.3(i)	NM		\$20,000
Failure to perform additional work in accordance with the timeframes specified in a revised remedial investigation workplan.	7:14B-8.3(j)	NM		\$8,000
Failure to comply with N.J.A.C. 7:26E-1.14 when a discharge poses an immediate threat to public health or the environment.	7:14B-8.3(k)	NM		\$20,000
Failure to implement the remedial investigation and submit reports as required pursuant to N.J.A.C. 7:26C-2.4, and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4.	7:14B-8.3(l)	NM		\$8,000
Failure to implement the remedial action workplan within the timeframes approved by the Department and/or obtain all necessary permits to perform the remedial action workplan as required.	7:14B-8.4(a)1	NM		\$8,000
Failure to submit a revised remedial action workplan upon discovery of new information available which was not adequately addressed in the original workplan.	7:14B-8.4(a)3	M	30	\$8,000

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Failure to submit progress reports, prepared in accordance with N.J.A.C. 7:26E-6.6, within the time schedule approved in the remedial action workplan.	7:14B-8.4(a)4	M	30	\$8,000
Failure to implement the remedial action pursuant to N.J.A.C. 7:26C-2.4 and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4.	7:14B-8.4(b)	NM		\$8,000
Failure to submit a complete remedial action report, prepared in accordance with N.J.A.C. 7:26E-6.7, upon full implementation of the remedial action workplan.	7:14B-8.5(a)1	NM		\$8,000
Failure to submit an amended remedial action report, in the time frame specified by the Department, that addresses the deficiencies of the initial Remedial Action Report.	7:14B-8.5(a)2	M	30	\$8,000
Failure to implement the remedial action, submit reports, and address any deficiencies identified by the Department in accordance with N.J.A.C. 7:26C-2.4, and submit a response action outcome issued by the licensed site remediation professional.	7:14B-8.5(b)	NM		\$8,000
Failure to remediate a discharge of hazardous substances in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E.	7:14B-8.6	NM		\$8,000
Failure to conduct all remedial investigation and remedial action activities in accordance with N.J.A.C. 7:26E-1.9.	7:14B-8.7	NM		\$8,000
Failure to empty and repair or close a tank system which has leaked a hazardous substance into the annular space created by the secondary containment system.	7:14B-8.8(a)	M	30	\$5,000
Failure to submit to the Department a report which documents the investigation of the tank leak and its repair.	7:14B-8.8(b)	M	30	\$8,000
9 Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems				
Failure to notify the Department within 30 days that a tank system is out of service.	7:14B-9.1(a)	M	30	\$4,000
Failure to follow the requirements of API Bulletin No. 1604 when a tank system is out of service for greater than three months.	7:14B-9.1(b)	M	30	\$8,000
Failure to properly submit documentation to the Department for the extension of the 12-month out of service period.	7:14B-9.1(c)	NM		\$8,000
Failure to close a tank system after it has been out of service for more than 12 months without the approval of the Department.	7:14B-9.1(d)	NM		\$8,000
Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities, when required.	7:14B-9.1(e)1	NM		\$8,000
Failure to conduct tank closure and site investigation activities in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using a licensed site remediation professional, when required.	7:14B-9.1(e)2	NM		\$8,000
Failure to notify the Department and all applicable local and county health departments in writing at least 30 days prior to closing an underground storage tank system.	7:14B-9.2(a)1	M	30	\$4,000
Failure to comply with all applicable requirements of the New Jersey Uniform Construction Code regarding closing an underground storage tank system.	7:14B-9.2(a)2	M	30	\$4,000
Failure to include a copy of the Department notification with the application for a local demolition permit prior to closing an underground storage tank system.	7:14B-9.2(a)3	M	30	\$4,000
Failure to submit a completed New Jersey Underground Storage Tank Registration Questionnaire and fees, if the tank is not already registered, at least 60 days prior to closing an underground storage tank system.	7:14B-9.2(a)4	M	30	\$8,000
Failure to develop and implement a closure plan pursuant to the procedures set forth in N.J.A.C. 7:26E-6.3(b).	7:14B-9.2(b)	NM		\$8,000
Failure to follow the closure requirements set forth in N.J.A.C. 7:26-9 for underground storage tank systems regulated by the New Jersey Hazardous Waste rules.	7:14B-9.3(a)	Defer to specific N.J.A.C. 7:26-9 violations and penalties		

Failure to follow the closure requirements set forth in N.J.A.C. 7:14B-9.2 for underground storage tank systems containing hazardous wastes which are not subject to the New Jersey Hazardous Waste rules.	7:14B-9.3(b)	M	30	\$8,000
Failure to ensure the underground storage tank system is closed by an individual certified for closure per N.J.A.C. 7:14B-13 or a licensed site remediation professional, as required, depending upon the date that closure was initiated.	7:14B-9.3(c)	NM		\$8,000
Failure to ensure that an individual certified in subsurface evaluation is on site during the removal or abandonment-in-place of the underground storage tank system and makes all observations and decisions regarding site investigation and remedial investigation activities when required.	7:14B-9.3(d)1	NM		\$8,000
Failure to ensure that all tank closure and site investigation activities were conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using a licensed site remediation professional, when required.	7:14B-9.3(d)2	NM		\$8,000
Failure to empty and clean a tank prior to storing a non-hazardous substance.	7:14B-9.4(a)1	NM		\$8,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3, before the substance being stored was changed to a non-hazardous substance.	7:14B-9.4(a)2	NM		\$8,000
Failure to submit a site investigation report, prepared and presented in accordance with N.J.A.C. 7:26E-3.13, within the required timeframe.	7:14B-9.4(a)3	NM		\$8,000
Failure to immediately notify the Department upon identification of a discharge during activities associated with N.J.A.C. 7:14B-9.4(a), and to conduct remediation.	7:14B-9.4(b)	NM		\$8,000
Failure to submit a New Jersey Underground Storage Tank Facility Certification Questionnaire that reflects the change of substance.	7:14B-9.4(c)	M	30	\$8,000
Failure to submit a site investigation report to the Department within the required timeframe.	7:14B-9.5(a)	M	30	\$8,000
Failure to insure the site investigation report is prepared by individual certified in subsurface evaluation per N.J.A.C. 7:14B-13 or a licensed site remediation professional, as required, depending upon the date that closure was initiated.	7:14B-9.5(b)	NM		\$8,000
Failure to maintain and make available to the Department upon request all records generated per N.J.A.C. 7:14B-9.	7:14B-9.5(c)	M	30	\$4,000
10 Permitting Requirements for Underground Storage Tanks				
Failure to obtain a permit from the Department prior to the repair, installation, substantial modification or upgrade of an underground storage tank system.	7:14B-10.1(a)1	NM		\$8,000
Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.	7:14B-10.1a)2	M	30	\$4,000
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$4,000
Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.	7:14B-10.2(a)	NM		\$8,000
Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.	7:14B-10.2(b)	M	60	\$4,000
Failure to submit a permit application on forms provided by the Department.	7:14B-10.3(a)	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or upgrade which are signed and sealed by a New Jersey profession engineer.	7:14B-10.3(b)1	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system indicating the size and location of the tank systems, existing structures on the site, and distances from lot lines.	7:14B-10.3(b)2	M	30	\$4,000

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Failure to submit information documenting soil permeability.	7:14B-10.3(b)3	M	30	\$4,000
Failure to submit required documentation of the depth to ground water.	7:14B-10.3(b)4	M	30	\$4,000
Failure to submit corrosion system designs which are properly certified.	7:14B-10.3(b)5	M	30	\$4,000
Failure to submit a detailed description of the upgrade, installation, or repair that is to be performed.	7:14B-10.3(b)6	M	30	\$4,000
Failure to submit documentation of the precision of the performance of the release detection monitoring method chosen pursuant to N.J.A.C. 7:14B-6.1, 6.2 and 6.3.	7:14B-10.3(b)7	M	30	\$4,000
Failure to submit a scaled site diagram accurately indicating the locations of all sampling and monitoring points in relation to all underground storage tank systems at the facility.	7:14B-10.3(b)8	M	30	\$4,000
Failure to submit the required certification, signed by a Department certified subsurface evaluator, that the number and locations of all vapor or product monitoring points is sufficient to monitor the tank system.	7:14B-10.3(b)9	M	30	\$4,000
Failure to make the Department issued permit available for inspection by an authorized local, State or Federal representative and prominently display the permit at the facility site during the course of the permitted activity.	7:14B-10.5(a)	M	30	\$4,000
Failure to maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection by an authorized local, State or Federal representative.	7:14B-10.5(b)	M	30	\$4,000
Failure to contact the Department as required to obtain an emergency permit, and to submit a permit application within 14 calendar days of receipt of the emergency permit.	7:14B-10.6(b)	NM		\$8,000
Failure to provide required information when requesting an emergency permit.	7:14B-10.6(c)	M	30	\$4,000
Failure to make the Department-issued emergency permit number available for inspection by an authorized local, State or Federal representative and prominently display the emergency permit number at the facility site during the course of the permitted activity.	7:14B-10.6(d)	M	30	\$4,000
Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.	7:14B-10.8(e)	NM		\$8,000
11 Municipal Ordinances				
Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.	7:14B-11.1(b)	M	30	\$4,000
Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.	7:14B-11.2(a)	M	30	\$4,000
Failure to submit to the Department a copy of the final ordinance.	7:14B-11.3(d)	M	30	\$4,000
13 Certification of Individuals and Business Firms				
Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.	7:14B-13.1(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-13.1(b)	M	30	\$4,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-13.1(c)	M	30	\$4,000
Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-13.1(d)	NM		\$5,000

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Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-13.1(e)1	NM		\$5,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)2	NM		\$5,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-13.1(h)	M	30	\$4,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-13.1(j)	M	30	\$4,000
Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.	7:14B-13.1(k)	M	30	\$4,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-13.1(l)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to comply with the professional business practices described in N.J.A.C. 7:14B-13.9	7:14B-13.1(m)	NM		\$5,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 CFR 1910.120(e)(8).	7:14B-13.6(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-13.6(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$5,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-13.6.	7:14B-13.7(f)	M	30	\$4,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-13.9(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-13.9(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-13.9(a)3	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to enter into a written contract with a client that contains all of the provisions of N.J.A.C. 7:14B-13.9(b).	7:14B-13.9(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide a standard price list of the services that it provides upon request of the client.	7:14B-13.9(c)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-13.9(d)1	M	30	\$4,000

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Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-13.9(d)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-13.9(e)	NM		\$5,000
16 Certification of individuals and business firms for unregulated underground storage tank systems				
Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tanks.	7:14B-16.2(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-16.2(b)	M	30	\$4,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-16.2(c)	M	30	\$4,000
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tanks are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-16.2(d)	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-16.2(e)1	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-16.2(e)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.	7:14B-16.2(f)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to comply with the professional business practices described in N.J.A.C. 7:14B-16.10.	7:14B-16.2(g)	NM		\$5,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit a list of the maximum price that they will charge to perform those services for which he/she/it is certified.	7:14B-16.2(g)1	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to cooperate in any audit of their pricing and business practices.	7:14B-16.2(g)2	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit documentation of the cost to provide the services for which the Petroleum Underground Storage Tank Remediation and Upgrade Closure Fund is providing financial assistance.	7:14B-16.2(g)3	M	30	\$3,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification other than those created by passing an examination.	7:14B-16.2(i)	M	30	\$4,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-16.2(j)	M	30	\$4,000
Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.	7:14B-16.2(k)	M	30	\$4,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-16.2(l)	M	30	\$4,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 CFR 1910.120(e)(8).	7:14B-16.7(a)	M	30	\$4,000

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Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-16.7(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$5,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7.	7:14B-16.8(f)	M	30	\$4,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-16.9(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-16.9(b)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-16.10(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-16.10(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-16.10(a)3	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to enter into a written contract with a client that contains all of the provisions of N.J.A.C. 7:14B-16.10(b).	7:14B-16.10(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide a standard price list of services to the client.	7:14B-16.10(c)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-16.10(d)1	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-16.10(d)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-16.10(e)	NM		\$5,000
<u>Industrial Site Recovery Act N.J.A.C. 7:26B</u>				
1 General Information				
Failure to make all submissions in format as required.	7:26B-1.5	M	30	\$4,000
Failure to submit proper certifications.	7:26B-1.6	M	30	\$4,000
Failure to complete additional remediation and address deficiencies in submittals.	7:26B-1.7(b)	NM		\$8,000
Failure to allow the Department access to the site.	7:26B-1.9	NM		\$20,000
Prior to the transfer of an industrial establishment, failure to: obtain an authorization letter, no further action letter or remedial action workplan approval from the Department; obtain a response action outcome or certification of a remedial action workplan from a licensed site remediation professional; execute a remediation agreement or submit a remediation certification.	7:26B-1.10(b)	NM		\$8,000
Failure to amend a General Information Notice for any subsequent transfers of ownership or operations.	7:26B-1.10(c)	M	30	\$4,000
3 General Information Notice				
Failure to submit a General Information Notice within five calendar days after the occurrence of a transaction event.	7:26B-3.2(a)	NM		\$8,000

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Failure to remediate a site in accordance with the Industrial Site Recovery Act.	7:26B-3.2(b)	NM		\$8,000
Failure to submit a complete and accurate General Information Notice.	7:26B-3.3(a)	M	30	\$4,000
Failure to comply with N.J.A.C. 7:26C-2.4 for a General Information Notice submitted to the Department on or after November 4, 2009.	7:26B-3.3(d)	NM		\$8,000
Failure to submit revisions to the General Information Notice within 30 calendar days of discovery that the original is incorrect, inaccurate or incomplete.	7:26B-3.4(b)	M	30	\$4,000
4 Remediation Agreement and Remediation Certification				
Failure to conduct remediation in accordance with a Remediation Agreement.	7:26B-4.1	NM		\$8,000
Failure to conduct remediation in accordance with a Remediation Agreement Amendment.	7:26B-4.2	NM		\$8,000
Failure to submit a complete and accurate remediation certification.	7:26B-4.3	M	30	\$4,000
6 Remediation Procedures				
Failure to complete a preliminary assessment and submit a preliminary assessment report to the Department within the required timeframe.	7:26B-6.1(b)	NM		\$8,000
Failure to complete a site investigation and submit a site investigation report to the Department within the required timeframe.	7:26B-6.1(c)	NM		\$8,000
Failure to submit a remedial investigation workplan to the Department within the required timeframe.	7:26B-6.1(d)	NM		\$8,000
Failure to complete a remedial investigation and submit a remedial investigation report to the Department within the required timeframe.	7:26B-6.1(e)	NM		\$8,000
Commenced a remedial action which does not meet the criteria in N.J.A.C. 7:26B-6.2(b) without the Department's approval of a remedial action workplan.	7:26B-6.2(a)	NM		\$8,000
Failure to submit, within the required timeframe, a certification that there are no areas of concern at the industrial establishment where hazardous substances have migrated or are migrating from, involving remediation of groundwater or surface water, and a summary and schedule of completed and proposed soil remedial actions.	7:26B-6.2(c)	NM		\$8,000
Failure to certify the notification referenced in N.J.A.C. 7:26B-6.2(c).	7:26B-6.2(d)	M	30	\$4,000
Failure to submit a notification in accordance with N.J.A.C. 7:26E-1.4.	7:26B-6.2(e)	NM		\$8,000
Failure to submit progress reports when required.	7:26B-6.2(f)	M	30	\$8,000
Failure to submit a remedial action workplan to the Department within the required timeframe.	7:26B-6.2(g)	NM		\$8,000
Failure to submit a remedial action workplan to the Department within the required timeframe when conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.	7:26B-6.2(h)	NM		\$8,000
Failure to submit a ground water or surface water remedial action workplan within the required timeframe for Department approval.	7:26B-6.3(a)	NM		\$8,000
Failure to submit a ground water or surface water remedial action workplan to the Department within the required timeframe when conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.	7:26B-6.3(b)	NM		\$8,000
Failure to submit a Remediation Funding Source upon the Department's approval or licensed site remediation professional's certification of a remedial action workplan.	7:26B-6.4	NM		\$5,000
Failure to remediate a site in accordance with a schedule.	7:26B-6.5	NM		\$8,000
Failure to submit all workplans and reports documenting completion of remediation.	7:26B-6.6	M	30	\$8,000
Failure to submit a negative declaration.	7:26B-6.7	NM		\$8,000
8 Program fees and oversight costs				

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Failure to pay fees and oversight costs.	7:26B-8	M	30	20 percent of outstanding amount; \$1,000 minimum
Remediation Agreements				
Failure to submit workplans and reports that comply with N.J.A.C. 7:26E and that conform to the Department's comments, in accordance with the remediation agreement.	specific remediation agreement paragraphs	NM		\$8,000
Failure to implement approved workplans in accordance with approved schedule and the conduct of additional work required by the Department, in accordance with the remediation agreement.	specific remediation agreement paragraphs	NM		\$8,000
Failure to comply with remediation funding source (RFS) requirements in a remediation agreement.	specific remediation agreement paragraphs	NM		\$8,000
Failure to comply with any other administrative requirements of a remediation agreement, including but not limited to payment of oversight costs and fees; payment of RFS surcharge; submittal of cost review.	specific remediation agreement paragraphs	M	30	\$4,000
<u>Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C</u>				
1 General Requirements				
Failure to conduct remediation in accordance with all applicable statutes, rules, and guidance.	7:26C-1.2(a)	NM		\$8,000
Failure to conduct additional remediation using the services of a licensed site remediation professional when notified by the Department.	7:26C-1.4(b)	NM		\$8,000
Failure to properly certify all submissions.	7:26C-1.5	M	30	\$4,000
Failure to submit forms, applications and documents as required.	7:26C-1.6	M	30	\$4,000
2 Obligations of the Persons Responsible for Conducting the Remediation of a Contaminated Site				
Failure to conduct remediation as required.	7:26C-2.3(a)	NM		\$20,000
Failure to conduct remediation as required.	7:26C-2.4	NM		\$20,000
Failure to retain records as required and to submit them upon issuance of final remediation document and/or upon request.	7:26C-2.5	NM		\$8,000
3 Remediation Timeframes and Extension Requests				
Failure to remediate the site or area of concern pursuant to the schedules in N.J.A.C. 7:14B, 7:26B, 7:26C and 7:26E or an administration consent order or remediation agreement.	7:26C-3.2(a)	NM		\$8,000
Failure to comply with the mandatory timeframe for submittal of a preliminary assessment and site investigation report.	7:26C-3.3(a)1	NM		\$8,000
Failure to comply with the mandatory timeframe for submittal of an initial receptor evaluation report.	7:26C-3.3(a)1	NM		\$20,000
Failure to comply with the mandatory timeframe for delineation of the immediate environmental concern contaminant source, initiation of immediate environmental concern contaminant source control and submittal of Immediate Environmental Concern Contaminant Source Control Report.	7:26C-3.3(a)2	NM		\$20,000
Failure to comply with the mandatory timeframe for delineation of light non-aqueous phase liquid (LNAPL) free product, completion of LNAPL recovery system installation, initiation of LNAPL recovery system monitoring, and submittal of interim remedial action report.	7:26C-3.3(a)3	NM		\$20,000
Failure to comply with an expedited site-specific timeframe established by the Department.	7:26C-3.4(c)	NM		\$20,000
4 Fees and Oversight Costs				

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Failure to pay the annual remediation fee.	7:26C-4.2(a)	NM		20 percent of outstanding amount; \$1,000 minimum
Failure to accurately identify contaminated areas of concern/media for the purpose of determining the amount of the annual remediation fee.	7:26C-4.2(b)	NM		\$4,000
Failure to submit a new Annual Remediation Fee Reporting Form within the required timeframe prior to the annual remediation fee anniversary date, when additional contaminated areas of concern/media are discovered.	7:26C-4.2(d)	NM		\$4,000
Failure to pay the annual remediation fee every year and the Department oversight costs per N.J.A.C. 7:26C-4.5, as required, when the Department has determined that it will undertake direct oversight of a portion or condition of the site pursuant to N.J.S.A. 58:10C-27.	7:26C-4.2(f) and (g)	NM		20 percent of outstanding amount; \$1,000 minimum
Failure to pay document review fees as required.	7:26C-4.3(a)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to pay the required fee related to a discharge from an unregulated heating oil tank system.	7:26C-4.3(c)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to submit the required remedial action permit annual fee.	7:26C-4.4(b)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to pay annual remedial action permit fee	7:26C-4.4(c)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to pay oversight costs as required.	7:26C-4.5	M	30	20 percent of outstanding amount; \$1,000 minimum
5 Remediation Funding Source Requirements				
Failure to establish and maintain a remediation funding source in an amount equal to the cost of the remediation for a period of not less than the actual time to complete the remediation when required.	7:26C-5.2(e)	NM		\$8,000
Failure to submit the required confirmation of the value of the RFS, or renew a self guarantee, when required 30 days prior to expiration.	7:26C-5.4(b), 5.5(b), 5.6(b), 5.8(d)	M	30	\$4,000
Failure to pay the annual RFS surcharge.	7:26C-5.9(b)	M	30	\$4,000
Failure to submit an annual cost review.	7:26C-5.10(a)	M	30	\$4,000
Failure to increase the RFS within 30 days of a determination that remediation costs are greater than the amount of the established RFS.	7:26C-5.11(c)	NM		\$4,000
Failure to submit information regarding disbursements.	7:26C-5.12(c)	M	30	\$4,000
6 Final Remediation Documents				

Failure to conduct additional remediation when required by the Department subsequent to the rescission of a no further action letter or the invalidation of a response action outcome.	7:26C-6.4(b)	NM		\$8,000
7 Remedial Action Permits				
Failure to comply with general conditions applicable to all remedial action permits including the submittal of a biennial certification, maintenance of a RFS, if applicable, and payment of applicable fees.	7:26C-7.4(a)-(b)	NM		\$8,000
Failure to comply with conditions applicable to a soil remedial action permit, including general conditions, deed notice conditions, and biennial certification requirements.	7:26C-7.5	NM		\$8,000
Failure to comply with conditions applicable to a ground water remedial action permit, including general conditions, ground water monitoring reporting requirements, well restrictions associated with each ground water classification exception area, and biennial certification requirements.	7:26C-7.6	NM		\$8,000
Failure to submit to the Department, on the same schedule as biennial certification submittal, an estimate of the future costs to operate, maintain, and inspect all engineering controls.	7:26C-7.7(a)1	NM		\$8,000
Failure to maintain financial assurance as required pursuant to a remedial action permit.	7:26C-7.7(a)2	NM		\$8,000
8 Access				
Failure to send written requests for access as required to each property owner.	7:26C-8.2(b) and (c)	M	30	\$4,000
Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.	7:26C-8.2(d)	M	30	\$4,000
Failure to use either an appropriately certified subsurface evaluator or a licensed site remediation professional to perform the remediation of a discharge from an unregulated heating oil tank system.	7:26C-13.2(a)	NM		\$8,000
Failure to submit the required information.	7:26C-13.3	M	30	\$4,000
Failure to obtain the required approvals when conducting remediation of an unregulated heating oil system	7:26C-13.5(b)	NM		\$8,000
Administrative Consent Orders				
Failure to submit workplans and reports that comply with N.J.A.C. 7:26E and that conform to the Department's comments, in accordance with an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
Failure to implement approved workplans in accordance with approved schedule and the conduct of additional work required by the Department, in accordance with an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
Failure to comply with RFS requirements in an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
Failure to comply with any other administrative requirements of an administrative consent order, including but not limited to payment of oversight costs and fees; payment of RFS surcharge; submittal of cost review.	specific administrative consent order paragraphs	M	30	\$4,000
<u>Technical Requirements for Site Remediation N.J.A.C. 7:26E</u>				
1 General Information				
Failure to comply with this chapter and guidance when conducting remediation pursuant to any of the applicable statutes.	7:26E-1.3(a)	NM		\$8,000
Failure to remediate to the applicable standards.	7:26E-1.3(c)	NM		\$8,000
Failure to conduct remediation consistent with the requirements of Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and any rules promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.	7:26E-1.3(d)	NM		\$8,000
Failure to comply with notification requirements.	7:26E-1.4(a) through (e)	NM		\$8,000

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Failure to provide a copy of the remedial action workplan or updates or status reports if requested by the municipality.	7:26E-1.4(f)	M	30	\$4,000
Failure to provide public notice of remediation activities at the site using either a sign or notification letters.	7:26E-1.4(h)	NM		\$8,000
Failure to comply with all requirements when using a sign for public notification.	7:26E-1.4(i)	M	30	\$4,000
Failure to comply with all requirements when using notification letters for public notification.	7:26E-1.4(j)	M	30	\$4,000
Failure to obtain the Department's prior approval, comply with guidance, and send additional notification of excess fill material as required.	7:26E-1.4(k)	NM		\$8,000
Failure to send, update, publish fact sheet, and notify affected property owner as required, when contamination migrates off site.	7:26E-1.4(l)	M	30	\$4,000
Failure to notify adjoining property owner of soil contamination via certified mail.	7:26E-1.4(m)	M	30	\$4,000
Failure to include the rationale for an alternative public notification plan with the applicable remedial phase report.	7:26E-1.4(p)	M	30	\$4,000
Failure to conduct additional public outreach when the Department determined there is substantial public interest.	7:26E-1.4(q)	NM		\$8,000
Failure to make submissions to, and/or get approvals from, Pinelands Commission.	7:26E-1.4(s)	M	30	\$4,000
Failure to submit proper certifications and to submit forms and submissions as required.	7:26E-1.5	M	30	\$4,000
Failure to submit workplans and reports in the proper format and in a timely manner.	7:26E-1.6	M	30	\$4,000
Failure to include in the applicable remedial phase report the rationale for varying from a technical requirement or guidance.	7:26E-1.7(a)	NM		\$8,000
Failure to conduct remediation pursuant to the regulatory timeframes established in this chapter and submit all documents, forms, and other submissions as required in this chapter.	7:26E-1.9(a)	NM		\$8,000
Failure to comply with the Site Remediation Program's guidance documents in effect at the time that the work was conducted.	7:26E-1.9(b)	NM		\$8,000
Failure to properly submit required documents.	7:26E-1.9(d)	M	30	\$4,000
Failure to prepare or implement a health and safety plan.	7:26E-1.10	NM		\$8,000
Failure to implement an interim response measure to contain or stabilize contamination.	7:26E-1.12(a)	NM		\$20,000
Failure to notify the Department of the discovery of light nonaqueous phase liquid (LNAPL) and initiate free product recovery as required.	7:26E-1.12(b)1	NM		\$20,000
Failure to complete LNAPL delineation, installation of recovery system, and submit report within the required timeframe.	7:26E-1.12(b)2	NM		\$20,000
Failure to complete the installation of a recovery system, initiate operational monitoring, and submit required information concerning LNAPL recovery within required timeframe.	7:26E-1.12(b)4	NM		\$20,000
Failure to conduct remediation with the Department's oversight in situations where such oversight is required.	7:26E-1.13	NM		\$8,000
Failure to address an immediate environmental concern (IEC) condition in accordance with the Department's IEC Guidance.	7:26E-1.14(a)	NM		\$20,000
Failure to immediately notify the Department upon the discovery of an IEC condition.	7:26E-1.14(b)1	NM		\$20,000
Failure to mitigate the IEC impacts within the required timeframe.	7:26E-1.14(b)2	NM		\$20,000
Failure to submit the required information within the required timeframe.	7:26E-1.14(b)3	NM		\$20,000
Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.14(b)4	NM		\$20,000
Failure to submit an IEC engineered system response action report with the required form within the required timeframe.	7:26E-1.14(c)	NM		\$20,000

Failure to initiate control of the IEC contaminant source using the Department's guidance, complete the delineation of the IEC contaminant source, and submit an IEC contaminant source control report with the required form within the required timeframe.	7:26E-1.14(d)	NM		\$20,000
Failure to conduct an initial receptor evaluation, pursuant to N.J.A.C. 7:26E-1.15(a) within the applicable required timeframe.	7:26E-1.15(c)	NM		\$20,000
Failure to update a receptor evaluation and submit it as required.	7:26E-1.15(d)	NM		\$20,000
Failure to send a copy of each receptor evaluation to local officials as required.	7:26E-1.15(e)	NM		\$20,000
Failure to properly conduct a receptor evaluation concerning land use, ground water use, vapor intrusion and ecological receptors.	7:26E-1.16-1.19	NM		\$20,000
2 Quality Assurance for Sampling and Laboratory Analysis				
Failure to use a laboratory that has the appropriate certification and capabilities.	7:26E-2.1(a)1	NM		\$8,000
Failure to use appropriate methods for sampling, sample management, sample matrix cleanup, analysis and reporting as required.	7:26E-2.1(a)3 through 18	M	60	\$4,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	M	30	\$4,000
Failure to analyze samples for contaminants which may be present, or to analyze for the Target Compound List (TCL) plus tentatively identified compounds (TICs)/Target Analyte List (TAL) (TCL + TICs/TAL), hexavalent chromium, petroleum hydrocarbons (PHC), and pH when contaminants are unknown or not well documented.	7:26E-2.1(c)1	M	60	\$4,000
Failure to analyze samples for parameters as needed to develop a site-specific standard or criterion and an alternative remediation standard for the soil inhalation pathway.	7:26E-2.1(c)3	M	60	\$4,000
Failure to conduct sampling pursuant to Department's Guidance for Characterization of Concrete and Clean Material Certification for concrete and other building material that will be recycled.	7:26E-2.1(c)4	M	60	\$4,000
Failure to analyze samples for petroleum hydrocarbons contamination (PHC) pursuant to the Department's guidance and as required.	7:26E-2.1(d)	M	60	\$4,000
Failure to further address tentatively identified compounds, as required.	7:26E-2.1(e)	M	60	\$4,000
Failure to prepare a quality assurance project plan, as required.	7:26E-2.2(a)	M	30	\$8,000
3 Preliminary Assessment and Site Investigation				
Failure to properly conduct preliminary assessment in accordance with N.J.A.C. 7:26E-3.	7:26E-3.1(b)	NM		\$8,000
Failure to conduct a preliminary assessment and/or site assessment pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers when conducting an evaluation of a child care center pursuant to N.J.S.A. 52:27D-130.4.	7:26E-3.1(c)	NM		\$8,000
Failure to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.13 when potentially contaminated areas of concern are identified.	7:26E-3.1(d)	NM		\$8,000
Failure of a person who is required to submit an Industrial Site Recovery Act general information notice, pursuant to N.J.A.C. 7:26B-3 within the required timeframe.	7:26E-3.1(e)	NM		\$8,000
Failure to submit a preliminary assessment report that conforms to N.J.A.C. 7:26E-3.2	7:26E-3.2	NM		\$8,000
Failure to conduct a site investigation that satisfies all the listed requirements	7:26E-3.3(b)	NM		\$8,000
Failure to conduct a comparison of all site data with the Department's applicable remediation standards pursuant to the Department's guidance, to determine if contaminated areas of concern are present.	7:26E-3.3(d)	NM		\$8,000
Failure to complete the site investigation and submit a site investigation report with the required form within the applicable required timeframe.	7:26E-3.3(e)	NM		\$8,000
Failure to properly select sample locations, and to properly collect and analyze samples pursuant to N.J.A.C. 7:26E-2.	7:26E-3.4	M	60	\$4,000
Failure to conduct necessary site investigation of building interiors.	7:26E-3.5	M	30	\$4,000

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Failure to satisfy site investigation requirements for soil sampling, as listed.	7:26E-3.6(a)	M	30	\$4,000
Failure to conduct site investigation of soil according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.	7:26E-3.6(c)2	M	60	\$4,000
Failure to conduct site investigation of ground water when required by measured soil contamination at an area of concern.	7:26E-3.7(a)	M	60	\$4,000
Failure to properly locate ground water sampling points, implement quality assurance/quality control measures, and utilize proper sampling methods when conducting a site investigation of ground water.	7:26E-3.7(c)1-3	M	60	\$4,000
Failure to collect the required number of ground water samples.	7:26E-3.7(d)	M	30	\$4,000
Failure to properly evaluate ground water site investigation sampling results.	7:26E-3.7(e)	M	30	\$4,000
Failure to resample ground water to confirm the presence of contamination.	7:26E-3.7(e)2	M	60	\$4,000
Failure to determine ground water flow direction upon the confirmation of ground water contamination.	7:26E-3.7(e)3	M		\$4,000
Failure to commence a potable water investigation within 30 calendar days after property acquisition.	7:26E-3.7(f)	NM		\$20,000
Failure to conduct a background investigation that supports a position that the presence of a ground water contaminant in excess of the applicable remediation standard is due to background ground water contamination.	7:26E-3.7(g)	M	90	\$4,000
Failure to evaluate evidence of discharges to surface water or sediment.	7:26E-3.8(a)	M	30	\$4,000
Failure to properly conduct site investigation of surface water and sediment.	7:26E-3.8(b)	M	60	\$4,000
Failure to satisfy the site investigation requirements related to bulk storage tanks and appurtenances as listed.	7:26E-3.9(a)1-6	M	30	\$4,000
Failure to properly conduct site investigation of all pads and all storage and staging areas over permeable cover.	7:26E-3.9(b)	M	30	\$4,000
Failure to properly conduct site investigation of all surface impoundments.	7:26E-3.9(c)	M	30	\$4,000
Failure to properly conduct site investigation of all drainage systems.	7:26E-3.9(d)	M	30	\$4,000
Failure to properly conduct site investigation of all discharge and waste disposal systems and areas.	7:26E-3.9(e)	M	30	\$4,000
Failure to properly conduct site investigation of any area of concern not addressed pursuant to previous requirements.	7:26E-3.9(f)	M	30	\$4,000
Failure to satisfy the baseline ecological evaluation requirements as part of the site investigation.	7:26E-3.11(a)	M	60	\$4,000
Failure to conduct a proper site investigation when a landfill may be present.	7:26E-3.12(a)	M	60	\$4,000
Failure to conduct a proper site investigation when a historic fill may be present.	7:26E-3.12(b)	M	60	\$4,000
Failure to submit a site investigation report that includes information on site history, physical setting, technical overview and findings and recommendations.	7:26E-3.13(b)	M	30	\$4,000
Failure to submit a site investigation report that includes the required data and related information.	7:26E-3.13(c)	M	30	\$4,000
Failure to submit a site investigation report that includes the required maps and diagrams.	7:26E-3.13(d)	M	30	\$4,000
4 Remedial Investigations				
Failure to conduct a remedial investigation in accordance with N.J.A.C. 7:26E-4, including delineation of contamination to the applicable remediation standard in all media pursuant to the Department's guidance, determination of off-site migration of contamination, and evaluation of impacts to human and ecological receptors.	7:26E-4.1(b)	M	90	\$4,000

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Failure to submit a remedial investigation workplan that conforms to the general requirements of this section.	7:26E-4.2(a)	M	30	\$4,000
Failure to include all the required information in a remedial investigation workplan.	7:26E-4.2(b)	M	30	\$4,000
Failure to conduct a remedial investigation of soil at a contaminated site.	7:26E-4.3(a)	NM		\$8,000
Failure to conduct the remedial investigation of soil according to general technical requirements.	7:26E-4.3(b)	M	90	\$4,000
Failure to conduct a remedial investigation of ground water when required.	7:26E-4.4(a)	NM		\$8,000
Failure to provide information necessary to support a position that ground water sampling is not necessary.	7:26E-4.4(b)	M	30	\$4,000
Failure to conduct a remedial investigation of ground water according to general technical requirements.	7:26E-4.4(c)	M	90	\$4,000
Failure to collect ground water samples using acceptable professional methods such as those described in the then effective New Jersey Department of Environmental Protection Field Sampling Procedures Manual, or to gain Department approval of an alternate method.	7:26E-4.4(d)	M	30	\$4,000
Failure to properly locate all ground water sampling points.	7:26E-4.4(e)	M	30	\$4,000
Failure to collect the appropriate number of ground water samples.	7:26E-4.4(f)	M	30	\$4,000
Failure to comply with requirements for monitoring wells and piezometers.	7:26E-4.4(g)	M	30	\$4,000
Failure to evaluate the results of the initial ground water analyses.	7:26E-4.4(h)	M	30	\$4,000
Failure to properly perform confirmation ground water sampling.	7:26E-4.4(h)2	M	60	\$4,000
Failure to fully investigate confirmed groundwater contamination and potential impacts, or to conduct a background investigation that supports a position that groundwater contamination is from an offsite source.	7:26E-4.4(h)3	M	30	\$4,000
Failure to delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including free and residual product.	7:26E-4.4(h)3i	M	90	\$4,000
Failure to confirm ground water flow direction.	7:26E-4.4(h)3ii	M	30	\$4,000
Failure to adequately characterize the impacted aquifer.	7:26E-4.4(h)3iii	M	60	\$4,000
Failure to provide documentation for ground water flow system model.	7:26E-4.4(h)3iv	M	30	\$4,000
Failure to properly perform a well search.	7:26E-4.4(h)3v	NM		\$20,000
Failure to properly sample potable and supply wells which are suspected to be contaminated.	7:26E-4.4(h)3vi	NM		\$20,000
Failure to properly evaluate any surface water body potentially impacted by contaminated ground water.	7:26E-4.4(h)3vii	NM		\$20,000
Failure to properly evaluate any subsurface utilities, basements or other structures potentially impacted by vapor hazards related to contaminated ground water.	7:26E-4.4(h)3viii	NM		\$20,000
Failure to properly evaluate current and potential ground water uses for the 25-year planning horizon.	7:26E-4.4(h)3ix	M	30	\$4,000
Failure to properly conduct soil gas studies when required.	7:26E-4.4(i)	M	30	\$4,000
Failure to properly conduct a remedial investigation of surface water, wetlands and sediment.	7:26E-4.5(a)	NM		\$8,000
Failure to properly conduct the remedial investigation of surface water, wetlands and sediment in accordance with the general technical requirements.	7:26E-4.5(b)	M	30	\$4,000
Failure to properly document a position that a remedial investigation of surface water is not necessary.	7:26E-4.5(c)	M	30	\$4,000
Failure to conduct a surface water investigation as required.	7:26E-4.5(d)	M	30	\$4,000
Failure to conduct the remedial investigation of landfills as required.	7:26E-4.6(a)	NM		\$8,000
Failure to conduct the remedial investigation of historic fill as required.	7:26E-4.6(b)	M	30	\$4,000
Failure to conduct an ecological risk assessment according to general technical requirements.	7:26E-4.7(a)	M	60	\$4,000

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Failure to present the results of an ecological risk assessment in a ecological risk assessment report that conforms to the specific requirements.	7:26E-4.7(b)	M	30	\$4,000
Failure to submit a complete remedial investigation report.	7:26E-4.8	M	30	\$4,000
5 Remedial Action Selection				
Failure to establish remedial action objectives/goals as required.	7:26E-5.1(b)	M	30	\$4,000
Failure to select a remedial action that reduces contamination to below all applicable remediation standards or eliminates exposure to contamination above the applicable remediation standard based on the current and future land use for the site and all listed standards rule and guidelines.	7:26E-5.1(c)	NM		\$8,000
Failure to select a remedial action that also considers other listed factors.	7:26E-5.1(d)	NM		\$8,000
Failure to include in a report information that supports the use of an innovative remedial action technology.	7:26E-5.1(e)	M	30	\$4,000
Failure to submit a feasibility study instead of a remedial action selection report when the person responsible for conducting the remediation that is remediating a site is subject to direct Department oversight.	7:26E-5.1(f)	M	30	\$4,000
Failure to comply with the Department's requirements for use of engineering and institutional controls at N.J.A.C. 7:26E-8.	7:26E-5.1(g)	NM		\$8,000
Failure to select the required remedial action if new construction of, or a change in use to, a residence, a school or child care center will occur at a site that is undergoing remediation.	7:26E-5.1(i)	NM		\$8,000
Implemented an alternative remedy for a site that will be used as a residence, a school, or a child care center without the Department's prior written approval.	7:26E-5.1(j)	NM		\$8,000
Failure to submit a remedial action selection report with the remedial action workplan when required.	7:26E-5.2(a)	M	30	\$4,000
Failure to include all required information in the remedial action selection report.	7:26E-5.2(b)	M	30	\$4,000
6 Remedial Action				
Failure to notify the Department and the local governing body pursuant to N.J.A.C. 7:26E-1.4.	7:26E-6.1(a)	NM		\$8,000
Failure to ensure that each remedial action implemented at a contaminated site meets all listed requirements.	7:26E-6.1(b)	NM		\$8,000
Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.	7:26E-6.1(d)	NM		\$20,000
Failure to establish institutional controls for a restricted use or a limited use remedy.	7:26E-6.1(e)	NM		\$8,000
Failure to conduct the remediation of historic fill pursuant to N.J.A.C. 7:26E-6.2(c), or for other fill material pursuant to N.J.A.C. 7:26E-5.1.	7:26E-6.1(f)	M	30	\$4,000
Failure to prepare and submit a remedial action workplan that includes all required information in the required format.	7:26E-6.2(a)	M	30	\$8,000
Implemented a soil remedial action without the prior Department approval of a remedial action workplan when such approval is required.	7:26E-6.2(b)	NM		\$8,000
Failure to include in the remedial action workplan a reuse soil plan pursuant to the Department's Guidance for Remediation of Contaminated Soils when reuse of contaminated soil is planned as part of a remedial action.	7:26E-6.2(c)	M	60	\$4,000
Failure to propose engineering and institutional controls when historic fill material will not be treated or removed.	7:26E-6.2(d)	M	30	\$4,000
Failure to contain or stabilize contaminants in all media, as a first priority, to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.	7:26E-6.3(a)	NM		\$20,000
Failure to follow requirements related to closure of underground storage tanks.	7:26E-6.3(b)	NM		\$8,000
Failure to properly conduct remediation of a landfill.	7:26E-6.3(c)	M	60	\$4,000

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Failure to conduct the required investigation or take the required actions, and to provide all the information necessary, to support the proposal of a natural ground water remediation.	7:26E-6.3(d)	M	30	\$4,000
Failure to comply with the monitoring and performance requirements for natural remediation.	7:26E-6.3(e)	M	30	\$4,000
Failure to include in a remedial action workplan a proposal to monitor an active ground water remedial system as required.	7:26E-6.3(f)	M	30	\$4,000
Failure to include a groundwater monitoring plan for an active groundwater remedial action.	7:26E-6.3(g)	M	30	\$4,000
Failure to include a completed classification exception area (CEA)/Well Restriction Area (WRA) Fact Sheet Form as part of an application for a ground water remedial action permit.	7:26E-6.3(h)	M	30	\$4,000
Failure to document the effectiveness of the remedial action.	7:26E-6.4(a)	M	30	\$4,000
Failure to restore all areas subject to remediation to pre-remediation conditions.	7:26E-6.4(b)	M	30	\$4,000
Failure to decommission all monitoring and extraction wells after completion of remediation.	7:26E-6.4(c)	M	30	\$4,000
Failure to prepare a soil reuse plan pursuant to the Department's Guidance for Remediation of Contaminated Soils that complies with the required sampling requirements.	7:26E-6.4(d)	NM	\$8,000	
Failure to remediate property not owned by the person conducting the remediation to the applicable residential use standard if the property owner does not consent in writing to implement the institutional or engineering controls and to record a deed notice.	7:26E-6.4(e)	NM		\$8,000
Failure to implement a post remedial action implementation monitoring plan to determine whether the achieved ground water remediation standards are sustainable and not subject to concentration rebound after remediation standards are met, when contaminant levels in the source monitoring wells are at or below the applicable standards for two consecutive high seasonal water table monitoring events.	7:26E-6.4(f)	M	90	\$8,000
Failure to prepare a schedule of the remedial action that includes the information specified in this section and to revise/resubmit it as required.	7:26E-6.5(a), (b) and (c)	M	30	\$8,000
Failure to submit a remedial action progress report that includes the required information, when required.	7:26E-6.6	M	30	\$8,000
Failure to submit a Remedial Action Report that complies with the content and format requirements specified by this section.	7:26E-6.7(a)	NM		\$8,000
Failure to include all the required information in the Remedial Action Report.	7:26E-6.7(b) through (f)	M	30	\$4,000
7 Permit identification, permit application schedule and discharge to ground water and surface water permits				
Failure to identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action.	7:26E-7.1(a)	M	30	\$4,000
Failure to apply for and obtain all required permits prior to initiating the remedial action.	7:26E-7.1(b)	M	30	\$4,000
Failure to develop a permit application schedule when required.	7:26E-7.1(c)	M	30	\$4,000
Failure to comply with this section and the Department's Guidance NJPDES Discharges To Ground Water Technical Manual For The Site Remediation Program 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).	7:26E-7.2(a)	NM		\$8,000
Failure to submit a DGW proposal with the required form, including the required detailed description of the DGW proposal.	7:26E-7.2(b)	M	30	\$8,000
Failure to comply with requirements related to public notice of the DGW proposal.	7:26E-7.2(c)	NM		\$8,000
Failure to comply with the applicable requirements of N.J.A.C. 7:14A-6, this section, and the Department's guidance NJPDES Discharges To Ground Water Technical Manual For The Site Remediation Program.	7:26E-7.2(e)	NM		\$8,000
8 Engineering and Institutional Controls				

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Failure to prepare a deed notice, pursuant to N.J.A.C. 7:26E-8.2.	7:26E-8.1(b)1	M	30	\$4,000
Failure to demonstrate in the remedial action workplan that the selected remedial action will remain protective, that contamination exposure can be controlled, and all current and future uses of the site will be consistent with the remedial action.	7:26E-8.1(b)2	M	30	\$4,000
Failure to monitor each engineering and institutional control.	7:26E-8.1(b)3	NM		\$8,000
Failure to document in the remedial action workplan, how each of the specified criteria has been factored in to ensure that the remedial action is protective of the public health and safety and of the environment.	7:26E-8.1(c)	M	30	\$8,000
Failure to record a deed notice for the site pursuant to N.J.A.C. 7:26E-8.2(c) and (d).	7:26E-8.2(a)1	NM		\$8,000
Failure to document the owner's consent to record the necessary deed notice pursuant to N.J.A.C. 7:26E-8.2(b).	7:26E-8.2(a)2	NM		\$8,000
Failure to include a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16.	7:26E-8.2(b)	M	60	\$4,000
Failure to prepare the required draft notice, draft amendment to the Base Master Plan or Land Use Control Assurance Plan, or draft deed notice, worded pursuant to N.J.A.C. 7:26E-8.2(d), as required by this section.	7:26E-8.2(c)	M	30	\$4,000
Failure to prepare a deed notice as part of the remedial action report, that is worded exactly as the model document in N.J.A.C. 7:26E Appendix E, and includes copies of all required maps.	7:26E-8.2(d)	M	30	\$4,000
Failure to have the owner of the property record the deed notice at the proper county office within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(e)1	NM		\$8,000
Failure to provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the road department of each municipality and county in which the site is located, the New Jersey Department of Transportation, and utility companies with easements on the roadway.	7:26E-8.2(e)2	NM		\$8,000
Failure to include a copy of the recorded deed notice, stamped "Filed," or notice, as applicable, with the Remedial Action Outcome and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in N.J.A.C. 7:26E-8.2(g).	7:26E-8.2(e)3	NM		\$8,000
Failure to provide a copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1 to the specified recipients.	7:26E-8.2(f)	M	30	\$4,000
Failure to comply with N.J.A.C. 7:26C-2.4 when redeveloping or changing the use of a site in a manner inconsistent with a remedial action such that modification of the declaration of environmental restriction (DER) or deed notice is necessary.	7:26E-8.2(g)	NM		\$8,000
Failure to submit a completed CEA/Well Restriction Area (WRA) Fact Sheet Form, and the required information.	7:26E-8.3(b)	M	30	\$4,000
Failure to submit to the Department a monitoring/maintenance certification, for a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded.	7:26E-8.4(c)1	NM		\$8,000
Failure to submit to the Department a monitoring/maintenance certification, for a ground water classification exception area, every two years on the anniversary of the date that the Department established the ground water classification exception area.	7:26E-8.4(c)2	NM		\$8,000
Failure to submit to the Department a monitoring/maintenance certification, for all other engineering and institutional controls (besides a deed notice or ground water classification exception area), every two years on the anniversary of when the engineering or institutional control was in place.	7:26E-8.4(c)3	NM		\$8,000
Failure to submit a biennial certification for all remedial actions and all engineering and institutional controls for the site to the Department in accordance with N.J.A.C. 7:26E-8.4(e) and biennially thereafter on that same date.	7:26E-8.4(d)	NM		\$8,000

Failure to monitor the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions as required, including evaluation of land use changes; conducting site inspections; comparing laws and standards; keeping a maintenance log.	7:26E-8.5(a)	NM	\$8,000
Failure to prepare a biennial certification report and/or a remedial action protectiveness certification form that includes the information listed at N.J.A.C. 7:26E-8.5(b)1 through 10.	7:26E-8.5(b)	NM	\$8,000
Failure to certify to the Department that the deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained, and the remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of public health and the environment.	7:26E-8.5(c)1	NM	\$8,000
Failure to submit a written and electronic version of the monitoring report along with the certification.	7:26E-8.5(c)2	NM	\$8,000
Failure to submit the monitoring report and the certification in accordance with the schedule in N.J.A.C. 7:26E-8.4(c), to the municipal and county clerks; the local, county and regional health department; each owner of the property; or the Department.	7:26E-8.5(c)3	NM	\$8,000
Failure of the person who is relinquishing the obligation to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)1	NM	\$8,000
Failure of the person who is assuming the obligation to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)2	NM	\$8,000
Failure to conduct the monitoring and maintenance of a ground water remedial action, and submit a biennial certification, as required.	7:26E-8.6(a)	NM	\$8,000
Failure to monitor the protectiveness of a remedial action that includes a ground water classification exception area.	7:26E-8.6(b)	NM	\$8,000
Failure to prepare a Biennial Certification Report using the required form that includes all of the criteria outlined in N.J.A.C. 7:26E-8.6(b)1 through 14.	7:26E-8.6(c)	NM	\$8,000
Failure to submit the required certification and form to the listed entities according to the schedule at N.J.A.C. 7:26E-8.4(c), including a statement that the biennial certification report supporting the certification is available upon request and including contact information.	7:26E-8.6(d)	NM	\$8,000
Failure to monitor the protectiveness of a remedial action that includes any other engineering or institutional control.	7:26E-8.7(a)	NM	\$8,000
Failure to prepare a monitoring report that includes all the information listed at N.J.A.C. 7:26E-8.7(b)1 through 9.	7:26E-8.7(b)	NM	\$8,000
Failure to submit the required certification and monitoring report concerning proper maintenance of each engineering or institutional control.	7:26E-8.7(c)	NM	\$8,000

7:26C-9.6 Penalty adjustment factors

(a) For violations that meet the criteria set forth at N.J.A.C. 7:26C-9.5(a)4, the Department may adjust the base penalty listed in the table at N.J.A.C. 7:26C-9.5(c) based on the following factors:

1. The Department may increase the amount of the penalty based on the compliance history of the violator as follows:

- i. The second time that the same violation occurs, the Department may increase the amount of the penalty by a factor of two; and
- ii. The third time the violation occurs and for each subsequent occurrence, the Department may increase the penalty by a factor of five.

2. The Department may increase the penalty by up to 100 percent if the violation is the result of any intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

7:26C-9.7 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or

certification in any application, record or other document required to be submitted or maintained pursuant to this chapter.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be up to \$20,000 for the first offense, up to \$40,000 for the second offense and up to \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of up to \$1,000 for the first offense, up to \$2,000 for the second offense and up to \$5,000 for the third and each subsequent offense.

(d) A violation under this section is non-minor and therefore is not subject to a grace period.

7:26C-9.8 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with any applicable requirements.

(b) The Department shall include the following dollar amounts in its calculation of economic benefit:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
2. The return earned or that may be earned on the amount of the avoided costs;
3. All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
4. All other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time nondepreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and
7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

7:26C-9.9 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations listed in N.J.A.C. 7:26C-10.1(a), the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. In each notice of civil administrative penalty assessment the Department shall:

1. Identify the provision violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty assessed pursuant to N.J.A.C. 7:26C-9.5; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-9.6.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case or when a notice of civil administrative penalty becomes a final order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:26C-9.10, a notice of civil administrative penalty assessment becomes a final order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) If the violator does not pay a civil administrative penalty within 30 calendar days after the date of a final order, and the penalty is not contested pursuant to N.J.A.C. 7:26C-9.6, or if the

violator does not make a required payment pursuant to a payment schedule entered into with the Department, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing and continue until the violator pays the penalty in full.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-9.10 and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.

(e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The Department may assess and recover, by civil administrative order, the reasonable cost of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, in addition to the penalty assessment.

7:26C-9.10 Procedures for requesting and conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest a notice of civil administrative penalty assessment or an administrative order assessed or issued pursuant to this chapter, the violator shall submit an original request in writing to the Department at the address in (d) below, within 20 calendar days after the violator's receipt of the notice of civil administrative penalty assessment or an administrative order. The violator shall include the following information in each hearing request:

1. The name, address, and telephone number, and if available, the fax number and email address, of the violator and its authorized representative;
2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;
3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;
4. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order stated in short and plain terms;
5. An admission or denial of each of the Department's findings of fact in the notice of administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours); and

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) The Department shall deny the hearing request if:

1. The violator fails to include all the information required by (a) above; or
2. The Department does not receive the request within 20 calendar days after the violator received the enforcement document being contested.

(c) The Department shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The violator shall send the request for an adjudicatory hearing to:

1. The Office of Legal Affairs
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request; and
2. New Jersey Department of Environmental Protection
Bureau of Enforcement and Investigations
PO Box 028
Trenton, New Jersey 08625-0028
Attention: Hearing Request

7:26C-9.11 Spill Compensation and Control Act directive

(a) A Spill Compensation and Control Act directive is a clear, written notice that the Department has determined that it is necessary to cleanup and remove discharges, and that notifies the respondents that the Department believes them to be responsible for the hazardous substances that were discharged.

(b) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a hazardous substance at a site to:

1. Clean up and remove the discharge or threatened of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(c) To the extent possible, the Department will provide in the directive general notice as to:

1. The location of the discharge or threatened discharge;
2. The identity of those responsible parties receiving the directive;
3. The connection of each such responsible party to the hazardous substances at the site;
4. The scope of the necessary remediation or the estimated remediation costs;
5. The actions that the responsible parties are directed to take;
6. The manner and timetable for the undertaking action pursuant to the directive; and
7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

(f) The responsible party shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party shall make such payment in mitigation of any liability that it may possess and comply with (g) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the responsible party decides not to comply with the directive, the directive recipient shall comply with (g) below, indicating in writing that it chooses not to take any actions to comply with the directive.

(g) If the responsible party chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the

responsible party shall submit a written response to the Department according to the requirements in the directive. The responsible party shall include in the response a detailed explanation of the person's reasons for its decision, including all good cause defenses to the directive.

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.1 Scope

(a) This subchapter contains provisions that:

1. Establish the eligibility requirements for technical assistance grants, at N.J.A.C. 7:26C-10.3;
2. Establish the pre-application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.4;
3. Establish the application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.5;
4. Establish the eligible technical assistance grant activities, at N.J.A.C. 7:26C-10.6; and
5. Establish the reporting requirements for a community group receiving a technical assistance grant, at N.J.A.C. 7:26C-10.7.

7:26C-10.2 General requirements

(a) The Department shall award a technical assistance grant in an amount not to exceed \$10,000 per remediation phase for each of the following phases of remediation:

1. The remedial investigation phase; and
2. The remedial action phase.

(b) The money awarded in a technical assistance grant shall be used for the limited purposes of hiring a licensed site remediation professional to support and advise a grant recipient concerning the technical assistance grant activities described at N.J.A.C. 7:26C-10.6(b).

(c) The Department shall not award a technical assistance grant to more than one community group at any one time for any contaminated site.

(d) The Department may provide reimbursement to any community group for costs incurred pursuant to N.J.A.C. 7:26C-10.4(d).

7:26C-10.3 Eligibility

(a) A community group is eligible for a technical assistance grant if it meets the following criteria:

1. One or more members of the community group lives near the site;
2. No member of the community group is associated with any person responsible for conducting the remediation of the site;
3. No person responsible for conducting the remediation of the site established or is currently supporting the community group;
4. The community group must not be affiliated with a national organization;
5. The community group is not an academic institution;
6. The community group does not consist of a political subdivision (example: township or municipality);
7. The community group is incorporated or in the process of incorporating;
8. The community group must be:
 - i. A non-profit organization pursuant to the Internal Revenue Code, 26 U.S.C. §501(c)3;
 - ii. In the process of obtaining status pursuant to 26 U.S.C. §501(c)3 status; or
 - iii. Be affiliated with a local organization that has obtained status under 26 U.S.C. §501(c)3 as a non-profit organization for the specific purpose of representing the community;
9. The community group must have established procedures for recordkeeping and financial accounting in managing the technical assistance grant; and
10. The community group must have a commercial bank account in the name of the community group or the name of the 501(c)3 organization with which the community group has affiliated.

7:26C-10.4 Pre-application process

(a) A community group may request that the Department make a finding of substantial public interest in a particular contaminated site, as a condition of seeking a technical assistance grant, by submitting to the Department a petition containing the signatures of 25 or more people who live or work near the site.

(b) The Department will respond to a petition and inform the community group of whether or not it has met the requirements of a substantial public interest.

(c) Within 30 days after receiving the Department's response, the community group shall submit to the Department's Office of Community Relations a Letter of Intent that includes the following information:

1. The name of the community group;
2. A description of the composition of the group;
3. A statement of the group's intent to apply for a technical assistance grant;
4. The program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking the grant; and
5. The name and address of a contact person for the group and his or her daytime phone number.

(d) Upon receipt of the Letter of Intent, the community group will publish a public notice in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site which includes the following information:

1. The program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking a technical assistance grant;
2. A statement that the community group has submitted a Letter of Intent to the Department as part of the process to acquire a technical assistance grant for the contaminated site;
3. The name of the community group, seeking the technical assistance grant, and its contact; and
4. A statement that any other community groups interested in a technical assistance grant for the same contaminated site has 30 days after the publication of the notice in the newspaper to submit its own Letter of Intent to the Department.

(e) If the Department does not receive an additional Letter of Intent within the prescribed time period, the Department will advise the community group in writing that it has 60 days to file an application for a technical assistance grant pursuant to N.J.A.C. 7:26E-10.5.

(f) If the Department receives additional Letters of Intent, all community groups filing letters will have an additional 30 days from the publication of the public notice to attempt to form a coalition. The Department's website at www.nj.gov/dep/srp/srra/community/ provides guidance about the coalition process.

(g) If multiple community groups apply for a grant for the same site and phase and no coalition is formed, the Department will not award a grant.

7:26C-10.5 Application for technical assistance grant

(a) An applicant for a technical assistance grant shall submit an application, on a Technical Assistance Grant Form available from the Department at www.nj.gov/dep/srp/srra/community/, which includes the following information:

1. A description of the community group, including:
 - i. The bylaws established by the community group;
 - ii. An explanation of how the community group is organized, including officers and purpose;
 - iii. An explanation of how the community group's board of directors, technical advisors, and project manager will interact with each other; and
 - iv. The name and address of contact person for the community group and his/her daytime phone number;
2. Documentation that the community group meets the eligibility requirements outlined in N.J.A.C. 7:26C-10.3(a); and
3. A financial plan, including:

i. The total amount of money being requested in the technical assistance grant;

ii. A budget that describes how the community group will spend the money;

iii. A description of the work that will be undertaken with the assistance of a licensed site remediation professional;

iv. An outline of how the community group will share information with the community in which the site is located; and

v. A list of project milestones and a schedule for meeting those milestones;

(b) After reviewing the application for eligibility, administrative completeness, and technical acceptability, the Department will notify the contact person for the community group in writing as follows:

1. The community group is eligible, the application is administratively complete, technically acceptable and the Department approves the application for all or part of the amount requested, provided there are sufficient funds in the Remediation Guarantee Fund;

2. The application is administratively incomplete or technically unacceptable and the Department cannot take further action until the deficiencies listed in the Department's notification are corrected; or

3. The community group is not eligible for a technical assistance grant, with a statement of the reason(s) therefore.

(c) The Department reserves the right to deny any and all technical assistance grant applications.

7:26C-10.6 Eligible technical assistance grant activities

(a) The community group shall use the technical assistance grant to hire a licensed site remediation professional that is not associated with any person responsible for conducting the remediation of the contaminated site.

(b) The community group shall use the technical assistance grant to offset the costs of the licensed site remediation professional to:

1. Interpret and comment on remediation documents, including technical reports and analytical data prepared by the person responsible for conducting the remediation;

2. Participate in public meetings concerning the contaminated site;

3. Evaluate the potential impacts of the remediation on the community based upon the information provided by the person responsible for conducting the remediation; and

4. Interpret site information that is ancillary to the remediation, including, but not limited to, public health and redevelopment information, as these issues may be relevant.

(c) The community group shall not use the technical assistance grant to fund:

1. Lawsuits or other legal actions, including payment of attorney fees for advice related to any kind of legal action or any activities that would result in an attorney/client relationship;

2. Political activity or lobbying;

3. Social, ceremonial or amusement activities and related costs, including meals, lodging, rentals, transportation, and tips;

4. Training or travel for any group member or the licensed site remediation professional;

5. Generation of new site-specific environmental data, such as soil and water data;

6. Resolving disputes with the Department; or

7. Epidemiological or health studies, such as urine or blood testing.

(d) The Department will issue payments upon the submission of invoices up to the amount of the technical assistance grant to the community group for documented technical assistance costs that are identified in the community group's approved budget and scope of work.

(e) If the community group or its licensed site remediation professional uses technical assistance grant funds for activities not identified in the approved budget and scope of work or for activities listed in (c) above:

1. The Department may revoke the technical assistance grant and require reimbursement; and

2. The community group shall repay all of the grant.

7:26C-10.7 Reporting requirements

(a) The community group shall submit the following reports to the Department for the duration of the technical assistance grant:

1. Annual progress reports which include the following information:

- i. Invoices associated with the services provided by the licensed site remediation professional;
- ii. A project summary sheet prepared in accordance with the Department's Cost Guide at www.nj.gov/dep/srp/srra/community;
- iii. A list of technical assistance grant project milestones;
- iv. A description of the community group's progress towards completing its technical assistance grant project;
- v. A description of any problems the community group encountered that prevented progress toward completing the technical assistance grant project; and
- vi. Annual financial status reports;

2. An electronic copy of each final written product the licensed site remediation professional prepares for the group within 30 days after the community group's receipt of the document;

3. A final report, submitted to the Department within 180 days after the date of termination of the technical assistance grant, which shall include:

- i. A description of project goals and objectives;
- ii. Activities undertaken to achieve goals and objectives;
- iii. Difficulties encountered;
- iv. Successes achieved; and
- v. Technical advisor's work products; and

4. A final financial report, submitted to the Department 180 days after the date of the termination of the technical assistance grant, which shall include a detailed description of all funds spent.

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

7:26C-11.1 Scope and requirements

This subchapter provides the requirements for a person to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund.

7:26C-11.2 Application for loans and grants

(a) A person or public entity as defined pursuant to N.J.S.A. 58:10B-1 may apply for financial assistance from the Hazardous Discharge Site Remediation Fund by submitting a completed Hazardous Discharge Site Remediation Fund Application Form available from the Department at www.nj.gov/dep/srp/srra/forms and by following the Hazardous Discharge Site Remediation Fund Application Guidance.

7:26C-11.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs that were incurred prior to an application pursuant to this subchapter provided that:

- 1. The remediation costs were incurred after June 16, 1993; and
- 2. The Department has approved the remediation associated with the remediation costs.

7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation using a loan or a grant as part of the remediation funding source requirement shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 12. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

7:26C-12.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, to fund

projects eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.

7:26C-12.2 Application for loans and grants

A person may apply for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund by submitting to the Department a completed Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Form available from the Department at www.nj.gov/dep/srp/finance/ustfund and by following the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Instructions and Cost Guide, both of which are a part of the application package.

7:26C-12.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

- 1. The remediation costs were incurred after August 30, 1997; and
- 2. The remediation associated with the remediation costs was conducted with Department oversight.

7:26C-12.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 13. REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-13.1 Scope

(a) This subchapter contains provisions that specify the:

1. General requirements for a person responsible for conducting the remediation of an unregulated heating oil tank system, in N.J.A.C. 7:26C-13.2;

2. Requirements for a person responsible for conducting the remediation using a certified subsurface evaluator to conduct the remediation, in N.J.A.C. 7:26C-13.3; and

3. Requirements for a person responsible for conducting the remediation using a licensed site remediation professional to conduct the remediation, in N.J.A.C. 7:26C-13.4.

7:26C-13.2 General requirements

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall hire either a subsurface evaluator certified pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16 or a licensed site remediation professional to perform the remediation of the discharge.

(b) If a person responsible for conducting the remediation uses a certified subsurface evaluator to perform the remediation, upon completion of the remediation the Department will issue a no further action letter pursuant to N.J.A.C. 7:26C-13.3(b).

(c) If a person responsible for conducting the remediation uses a licensed site remediation professional to perform the remediation, upon the completion of the remediation the licensed site remediation professional will issue a response action outcome pursuant to N.J.A.C. 7:26C-13.3.

7:26C-13.3 Person responsible for conducting the remediation of an unregulated heating oil tank system using a certified subsurface evaluator

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system who uses a certified subsurface evaluator to remediate the discharge shall employ an individual working for a business firm certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16.

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation in accordance with N.J.A.C. 7:26C-6, upon receipt and review of the following:

1. A certification by the subsurface evaluator certified pursuant to N.J.A.C. 7:14B-13 or 16 to perform the remediation, that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated was remediated pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover evidence of a discharge of a hazardous substance, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery and to the Department pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.4. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties";

2. A completed Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire. The questionnaire may be obtained from the Department's website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable review fee as set forth at N.J.A.C. 7:26C-4.3; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.7.

(c) All submissions required by this section shall be made to:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
401 E. State St.
P.O. Box 434

Trenton, NJ 08625-0434

7:26C-13.4 Person responsible for conducting the remediation of an unregulated heating oil tank system using a licensed site remediation professional

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil system who uses a licensed site remediation professional to conduct the remediation shall submit the applicable review fee as set forth at N.J.A.C. 7:26C-4.3.

(b) Upon a determination by the licensed site remediation professional that the discharge has been remediated in accordance with all applicable rules, standards and guidance, the licensed site remediation professional shall issue a response action outcome pursuant to N.J.A.C. 7:26C-6 to the person responsible for conducting the remediation.

7:26C-13.5 Special conditions

(a) The person responsible for conducting the remediation of the unregulated heating oil system shall comply with N.J.A.C. 7:26E-1.14 when the discharge from the unregulated heating oil tank system results in an immediate environmental concern condition.

(b) The person responsible for conducting the remediation shall obtain the appropriate Departmental approvals when:

1. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit pursuant to N.J.A.C. 7:26E-7.2;

2. The remedy includes a discharge to surface water requiring a New Jersey Pollution Discharge Elimination System General Permit pursuant to N.J.A.C. 7:14A-6.13; or

3. The remedy requires an On-Scene Coordinator Discharge Authorization pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan (NCP) regulations at 40 CFR Part 30.

APPENDIX A

DEVELOPER CERTIFICATION

IN THE MATTER OF THE :
[Insert Site Name, : DEVELOPER
Program Interest Number (Preferred ID)] : CERTIFICATION
AND :
[Insert Name of Person] :

Name of Authorized Individual

Authorized Individual's Title

Name of Person

Address of Person

hereby certifies, on behalf of [insert name of person], that he or she is authorized to make this binding Certification for the [describe here the real property that [insert name of person] is remediating, including any name by which the Site is known, the street address, all blocks and lots, the municipality, county and the DEP program interest name and program interest number(preferred ID)] [(the Site)], and, with regard to that Site, [insert name of person] further certifies as follows:

1. If person is an owner of the site, or a prospective purchaser of the site: [Insert name of person] insert one of the following:

purchased the Site on [insert date];
acquired title to the Site by devise or succession on [insert date];
intends to acquire the Site after the date of this Certification.

2. If person is an owner of the site, insert one of the following unless the person acquired the site on or after January 6, 1998 and entered into an oversight document with the Department prior to acquiring ownership of the Site:

If person acquired title to the Site on or after September 14, 1993, insert the following:

[Insert name of person] has undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the Site, including the performance of a preliminary assessment and a site investigation, if necessary pursuant to N.J.A.C. 7:26E. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(2).

If person acquired title to the Site prior to September 14, 1993, insert the following:

At the time of acquisition, [Insert name of person] undertook all appropriate inquiry on the previous ownership and uses of the Site based upon generally accepted good and customary standards, and, as result of that inquiry, did not know and had no reason to know that any

hazardous substances had been discharged at the Site. After acquiring title to the Site, [Insert name of person] submitted to the Department, on [insert date], a preliminary assessment report prepared pursuant to N.J.A.C. 7:26E-3.2, and, if necessary pursuant to N.J.A.C. 7:26E-3, a site investigation report prepared pursuant to N.J.A.C. 7:26E-3.13. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11g(5).

3. If the person acquired title to the Site on or after January 6, 1998, insert the following:

[Insert name of person] has:

a. Within 10 days after acquiring title to the Site, agreed in writing (a copy of which is attached hereto) to give the Department access to the Site to oversee the remediation and to perform any remediation that [insert name of person] does not perform; and

b. Within 30 days after acquiring title to the Site, commenced remediation of the Site, including any migration, pursuant to a Department oversight document executed on [insert date, which must be prior to date of acquisition] and is presently in compliance with all of the Department's remediation requirements.

4. [Insert the following if the person executing this Certification is an owner of the Site and has discovered a discharge at the Site.] Concerning discharges at the site which occurred prior to [insert name of person]'s acquiring title, where applicable, to the Site:

a. [Insert name of person] discovered the discharges at the Site on [insert date]; and

b. [Insert name of person] reported these discharges to the Department on [insert date] via [insert one of the following: telephone call to the DEP Hotline, written documentation, or describe other means of providing the Department notice of the discharges].

5. [Insert name of person], at any time up to the date of this Certification:

a. Has not discharged, at the Site, any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Has not been in any way responsible, pursuant to any law, for any contaminant at or emanating from the Site, or contamination that has emanated from the Site, other than by acquiring ownership of the Site, if applicable, after all of the discharges occurred at the Site;

c. Has not aggravated or contributed to contamination at or emanating from the Site, or contamination that has emanated from the Site;

d. Has not, as a holder of a security interest in a facility or underground storage tank facility, actively participated in the management of a facility or underground storage tank facility at the Site, as those terms are defined in N.J.S.A. 58:10-23.11a et seq.;

e. Has not negligently caused a new discharge at the Site, after the date of [insert name of person]'s foreclosure on a security interest in the Site, pursuant to N.J.S.A. 58:10-23.11g.6.e(1); and

f. Is not at the time of this certification, and has never been, an owner or operator of an industrial establishment at the Site pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

6. [Insert name of person] is not a corporate successor to, affiliated with, or otherwise related to any person described below such that [insert name of person] would be liable for the contamination other than by acquiring title to the site:

a. Any entity that the [Insert name of person] has reason to believe has discharged at the Site any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Any entity that [Insert name of person] has reason to believe is in any way responsible, pursuant to any law, for contamination at or emanating from the Site, or contamination that has emanated from that Site, other than by acquiring ownership, if applicable, of the Site after all of the discharges occurred at the Site; or

c. Any person that [Insert name of person] has reason to believe is liable, pursuant to N.J.S.A. 58:10-23.11g, for cleanup and removal costs, as that phrase is defined at N.J.S.A. 58:10-23.11b, for the Site.

7. [Insert name of person] agrees that until the remediation is complete, [insert name of person] is under a continuing obligation to inform in writing the New Jersey Department of Environmental Protection, within 30 calendar days after any of the above facts or circumstances change and the date of such change.

8. [Insert name of person] is familiar with the Site and with all matters addressed in this Certification.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment, and that I will also forfeit developer status, for the purposes of the Department's oversight cost formula, in that event.

[Type or Print Full Name of Person]

Dated: _____

By: _____

Signature of Authorized Individual

[Type or Print Name and Title of Authorized Individual]

Dated: _____

Witness: _____

Signature of Witness

[Type or Print Name and Title of Witness]

APPENDIX B

MODEL TERMINATION OF DEED NOTICE

FILED AT THE OFFICE OF THE REGISTER OF

[county] COUNTY

IN DEED BOOK [volume], Pages [pages]

AS TO

BLOCK(S) _____, LOT(S) _____, TAX MAP OF THE [county] County

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____

Recorded by: _____

[Signature, Officer of County Recording Office]

[Print name below signature]

This Termination of Deed Notice is made as of [month day, year] by [name of property owner].

1. DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [county] COUNTY, AT BOOK [book number/vol.], PAGES [page numbers]. By way of a Declaration of Environmental Restriction (DER) or Deed Notice (hereinafter collectively Deed Notice) dated [month day, year], [name of the original responsible party(s) that filed the DER or Deed Notice] advised of: (a) the existence of soil contamination in concentrations at the real property situated in the [city/town/borough name] and designated as Block(s) [see example above for multiples], Lot(s) [see example above for multiples] ("the Property") on the Tax Map of [city/town/borough name] that do not allow for the unrestricted use of the Property; (b) the existence of institutional and/or engineering controls selected as part of the remedial action for the Property; and (c) the continuing obligation of [name of original responsible party(s) that filed the DER or Deed Notice], subsequent owners, and others to monitor and maintain those institutional and/or engineering controls. The Deed Notice was part of the remediation of contamination at the Property and was recorded in the Office of the Register of [county] County on [month day, year] in Deed Book [book number/volume], Pages [page numbers] by [name of original responsible party(s) that filed the DER or Deed Notice], the then owner of the Property. Pursuant to Paragraph 10, the Deed Notice was to remain in effect until such time as the Department approved the termination of the Deed Notice by executing a document expressly terminating the Deed Notice.

2. TRANSFER OF THE PROPERTY. By Deed dated [month day, year] and recorded in the Office of the Register of [county] County on [month day, year] in Book [book number/vol], Pages [page numbers], [name of person appearing on deed] transferred ownership of Block(s) _____, Lot(s) _____ subject to the Deed Notice.

3. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [county] COUNTY AT BOOK _____, PAGES _____ AS TO BLOCK(S) _____, LOT(S) _____. By way of letter dated [month day, year], [name of person/corporation etc.] requested approval from the Department to terminate the Deed Notice because conditions that required the execution and recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated [month day, year]. Accordingly, the Department hereby executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed Notice recorded in the Office of the Register of [county] County in Deed Book _____, Pages _____ shall be terminated and discharged. A metes and bounds description of Block(s) _____, Lot(s) _____ and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

4. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s) _____, the Department also has determined that soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by [name of person or corporation etc. filing new Deed Notice].

5. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice or the date the new Deed Notice for Block(s) _____, Lot(s) _____ is recorded in the Office of the Register of [county], whichever is later, or, if this Termination of Deed Notice and the new Deed Notice are simultaneously recorded in the Office of the Register of [county], on the date of such simultaneous recording.

[Note: The language of the following two (2) consecutive paragraphs shall be substituted for the language of paragraphs 3 and 4 above where the subject property is proposed to be subdivided]

{Appropriate consecutive paragraph number}. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF _____ AT BOOK _____, PAGE _____ AS TO BLOCK(S) _____, LOT(S) _____. By way of letter dated, [name of person/corporation etc.] requested approval from the Department to terminate the Deed Notice as to Block(s) _____, Lot(s) _____ because Block(s) _____, Lot(s) _____, has been subdivided from the Property, and the conditions that required the execution and recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated _____. Accordingly, the Department hereby executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed Notice recorded in the Office of the Register of _____ in Deed Book _____, Page _____ shall be terminated and discharged as it applies to Block(s) _____ Lot(s) _____. Such termination, however, is limited to Block(s) _____, Lot(s) _____, and the Deed Notice remains in full force and effect as to such other portions of the Property for which the Department has not approved termination of the Deed Notice. A metes and bounds description of Block(s) _____, Lot(s) _____ and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

{Appropriate consecutive paragraph number}. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s) _____, soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by

[Note: The language of the following paragraph shall be substituted for that of paragraph number 5 above where no new Deed Notice would be filed for the subject property]

{Appropriate consecutive paragraph number}. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice is recorded in the Office of the Register of [county].

[Note: The following paragraph is required for all versions of this form]

{Appropriate consecutive paragraph number}. SIGNATURES IN WITNESS WHEREOF, [name of person/corporation etc. executing the Termination of Deed Notice] and the New Jersey Department of Environmental Protection have executed this Termination of Deed Notice, as of the date first written above.

A. [If Owner is an individual]

WITNESS:

[Signature]

[Print name]

[Signature]

[Print name]

STATE OF [State where document is executed]
COUNTY OF [County where document is executed]

SS.:

I certify that on [month day, year], [name of owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one, each person]
(a) is named in and personally signed this document; and
(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public
[Signature]

[Print name]

B. [If owner is a corporation]

WITNESS:

[Name of corporation]

[Signature]

[Print name and title]

By: _____
[Signature]

[Print name]

[Print title]

STATE OF [State where document is executed]
COUNTY OF [County where document is executed]

SS.:

I certify that on [month day, year], [name of witness] personally came before me, and this person acknowledged under oath, to my satisfaction, that:
(a) this person is the [secretary/assistant secretary] of [name of corporate owner], the corporation named in this document;
(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;
(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;
(d) this person knows the proper seal of the corporation which was affixed to this document; and
(e) this person signed this proof to attest to the truth of these facts.

[Signature]

[Print Name and Title of Attesting Witness]
_____, Notary Public
[Signature]

[Print Name]

C. [If owner is a general or limited partnership]

WITNESS:

[name of partnership]

[Signature]

[Print name and title]

By: _____, General Partner
[Signature]

[Print name]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [name of person executing document on behalf of owner partnership] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

- (a) is a general partner of [name of partnership owner], the partnership named in this document;
- (b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [name of partnership owner]; and
- (c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public
[Signature]

[Print name]

D. [If Owner is a Limited Liability Company]

WITNESS: _____ [Name of Limited Liability Company]

[Signature]

By: _____
[Signature]

[Print name and title of witness]

[Print name and title]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [Name of Witness] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) This person is the [insert either secretary/assistant secretary of the owner limited liability company] of [insert full name of limited liability company];
- (b) This person is the attesting witness to the signing of this document by the proper officer who is the [insert title of person signing on behalf of limited liability company] of the [insert name of owner limited liability company];
- (c) This document was signed and delivered by the limited liability company as its voluntary act and was duly authorized;
- (d) This person knows the proper seal of the limited liability company which was affixed to this document; and
- (e) This person signed this proof to attest to the truth of these facts.

[Signature]

[Print Name and Title of Attesting Witness]

_____, Notary Public
[Signature]

[Print Name]

[Note: In situations where the person signing the document on behalf of the owner limited liability company is a member of the limited liability company, the attesting witness shall certify under oath that he/she knows that the document was signed and delivered by the owner limited liability company as its voluntary act, that the member is authorized to execute the document on behalf of the owner limited liability company, and that the person signing the document is authorized to sign the document on behalf of the member. Where the member is a partnership, corporation or other limited liability company, the attesting witness shall also certify that the person signing the document is authorized to sign on behalf of the corporation, partnership or limited liability company, as the case may be. To the extent that such corporation, partnership, or limited liability company, in turn, is directly or indirectly controlled by another corporation, limited liability company, or partnership, and the person signing the document is an officer of that corporation or limited liability company or a partner of that partnership, the attesting witness shall also certify under oath that such person is authorized to sign on behalf of the corporation, limited liability company, or partnership, as the case may be.]

WITNESS: _____ New Jersey Department of Environmental Protection

[Signature]

By: _____
[Signature]

[Print name and title]

[Print name and title]

STATE OF NEW JERSEY
COUNTY OF MERCER

SS.:

I certify that on [month day, year], [Insert name of person executing document on behalf of the New Jersey Department Environmental Protection] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

- (a) Is [insert title] and is authorized to execute this document on behalf of the New Jersey Department of Environmental Protection;
- (b) Signed, sealed and delivered this document as his or her act and deed in his capacity as [title] of the New Jersey Department of Environmental Protection; and
- (c) This document was signed and delivered by the New Jersey Department of Environmental Protection as its voluntary act, duly authorized.

_____, Notary Public
[Signature]

[Print name]

RECORD AND RETURN TO:
[Name of person who prepared the Termination of Deed Notice]
[Address]

EXHIBIT A
Metes and Bounds Description

EXHIBIT B

Scaled Tax Map of the Property and Institutional/Engineering Control Boundaries

CHAPTER 26D
REMEDIATION STANDARDS

SUBCHAPTER 1. GENERAL INFORMATION

- 7:26D-1.1 Purpose
 - (a) (No change.)
 - (b) This chapter does not establish the minimum impact to ground water soil remediation standards; these standards shall be developed [by the Department] on a site-by-site basis, pursuant to the Department’s authority under N.J.S.A. 58:10B-12a and the Department’s Soil Remediation Standards Guidance for Impact to Ground Water available at www.nj.gov/dep/srp/srra/regs/guidance.htm.
 - (c) (No change.)

7:26D-1.5 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...
“Person responsible for conducting the remediation” means [the person responsible for conducting the remediation as defined pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8] any person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-1.3.
...

SUBCHAPTER 7. ALTERNATIVE SOIL REMEDIATION STANDARDS

7:26D-7.1 Purpose
Except as provided at N.J.A.C. 7:26D-1.1(b), this subchapter sets forth the circumstances in which the Department may require the person responsible for conducting the remediation to develop an alternative soil remediation standard, the procedures that the person responsible for conducting the remediation shall use to apply for permission to use an alternative soil remediation standard, the procedures for the person to develop an alternative remediation standard without the Department’s prior approval, and the procedures the Department shall use to evaluate an application for the use of an alternative soil remediation standard that is proposed by the person responsible for conducting the remediation.

7:26D-7.3 Basis for an alternative soil remediation standard
(a) [The] Except as provided in N.J.A.C. 7:26D-7.5, the person responsible for conducting the remediation may propose, in accordance with N.J.A.C. 7:26D-7.4, an alternative soil remediation standard based on the following:

- 1.-2. (No change.)
- (b) The basis for the request for an alternative remediation standard may include, but is not limited to, the following:
 - 1.-3. (No change.)
 - 4. Site-specific conditions that support the modification of input parameters for models used to develop alternative soil remediation standards pursuant to Appendices [5 through 7] 4 and 5.
- (c) (No change.)

7:26D-7.4 Alternative soil remediation standards application and approval process
(a) The person responsible for conducting the remediation may seek Department approval for an alternative soil remediation standard based on the criteria in N.J.A.C. 7:26D-7.3(a) and (b) [above] by [completing the application in chapter Appendix 6, incorporated herein by reference, and] submitting the completed application on a **Alternative Soil Remediation Standard Application form provided by the Department** in accordance with [(c)] (b) below.

[(b)] The person responsible for conducting the remediation that elects to submit an application for an alternative soil remediation standard agrees to pay the Department’s oversight costs pursuant to Industrial Site Recovery Act Rules, N.J.A.C. 7:26B, Underground Storage Tanks rules, N.J.A.C. 7:14B or the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.]
[(c)] (b) (No change in text.)

7:26D-7.5 Procedures for the development of alternative soil remediation standards without prior approval from the Department

- (a) The person responsible for conducting the remediation is not required to obtain the Department’s prior approval for alternative inhalation soil remediation standards that are developed using N.J.A.C. 7:26D Appendix 5 and modification of the following site-specific input parameters:
 - 1. Depth range of contamination;
 - 2. Organic carbon concentration;
 - 3. Vegetative cover; and
 - 4. The average number of vehicle trips.

(b) The person responsible for conducting the remediation that chooses to develop an alternative remediation standard pursuant to (a) above shall provide the following, with the applicable remedial phase report that is submitted to the Department:

1. Documentation that the appropriate methods were used to develop the alternative remediation standard;

2. How the input parameters were selected, including all related laboratory results; and

3. A description how the standards were used in the remediation of the site or area of concern.

APPENDIX 5

Methods for the Development of Alternative Inhalation Soil Remediation Standards

Pursuant to N.J.A.C. 7:26D-7.2, the person responsible for conducting the remediation may propose, for the Department's approval, an alternative soil remediation standard (ARS) for the inhalation exposure pathway for a site or an area of concern based on one of the options provided in this Appendix.

A. (No change.)

B. Alternative Remediation Standard Options

Option I. Volatile Phase Contaminants

1. For volatile phase contaminants, three parameters can be varied to develop an ARS. These parameters are depth range of contamination, organic carbon content of the soil, and site size. These parameters are applicable to residential and non-residential scenarios as well as carcinogenic and noncarcinogenic health endpoints.

i. Depth Range of Contamination

(1)-(3) (No change.)

(4) The Department will not require the use of an institutional control pursuant to N.J.A.C. 7:26E-8 for an ARS based on depth range of contamination **when the depth range of contamination begins at the ground surface. The Department will require the use of an institutional control pursuant to N.J.A.C. 7:26E-8 when an ARS is based on depth range of contamination that begins below the ground surface.**

ii. (No change.)

Options II. and III. (No change.)

CHAPTER 26E

TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.2 Liberal construction

These rules, being necessary to promote the public health and welfare, **and to protect the environment**, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., [and] 58:10A-21 et seq., **58:10B-1 et seq. and 58:10C-1 et seq.**

7:26E-1.3 Applicability

(a) [This chapter establishes the minimum technical requirements that form the basis of the Department's review of the remediation of any contaminated site in New Jersey, including, without limitation, those sites and activities subject to] **Any person conducting remediation pursuant to any of the following statutes shall comply with this chapter and all guidance found on the Department's website, www.nj.gov/dep/srp/srra/guidance:**

1.-6. (No change.)

7. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.) (CERCLA); [and]

8. The Brownfield and Contaminated Site Remediation Act[.], N.J.S.A. **58:10B-1 et seq.; and**

9. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

[(b) Any person seeking Department review of work undertaken pursuant to this chapter shall:

1. Execute an oversight document with the Department pursuant to N.J.A.C. 7:26C;

2. Comply with the requirements of N.J.A.C. 7:26B; or

3. Comply with the requirements of N.J.A.C. 7:14B.]

Recodify existing (c)-(e) as (b)-(d) (No change in text.)

7:26E-1.4 Notification and public outreach

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

(d) **The person responsible for conducting the remediation shall notify the Department in writing, on the Confirmed Discharge Notification form available from the Department, within five days after the occurrence of any of the following events:**

1. A discharge of a hazardous substance, or the discovery of a discharge of a hazardous substance pursuant to N.J.A.C. 7:1E-5.7; and

2. **The owner or operator of a regulated tank system:**

i. **Determines that there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B-6 or 7;**

ii. **Is required to close a regulated underground storage tank system, pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d), 9.2 or 9.3; or**

iii. **Is otherwise required to conduct a site investigation pursuant to N.J.A.C. 7:14B.**

(e) **The person responsible for conducting the remediation shall notify the Department prior to conducting potable well sampling, and indoor air or sub-slab soil gas sampling pursuant to N.J.A.C. 7:26E-1.17 and 1.18, respectively. The person shall notify the Department, on a Potable Well/Indoor Air Sampling Notification form available from the Department, at the time that that person contacts property owners or tenants for the purpose of gaining access to conduct sampling, but no later than seven days prior to the scheduled sampling date.**

[(d)] (f) (No change in text.)

[(e)] (g) The person responsible for conducting the remediation of [an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential dwelling] **any unregulated heating oil tank system** or the person responsible for conducting an emergency response action shall **only** comply with the notification requirements of (a) through (c) above[, and (l) below only].

[(f) Except as provided in (e) above, the person responsible for conducting the remediation shall identify sensitive populations and resources located within 200 feet of the site boundary as follows:

1. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multiphase remediation or initiating a single phase remediation, identify all of the following sensitive populations and resources that are located within 200 feet of the site boundary and record this information on the Sensitive Population and Resource Checklist provided by the Department at <http://www.nj.gov/dep/srp/community>:

i. Residences;

ii. Potable wells;

iii. Public and private schools that teach students in any of the grades kindergarten through twelve;

iv. Child care facilities;

v. Public parks and playgrounds;

vi. Surface water; and

vii. Tier 1 well-head protection areas. This information is available at www.state.nj.us/dep/njgs/geodata/dgs02-2md.htm;

2. Determine if the site is located in a municipality where an Environmental Justice Petition neighborhood has been designated by either EPA or the New Jersey Environmental Justice Task Force. This information is available at www.nj.gov/dep/ej;

3. Determine if a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the property boundary and record this information on the Sensitive Population and Resource Checklist pursuant to (f)1 above;

4. Generate a scaled map, in hard copy or electronic form, which shows the location of the site and the location of each sensitive population and resource identified pursuant to (f)1 above. The Department prefers electronic maps and it prefers that electronic maps be compatible with the New Jersey Department of Environmental Protection

Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards" outlined in N.J.A.C. 7:1D, Appendix A. The Department's website at <http://www.state.nj.us/dep/GIS/newmapping.htm> provides user guidance and links to internet mapping applications and data downloads; and

5. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multi-phase remediation or initiating a single phase remediation, submit a paper copy and an electronic copy (disk or CD) of the completed Sensitive Population and Resource Checklist and the map generated pursuant to (f)4 above to the following:

i. The Department case manager. If a case manager for the site has not been assigned, a copy of the Sensitive Population and Resource Checklist shall be submitted as part of the remedial investigation report or remedial action report required by this chapter. The submission to the Department shall include documentation that the Checklist and map was sent to the municipal clerk and the designated health official;

ii. The DEP Office of Community Relations at the following address:

Division of Remediation Support
New Jersey Department of Environmental Protection
401 East State Street, 6th Floor
P.O. Box 413
Trenton, NJ 08625-0413

Attention: Office of Community Relations;

iii. The clerk of each municipality in which the site is located; and

iv. The designated local health official.]

[(g)] (h) Except as provided in [(e)] (g) above, the person responsible for conducting the remediation shall provide public notice, either by posting a sign pursuant to [(h)] (i) below or by sending periodic notification letters pursuant to [(i)] (j) below, as follows:

1. All public notices, whether in the form of a sign or a notification letter, shall be in English. Additionally, where[, pursuant to (f) above,] the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, notice shall also be provided in [the] **that predominant** non-English language; and

2. The person responsible for conducting the remediation may, at any time, change the form of notification pursuant to this subsection from posting a sign pursuant to [(h)] (i) below to sending periodic notification letters pursuant to [(i)] (j) below, or from sending notification letters pursuant to [(i)] (j) below to posting a sign pursuant to [(h),] (i) below.

[(h)] (i) If the person responsible for conducting the remediation chooses to provide public notice by posting a sign, the following shall apply:

1. (No change.)

2. The sign shall be posted [as follows:

i. No] **no** later than [two weeks] **14 days** prior to either initiating field activities associated with a remedial investigation of a multi-phase remediation or initiating a single phase remediation; [or

ii. For sites where the remedial investigation or single-phase remediation was initiated prior to September 2, 2008, no later than September 2, 2009;]

3. The sign shall remain posted and shall be maintained so that it is legible at all times, until such time as the [Department issues a No Further Action and Covenant Not to Sue letter pursuant to N.J.A.C. 7:26C] **required remediation is completed and the final remediation document is filed or issued;**

4. The sign shall be at least two feet by three feet in size and shall include the following wording, printed in font that is of sufficient size to be readable from the street or sidewalk:

i. (No change.)

ii. "For Further Information Contact. . ." followed by the **name and telephone number** for the person responsible for conducting the remediation and **the name and telephone number for the licensed site remediation professional. If there is no licensed site remediation professional, include** the telephone number for Department's Office of Community Relations, which is posted on the Department's website at www.state.nj.us/dep/srp;

iii. The Department's Preferred ID, as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey"

report or the valid EPA site identification number. If neither number is available, the incident number provided by the Department's hotline may be substituted [(1-877 WARNDP or 1-877-927-6337)]; and

iv. (No change.)

5. Within [two weeks] **14 days** after the sign is posted, the person responsible for conducting the remediation shall submit the site information required at [(i)4] (j)4 below, and a photograph of the sign showing its location and content in both electronic/digital format and in hard copy **with a Public Notification and Outreach form available from the Department** to:

i. (No change.)

ii. The Department's Office of Community Relations at the address provided [in (f)5ii above] **below:**

**New Jersey Department of Environmental Protection
Office of Community Relations
401 East State Street, 6th Floor
P.O. Box 413
Trenton, NJ 08625-0413**

iii.-iv. (No change.)

6. (No change.)

[(i)] (j) If the person responsible for conducting the remediation chooses to provide public notice by sending notification letters, the following shall apply:

1. Notification letters shall be sent[:

i. No] **no** later than [two weeks] **14 days** prior to either initiating field activities associated with a remedial investigation **or remedial action** of a multi-phase remediation or initiating a single phase remediation]; or

ii. For sites where the remedial investigation or single-phase remediation was initiated prior to September 2, 2008, no later than September 2, 2009].

2. Additional notification letters that reflect the current condition and progress of the remediation shall be sent every two years [after the initiation of the single phase remediation or the remedial action] until [a No Further Action and Covenant Not to Sue letter is issued by the Department pursuant to N.J.A.C. 7:26C, or on a schedule approved by the Department] **all the required remediation is completed and the final remediation document is filed or issued.**

3. The notices prepared pursuant to [(i)1] (j)1 and 2 above shall be sent to the following persons by certified mail or by using the certificate of mailing service:

i. (No change.)

ii. The administrator of each school and child care [facility identified in the sensitive population and resource checklist required pursuant to (f) above] **center located within 200 feet of the site boundary.**

4. The notice shall include the following site information:

i.-ii. (No change.)

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the **communication center incident** number provided by the Department's hotline may be substituted [(1-877 WARNDP or 1-877-927-6337)];

iv. (No change.)

v. A brief description of the type of contamination in common language, the affected environmental media, **the current remediation phase**, [and] action(s) being taken at the site **and the date field activities are expected to begin;**

vi. Contact information for the person responsible for conducting the remediation and **the name and telephone number for the licensed site remediation professional. If there is no licensed site remediation professional, include the telephone number** for the Department's Office of Community Relations, **which is posted on the Department's website at www.nj.gov/dep/srp**; and

vii. (No change.)

5. Each time notification letters are sent, the person responsible for conducting the remediation shall submit an electronic copy and a paper copy of one notification letter and list of recipients to the following:

i. (No change.)

ii. The Department's Office of Community Relations at the address provided in [(f)5ii] (i)5ii above;

iii.-iv. (No change.)

[(j)] **(k)** If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements, **to raise the topographic level in the floodplain**, or to construct the engineering controls approved by the Department in either a remedial action workplan pursuant to N.J.A.C. 7:26C-8 [or a landfill closure plan pursuant to N.J.A.C. 7:26-2A.9], the person shall **obtain the Department's prior approval, comply with the Department's Alternative Fill Protocol, and comply with all of the following:**

1. Send a notification letter to each of the following persons by certified mail or by using the certificate of mailing service:

i.-iv. (No change.)

v. The assigned case manager. If a case manager for the site has not been assigned, to the Department's Office of Community Relations at the address provided in [(f)5ii] **(i)5ii**, above; and

2. (No change.)

[(k)] **(l)** Except as provided in [(e)] **(g)** above and [(l) and (m)] **(m)** and **(n)** below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute and publish a fact sheet as follows:

1. The fact sheet shall be prepared and distributed[:

i. Within **within [two weeks] 14 days** after the determination that contamination has migrated off site[; or

ii. For sites where contamination has migrated off site prior to September 2, 2008, no later than September 2, 2009;

2. The fact sheet shall be updated and redistributed with the relevant information regarding the extent of the contamination at the completion of the remedial investigation, when the extent of contamination has been determined[;

[3.] **2.** The fact sheet [and any updates] shall be distributed by certified mail or by using the certificate of mailing service, to each owner of [all] real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary;

[4.] **3.** The fact sheet and any updates shall be in English. Additionally, where[, pursuant to (f) above,] the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, the fact sheets and any updates shall also be provided in [the] **that predominant** non-English language;

[5.] **4.** The fact sheet shall include the following information:

i.-ii. (No change.)

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the **communication center incident** number provided by the Department's hotline may be substituted [1-877 WARNDEP or 1-877-927-6337];

iv.-viii. (No change.)

ix. [Contact information for] **The name and telephone number for the licensed site remediation professional. If there is no licensed site remediation professional, include the telephone number for the Department's Office of Community Relations, [at the address provided in (f)5ii above] which is posted on the Department's website at www.nj.gov/dep/srp:**

[6.] **5.** Within [four weeks] **30 days** of the discovery of off-site contamination, the person responsible for conducting the remediation shall:

i. Publish the fact sheet prepared pursuant to [(k) above] **this subsection** as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site **pursuant to this section and the Department's Public Notification Guidance**; and

ii. Submit a copy of the fact sheet, a list of persons to whom the fact sheet was mailed pursuant to [(k)3] **(l)2** above, and a copy of the display advertisement to:

(1) (No change.)

(2) The Department's Office of Community Relations at the address provided in [(f)5ii] **(i)5ii** above;

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

[7.] **6.** Within [four weeks] **30 days** after the horizontal and vertical extent of contamination has been determined pursuant to N.J.A.C. 7:26E-4.1, the person responsible for conducting the remediation shall:

i. [Publish] **Except as provided in (l)6iii below, publish** an updated fact sheet [prepared pursuant to (k)2 above,] as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site **pursuant to this section and the Department's Public Notification Guidance**; [and]

ii. Submit a copy of the **updated** fact sheet, a list of persons to whom the updated fact sheet was mailed pursuant to [(k)3] **(l)2** above, and a copy of the display advertisement to:

(1) (No change.)

(2) The Department's Office of Community Relations at the address provided in [(f)5ii] **(i)5ii**, above;

(3) (No change.)

(4) The designated local health official[.]; and

iii. For ground water contamination, conduct the public notification pursuant to the requirements of N.J.A.C. 7:26E-8.3 when the Department establishes a classification exception area (CEA).

[(l)] **(m)** (No change in text.)

[(m)] **(n)** If contamination migrates off site and the affected media is limited to historic fill, the person responsible for conducting the remediation is exempt from the requirements of [(k)] **(l)** above.

[(n)] The **(o)** **Except as provided in (p) below**, the person responsible for conducting the remediation who is performing the remediation with the Department's oversight in accordance with N.J.A.C. 7:26C may propose a plan for public notice and outreach as an alternative to [(h), or (i)] **(i)** or **(j)** above. The alternative plan shall be submitted to the assigned case manager and Department's Office of Community Relations at the address in [(f)5ii] **(i)5ii** above for the Department's review.

1.-2. (No change.)

(p) The person responsible for conducting the remediation may implement an alternative plan if that plan is prepared by a licensed site remediation professional, and that plan meets the intent of this section. The person responsible for conducting the remediation shall include in the applicable remedial phase report that is submitted to the Department the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice.

Recodify existing (o)-(q) as **(q)-(s)** (No change in text.)

7:26E-1.5 Certifications, forms and submissions

(a) The person responsible for conducting the remediation shall:

1. Certify, and shall have the licensed site remediation professional certify if applicable pursuant to N.J.A.C. 7:26C-1.5, all forms and documents prepared to pursuant to this chapter; and

2. Except as otherwise noted in this chapter, submit all forms and documents to the Department at the address in N.J.A.C. 7:26C-1.6.

(b) All forms are available from the Department at www.nj.gov/dep/srp/srra/forms.

7:26E-1.6 Documenting compliance with the technical requirements

(a) All work being conducted at a site pursuant to this chapter, whether or not being done with Department oversight, shall be documented and included in reports which follow the format and contain the information required pursuant to the reporting sections of N.J.A.C. 7:26E-[2]1 through 8. If a report has already been submitted to the Department pursuant to another Department regulatory program, including, but not limited to, N.J.A.C. 7:14B, 7:26B or 7:26C, then a summary of what was included in the previously submitted report may be submitted. The summary shall include a reference to the Department program to which the report was submitted and the date that it was submitted. Any reports prepared pursuant to this chapter may be combined into a single report.

(b) When the remediation is conducted with Department oversight, the person responsible for conducting the remediation shall submit workplans (if applicable) and reports in a timely manner [pursuant to the schedule contained in the oversight document which the person executed with the Department pursuant to N.J.A.C. 7:26C, or as the Department requires pursuant to ISRA or UST]. The workplan and/or report shall comply with the format and contain the information required pursuant to N.J.A.C. 7:26E-[2]1 through 8.

(c) In order to provide flexibility in the technical requirements for site remediation described in this chapter, the Department has identified certain limited situations, as specified through this chapter, when alternate sampling, analytical, or investigatory methods may be used without Department pre-approval.

1. Such alternate methods may be used if the person responsible for conducting the remediation documents in the applicable remedial phase report (that is, preliminary assessment, site investigation, remedial investigation, remedial action) rationale acceptable to the Department for using the alternate method.

2. The Department will review the documentation, either as part of the Department's oversight during the remediation or at a later time when the site becomes a Department priority for site remediation.

3. The Department will evaluate the alternate method in terms of its site-specific application, based upon the documentation provided and other appropriate information available to the Department, in terms of the extent to which the alternate method:

i. Has previously been either used successfully or approved by the Department in writing in other similar situations; or

ii. Reflects current technology as documented in peer-reviewed professional journals; and

iii. Provides results which are verifiable and reproducible;

iv. Can be expected to achieve the same results or objectives as the method which it proposes to replace;

v. Furthers the attainment of the goals of the specific remedial phase for which it is used; and

vi. Is consistent with the overall scheme of this chapter to ensure the remediation of contaminated sites in a manner which is protective of human health and the environment.

(d) Any person responsible for conducting the remediation may petition the Department for a variance from any of the requirements in N.J.A.C. 7:26E-2 through 6 inclusive pursuant to the procedural criteria in (d)1 and the substantive criteria in (d)2, below. The petition shall include a request for use of an alternative approach to be utilized in place of the requirement for which the variance has been requested. The variance is not effective until it has been approved by the Department. The decision as to whether or not to grant the variance rests solely with the Department. A variance petition may be submitted within an oversight document executed in accordance with N.J.A.C. 7:26C, or pursuant to the program requirements of N.J.A.C. 7:26B or N.J.A.C. 7:14B. The Department shall make reasonable efforts to provide timely responses to variance petitions.

1. To petition for a variance from a requirement in N.J.A.C. 7:26E-2 through 6, the petitioner shall submit the following information to the Department at the address in the applicable oversight document or in accordance with the program requirements of N.J.A.C. 7:26B or N.J.A.C. 7:14B prior to the utilization of the alternate approach:

i. The name and address of the person submitting the petition;

ii. The name and address of the person conducting the remediation;

iii. The names and addresses of the owner(s) and occupant(s) of the site which is the subject of the variance;

iv. The street address and all tax block and lot numbers of the site which is the subject of the variance;

v. A description of the proposed alternate approach and applicable N.J.A.C. 7:26E citation;

vi. A description of site specific conditions applicable to the variance;

vii. The technical basis for the variance pursuant to (c) above; and

viii. Any other information or data the Department requests to thoroughly evaluate the petition.

2. The Department will evaluate the petition for a variance from the requirements of N.J.A.C. 7:26E-2 through 6 according to the same criteria as those listed in (c) above for approval of alternate methods.

3. Verbal variances may be granted pursuant to N.J.A.C. 7:26E-3.4(a)4.]

[(e)] (e) (No change in text.)

7:26E-1.7 Variance from the technical requirements and guidance

(a) Except as provided in (b) below, the person responsible for conducting the remediation may only vary from certain technical requirements in N.J.A.C. 7:26E-1 through 8, and site remediation

guidance referenced in N.J.A.C. 7:26E-1 through 8 unless expressly exempted by the Department, provided that the person submits the following technical information in the applicable remedial phase report:

1. The regulatory citation for the requirement, or the guidance name and version number for the requirement;

2. A description of how the work performed deviated from the rule requirement or guidance; and

3. The rationale for varying from the requirement that includes supporting information as necessary to document that the work conducted has:

i. Provided results that are verifiable and reproducible;

ii. Achieved the objectives as the rule requirement or guidance from which it varied; and

iii. Furthered the attainment of the goals of the specific remedial phase.

(b) The person responsible for conducting the remediation shall not vary from any non-technical requirements, including, but not limited to, the following:

1. Department notification requirements;

2. Regulatory timeframes;

3. The requirement to obtain permits;

4. The requirement to submit reports that are in the format required in this chapter and address the information required to be provided in this chapter;

5. The requirement to comply with applicable remediation standards; and

6. The requirement to comply with quality assurance laboratory requirements.

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:

“Area of concern” means any existing or former **distinct** location where **any** hazardous substance[s], hazardous waste[s], or [pollutants are or were] **pollutant is** known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where **any** hazardous substance[s], hazardous waste[s], or [pollutants have] **pollutant has** or may have migrated, including, but not limited to, [all] **each** current and former:

1. [Bulk storage] **Storage** tank[s] and appurtenance[s], including, without limitation **each**:

i. [Tanks] **Above ground or underground storage tank** and silo[s];

ii. Rail car[s];

iii. Piping, above and below ground pumping station[s], sump[s] and pit[s]; and

iv. Loading and unloading area[s];

2. Storage and staging area[s], including **each**:

i. Storage pad[s] and area[s];

ii. Surface impoundment[s] and lagoon[s];

iii. Dumpster[s]; and

iv. Chemical storage cabinet[s] or closet[s];

3. Drainage system[s] and area[s], including, without limitation **each**:

i. Building floor drain[s] and piping, sump[s] and pit[s], including **each** trench[es] and piping from **each** sink[s] that potentially receives process waste;

ii. Roof leader[s] (when process operations vent to roof);

iii. Drainage swale[s] and culvert[s];

iv. Storm sewer collection system[s];

v. Storm water detention pond[s] and fire pond[s];

vi. Surface water [bodies] **body**;

vii. Leach field[s]; and

viii. Dry well[s] and sump[s];

4. Discharge and disposal area[s], including, without limitation **each**:

i. Area[s] of discharge[s] pursuant to N.J.A.C. 7:1E;

ii. Waste pile[s] as defined by N.J.A.C. 7:26;

iii. Waste water treatment, collection and disposal system[s], including, without limitation, **each** septic system[s], seepage pit[s] and dry well[s];

- iv. Landfill[s];
 - v. Landfarm[s];
 - vi. Sprayfield[s];
 - vii. Incinerator[s]; and
 - viii. Historic fill material area[s] or any other fill material area[s];
5. Other areas of concern, including, without limitation each:
- i. Electrical transformer[s] and capacitor[s];
 - ii. Hazardous materials storage or handling area[s];
 - iii. Waste treatment area[s];
 - iv. Discolored area[s] or spill area[s];
 - v. Open area[s] away from production operations;
 - vi. Area[s] with stressed vegetation;
 - vii. Other discharge area[s];
 - viii. Underground piping including industrial process sewer[s];
 - ix. Compressor vent discharge[s];
 - x. Non contact cooling water discharge[s];
 - xi. Area[s] that may have received floodwater or stormwater runoff from any potentially contaminated area[s]; and
 - xii. (No change.)
6. Environmental media at a site, including:
- i. Ground water, including, without limitation, present or past regulated activities under the New Jersey Pollutant Discharge Elimination System (NJPDES) Discharge to Ground Water regulations, N.J.A.C. 7:14A, including each: seepage pit[s]; dry well[s]; lagoon[s]; and septic system[s] which received industrial waste;
 - ii. Surface water, including, without limitation, [all] each surface water area[s] and associated sediment which receive or may have received any point or non-point source discharge from the site; and
 - iii. Soil[, pursuant to a Department approved work plan or report].

...
 “Child care center” means such a facility as defined at N.J.S.A. 30:5B-13 et seq.

...
 “Day” means calendar day.

...
 “Discharge to ground water proposal” or “DGW proposal” means a proposal for a new discharge to ground water (DGW) designed to occur during or as part of the site remediation process.

...
 “Engineered system response” means a system that is designed to mitigate risk or remediate an IEC or free product and as further described in the Department’s Immediate Environmental Concern (IEC) guidance.

...
 “Feasibility study” means a study designed to develop and evaluate options for remedial action using data gathered during the remedial investigation to develop the objectives of the remedial action, and to develop possible remedial action alternatives, to evaluate those alternatives and create a list of feasible alternatives, and to analyze the engineering, scientific, institutional, human health, environmental, and cost of each selected alternative.

...
 “Final remediation document” means a document defined as such pursuant to N.J.A.C. 7:26C-1.3.

...
 “[Groundwater] Ground water use area” means any area, as determined by a well search conducted pursuant to N.J.A.C. 7:26E-[3.7(e)3]1.18 and an evaluation of the current and potential groundwater uses of an area using a 25-year planning horizon pursuant to N.J.A.C. 7:26E-8.3(b)4ii, where any 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.

...
 “Immediate environmental concern” means a condition [which poses an acute threat to human health or a direct threat to the drinking water of the State including, but not limited to:

- 1. Dermal contact, inhalation or ingestion of contaminated materials;
- 2. Potable water supplies contaminated above the applicable drinking water standard; and

3. Contaminants which are confirmed to exist in an occupied or confined space, producing a toxic or harmful gas resulting in a potential for an acute short-term human health exposure, or producing an oxygen deficient atmosphere, or resulting in demonstrated physical damage to essential underground services.] at a contaminated site where any of the following types of contamination or any of the following conditions related to the discharges at the site are found at the site:

1. Contamination in a well used for potable purposes at concentrations at or above the Class II ground water remediation standards;

2. Contamination in indoor air at a level greater than any vapor intrusion indoor air screening level described in the Department’s Vapor Intrusion Guidance;

3. Contamination in an occupied or confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services;

4. Contamination that exceeds the Department’s acute human health exposure levels in surface soil such that dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure, as further described in the Department’s IEC Guidance; or

5. Any other condition that poses an immediate threat to the environment or to the public health and safety as further described in the Department IEC Guidance.

...
 “Indoor air screening level” means a screening level for indoor air defined in the Department’s Vapor Intrusion Guidance.

...
 “Licensed site remediation professional” or “LSRP” means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...
 “Light non-aqueous phase liquid” or “LNAPL” means hydrocarbons that exist as a separate and immiscible phase liquid when in contact with water and/or air, can exist as a continuous phase (mobile) and/or a discontinuous mass (immobile) and is less dense than water at ambient temperature.

...
 “No further action letter” means a written determination by the Department [that based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations] defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...
 [“Oversight document” means any document defined as an oversight document pursuant to N.J.A.C. 7:26C.]

...
 “Person responsible for conducting the remediation” [includes any person who executes or is otherwise subject to an oversight document, and any person who is performing the remediation or has control over the person (for example, contractor or consultant) who is performing the remediation, including, without limitation, an owner or operator who is subject to either ISRA or UST] means any person defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...
 [“Remedial action costs” means all costs associated with the development and implementation of a remedial action including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services,

natural resource damages, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and legal, administrative and capital costs associated with the placement of institutional controls on a property. Remedial action costs shall be expressed as net present worth of all such costs over time by discounting all future costs to the current calendar year. The discount rate to be used for all present worth analyses shall be the current rate as specified by the EPA at the time of remedial action selection and shall be applied before taxes and after inflation. The period of performance for present worth costing analyses shall not exceed 30 years.]

...
“Remediation costs” means costs defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...
“Sanitary landfill” or “landfill” means a landfill defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...
“School” means a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1.

...
“Soil gas” means vapors or gases present in unsaturated pore spaces of subsurface material.

“Soil gas screening level” means a screening level for soil gas defined in the Department’s Vapor Intrusion Guidance document.

...
“Timely manner” means [that, except for immediate environmental concern cases, the person responsible for conducting the remediation completes the remedial activities at a contaminated site or area of concern either:

1. Within five years, if soil is the only contaminated media at the site and the remediation will achieve unrestricted or limited restricted use standards; or

2. In compliance with a remedial action schedule approved in writing by the Department.] **in compliance with all mandatory time frames, expedited site specific time frames, and regulatory time frames set forth in these rules and in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.**

7:26E-1.9 General remediation requirements

(a) **The person responsible for conducting the remediation shall conduct remediation pursuant to the regulatory timeframes established in this chapter and shall submit all documents, forms, and other submissions as required in this chapter. That person may, based on site specific conditions or circumstances, request an extension of a regulatory timeframe pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3.1.**

(b) **The person responsible for conducting the remediation shall comply with the Site Remediation Program’s guidance documents in effect at the time that the work is conducted. All guidance documents can be found in the Site Remediation Program’s Guidance Library on the Department’s web site at <http://www.nj.gov/dep/srp/srra/guidance>.**

(c) **The person responsible for conducting the remediation shall direct each licensed site remediation professional he or she hires to conduct the remediation pursuant to N.J.A.C. 7:26C-2.4.**

(d) **The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter as follows:**

1. **One paper copy and three copies on CD in Adobe portable document format (PDF) of all forms, applications and documents, except as provided in (d)2 through 4 below;**

2. **One copy on CD of the site-specific health and safety plan pursuant to N.J.A.C. 7:26E-1.10; quality assurance project plan,**

pursuant to N.J.A.C. 7:26E-2.2, with the each remedial phase report as applicable;

3. **Three electronic copies of all analytical data using the format outlined in the Site Remediation Program’s Electronic Data Interchange guidance;**

4. **One paper copy of all required maps and one electronic copy of all GIS compatible electronic maps prepared using the Department’s GIS guidance;**

5. **Three electronic copies of all full laboratory data deliverables on CD in Adobe portable document format (PDF) or in a format determined by the Department and one paper copy of all full laboratory deliverables for drinking water, indoor air, chromium and dioxin samples; and**

6. **Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.**

Recodify existing N.J.A.C. 7:26E-1.9 and 1.10 as **1.10 and 1.11** (No change in text).

7:26E-[1.11 Bias for action] 1.12 Control of ongoing sources and implementation of interim remedial measures

(a) **As a first priority, the person responsible for conducting the remediation shall [implement an interim response action to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors.]:**

1. **Identify the need for any interim remedial measures necessary to remove, contain, or stabilize a source of contamination to prevent contaminant migration and exposure to receptors; and**

2. **Whenever site-specific data support the need for an interim remedial measure, include in each remedial phase report a description of each interim remedial measure implemented and each interim remedial measure that is planned.**

[(b) If an immediate environmental concern (IEC) condition is identified at a site, the person responsible for conducting the remediation shall conduct the following interim response actions:

1. **Notify the Department pursuant to N.J.A.C. 7:26E-1.4(a) and (b) as appropriate;**

2. **Immediately stabilize the IEC condition with Department oversight pursuant to N.J.A.C. 7:26C; and**

3. **When potable water sources have been impacted by contamination at levels above the ground water remediation standards at N.J.A.C. 7:26D-2, treat the contaminated drinking water to a point at which the contaminant levels do not exceed the ground water remediation standards, or provide an alternative water supply.**

(c) **The person responsible for conducting the remediation shall submit written documentation to the Department of all interim response actions conducted in compliance with (a) or (b) above within 14 days of initiating each such action.]**

(b) **The person responsible for conducting the remediation shall follow the Department’s Light Non-aqueous Phase Liquid (LNAPL) Free Product Interim Remedial Measures guidance concerning free product removal as follows:**

1. **Within 60 days after either March 1, 2010 or LNAPL is identified, whichever is later, initiate the recovery of free product and notify the Department on a form available from the Department; and**

2. **Within 270 days after either March 1, 2010 or LNAPL is identified, whichever is later, complete delineation of the free product; and complete the installation of a LNAPL recovery system, initiate operational monitoring, and submit an Free Product Interim Remedial Measures Report with a form to the Department that documents the actions taken pursuant to this subsection.**

7:26E-[1.12]1.13 Requirement for Department oversight of remediation

(a) **The person responsible for conducting the remediation shall investigate and remediate contaminated sites with [Department oversight**

as specified in N.J.A.C. 7:26C and, in addition,] the Department's prior approval, in the following circumstances:

1. Sites suspected or known to be contaminated with anthropogenic radionuclide contamination of any media; [and]
2. Sites with immediate environmental concern conditions[.]; and
3. Sites with a landfill, if:
 - i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;
 - ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, a Brownfield redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or
 - iii. The person conducting the remediation wants a final remediation document.

[7:26E-1.13 (Reserved)]

7:26E-1.14 Immediate environmental concern requirements

(a) The person responsible for conducting the remediation that identifies an immediate environmental concern (IEC) condition shall follow the Department's IEC guidance and address the IEC condition pursuant to this section.

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

1. Immediately notify the case manager if one is assigned. If no case manager is assigned or if the case manager is not available, immediately call the Department's hotline at 1-877 WARNDP or 1-877-927-6337;

2. Within five days after identifying the IEC condition, mitigate the IEC impacts as applicable as follows:

- i. Provide bottled water to the residents of each property where contaminant concentrations exceed any remediation standard for Class II ground water;
- ii. Mitigate the infiltration of vapors into structures impacted by vapor intrusion;
- iii. Restrict access to soil contaminated above acute levels;

3. Within five days after identifying the IEC condition, submit the following to the Department:

- i. A completed IEC Response Action form available from the Department;
- ii. A completed IEC Information Spreadsheet available from the Department;
- iii. A map indicating the location of the site and the location of the IEC condition; and
- iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)17, with a Potable Water Data form available from the Department;

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; and

5. Within 60 days after identifying the IEC condition, implement the following IEC engineered system response actions:

- i. Provide water treatment or an alternative water supply to the residents of each property where contaminant concentrations in their potable well exceed any remediation standard for Class II ground water quality standard;
- ii. Install a vapor mitigation system at each property where contaminant concentrations exceed any applicable vapor intrusion indoor air screening level that is available in the Department's Vapor Intrusion Guidance; and
- iii. Otherwise reduce exposure to contaminants or hazardous conditions to acceptable levels as applicable.

(c) Within 120 days after identifying the IEC condition, the person responsible for conducting the remediation shall submit an IEC engineered system response action report with an updated IEC Response Action form available from the Department, that includes the following:

1. A description of all immediate response actions and engineered system response actions that have been completed, including the date that each action that was conducted pursuant to (b) above;
2. A summary of all analytical data related to the IEC and the engineered system response action;
3. All maps and figures related to the IEC and the engineered system response action;
4. A description of the contaminant source control that will be implemented as required pursuant to (d) below; and
5. A GIS compatible map of the estimated area of ground water contamination prepared pursuant to the Department's IEC Guidance.

(d) Within 270 days after identifying the IEC condition, the person responsible for conducting the remediation shall initiate control of the IEC contaminant source using the Department's IEC Guidance, complete the delineation of the IEC contaminant source, and submit an IEC contaminant source control report, with an updated IEC Response Action form available from the Department that includes descriptions of each of the following:

1. Remedial actions being implemented to remediate the IEC contaminant source;
2. A monitoring plan for the mitigation system; and
3. A monitoring plan for the wells or structures that are located downgradient of the wells or structures that are impacted by the IEC condition.

7:26E-1.15 Receptor evaluation - general and reporting requirements

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation pursuant to the requirements of N.J.A.C. 7:26E-1.16 through 1.19.

(b) The person responsible for conducting the remediation who completes an unrestricted remedial action is not required to conduct a receptor evaluation when a final remediation document is issued or is filed with the Department within 270 days after initiating the remediation.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation, on a Receptor Evaluation form available from the Department, by November 26, 2010, or with the submittal of a site investigation report, whichever is later.

(d) The person responsible for conducting the remediation shall submit an updated receptor evaluation report on a Receptor Evaluation form available from the Department with the following documents, as applicable:

1. A remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4.8; and
2. A remedial action report submitted pursuant to N.J.A.C. 7:26E-6.7.

(e) The person responsible for conducting the remediation shall also send a copy of each receptor evaluation to the following:

1. The clerk of each municipality in which the site is located; and
2. The designated local health official.

7:26E-1.16 Receptor evaluation - land use

(a) The person responsible for conducting the remediation shall identify all current land uses at the site and of each property located within 200 feet of the site boundary.

(b) The person responsible for conducting the remediation shall provide the address of each residence, school or child care center, as well as each park, playground or other recreation area that is identified at the site and within 200 feet of the site boundary.

(c) The person responsible for conducting the remediation shall generate and submit a map that shows the location of the site and the location of each residence, school or child care center, a park, playground or other recreation area land use that is identified pursuant to (b) above.

(d) The person responsible for conducting the remediation shall identify and describe any proposed changes of land use at the site and of each property located within 200 feet of the site boundary that the municipality has approved, with a map depicting the location of the change in relation to the areas being remediated.

7:26E-1.17 Receptor evaluation - ground water

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water remediation standard as follows:

1. Within 90 days after ground water contamination is detected, conduct a well search to identify each well that may be impacted by contamination that has or may have emanated from the site as follows:

i. Locate all wells by conducting a file search of all available Department, county and local records for all monitoring and potable wells located within one-half mile of each point of ground water contamination, and all irrigation, industrial wells, and wells with water allocation permits located within one mile of each point of ground water contamination;

ii. If the person responsible for conducting the remediation finds any of the wells described in (a)1i above, that person shall conduct a door-to-door survey by following the Department's well search guidance;

iii. For each well located, identify the type (potable, irrigation, noncontact cooling water) and the status of the well (active, inactive, properly abandoned pursuant to N.J.A.C. 7:9D), including, as available, total depth, casing length, open bore hole or screened interval, and obtain copies of well records and/or well logs on file with the Department's Bureau of Water Systems and Well Permitting, and any additional records available in county or municipal records;

iv. Document all sources used in conducting the well search, including the names of any agency that was unable to provide the information requested; and

v. For each point of ground water contamination, determine if the ground water contamination is located within a Tier 1 or a Tier 2 well head protection area; and

2. Within 120 days after ground water contamination is detected at the site above a Class II ground water remediation standard, the person responsible for conducting the remediation shall:

i. Notify the Department, pursuant to N.J.A.C. 7:26E-1.4(e), prior to conducting potable well sampling;

ii. Sample each potable well identified by the well search that is located within 1000 feet of any point of ground water contamination, or if ground water flow direction is known, limit sampling to wells 250 feet upgradient, 500 feet sidegradient and 1,000 feet downgradient from any point of ground water contamination; and

iii. Sample irrigation wells identified by the well search when there are concerns about exposure or when information about the characteristics of the plume is needed.

(b) If the person responsible for conducting the remediation determines that a contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard pursuant to N.J.A.C. 7:26D-2.2(a)1, the person shall:

1. Notify the Department of the IEC condition and conduct all actions pursuant to N.J.A.C. 7:26E-1.14; and

2. Within 14 days after completing the first round of potable well sampling, the person responsible for conducting the remediation shall:

i. Continue to delineate ground water contamination, including the extent of free product, pursuant to N.J.A.C. 7:26E-4.4; and

ii. Continue to identify potential wells and conduct additional sampling pursuant to the Department's IEC Guidance.

(c) If no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard, within 14 days after receipt of the analytical results from the

laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)17 with the Full Laboratory Data Deliverables form available from the Department; and

2. If a licensed site remediation professional is overseeing the remediation, conduct the following:

i. Notify each person whose potable well was sampled of the analytical results; and

ii. Provide the Department with a copy of each notification letter.

(d) The person responsible for conducting the remediation shall provide a detailed report of all potable well sampling activities in the applicable remedial phase report that that person submits to the Department.

7:26E-1.18 Receptor evaluation—vapor intrusion

(a) The person responsible for conducting the remediation shall conduct a vapor intrusion investigation pursuant to this section and Department's Vapor Intrusion Guidance (VIG) when any of the following conditions exist in shallow ground water:

1. A ground water plume containing petroleum hydrocarbon contamination at a concentration greater than any vapor intrusion ground water screening level, is identified within 30 feet of a building;

2. A ground water plume containing volatile contamination that is not petroleum based at a concentration greater than any vapor intrusion ground water screening level is identified within 100 feet of a building;

3. Free product is identified in ground water within 100 feet of a building; or

4. When any of the following conditions are identified:

i. Soil gas or indoor air contamination is detected at concentrations that exceed the applicable vapor intrusion soil gas or indoor air screening levels;

ii. A landfill is located on or adjacent to the site;

iii. A wet basement or sump in a building contains free product and/or ground water containing any contaminant listed in Table 1 of the VIG;

iv. Methanogenic (methane generating) conditions are present that may cause an explosion; or

v. Any other information that indicates that human health may be impacted via the vapor intrusion pathway.

(b) Within 60 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. Identify all structures and subsurface utilities located within 200 feet of the currently known extent of the shallow ground water that contains contamination at a concentration greater than any vapor intrusion ground water screening level, or within 200 feet of any condition listed in (a)3 or 4 above;

2. Determine the specific use for each structure identified, including the presence of residences, schools or child care centers, whether each structure has a basement, crawl space, or is constructed on a slab, and the approximate square footage of each building footprint;

3. Determine the specific use, depth of the invert, diameter, and construction specifications of all subsurface utilities identified;

4. Determine the flow direction of the shallow ground water pursuant to N.J.A.C. 7:26E-3.7(e)3; and

5. Determine whether free product pursuant to N.J.A.C. 7:26E-2.1(a)14 is present at each ground water sampling location.

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. Notify the Department prior to conducting indoor air or sub-slab sampling pursuant to N.J.A.C. 7:26E-1.4(e); and

2. Implement the Vapor Intrusion Guidance, including, but not limited to:

i. If indoor air samples are to be collected, remove sources of potential background volatile organic chemicals from inside the structure, if possible;

ii. Determine the number and locations of indoor air and/or sub-slab samples;

iii. Collect indoor air and sub-slab samples at structures that may be impacted by vapor intrusion;

iv. Collect other vapor intrusion related samples such as soil gas samples, background samples and ground water samples as necessary to fully evaluate the vapor intrusion pathway;

v. Analyze indoor air samples and sub-slab soil gas samples and any other samples collected using certified analytical methods; and

vi. Evaluate the results of indoor air sampling as follows:

(1) If the results are greater than the Department's vapor intrusion indoor air screening level, the person shall determine whether contaminants are likely to be associated with a discharge at the site or may be attributed to background sources;

(2) If the results are greater than the vapor intrusion indoor air screening level the person shall immediately notify the Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14;

(3) If the results are greater than the Department's Health Department Notification Levels for indoor air the person shall immediately notify:

(A) The Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14; and

(B) The New Jersey Department of Health and Senior Services at 609-631-6749;

(4) If the person identifies potentially explosive conditions in a structure or subsurface utility, the person shall immediately notify:

(A) 911 and report explosive conditions to the local emergency response agency;

(B) The Department of the emergency condition at 1-877-WARNDEP or 1-877-972-6337; and

(C) The New Jersey Department of Health and Senior Services at 609-631-6749;

(d) If no contaminant concentration is detected in any indoor air sample in excess of any Department indoor air screening level, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)17 with the Full Laboratory Data Deliverables form available from the Department;

2. Submit all analytical results 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; and

3. If a licensed site remediation professional is overseeing the remediation, conduct the following:

i. Notify each person whose indoor air was sampled of the analytical results; and

ii. Provide the Department with a copy of each notification letter.

(e) If the person responsible for conducting the remediation identifies vapor intrusion IEC conditions pursuant to (c) above, within 14 days after completing the first round of sampling, the person shall continue to:

1. Delineate ground water contamination, including the extent of free product, pursuant to N.J.A.C. 7:26E-4.4; and

2. Identify structures and conduct additional indoor air and/or sub-slab sampling pursuant to the Department's IEC Guidance and the VIG.

(f) If the person responsible for conducting the remediation determines that no IEC condition exists, but the vapor intrusion pathway is still of concern, the person shall complete a vapor intrusion investigation as part of the site investigation or remedial investigation, as applicable.

(g) The person responsible for conducting the remediation shall provide a detailed report of all vapor intrusion sampling activities in the applicable remedial phase report that is submitted to the Department.

(h) If the person responsible for conducting the remediation determines that the vapor intrusion pathway is not a concern at or adjacent to the site, the person shall provide a technical rationale supporting that conclusion.

7:26E-1.19 Receptor evaluation - ecological

As part of the receptor evaluation the person responsible for conducting the remediation shall conduct a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11, in order to determine whether a remedial investigation of ecological receptors is required pursuant to N.J.A.C. 7:26E-4.7.

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

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

1. Laboratories performing analyses shall conform to the following:

i.-ii. (No change.)

iii. For the analysis of samples using USEPA Contract Laboratory Program (CLP) analytical methods for a parameter or category or parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a minimum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c); [or]

iv. For the analysis of aqueous and non-aqueous samples for parameters or categories of parameters not contained in (a)i through iii above, the person responsible for conducting the remediation is also responsible for ensuring that the selected laboratory is capable of performing the analysis. At such time as N.J.A.C. 7:18 incorporates procedures for parameters or categories of parameters not contained in (a)i through iii above, the procedures in N.J.A.C. 7:18 shall be followed[.];

v. For the analysis of soil gas or indoor air samples collected to investigate the vapor intrusion pathway for a parameter or category of parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a minimum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c);

vi. For the analysis of samples for petroleum hydrocarbons (PHC) follow the Department's Protocol for Addressing Extractable Petroleum Hydrocarbons; and

vii. For any field analytical method, the laboratory or individual conducting the analysis shall be certified for the parameter or category of parameters for field analytical methods for which the Department provides certification. If the Department does not provide certification for a field analytical method, the laboratory or person shall obtain a site-specific certification for the field analytical method from by the Department's Office of Quality Assurance;

2. The [Department] person responsible for conducting the remediation shall reject analytical data as follows:

i.-iii. (No change.)

3.-5. (No change.)

6. The person responsible for conducting remediation shall ensure that aqueous samples are analyzed to determine potability as follows:

i. For organic contaminant, use the version of USEPA 500 series methods in effect on the date of analysis (USEPA Publication "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III, August 1995"), incorporated herein by reference, as amended and supplemented); and

ii. For inorganic contaminant, use the version of USEPA 200 series methods in effect on the date of analysis (USEPA Publication "Methods for the Determination of Metals in Environmental

Samples, Supplement I, May 1994”), incorporated herein by reference, as amended and supplemented). As an alternative, lead may be analyzed by the version of ASTM Method D3559-90D in effect on the date of analysis (American Society for Testing Publication “Annual Book of ASTM Standards, 1994”), incorporated herein by reference, as amended and supplemented, or by the version of Method 3113B in effect on the date of analysis (American Public Health Publication “Standard Methods for the Examination of Water and Wastewater, 18th Edition”), incorporated herein by reference, as amended and supplemented.

7. The person responsible for conducting remediation shall ensure that hexavalent chromium analysis of aqueous and nonaqueous samples is conducted as follows:

i. Measure the pH and Eh of each sample, not just the quality control sample, with the pH and Eh data included and plotted in the full data deliverables using the graph in USEPA SW-846 Method 3060A incorporated herein by reference, as amended and supplemented; and

ii. Use a site sample for the quality control analyses so the reduction/oxidation effects of the site matrix can be properly evaluated using USEPA SW-846 Method 3060A.

8. For all samples to be used for determining compliance pursuant to the Department’s Compliance Guidance, the analytical method(s) shall have analytical sensitivity sufficient to accurately measure concentrations at or below the applicable remediation standard or criteria.

[6.] 9. If analytical methods are not available for a contaminant, analysis of indicator parameters may be acceptable with technical rationale in the applicable remedial phase report that is submitted to the Department (for example, pH may be used as an indicator parameter for acid or base discharges) [may be acceptable, subject to the Department’s review of documentation pursuant to N.J.A.C. 7:26E-1.6(c)].

Recodify existing 7.-13. as 10.-16. (No change in text.)

[14. Sampling methods, sample preservation requirements, sample handling times, decontamination procedure for field equipment, and frequency for field blanks, field duplicates and trip blanks shall conform to applicable industry methods such as those specified in the NJDEP “Field Sampling Procedures Manual” in effect as of the date on which sampling is performed. The person responsible for conducting the remediation shall document the rationale for any deviations from the methods in the “Field Sampling Procedures Manual” pursuant to N.J.A.C. 7:26E-1.6(c).]

17. All sample collection, storage, and shipping requirements, such as sampling methods, sample preservation requirements, sample handling times, decontamination procedure for field equipment, and frequency for field blanks, field duplicates and trip blanks shall conform to the requirements specified in the Department’s Field Sampling Procedures Manual. The person responsible for conducting the remediation shall document the rationale for any deviations from the methods in the Department’s “Field Sampling Procedures Manual” in the applicable remedial phase report submitted to the Department.

[15.] 18. (No change in text.)

(b) Field screening methods are limited as follows:

1.-3. (No change.)

4. Other field screening methods may be [acceptable, subject to the Department’s review of documentation pursuant to N.J.A.C. 7:26E-1.6(c)] used if use of the selected method enables the person to meet the sampling goals set forth in this subchapter, and the person provides the technical rationale for using the selected sampling method in the applicable remedial phase report submitted to the Department.

(c) The following requirements apply for selection of analytical parameters for all environmental media:

1. Samples [from each area of concern] shall be analyzed for:

i. The contaminants [which] that may be present[,] as determined during the preliminary assessment and from any other information obtained during the remediation; or

[2. Analysis of Target Compound List plus 30/Target Analyte List (TCL + 30/TAL) or Priority Pollutant plus 40 (PP + 40) scans, petroleum hydrocarbons, and pH shall be conducted when contaminants in an area are unknown or not well documented, although a limited contaminant list may be used subject to the Department’s review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).]

ii. The Target Compound List plus TICs/Target Analyte List (TCL + TICs/TAL), hexavalent chromium, petroleum hydrocarbons (PHC), and pH when contaminants are unknown or not well documented;

2. Based on sampling conducted pursuant to (c)1 above, the person responsible for conducting the remediation may, during future sampling events, sample for fewer contaminants than for which the person initially sampled. The person responsible for conducting the remediation shall provide the technical rationale for the reduced list in the applicable remedial phase report submitted to the Department;

3. In addition to (c)1 and 2 above, analyze samples for parameters as needed to develop:

i. A site-specific standard or criterion for:

(1) The soil impact to ground water pathway;

(2) The vapor intrusion pathway;

(3) The ecological pathway; and

ii. An alternative remediation standard for the soil inhalation pathway; and

4. For concrete and other building material that will be recycled, conduct sampling pursuant to Department’s Guidance for Characterization of Concrete and Clean Material Certification.

[(d) For all petroleum storage and discharge areas, sample analysis shall be conducted pursuant to the requirements in Table 2-1. Samples taken in non-petroleum storage and discharge areas shall be analyzed for the stored material. Analysis of soil and sediment samples for petroleum hydrocarbons may be in accordance with the revision of NJDEP Method OQA QAM 025 10/91: “Quantitation of Semi-volatile Petroleum Products in Water, Soil, Sediment and Sludge” in effect as of the date on which sampling is performed. Analysis shall be conducted by a laboratory that is certified for any gas chromatography method pursuant to N.J.A.C. 7:18. Laboratory deliverables shall be as specified in the NJDEP method listed above.

TABLE 2-1

ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS¹¹

<u>Sampling Objective</u>	<u>Soil Initial Screening/ Post-Remediation¹</u>	<u>Water Initial Screening</u>
Gasoline, Mineral Spirits	VO+10 ² , Lead ⁷	VO+10 ² , MTBE ³
Kerosene, Jet Fuel	VO+10 ² Naphthalenes ⁵	TBA ³ , Lead ⁷ B/N+15 ² , VO+10 ²
Fuel Oil No. 2, Diesel Fuel	TPHC ⁹	B/N+15 ¹⁰ , VO+10 ²
Fuel Oil Nos. 4 & 6, Hydraulic Oils, Cutting Oil, Crude Oil, Lubricating Oil	TPHC, PAH ⁸	B/N+15 ¹⁰ , VO+10 ²
Waste Oil	TPHC ⁶ , VO+10 B/N+15 ¹⁰ , PCBs, Priority Pollutant Metals or EPA Target Analyte List	PP+40 or TCL/TAL ⁴
Waste Vehicular Crankcase Oil	TPHC ⁶ , VO+10 ² B/N+15 ¹⁰ , PCBs, lead	VO+10 ² , B/N+15 ¹⁰
Waste Mineral Oil	TPHC	

Footnotes

1. Analytical parameters may be limited based on previous analytical results.
 2. EPA target compound list volatile organic or priority pollutant volatile organic scans including xylene with a library search.
 3. Methyl-tertiary-butyl-ether (MTBE), tertiary-butyl alcohol (TBA) analysis required if gasoline tanks were in service after 1979 and 1969 respectively.
 4. Priority Pollutant plus forty (PP+40) including xylene, excluding PCB/pesticide analysis, or EPA Target Compound List plus 30 and EPA Target Analyte List, excluding PCB/pesticide analysis.
 5. Naphthalene, including Naphthalene, Methyl Naphthalenes, Dimethyl Naphthalenes; may be analyzed in B/N + 15 fraction or in VO fractions; if analyzed in VO fraction, instrument must be calibrated for these analytes. Quantitation of all isomers found shall be performed against at least one Methyl Naphthalene standard and at least one Di-Methyl Naphthalene standard.
 6. Total Petroleum Hydrocarbon (TPHC) analysis required on all samples. Other parameters required on 25 percent of samples where TPHC was detected (minimum of one sample); other parameters shall be analyzed for in the sample with the highest TPHC.
 7. Lead Analysis required if source was or is leaded gasoline.
 8. TPHC analysis required on all samples. Polynuclear aromatic hydrocarbons (per EPA Priority Pollutant List) analysis required on 25 percent of samples where TPHC exceeds 100 ppm (minimum of one sample); samples for PAH analysis shall be those with the highest TPHC concentration.
 9. TPHC analysis required on all samples; VO + 10 analysis required on 25 percent of samples in which TPHC level in soil exceeds 1000 PPM (minimum of one sample); samples for VO analyses shall be those with the highest TPHC concentration.
 10. EPA Target Compound List Base Neutral or Priority Pollutant Base Neutral scan with a library search.
 11. Analyses are required on all samples unless otherwise noted.]
- (d) The person responsible for conducting the remediation shall analyze samples for petroleum hydrocarbons contamination (PHC) pursuant to the Department's Protocol for Addressing EPH Contamination Guidance and as follows:
1. For all petroleum storage and discharge areas, analyze all samples pursuant to the requirements in Table 2-1 and the Department's guidance Replacement of TPH Method 418.1 for the Site Remediation Program;
 2. For contaminants, where Table 2-1 indicates that additional analytical parameters are required, conduct the additional analyses on sample(s) with the highest PHC concentration(s), with a minimum of one sample; and
 3. For all matrices where sheen or odor indicate the potential presence of PHC from an unknown source, analyze all samples as unknown PHC pursuant to the requirements in Table 2-1.

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

Petroleum Product	Soil/Sediment	Water
Leaded Gasoline, Aviation Gasoline	VO+TICs ¹ , Lead	VO+TICs ¹ , Lead
Unleaded Gasoline	VO+TICs ¹ , Tertiary butyl alcohol	VO+TICs ¹ , Tertiary butyl alcohol
Light Petroleum Distillates (Naptha, Stoddard Solvent, Paint Thinner, etc.)	VO+TICs ¹	VO+TICs ¹

Kerosene, Jet Fuel	VO+TICs ¹ , Naphthalene, 2-Methyl Naphthalene	VO+TICs ¹ , SVO+TICs ²
Fuel Oil No. 2, Diesel Fuel	PHC ³ . Analyze 25 percent of samples for 2-Methyl Naphthalene and Naphthalene when PHC are detected over 1,000 mg/kg. ⁷	VO+TICs ¹ , SVO+TICs ²
Fuel Oil Nos. 4 & 6, Hydraulic Oils, Cutting Oil, Lubricating Oil	PHC ³ . Analyze 25 percent of samples for PAH ⁴ when PHC are detected over 100 mg/kg. ⁷	VO+TICs ¹ , SVO+TICs ²
Crude Oil	PHC ³ , VO+TICs ¹ , SVO+TICs ² , TAL Metals ⁵	VO+TICs ¹ , SVO+TICs ² , TAL Metals ⁵
Waste Oil, Unknown Petroleum Hydrocarbons	PHC ³ . Analyze 25 percent of samples for VO+TICs ¹ , SVO+TICs ² , PCBs, EPA TAL Metals ⁵ when PHC are detected. ⁷	VO+TICs ¹ , B/N+TICs ² , TAL Metals ⁵
Waste Vehicular Crankcase Oil	PHC ³ . Analyze 25 percent of the samples for VO+TICs, SVO+TICs ² , PCBs, Lead when PHC are detected. ⁷	VO+TICs ¹ , SVO+TICs ² , Lead
Mineral Oil, Dielectric Fluid, Transformer Oil	PHC ³ and PCBs.	PHC ³ and PCBs
Manufactured Gas	PHC ³ , VO+TICs ¹ , PAH ⁴ , TAL	PHC ³ , VO+TICs ¹ , PAH ⁴ , TAL
Plant (MGP) Sites	Metals ⁵ , Cyanide, Phenolics ⁶	Metals ⁵ , Ammonia (Total), Cyanide, Phenolics ⁶

Footnotes

1. EPA Target Compound List volatile organic compounds with a library search of TICs.
 2. EPA Target Compound List semivolatile organic compounds with a library search of TICs.
 3. Petroleum Hydrocarbons.
 4. EPA Target Compound List Polynuclear Aromatic Hydrocarbons with a library search of TICs.
 5. EPA Target Analyte List (TAL) Metals.
 6. EPA Target Compound List phenol; 2-methylphenol; 4-methylphenol; and 2,4-dimethylphenol.
 7. Conduct the additional analyses on sample(s) with the highest PHC concentration(s), with a minimum of one sample.
- (e) (No change.)
- 7:26E-2.2 Quality assurance project plan
- (a) [If the Department requires a Quality Assurance Project Plan (QAPP) pursuant to an oversight document or the ISRA, UST, or any other regulatory program, the] The person responsible for conducting the remediation shall [submit the] prepare a Quality Assurance Project Plan [in accordance with the schedule contained in the oversight document or applicable regulation, and] in a format that corresponds directly to the outline of this section.

1.-2. (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.1 Preliminary assessments

(a) The purpose of a preliminary assessment is to identify the presence of any potentially contaminated areas of concern. [If any potentially contaminated areas of concern are identified, then there is a need for a site investigation pursuant to N.J.A.C. 7:26E-3.3. If no potentially contaminated areas of concern are identified, then no further remediation is required at the site.]

[(b) A preliminary assessment is the first step in the process to determine whether or not a site is contaminated.]

[(c)] (b) A preliminary assessment shall be based on diligent inquiry and include an evaluation of the following:

1. Historical information concerning the site history shall be part of the preliminary assessment unless the remediation is directed at either a specific discharge event (rather than a particular area of concern) or any underground tank or underground tank system. The site history shall include an evaluation of the following to the extent available from diligent inquiry:

i.-v. (No change.)

vi. If the site area exceeds two acres, an interpretation of the aerial photographic history of the site, based on available current and historical color, black and white and infrared aerial photographs (scale 1:18,000 or less) of the site and surrounding area at a frequency which provides [the evaluator with] a historical perspective of site activities. [The] **Evaluate the** photographic history [shall date] back to 1932 or to the earliest photograph available. Aerial photographic coverage is available for review at the New Jersey Department of Environmental Protection [and Energy], Tidelands Management Program, Aerial Photo Library, [9 Ewing Street,] Trenton, New Jersey **and from other commercial services;**

vii.-xii. (No change.)

xiii. All administrative, civil and criminal enforcement actions for alleged violations of environmental laws concerning the site, including:

(1)-(6) (No change.)

(7) A description of any potential environmental impact which may have resulted from the alleged violation; [and]

xiv. All areas where non-indigenous fill materials were used to replace soil or raise the topographic elevation of the site, including the dates of emplacement[.];

xv. **All waste disposal records for any onsite landfill that describes the nature, quantity, location, and date of the placement in the landfill. Include waste disposal records for all wastes, drums, tanks, pressurized gas cylinders and all hazardous wastes; and**

xvi. **All permit requirements pursuant to a Solid Waste Operating Permit, or Disruption and Closure Permit granted pursuant to N.J.A.C. 7:26, including a description of permit requirements completed to date and a description of permit requirements not yet completed.**

2. The person conducting the preliminary assessment shall conduct a site visit to verify the findings in [(c)1] (b)1 above.

(c) **The person responsible for conducting the remediation who is conducting an evaluation of a child care center pursuant to N.J.S.A. 52:27D-130.4 and N.J.A.C. 10:122 shall conduct a preliminary assessment and/or site assessment pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers.**

(d) **If any potentially contaminated areas of concern are identified during the preliminary assessment, the person responsible for conducting the remediation shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.13.**

(e) **If no potentially contaminated areas of concern are identified during the preliminary assessment, no further remediation is required at the site except that the person who is required to submit an Industrial Site Remediation Act general information notice pursuant to N.J.A.C. 7:26B-3 shall submit a preliminary assessment**

report with a Preliminary Assessment form available from the Department:

1. By June 1, 2010; or

2. Ninety days after the person responsible for conducting the remediation has notified the Department pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-3.2, whichever is later.

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation shall prepare a preliminary assessment report which:

1. (No change.)

2. Is presented in a format that corresponds to the outline of N.J.A.C. 7:26E-3.1[(c)](b);

3. Shall also include:

i.-iii. (No change.)

iv. A summary of the data and information evaluated pursuant to N.J.A.C. 7:26E-3.1[(c)1vii](b)1vii, viii, ix, and x shall be presented by area of concern and all phases of work for a particular area of concern shall be integrated into a single discussion of that area;

4. For each area of concern identified at the site[, which has not been remediated under Department oversight,] **that has not been remediated, the report shall contain a recommendation that either:**

i. (No change.)

ii. The area of concern is not believed to contain contaminants above the applicable remediation standards, in which case the preliminary assessment report shall include documentation for this belief; [and]

5. For each area of concern identified at the site, for which a [No Further Action Letter was] **final remediation document was filed or issued, the person responsible for conducting the remediation shall compare the contaminant concentrations remaining in the area of concern [or the site] with the Department's applicable remediation standards at the time of comparison, and the report shall contain a recommendation that either:**

i. The area of concern contains contaminants above the numerical remediation standard applicable at the time of comparison[.]; however, no further remediation is required because:

(1) (No change.)

(2) The area of concern [or the site] was remediated using engineering and institutional controls [approved by the Department] and these controls are still protective of public health, safety and the environment; or

(3) The area of concern [or the site were] **was remediated to [an approved] a site specific remediation standard and all of the factors and assumptions which are the basis for deriving the site specific remediation standard remain valid for the site;**

ii. The area of concern [or site] contains contaminants above the numerical remediation standards applicable at the time of comparison and further remediation is required because:

(1) (No change.)

(2) The area of concern [or site] was remediated using engineering and institutional controls [approved by the Department] and these controls are no longer protective of public health, safety and the environment; or

(3) (No change.)

iii. (No change.)

iv. The contaminant concentration remaining in the area of concern or the site is more than order of magnitude greater than the numerical remediation standard applicable at the time of comparison. Any person who is liable for contamination pursuant to N.J.S.A. 58:10-23.11g may be required to conduct further remediation[.]; **and**

6. Includes a completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Documents. The case inventory document shall be provided at the front of the report.

(b) The documentation required for (a)5 above shall include a table comparing the levels of contaminants remaining in the area of concern, the numerical remediation standards which are contained in the [approved] remedial action workplan **that was approved by the Department or was prepared by a licensed site remediation professional** and the numerical remediation standards applicable at the time of comparison. The table shall contain all sampling results,

including, but not limited to, sample location, sample media, field and laboratory identification numbers, method detection limits as necessary, and analytical results for the area of concern.

[(c) The Department will determine the extent to which prior submissions or completions may satisfy the specific items required for the preliminary assessment. If the Department approves any such prior work in writing, then that work may be included as part of the preliminary assessment.]

7:26E-3.3 Site investigation

(a) The purpose of a site investigation is to determine if any contaminants are present at the site, or, as necessary, have emanated or are emanating from the site above any of the applicable [unrestricted use] remediation standards or if no further remediation is required. If such contaminants are present at the site, then additional remediation is necessary.

(b) A site investigation shall be conducted based upon the information collected pursuant to the preliminary assessment requirements in N.J.A.C. 7:26E-3.1 and shall satisfy all of the following requirements:

1.-8. (No change.)

9. The **landfill and historic fill** requirements in N.J.A.C. 7:26E-3.12, if applicable.

(c) (No change.)

[(d) It is often appropriate to phase the site investigation so that the areas of concern most likely to be contaminated above the applicable remediation standards are sampled first. If at any time during the site investigation, any contamination is found above the applicable remediation standards, then the site investigation may be discontinued and the remediation continued at either the remedial investigation or remedial action phase.]

(d) The person responsible for conducting the remediation shall conduct a comparison of all site data with the Department's applicable remediation standards, pursuant to the Department's Compliance Guidance, to determine if contaminated areas of concern are present.

(e) The person responsible for conducting the remediation shall complete the site investigation and submit a site investigation report with a Preliminary Assessment/Site Investigation form available from the Department by the later of the following:

1. **By November 26, 2010; or**

2. **Two hundred seventy days after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).**

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

(a) Sampling shall be conducted in all potentially contaminated areas of concern[, whether relating to current or former uses of the site] to determine whether or not any contaminants are present above the applicable unrestricted use remediation standard.

1.-3. (No change.)

4. If access to sampling locations required pursuant to N.J.A.C. 7:26E-3.5 through 3.12 is impractical due to physical obstructions or safety hazards, and no practical sampling alternatives are available, [upon prior verbal or written approval by the Department, sampling may be modified subject to the technical criteria in N.J.A.C. 7:26E-1.6(c)3. Confirmation of any verbal or written approval by the Department shall be provided in the site investigation report. For verbal approvals, the date of the verbal approval and the name of the Department representative who granted the approval shall be provided in written correspondence to the Department within seven days of the verbal approval] **the person responsible for conducting the remediation shall provide the rationale for alternative sampling location in the site investigation report.**

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

7:26E-3.5 Site investigation—building interiors

The **person responsible for conducting the remediation shall conduct a site investigation of building interiors [shall be conducted] when contaminants inside the building have the potential to migrate to the environment outside the building or when contaminants outside the building have the potential to migrate into the building. [Minimum requirements for investigating contaminants inside buildings which have the potential to migrate to the environment outside the building are**

specified in N.J.A.C. 7:26E-3.9, and requirements for investigating contaminants outside buildings which have the potential to migrate into buildings shall be specified by the Department on a site specific basis]. **The person responsible for conducting the remediation shall conduct the site investigation of the vapor intrusion pathway required pursuant to this chapter and the Department's Vapor Intrusion Guidance.**

7:26E-3.7 Site investigation—ground water

(a)-(d) (No change.)

(e) The results of each [groundwater] **ground water** site investigation analysis shall be evaluated as follows:

1. If the contaminant concentrations found in all ground water samples are below the applicable remediation standards, no further remediation is necessary for ground water;

2. If the contaminant concentrations found in any ground water samples exceed the applicable remediation standards, the ground water may be resampled to confirm the presence of contamination; this confirmation sampling shall include at least two additional samples taken over a 30 day period, the results of which may be averaged with the original result to determine compliance with the applicable remediation standards; and

3. If the contaminant concentrations found in any ground water sample exceeds the applicable ground water remediation standard, the person shall determine the direction of ground water flow as follows:

i. Install a minimum of three ground water monitoring wells or piezometers in each affected aquifer or water bearing zone to determine the ground water flow direction in that zone. Install and survey the monitoring wells or piezometers pursuant to N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:26E-4.4(g) to provide for adequate triangulation;

ii. Collect a minimum of two rounds of synoptic static water levels a minimum of 30 calendar days apart to provide a more accurate indication of the ground water flow direction. The water levels may be taken to evaluate seasonal variations in flow direction;

iii. If the site is located in an area that is tidally influenced, synoptic ground and surface water levels shall be collected during two fair weather sampling events separated by a minimum 30-day period where each event entails collecting hourly water levels from all applicable wells and the surface water for a minimum 71-hour period; and

iv. Collect water level measurements and determine ground water flow direction, taking into account activities in the area which may affect flow direction, such as pumping wells or seasonally used pumping wells and injection wells.

[3. If groundwater contamination is confirmed, the person responsible for conducting the remediation shall, except as provided in (f) below:

i. Within six weeks after identifying groundwater contamination, conduct a well search including:

(1) Locating wells through a file search using all available Department, county and local records for all monitoring and domestic wells within one-half mile of each point of groundwater contamination, and all irrigation, industrial, public supply wells, and wells with water allocation permits within one mile of the area of concern. Available Department records include without limitation, paper, microfiche, electronic and antique well records maintained by the Bureau of Water Allocation. The Department Geographic Information System shall be used as part of the file search. If the site is located in a groundwater use area the Department will determine if further action, such as a door-to-door survey, is required;

(2) Identifying the type of well and the status of the well (active, inactive, properly abandoned pursuant to N.J.A.C. 7:9D), including, as available, total depth, casing length, open bore hole or screened interval, copies of well records and/or well logs on file with the Department's Bureau of Water Allocation, and any additional records available in county or municipal records; and

(3) Documenting all sources referenced in performing the well search, including agencies that were unable to provide the information requested, including the name of the person within each agency that was contacted

and when, and that the request for information was denied or information was unavailable;

ii. Within two weeks after completing the well search, determine if any potable wells exist within 1,000 feet of each area of concern with groundwater contamination and:

(1) Within 24 hours after determining the existence of a potable well, notify the assigned case manager by telephone. If a case manager is not assigned, notify the Department hotline at 1-877 WARNDP or (877) 927-6337;

(2) Within eight weeks after identifying the potable wells, sample each existing potable well identified pursuant to the well search suspected to be contaminated by the site in question; and

(3) Within 45 days after completing sampling of the potable wells, submit all analytical results to the Department as full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2(a)13;

iii. Perform the following actions if any of the analytical results for the potable well samples collected pursuant to (e)3ii(2) above indicate that any of the potable wells are contaminated above the drinking water standards for contaminants that are suspected to be from the site:

(1) Within two weeks after submitting the analytical results to the Department, identify each potable well that exists within 1,000 feet to one-half mile of each area of concern with groundwater contamination and perform all sampling and reporting requirements as set forth at (e)3ii; and

(2) Repeat the process of identifying and sampling potable wells pursuant to (e)3i, ii and iii(1) above, by identifying and sampling potable wells at each successive half-mile intervals until either no more potable wells are identified, or no contaminants above the drinking water standard are identified;

iv. Determine the direction of groundwater flow for each affected aquifer as follows:

(1) Install a minimum of three groundwater monitoring wells or piezometers in each affected aquifer or water bearing zone to determine the groundwater flow direction in that zone. Install and survey the monitoring wells or piezometers pursuant to N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:26E-4.4(g) to provide for adequate triangulation;

(2) Collect a minimum of two rounds of synoptic static water levels a minimum of 30 calendar days apart to provide a more accurate indication of the groundwater flow direction. The water levels may be taken to evaluate seasonal variations in flow direction;

(3) If the site is located in an area that is tidally influenced, synoptic ground and surface water levels shall be collected during two fair weather sampling events separated by a minimum 30-day period where each event entails collecting hourly water levels from all applicable wells and the surface water for a minimum 71-hour period; and

(4) Collect water level measurements and determine groundwater flow direction, taking into account activities in the area which may affect flow direction, such as pumping wells or seasonally used pumping wells and injection wells; and

v. Conduct a groundwater remedial investigation pursuant to N.J.A.C. 7:26E-4.4.]

(f) A prospective purchaser shall commence a potable water investigation no later than 30 calendar days after acquiring the property, in accordance with the requirements and schedule [in (e)3 above] at **N.J.A.C. 7:26E-1.17**.

(g) (No change.)

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.)

iv. Instead of sampling soil beneath pavement, samples around the pad may be taken pursuant to (b)1 below [subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why

boring through pavement was not considered practical (for example, concrete slabs with berms, synthetic liners)] and **N.J.A.C. 7:26E-1.7**.

3.-4. (No change.)

5. For all below grade piping:

i.-iii. (No change.)

iv. For total piping lengths in excess of 50 feet, sampling frequency may be reduced [subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced number was considered adequate] **pursuant to N.J.A.C. 7:26E-1.7**.

6. (No change.)

(b) The site investigation shall also satisfy the following requirements for all storage and staging areas, dumpsters and transformers, whether temporary or permanent, including exposed soil areas adjacent to above ground vessels on pads; tank loading/unloading areas on pads; dumpster staging areas; electrical transformers, heat exchanger and other outdoor equipment and drum storage pads.

1. (No change.)

2. For all storage and staging areas over permeable cover:

i. (No change.)

ii. Sample frequency shall be one per 900 square feet of surface area to characterize soils below a storage or staging area up to 300 feet in perimeter with a minimum of one sample. [Sample frequency may be reduced for larger areas subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why sample frequency was considered adequate.] Sampling locations shall be biased toward the suspected location of greatest contamination based on low points, drainage patterns, discoloration, stressed vegetation, field instrument measurements or other field indicators.

(c) (No change.)

(d) The site investigation shall also satisfy the following requirements for all drainage systems.

1. For all floor drains and collection systems, if there is reason to believe contaminants were discharged into the floor drain or collection system:

i.-ii. (No change.)

iii. Collection system integrity shall be documented by representative soil sampling at potential leak areas, video inspection, hydrostatic test or pressure test. Other methods may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the methods were considered effective]; and

iv. (No change.)

2.-5. (No change.)

(e) The site investigation shall also satisfy the following requirements for all discharge and waste disposal systems and areas.

1. For any discharge areas and areas of discolored soil or stressed vegetation where specific requirements are not otherwise provided in this section:

i. (No change.)

ii. Initial characterization samples shall be biased based on field indicators such as soil discoloration, stressed vegetation, or field instrument measurements toward those areas of greatest suspected contamination. Sample frequency shall be at least one sample for every 900 square feet for areas up to 300 feet in perimeter. [Sample frequency may be reduced for larger areas, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced sample frequency was considered adequate.]

2. (No change.)

3. For below grade wastewater treatment systems:

i. For tanks, septic tanks, separators, and neutralization pits, two samples shall be collected from within the tank, one aqueous and one sludge sample, for analysis [unless documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the site investigation report (N.J.A.C. 7:26E-3.13) specifying why such sampling was not considered necessary to confirm that only sanitary waste was discharged to the system during the entire life of the system. Documentation shall include, without limitation, an affidavit certifying that only sanitary waste was ever discharged to the system and that no present or former floor drains, sinks, or other units in process areas were ever connected to the system].

ii. For septic disposal fields:

(1) Soil borings shall be completed as specified below for onsite disposal fields [unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.13) specifying why soil borings were not considered necessary to confirm that only sanitary waste was discharged to the system pursuant to (e)3i above].

(2)-(6) (No change.)

iii. For cesspools, seepage pits, as defined in N.J.A.C. 7:9A-2.1, and dry wells:

(1) Sampling shall be conducted in accordance with (e)3iii(2) through (5) below[, unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.10) specifying why sampling was not considered necessary, for example, to confirm that only sanitary waste or storm water was discharged to the system pursuant to (e)3i above];

(2)-(5) (No change.)

iv. (No change.)

(f) The site investigation shall also satisfy the following requirements for any other potentially contaminated areas away from process areas not otherwise addressed pursuant to (a) through (e) above:

1. The sample locations shall be biased toward suspected areas of the greatest contamination. If there is no basis for biasing, then random sampling of these areas is required as follows, except as provided in (f)2 below:

i. (No change.)

ii. The grid nodes chosen for sampling shall be based on the numbers selected from a random number chart; **and**

iii. Areas of less than 10 acres shall be sampled at a rate of at least one sample for every two acres[; and].

[iv. Areas greater than 10 acres may be sampled at a reduced frequency subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why a reduced frequency was considered appropriate, but a minimum of five locations shall be sampled.]

2. If the person responsible for conducting the remediation documents[, pursuant to N.J.A.C. 7:26E-1.6(c),] that the area is not and has not been used for any purpose which may have included hazardous substances, hazardous wastes, or pollutants, including, without limitation, the activities described in (a) through (e) above, then no samples are required. Such documentation shall be based upon the following:

i.-ii. (No change.)

7:26E-3.12 Site investigation—landfills and historic fill material

(a) If a landfill may be present at the site, the person responsible for conducting the remediation shall conduct a site investigation as follows:

1. Confirm whether a landfill is present;

2. Determine if buried containers including, but not limited to, drums, tanks, pressurized gas cylinders, munitions or explosives of concern, or unexploded ordnance are present by conducting a survey, by a person qualified and experienced in the use of geophysical sensing techniques, using an appropriately calibrated electro magnetometer or other appropriate geophysical sensing technique to detect potential buried containers as follows:

i. Use a 25-foot transect spacing across the landfill and around the perimeter of the landfill a sufficient distance beyond the potential landfill limits to ensure all areas with potential waste are surveyed; **and**

ii. Take and record readings every five feet along each transect; **and**

3. Evaluate the landfill and determine the presence and effectiveness of existing control systems, as applicable:

i. For each area of soil erosion and sediment deposition around the perimeter of the landfill:

(1) Collect and analyze soil and sediment samples from each area pursuant to N.J.A.C. 7:26E-3.6 and 3.8, respectively; **and**

(2) Bias samples to areas of likely contamination area pursuant to N.J.A.C. 7:26E-3.4;

ii. Collect a minimum of one leachate and one soil/sediment sample from each seep identified around the perimeter of the landfill.

If evidence of seeps are identified, but leachate is not present at the time of sampling, then collect samples when leachate is present;

iii. Collect ground water samples from any existing monitoring wells pursuant to N.J.A.C. 7:26E-3.7;

iv. Analyze samples collected above for TCL/TAL, pH, ammonia (as N), nitrate (as N), total dissolved solids (TDS), and conductivity;

v. Screen any existing vents for lower explosive level, volatile organic contaminants, methane and hydrogen sulfide using appropriate field analytical techniques such as photoionization detector (PID), flame ionization detector (FID), or other suitable instruments capable of detecting the contaminants pursuant to N.J.A.C. 7:26E-2.1(b); **and**

vi. Determine the type, extent, and condition of the landfill cap or cover including chemical analysis of soil for TCL/TAL pursuant to N.J.A.C. 7:26E-3.6.

(b) If historic fill material may be present at the site, the person responsible for conducting the remediation shall conduct a site investigation as follows:

1. Confirm whether historic fill material is present;

2. If historic fill material is confirmed, either:

i. Assume that the fill material is contaminated above the residential soil remediation standards and conduct a remedial investigation of historic fill material pursuant to N.J.A.C. 7:26E-4.6(b); **or**

ii. Demonstrate that the historic fill material is not contaminated above the residential soil remediation standards by sampling pursuant to N.J.A.C. 7:26E-3.4, 3.6 and 3.9, as applicable;

3. Investigate areas of concern located in historic fill material independently of the historic fill material. To differentiate between contaminants in fill and those from site discharges, conduct an evaluation of the contaminant type and concentration gradient in each area of concern and the contaminant distribution in the fill;

4. If historic fill material is assumed to be, or is determined to be contaminated, and the fill material is located within two feet of the seasonally high water table, collect a minimum of one ground water sample pursuant to N.J.A.C. 7:26E-3.7;

5. If the results of ground water sampling conducted pursuant to (b)4 above indicate contaminant concentrations are below the applicable ground water remediation standards, no further investigation of ground water as relates to impacts from historic fill is required; **and**

6. If the results of ground water sampling conducted pursuant to (b)4 above indicate contaminant concentrations are above an applicable ground water remediation standard:

i. For sites where the historic fill material extends beyond the property boundaries, the Department will establish a ground water classification exception area pursuant to N.J.A.C. 7:26E-6.3, using the footprint of the property as the boundaries of the classification exception area; **or**

ii. For sites where the historic fill material is contained within the property boundaries, conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26E-4.4.

7:26E-3.13 Site investigation report

(a) (No change.)

(b) The site investigation report shall include the following:

1. (No change.)

2. A physical setting section which shall include descriptions of the following unless the remediation is directed at either a specific discharge event, rather than a particular area of concern, or any underground tank or underground tank system:

i.-ii. (No change.)

iii. The results of the well search conducted pursuant to N.J.A.C. 7:26E-[3.7(e)3.]1.17 [using the well search format at Appendix B] **and the Department's Well Search Guidance;** **and**

iv. The direction of [groundwater] ground water flow, as determined pursuant to N.J.A.C. 7:26E-3.7(e)3[iv.];

3. A technical overview which shall present a general profile of the site investigation execution and results. The following items shall be discussed in the technical overview:

- i.-ii. (No change.)
- iii. Any significant events or seasonal variation which may have influenced sampling procedures or analytical results; [and]
- 4. Findings/recommendations which shall include:
 - i. (No change.)
 - ii. A discussion of the following items, for each area of concern:
 - (1)-(3) (No change.)

(4) Recommendations for either additional remediation or no further remediation for each area of concern[.]; and

5. A completed a case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report.

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

- 1.-2. (No change.)
- 3. A table summarizing all sampling results, including sample location, media, sample depth, field and laboratory identification numbers, analytical results, and comparison to applicable remediation standards organized by area of concern:

i.-iv. (No change.)

v. The data in the summary table shall be presented both as a hard copy and an electronic deliverable using the format outlined in detail in the Site Remediation Program's Electronic Data Interchange Manual in effect as of the date the report is submitted. The Electronic Data Interchange Manual may be obtained at [<http://www.state.nj.us/dep/srp/hazsite/index.html>] or by calling (609) 292-9418 [<http://www.nj.gov/dep/srp/hazsite/docs/>]. Electronic deliverables are not required if the summary table is prepared as part of the remediation of a specific discharge event **or for an area of concern that consists of a storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no groundwater impact.**

- (1) The following locational information shall be submitted:
 - (A) (No change.)
 - (B) Locational information collected in latitude and longitude shall be converted to New Jersey state plane coordinates. Conversion programs can be obtained at [<http://www.state.nj.us/dep/srp/hazsite/index.html>] [<http://www.nj.gov/dep/srp/hazsite/help/software/>].
- (2)-(3) (No change.)
- 4.-6. (No change.)
- 7. The following information shall be reported for each monitoring well sampled for each ground water sampling event. All measurements shall be to the nearest 0.01 feet:

- i. Before purging:
 - (1)-(3) (No change.)
- (4) The thickness of free product, if present, as determined pursuant to N.J.A.C. 7:26E-2.1[(a)11](a)14;
- (5)-(9) (No change.)
- ii.-v. (No change.)
- 8. (No change.)

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

- 1.-2. (No change.)
- 3. If applicable, a map of the distribution of **free product, and** surface water, structure and airborne contaminants, including sample location numbers and contaminant concentrations;
- 4.-5. (No change.)

(e) If a vapor intrusion evaluation was conducted pursuant to N.J.A.C. 7:26E-1.18, the site investigation report shall also include the following:

- 1. A summary of the vapor intrusion evaluation including, a description of all structures that were sampled and those that where sampling was determined not to be necessary; and
- 2. A scaled map of the site and surrounding area that:
 - i. Includes the locations of each structure and subsurface utility identified in relation to the areas of known ground water contamination;
 - ii. Includes the use of all structures and whether they are occupied; and

iii. Highlights each structure that is used as a residence, school, or child care center.

(f) The site investigation report shall also include the results of the baseline ecological evaluation.

(g) The site investigation report shall also include the results of all landfill and historic fill material investigations conducted pursuant to N.J.A.C. 7:26E-3.12, including:

1. A summary of all records pertaining to the nature of waste disposal at the landfill, and permit information; and

2. A copy of the records summarized in accordance with (g)1 above, as a separate attachment to the report.

(h) The site investigation report shall also include a summary and rationale for each variance from the requirements of this subchapter or guidance.

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) A remedial investigation is necessary at each area of concern with contaminants which exceed [the] **any** applicable [unrestricted use soil remediation standards or the applicable groundwater or surface water] remediation standard [pursuant to N.J.A.C. 7:26E-1.13]. The purposes of a remedial investigation are to:

- 1.-7. (No change.)
- (b) [The delineation of the horizontal and vertical limits of contamination to the applicable unrestricted use remediation standard for all media shall be conducted as part of the remedial investigation.] **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.-3. (No change.)
- (c) (No change.)

7:26E-4.2 Remedial investigation workplan

(a) [If a remedial investigation workplan is required by the Department in an oversight document or by the ISRA or UST programs, the workplan shall include proposals to complete all applicable requirements pursuant to N.J.A.C. 7:26E-4.1 and 4.3 through 4.7.] **The person responsible for conducting the remediation shall prepare a remedial investigation workplan prior to conducting the remedial investigation.** The remedial investigation workplan shall be [presented] in a format that corresponds to the outline of this section.

(b) The remedial investigation workplan shall include:

- 1.-8. (No change.)
- 9. Quality assurance project plan including proposed sampling/analytical methods pursuant to N.J.A.C. 7:26E-2.2;[and]
- 10. Health and safety plan pursuant to N.J.A.C. 7:26E-1.9[.]; and
- 11. **A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the workplan.**

TABLE 4-1

(No change.)

7:26E-4.4 Remedial investigation of ground water

- (a)-(f) (No change.)

(g) All [groundwater] **ground water** monitoring wells and piezometers shall:

1. Be constructed pursuant to N.J.A.C. 7:9D. [Variations from the well construction procedures in N.J.A.C. 7:9D shall be proposed to the assigned case manager prior to requesting a variance under N.J.A.C. 7:9D.] Failure to install a well or piezometer in accordance with current well construction specifications in N.J.A.C. 7:9D can result in rejection of results, and requirements to decommission the well or piezometer;

2.-10. (No change.)

11. Be constructed with a locking cap and generally protected from damage and vandalism. [Any damage or vandalism to a monitoring well or piezometer shall be reported to the Department, and] **The person responsible for conducting the remediation shall, within 14 days after discovering the damage, properly repair or decommission the damaged monitoring well or piezometer** [shall be properly repaired or decommissioned] in accordance with N.J.A.C. 7:9D.

(h)-(i) (No change.)

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

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

(c) The surface water investigation shall be conducted pursuant to (d) below to evaluate the relationship between contaminated ground water, sediments and surface waters, unless:

1. [Documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided with the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why] **If the person responsible for conducting the remediation determines that this migration pathway [was] is not considered significant, that person shall provide a technical rationale supporting that conclusion in the remedial investigation report;** or

2. (No change.)

(d) (No change.)

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

[(a) The remedial investigation shall include, unless the remedial investigation is being conducted pursuant to ISRA, an investigation of all landfills as follows:

1. The remedial investigation of landfills shall be conducted pursuant to N.J.A.C. 7:26E-4.1 according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Landfill investigations shall characterize the contents of the landfill through a complete file review, which shall include a review of the Department's Geographic Information System. In addition, the horizontal and vertical extent of fill material and impact on the soil, ground water, air and surface waters shall be evaluated;

3. The boundaries of the landfill shall be identified through geophysical sensing techniques, or subsurface exploration techniques including test pits or borings, or an aerial photographic history, or local government records, or use of the Department's Geographic Information System. Other methods may be used if documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why the methods were considered appropriate; and

4. The person responsible for conducting the remediation shall review all records pertaining to the landfill to determine if any hazardous waste pursuant to N.J.A.C. 7:26 may have been disposed in the landfill.]

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of a landfill as follows:

1. Determine the horizontal extent of the landfill without regard to the location of property boundaries, as follows:

i. Use aerial photography, local government records, and the Department's Geographical Information System;

ii. Install test pits at a minimum of one every 100 linear feet around the perimeter of the landfill;

iii. Install test pits and/or borings perpendicular to the landfill until no waste is found; and

iv. Use borings to determine the horizontal extent of the landfill if the landfill material is buried too deep for the use of test pits. Borings shall be of a sufficiently large diameter so that samples from the boring will clearly identify the recovered material;

2. Determine the vertical extent of the landfill as follows:

i. Install test pits or borings through the landfill material to native soil, meadow mat or bedrock without regard to the depth of the water table;

ii. Install test pits equally distributed across the landfill unless locations can be biased based on landfill records or geophysical sensing results or site observations;

iii. Use borings to determine the vertical extent of the landfill if the landfill material is buried too deep for the use of test pits. Borings shall be of a sufficiently large diameter so that samples from the boring will clearly identify the recovered material; and

iv. Install test pits or borings at the following minimum frequency:

<u>Acres of Land Fill</u>	<u>Number of Test Pits or Borings</u>
1 to 10	One per acre (minimum of three)
10 to 50	One per two acres (minimum of six)
51-100	One per three acres (minimum of 17)
101-200	One per four acres (minimum of 25)
Over 201	One per five acres (minimum of 40)

3. Delineate the location, condition, and contents of buried containers identified in the landfill pursuant to N.J.A.C. 7:26E-3.12(a)2 using test pits as follows:

i. Determine the general physical characteristics of the waste material including the presence of free product pursuant to N.J.A.C. 7:26E-2.1(a)14;

ii. Log the waste material, soils, and all buried containers encountered in the test pits or borings; and

iii. Record the location of each test pit or borings using a format compatible with the Department's Geographic Information System (see N.J.A.C. 7:1D Appendix A) and the Department's GIS Guidance;

4. Evaluate each test pit or boring required pursuant to (a)1 through 3 above as follows:

i. Determine the general physical characteristics of the waste material including the presence of free product pursuant to N.J.A.C. 7:26E-2.1(a)14;

ii. Log the waste material, soils, and all buried containers encountered in the test pits or borings;

iii. Record the location of each test pit or borings using a format compatible with the Department's Geographic Information System (see N.J.A.C. 7:1D Appendix A) and the Department's GIS Guidance;

iv. Collect leachate or ground water samples, when present;

v. Collect soil samples from below any waste material;

vi. Screen for lower explosive level (LEL), volatile organic contaminants, methane and hydrogen sulfide using appropriate field analytical techniques such as photoionization detector (PID), flame ionization detector (FID), or other suitable instruments capable of detecting the contaminants pursuant to N.J.A.C. 7:26E-2.1(b);

vii. Conduct a radiation survey of the test pits/borings using a hand-held gamma meter. The survey shall be conducted by a person qualified and experienced in the use of radiation survey techniques; and

viii. Analyze samples collected above for TCL/TAL, pH, ammonia (as N), nitrate (as N), total dissolved solids (TDS), and conductivity;

5. Conduct ground water and leachate sampling pursuant to N.J.A.C. 7:26E-3.7 and as follows:

i. Determine ground water flow direction and submit a Ground Water Contour Map Reporting form;

ii. Determine if ground water mounding is occurring by installing a minimum of one shallow monitoring well within the landfill. The well(s) shall be biased toward topographically high points in the central portion of the landfill;

iii. Install monitoring wells based on the contour map at a minimum of one for every 150 linear feet along the sides of the landfill where ground water flows from the landfill;

iv. Install monitoring wells just beyond the perimeter of the landfill with a minimum of one well in the upgradient direction of ground water flow and three wells in the downgradient direction

with additional wells installed if flow extends radially from the landfill;

v. Analyze ground water samples collected from test pits installed pursuant to (a)1 through 3 above, if potential in lieu of shallow ground water monitoring wells required in (a)2 and 3 above. Bias sampling towards test pits where contamination is indicated by visual observations, odors, free product, and field instrument readings;

vi. Collect ground water or leachate samples at the water table from monitoring wells installed pursuant to (a)5ii through iv above; and

vii. Analyze ground water and leachate samples for TCL/TAL, pH, ammonia (as N), nitrate (as N), total dissolved solids (TDS), and conductivity; and

6. Delineate sources of contaminants within and beyond the limits of the landfill based on the results of the screening of vents, test pits, or borings for lower explosive limit, volatile organic contaminants, methane, and hydrogen sulfide.

(b) The [remedial investigation of historic fill material] person responsible for conducting the remediation shall [identify] 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)11](a)14, as follows:

1.-3. (No change.)

4. Areas of concern located in historic fill material shall be investigated independently of the historic fill material. To differentiate between contaminants in fill and those from site discharges, an evaluation of the contaminant type and concentration gradient in each area of concern and the contaminant distribution in the fill shall be conducted. If this evaluation is not conclusive the Department may require additional data or information; and

5. If at any time during the remedial investigation of fill material the person responsible for conducting the remediation encounters materials that do not meet the definition of historic fill material because it includes material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag or tailings, free and/or residual product, as determined pursuant to N.J.A.C. 7:26E-2.1[(a)11](a)14, or containerized waste, the remediation of each such area shall be conducted as a separate area(s) of concern pursuant to N.J.A.C. 7:26E-4.; and

6. An appropriate number of ground water samples (minimum of one sample) are required when a high degree of certainty is needed to document that ground water is not contaminated, including, without limitation, if the historic fill site is in an area where ground water is used for potable water. Any ground water sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.7(c).]

TABLE 4-2

(No change.)

7:26E-4.8 Remedial investigation report

(a) The remedial investigation report shall comply with all requirements in N.J.A.C. 7:26E-3.13 (site investigation report) and in addition shall present and discuss any additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the [approved] remedial investigation workplan as outlined in N.J.A.C. 7:26E-4.2[, if applicable]. The remedial investigation report shall be accompanied by a Remedial Investigation Report form and be presented in a format that corresponds to the outline of this section.

(b) The remedial investigation report shall include the following:

1. A copy of the remedial investigation workplan required pursuant N.J.A.C. 7:26E-4.2;

[1.] 2. (No change in text.)

[2.] 3. Physical setting pursuant to N.J.A.C. 7:26E-4.2(b)4, including, but not limited to]:

i. The] the results of the [groundwater] ground water flow direction confirmation conducted pursuant to N.J.A.C. 7:26E-4.4(h)3ii; [and

ii. The results of the updated well search conducted pursuant to N.J.A.C. 7:26E-4.4(h)3v, including a conclusion as to whether any wells

may be impacted by the contaminant plume. The results of the well search shall be presented on the well search form at Appendix B.]

[3.] 4. Technical overview pursuant to N.J.A.C. 7:26E-3.13(b)3 and, in addition, the following items shall be discussed:

i.-ii. (No change.)

iii. A summary of the results of any ecological assessments conducted; [and]

[4.] 5. Findings/recommendations pursuant to N.J.A.C. 7:26E-3.13(b)4[.] and shall include a determination whether remedial action is required for soil pursuant to the Department's Compliance Guidance; and

6. A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report.

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

(e) If the person responsible for conducting the remediation conducted a vapor intrusion evaluation during the remedial investigation, the person shall include the results of that evaluation as a part of the remedial investigation report required pursuant to N.J.A.C. 7:26E-3.13(e).

(f) The person responsible for conducting the remediation shall submit an updated receptor evaluation pursuant to N.J.A.C. 7:26E-1.15 on a Receptor Evaluation form provided by the Department.

(g) The remedial investigation report shall also contain the results of all other remedial investigations conducted pursuant to this subchapter.

SUBCHAPTER 5. REMEDIAL ACTION SELECTION

7:26E-5.1 Remedial action selection

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

(c) [A] The person responsible for conducting [a] the remediation [for a site] shall select a remedial action that reduces **contamination to below all applicable remediation standards** or eliminates exposure to [contaminants] **contamination** above the applicable remediation standards[.] based on the current and future land use for the site and all of the following:

1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12;

i. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4; and

ii. Any other applicable standards adopted pursuant to law;

2. All applicable New Jersey regulations, including, without limitation:

i. This chapter; and

ii. The remediation standards promulgated by the Department at N.J.A.C. 7:26D;

3. The Department's technical guidelines concerning site remediation at www.nj.gov/dep/srp/srra/guidance; and

4. If there is no specific requirement provided by any technical standard the Department has adopted, or the Department's guidance is not appropriate or necessary, the person responsible for conducting the remediation may use the following additional technical guidance to make decisions regarding remediation, shall specifically identify all such guidance used, and set forth the rationale for such use:

i. Relevant guidance from the United States Environmental Protection Agency or other states; and

ii. Other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and the environment.

(d) In determining the appropriate remedial action that will reduce or eliminate exposure to contaminants above the applicable remediation standard, the person responsible for conducting the remediation shall also select, develop, and implement a remedial action that is based on the following factors:

1. The ability of the remedial action to protect the public health and safety and the environment, including:

i.-ii. (No change.)

iii. The degree to which the [proposed] remedial action reduces toxicity, mobility, or volume of contaminants through treatment, reuse or recycling;

iv.-v. (No change.)

2. The implementability of the [proposed] remedial action, including:

i. The engineering and scientific feasibility and availability of the technologies that the [proposed] remedial action would employ. If treatability, bench scale, or pilot studies have been conducted pursuant to N.J.A.C. 7:26E-4.1(a)4, these results shall be utilized to determine whether or not the [proposed] remedial action is technically feasible; or

ii. The ability of the person responsible for conducting the remediation to implement the proposed remedial action within a reasonable time frame. A proposed remedial action will be considered timely if it will achieve the applicable remediation standard within five years from the time the remedy is implemented, or in the case where Department approval of a remedial action workplan is required or sought, five years from remedial action workplan approval. Remedial actions to address immediate environmental concerns shall be considered timely as specific by the Department in an oversight document pursuant to N.J.A.C. 7:26C; and]

[iii.] ii. (No change in text.)

3. The consistency of the [proposed] remedial action with other applicable Federal, State, and local laws and regulations, including, without limitation, the provisions of the Pinelands Protection Act, P.L. 1979, c.111 ([N.J.A.C.] N.J.S.A. 13:18A-1 et seq.), any rules promulgated pursuant thereto, and the provisions of section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 4711;

4. The potential impacts of the [proposed] remedial action on the local community, including, without limitation:

i. (No change.)

ii. The degree to which the [proposed] remedial action is consistent with the local land use Master Plan; and

5. (No change.)

[d)] (e) [A] The person responsible for conducting the remediation may select an innovative remedial action technology for any site, area of concern, or contaminated media[, upon review and approval of an application submitted to the Department]. The [application for use] selection of an innovative remedial action technology shall include:

1. (No change.)

2. A report that includes a detailed description of the following shall be submitted with the remedial action selection report, the remedial action workplan or the feasibility study, as applicable:

i.-iv. (No change.)

(f) The person responsible for conducting the remediation that is remediating a site that is subject to direct Department oversight pursuant to N.J.S.A. 58:10C-27 shall submit a feasibility study, consistent with the USEPA guidance, with a remedial investigation report instead of submitting a remedial action selection report, or as the Department otherwise directs.

Recodify existing (e) and (f) as (g) and (h) (No change in text.)

(i) If new construction of, or a change in use to, a residence, a school, or child care center will occur at a site that is undergoing remediation, under the circumstances listed in (i)1 below, the person responsible for conducting the remediation shall select a remedial action from the list of remedial actions in (i)2 below.

1. For any remediation initiated:

i. Before May 7, 2010, and the Department directs the person to do so; or

ii. On or after May 7, 2010.

2. List of remedial actions;

i. An unrestricted use remedial action;

ii. A presumptive remedial action consistent with the Department's Presumptive Remedy Guidance on presumptive remedial actions; or

iii. An alternative remedy pursuant to (j) below.

(j) The person responsible for conducting the remediation shall not implement an alternative remedy for a site that will be used as a residence, a school, or a child care center without the Department's prior written approval.

(k) The person responsible for conducting the remediation shall request the Department's approval of an alternative remedy, pursuant to (j) above, by submitting all of the following to the Department:

1. A written analysis explaining why the presumptive remedial action is impractical due to site conditions if the basis for proposing an alternative remedy is that the presumptive remedies published by the Department are impractical; and

2. A written analysis that the alternative remedy is protective of the public health and safety.

7:26E-5.2 Remedial action selection report

(a) The person responsible for conducting the remediation shall prepare and submit a remedial action selection report with the remedial action workplan and the Remedial Action Workplan form, except as provided in (c) below.

(b) The remedial action selection report shall be presented in a format that corresponds to the outline of this section and shall include:

1. A detailed description of the selected remedial action including, without limitation, specifications for engineering and institutional controls, and a plan for monitoring of such controls pursuant to N.J.A.C. 7:26E-8;

2. A list of the remediation standards that the remedial action will comply with for each media of concern at each area of concern;

3. A discussion of how the remedial action satisfies all of the criteria pursuant to N.J.A.C. 7:26E-5.1(c) through (e) as applicable;

4. A discussion of why the alternative remedy is equally protective as the applicable presumptive remedy pursuant to N.J.A.C. 7:26E-5.1(j). An alternative remedy shall be approved by the Department prior to its implementation at a site;

5. A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report; and

6. Any additional information regarding remedial action selection that is necessary for the Department to determine if the remedy is appropriate.

(c) The person responsible for conducting the remediation is not required to submit a remedial action selection report when:

1. The remediation is limited to an unregulated heating oil tank system;

2. The person is required to submit a feasibility study pursuant to CERCLA, or is required to submit a corrective measures study pursuant to the Resource Conservation and Recovery Act (RCRA);

3. The person is subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27; or

4. That person is using a licensed site remediation professional to oversee the remediation unless a remedy that is an alternative to the presumptive remedy is proposed.

SUBCHAPTER 6. REMEDIAL ACTION

7:26E-6.1 Remedial action requirements

(a) (No change.)

[(b) Each remedial action implemented at a contaminated site shall:

1. Be approved by the Department prior to implementation, if a remedial action selection report is also required pursuant to N.J.A.C. 7:26E-5.2(a);

2. Comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department, provided, however, that if the applicable numeric remediation standards decrease by an order of magnitude or more prior to the issuance of a No Further Action Letter for the area of concern or the site, the person responsible for conducting the remediation shall be responsible for any additional necessary remediation to achieve the new remediation standards;

3. Comply with all applicable Federal, State, and local laws, regulations, and requirements; and

4. Not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another.]

(b) Except as provided in N.J.A.C. 7:26E-6.2(b), the person responsible for conducting the remediation shall ensure that each remedial action implemented at a contaminated site shall:

1. Be approved by the Department or a licensed site remediation professional prior to implementation;
2. Comply with the requirements of this subchapter;
3. Not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another;
4. Comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department or was prepared by a licensed site remediation professional, provided, however, that if an applicable numeric remediation standard decreases by an order of magnitude or more prior to the issuance of a final remediation document for the site being remediated, the person shall be responsible for additional necessary remediation to achieve the new remediation standard; and
5. Use institutional controls whenever a restricted use remedy or a limited restricted use remedy is used to remediate a site.

(c)-(f) (No change.)

7:26E-6.2 Remedial action workplan

(a) [If a remedial action workplan is required by the Department in an oversight document or pursuant to the ISRA or UST programs, or if the person responsible for conducting the remediation elects to obtain Department pre-approval for the workplan, the workplan shall be submitted in accordance with the schedule contained in that document, if applicable, and shall be presented in a format that corresponds directly to the outline of this section in a format that corresponds directly to the outline of this section.] **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 a Remedial Action Workplan form.** The workplan shall include:

1.-15. (No change.)

16. The following documentation whenever a deed notice is required as a component of the remedial action:

- i. (No change.)
- ii. A draft deed notice, including all of the exhibits, pursuant to N.J.A.C. 7:26E-8.2(c) **unless a licensed site remediation professional has been hired;**
17. All documentation required pursuant to N.J.A.C. 7:26E-8.3 whenever a classification exception area is to be established; [and]
18. A plan for the **monitoring**, maintenance and evaluation of all engineering and institutional controls pursuant to N.J.A.C. 7:26E-6.3, 8.5, 8.6, and 8.7, as applicable[.]; **and**
19. **A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the workplan.**

(b) **The person responsible for conducting the remediation subject to N.J.A.C. 7:26C-2.3 may implement a soil remedial action without the prior Department approval of a remedial action workplan if that person:**

1. **Can complete the soil remedial action within five years from the commencement of the implementation of the remedial action; or**
2. **Is implementing a soil remediation which meets the established residential or nonresidential use soil remediation standards.**

[b) If contaminated soil will be reused at a site, an evaluation pursuant to N.J.A.C. 7:26E-6.4(d) shall be conducted and a soil reuse proposal shall be submitted to the Department as part of the remedial action workplan. The soil reuse proposal may also be submitted at any time during the remediation process, as appropriate. At a minimum, the soil reuse proposal shall include:]

(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.-3. (No change.)

[c)] (d) (No change in text.)

7:26E-6.3 Specific remedial action requirements

(a) (No change.)

(b) The following requirements shall be followed for the closure of an underground storage tank:

1.-5. (No change.)

6. The tank shall be removed from the site according to all applicable laws and regulations.

i.-ii. (No change.)

iii. If the underground storage tank is located under a permanent structure or is physically inaccessible or a certification is submitted, signed and sealed by a licensed New Jersey professional engineer, stating that the sampling requirements at (b)6ii(3), (4), and (5) above for closure of the underground storage tank will cause damage to an adjacent structure, an alternate method for documenting the integrity of the tank may be submitted pursuant to N.J.A.C. 7:26E-[1.6(d)]1.7;

iv.-v. (No change.)

[(c) For a proposed remediation that includes a discharge to ground water described by the New Jersey Pollutant Discharge Elimination System (NJPDES) permit-by-rule at N.J.A.C. 7:14A-7.5(b)3vii, the following requirements apply:

1. The person seeking authorization under this permit-by-rule shall submit a remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 that includes the following:

i. A detailed description of how the discharge would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C-6, and the Surface Water Quality Standards, N.J.A.C. 7:9B;

ii. A detailed explanation of why the proposed ground water treatment system would be appropriate for the discharge. The explanation shall include, but not be limited to, plans for operating the proposed treatment system by a person licensed pursuant to the Licensing of Water Supply and Wastewater Treatment System Operators rules, N.J.A.C. 7:10A, where a licensed operator would be required to run the system;

iii. A detailed description of the type, location, volume and duration of the discharge that would be required for the remediation of ground water or soil, and a detailed description of the effect that the proposed discharge would have on ground water or any other receptor;

iv. A detailed description of the concentrations of all contaminants expected to be present in the discharge;

v. A detailed description of the chemical content of all fluids and substances to be discharged and/or placed into, or onto the ground to implement remediation;

vi. A detailed monitoring plan, including, but not limited to, the monitoring wells to be sampled, the frequency of sampling for wells, and if applicable, the fluid to be discharged, and a list of all the analytes to be monitored;

vii. A detailed proposal to, as applicable, modify any existing Classification Exception Area or establish a new Classification Exception Area, as defined in the Ground Water Quality Standards, N.J.A.C. 7:9-6;

viii. A detailed schedule for the submission of reports of all discharge-related activities;

ix. If applicable, specifications for the design of an underground injection system. Such specifications shall be in accordance with New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A-8; and

x. A draft public notice, worded exactly as the model in Appendix H, for approval prior to publication in accordance with (c)2 below.

2. The person seeking authorization under this permit-by-rule shall publish the approved public notice of the request for permit-by-rule authorization required by (c)1x above in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least 45 days prior to the proposed startup date of the ground water discharge, that includes the following:

i. The name and location of the site;

ii. A brief description of the proposed discharge; and

iii. A public comment period of at least 30 days from the date of publication of the public notice;

3. The person seeking authorization under this permit-by-rule shall provide a copy of the remedial action workplan, which includes the request for permit-by-rule authorization, to the mayor, clerk, and planning board for each municipality where the contaminated site is

located, and any sewerage authority, health officer and environmental commission with jurisdiction for each area in which the contaminated site is located;

4. The person seeking authorization under this permit-by-rule shall submit to the Department proof of publication of the public notice required by (c)2 above within 15 calendar days after the notice is published;

5. The Department shall hold a public hearing on a request for authorization under this permit-by-rule if there is or may be a significant degree of public interest in favor of holding a public hearing. The Department may hold a public hearing if it determines that a hearing is likely to clarify one or more legal or factual issues regarding a request for permit-by-rule authorization and that oral testimony is essential to adequately express all issues and concerns;

i. The Department shall publish a notice of the public hearing at least 30 days prior to the hearing; and

ii. The Department shall extend the public comment period to the close of the public hearing;

6. Written comments and requests for a public hearing on the request for permit-by-rule authorization shall be submitted to the Department to the address provided in the public notice in accordance with (c)2 above.

7. The Department shall consider comments received during the public comment period and respond to the comments when it issues the written decision to approve or deny the permit-by-rule authorization. The Department shall provide a copy of the decision to each commenter and to each person or entity to whom the notice was sent pursuant to (c)3 above.

8. The person to whom the Department issues a permit-by-rule authorization shall comply with the record-keeping requirements of the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules set forth at N.J.A.C. 7:14A-6.6.]

(c) The person responsible for conducting the remediation of a landfill shall:

1. Obtain and comply with all permits required by N.J.A.C. 7:26-2A; and

2. If any drums, tanks or other waste containers are identified in the landfill, evaluate whether:

i. The integrity of the landfill containment system would be threatened if the drum, tanks or other waste containers are left in place; and

ii. Excavation and treatment of these materials would be practicable and result in a reduction in risk at the site.

(d) When submitting a remedial action workplan for natural [groundwater] **ground water** remediation, the person responsible for conducting the remediation shall demonstrate to the Department that:

1. [Groundwater] **Ground water** contaminant concentrations will decrease to applicable remediation standards pursuant to N.J.A.C. [7:26E-1.13] **7:26D** through degradation, retardation, or dispersion under present site conditions.

i.-ii. (No change.)

2. Free and/or residual product in the unsaturated and saturated zones, as determined pursuant to N.J.A.C. 7:26E-2.1[(a)11](a)14, is treated or removed, if practicable, or contained if treatment or removal are not practicable;

3.-6. (No change.)

7. Contaminant levels in ground water do not present a vapor risk to any receptors[. This determination shall be made on a case-by-case basis];

8.-10. (No change.)

(e) (No change.)

(f) The person responsible for conducting the remediation that is implementing an active ground water remediation shall include a monitoring plan in the remedial action workplan with a schedule designed to demonstrate that:

1. There is a decreasing trend of contaminant concentrations in the ground water and that the ground water remediation standards will be attained in the treatment zone using the Mann-Whitney U test using Appendix C or the Department's Remedial Action Outcome guidance shall be used make this determination;

2. The plume is not migrating horizontally or vertically into an uncontaminated aquifer zone below and adjacent to the contaminant plume;

3. The plume is contained and not reaching the sentinel wells. Contaminant levels in sentinel wells shall remain below the applicable standard. The sentinel wells shall be located no closer than three years contaminant travel time to the nearest potential downgradient receptor and no further than five years contaminant travel time from the delineated downgradient extent of the contaminant plume; and

4. The ground water remedial action is performing as designed.

(g) The person responsible for conducting the remediation that is implementing an active ground water remediation shall include a ground water monitoring plan, with a schedule, designed to evaluate the ground water remedial action in order to:

1. Optimize the system's performance as the remediation progresses; and

2. Optimize the ground water quality monitoring program as remediation progresses.

(h) The person responsible for conducting the remediation subject to (e) and (g) above shall apply for a ground water remedial action permit by submitting the following to the Department with the monitoring plan pursuant to (e) and (g) above:

1. A completed Ground Water Remedial Action Permit form;

2. A completed CEA/Well Restriction Area (WRA) Permit Fact Sheet form; and

3. A ground water remedial action permit application fee pursuant to N.J.A.C. 7:26C-4.4.

7:26E-6.4 [Post-remedial] **Additional remedial** action requirements

(a) The [following sampling] **person responsible for conducting the remediation** shall document the effectiveness of the remedial action as follows:

1.-6. (No change.)

(b) [All areas subject to remediation shall be restored.] **The person responsible for conducting the remediation shall restore all areas of concern** to the extent practicable, to pre-remediation conditions with respect to topography, hydrology and vegetation[, unless alternate restoration is approved by the Department pursuant to N.J.A.C. 7:26E-1.6(d).] **as follows:**

1.-3. (No change.)

(c) (No change.)

(d) If contaminated soils will be reused at a site, [a soil reuse evaluation proposal shall be conducted and submitted to the Department prior to the reuse of contaminated soils and shall satisfy] **the person responsible for conducting the remediation shall prepare a soil reuse plan pursuant to the Department's Guidance Document for the Remediation of Contaminated Soils that complies with the following sampling requirements:**

1. The contaminated soil intended for reuse shall be fully characterized and delineated pursuant to the site investigation, N.J.A.C. 7:26E-3, and remedial investigation, N.J.A.C. 7:26E-4, or, if the soil has not been fully characterized and delineated, the soil shall be sampled in accordance with all applicable requirements at N.J.A.C. 7:26E-1, 2, 3.4, and 3.6, at the following frequencies:

i.-ii. (No change.)

iii. For quantities of soil greater than 1,000 cubic yards, a lower sampling frequency may be acceptable[, subject to prior Departmental approval pursuant to N.J.A.C. 7:26E-1.6(d)];

2. (No change.)

3. Excavated soil from drill cuttings or test pit excavations, may be returned to the original location provided that:

i. (No change.)

ii. Neither free nor residual product is present, as determined pursuant to N.J.A.C. 7:26E-2.1[(a)11](a)14;

iii.-iv. (No change.)

(e) If the person responsible for conducting the remediation required for real property not owned by that person does not obtain the property owner's written consent to implement the institutional and/or engineering control at the property and to record a deed notice, the person shall

remediate the property to an applicable [unrestricted] **residential** soil remediation standard.

(f) The person responsible for conducting the remediation shall implement, when contaminant levels in the source monitoring wells are at or below the applicable standards for two consecutive high seasonal water table monitoring events, a post remedial action implementation monitoring plan to determine whether the achieved ground water remediation standards are sustainable and not subject to concentration rebound after remediation standards are met.

7:26E-6.5 Remedial action schedule

(a) (No change.)

(b) The person responsible for conducting the remediation shall include the following in the remedial action schedule:

1. Monthly time frames, for the initiation and completion of each remedial action task[, including a consideration of Department review time for submitted reports. Specific dates shall not be listed, as these will be contingent upon Department approval of the remedial action workplan];

2.-3. (No change.)

4. A listing of all anticipated report submittals to the Department [including, without limitation, progress reports, groundwater monitoring reports, post-remedial action data reports for individual areas of concern, construction design reports and final remedial action reports];

[5. Time frames for submission of remedial action progress reports pursuant to N.J.A.C. 7:26E-6.6 and the remedial action report pursuant to N.J.A.C. 7:26E-6.7, including consideration of:

i. Review times of not only the person preparing each report, but all other persons who will be reviewing the report prior to submission to the Department, including, but not limited to, owners, operators, subcontractors, and legal advisors; and

ii. Laboratory analysis and data reduction time;]

[6.] **5.** A timeframe for submitting a request for a waste classification to the Department for disposal or treatment of waste generated during implementation of the remedial action; [and]

[7.] **6.** A timeframe for site restoration pursuant to N.J.A.C. 7:26E-6.4(b)[, and the Department's final inspection.]; **and**

7. A schedule for the submission of a ground water remedial action permit application, pursuant to N.J.A.C. 7:26E-6.3(h).

(c) (No change.)

7:26E-6.6 Remedial action progress reports

(a) The person responsible for conducting the remediation **who does not have a remedial action permit**, shall submit remedial action progress reports to the Department pursuant to this section and according to the remedial action schedule pursuant to N.J.A.C. 7:26E-6.5.

(b) The person responsible for conducting the remediation shall include the following in each remedial action progress report, as appropriate:

1.-6. (No change.)

7. The cost of each remedial action, including:

i. An annual summary of all [remedial action] **remediation** costs incurred to date; and

ii. (No change.)

8. (No change.)

9. For [active groundwater] **ground water** remedial actions:

i.-iv. (No change.)

10.-12. (No change.)

7:26E-6.7 Remedial action report

(a) The person responsible for conducting the remediation shall prepare a remedial action report **and submit with a Remedial Action Report form**, in a format that corresponds directly to the outline of this section, when the remedial action is completed, except as noted in (e) below.

(b) The person responsible for conducting the remediation shall include the following in the remedial action report:

1.-5. (No change.)

6. A report of the [remedial action] **remediation** costs, including a cost estimate to monitor, maintain, and certify the protectiveness of each

engineering and/or institutional control pursuant to N.J.A.C. 7:26E-8; [and]

7. A copy of a deed notice, stamped "Filed" if applicable pursuant to N.J.A.C. 7:26E-8.2(d), along with a Remedial Action Permit form on a remedial action permit application fee pursuant to N.J.A.C. 7:26C-4.4; and

[7.] **8.** Information pursuant to (c) through [(e)] (g) below, as applicable.

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

(f) The person responsible for conducting the remediation shall submit an updated receptor evaluation pursuant to N.J.A.C. 7:26E-1.15(d) on a Receptor Evaluation form provided by the Department.

(g) A completed a case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report.

SUBCHAPTER 7. PERMIT IDENTIFICATION, [AND] 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.-17. (No change.)

18. New Jersey Pollutant Discharge Elimination System (NJPDES) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);

i.-ii. (No change.)

iii. NJPDES—Discharge to Ground Water (DGW) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A and **N.J.A.C. 7:26E-7.2**);

19.-29. (No change.)

30. Hazardous Waste TSD Facility Permit, except that hazardous waste treatment, storage, or disposal facility permits pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Hazardous Waste rules at N.J.A.C. 7:26G, shall not be required for any remediation conducted on site pursuant to [any of the following:

i. An administrative consent order pursuant to N.J.A.C. 7:26C; or

ii. A memorandum of agreement expressly executed for the implementation of a Department approved remedial action pursuant to a Department approved schedule; provided, however, that if the remedial action is not implemented pursuant to the approved schedule, then this provision does not apply and the otherwise applicable hazardous waste permits shall be required

iii. Approvals under authority of ISRA and UST; or

iv. Approvals under any State publicly funded projects] **the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C; and**

31. (No change.)

(b) (No change.)

(c) [Any person conducting a remedial action pursuant to an oversight document or the ISRA or UST programs,] **The person responsible for conducting the remediation** shall develop a permit application schedule to identify the timeframes for application and issuance/approval pursuant to N.J.A.C. 7:26E-6.5(b)3.

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), the person responsible for 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) The person responsible for conducting the remediation shall submit a DGW proposal with a form available from the Department to the address provided on the form. The person shall include a detailed description of the following with the DGW proposal:

1. How the DGW would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Surface Water Quality Standards, N.J.A.C. 7:9B, as applicable;

2. Why the proposed ground water treatment system would be appropriate for the DGW;

3. The type, location, volume and duration of the discharge proposed for the remediation of ground water or soil, and the effect that the proposed discharge would have on ground water or any other receptor;

4. The concentrations of all contaminants expected to be present, prior to any treatment, in the fluid to be discharged;

5. The chemical content of all fluids and substances to be discharged and/or placed into, or onto the ground to implement remedial action;

6. A monitoring plan, including but not limited to, the monitoring wells to be sampled, the frequency of sampling for wells, and if applicable, monitoring of the fluid to be discharged, and a list of all the analytes to be monitored;

7. A proposal to establish a Classification Exception Area for the area impacted by the DGW pursuant to the Department's Discharge to Ground Water Technical Manual, if applicable;

8. A schedule for the submission of reports of all discharge-related activities; and

9. Specifications for the design of an underground injection system pursuant to N.J.A.C. 7:14A-8, as applicable.

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

1. Prior to publication of the public notice, submit a draft public notice, using the model in chapter Appendix H, to the address provided on the form, for the Department's approval;

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. The approved public notice to the clerk for each municipality in which the contaminated site is located, and to the designated local health official;

ii. The DGW proposal to the clerk for each municipality in which the contaminated site is located and to the designated local health official, if requested; and

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);

3. Publish the approved public notice of the DGW in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least 35 days prior to the proposed startup date of the ground water discharge; and

4. Submit to the Department the proof of publication for the public notice within 15 days after the notice is published, and provide the names and addresses of everyone that was sent a copy of the public notice and DGW proposal.

(d) The Department shall hold a public hearing on the DGW proposal if there is, or may be, a significant degree of public interest in favor of holding a public hearing. The Department may hold a public hearing if it determines that a hearing is likely to clarify legal or factual issues regarding the DGW proposal and that oral testimony is essential to adequately express all issues and concerns. If the Department decides to hold a public hearing on the proposed DGW, the Department shall:

1. Publish a notice of a public hearing at least 30 days prior to the hearing;

2. Extend the public comment period to the close of the public hearing;

3. Consider comments received during the public comment period and respond to the comments when it issues the written decision to approve or reject the DGW proposal; and

4. Provide a copy of the decision to each commenter and to each person or entity to whom the notice was sent pursuant to (c)2 above.

(e) After the Department approves the DGW, the person responsible for conducting the remediation shall comply with the applicable requirements of N.J.A.C. 7:14A-6, this section and the Department's guidance NJPDES Discharges to Ground Water Technical Manual for the Site Remediation Program.

(f) The person responsible for conducting the remediation is exempt from the notification provisions of this section:

1. When the proposed discharge is for the remediation of an unregulated heating oil storage tank; or

2. When the discharge will not exceed 180 days.

SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS

7:26E-8.1 General requirements

(a) (No change.)

(b) [Any person proposing to] **The person responsible for conducting the remediation that will use an engineering and/or institutional control[s] as part of a remedial action** shall:

1. [Propose] **Prepare** a deed notice, pursuant to N.J.A.C. 7:26E-8.2, whenever:

i. Soil contamination will remain above a concentration that would allow for the unrestricted use of the property, **and may include engineering controls such as a cap or fencing; [or]**

ii. A ground water remedial action includes containment[.], **such as a ground water pump and treat system or a slurry wall; or**

iii. **A landfill is being remediated;**

2. (No change.)

3. Monitor each engineering and institutional control [until such time that the Department approves in writing the removal of the control].

(c) In evaluating the protectiveness of a remedial action that includes an engineering and/or institutional control, the [Department will consider site-specific conditions, including, but not limited to] **person responsible for conducting the remediation shall document in the remedial action workplan, how each of the following criteria has been evaluated to ensure that the remedial action is protective of the public health and safety and of the environment:**

1.-6. (No change.)

7:26E-8.2 Deed notice requirements

(a) The person responsible for conducting the remediation of a site that [includes a soil remedial action that includes a proposed] **will use a deed notice pursuant to N.J.A.C. 7:26E-8.1(b)** shall:

1. (No change.)

2. If that person is not the owner of the site, [provide the Department documentation of] **document** the owner's consent to record the necessary deed notice pursuant to (b) below.

(b) The person responsible for conducting the remediation that [proposes] **will implement** a remedial action that includes a deed notice shall [provide the Department with] **include** a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16, as follows:

1.-2. (No change.)

(c) The person responsible for conducting the remediation [proposing] **that will implement** a remedial action that requires the owner of [the site] **any real property** to record a deed notice shall comply with the following procedures [for drafting a deed notice for the Department's approval as follows]:

1. For a property that is owned by a local, county, State or Federal government agency (except as provided in (c)2 below), and no deed is associated with the [site] **property**, the person responsible for conducting the remediation shall [submit a draft] **prepare** a notice worded pursuant to (d) below, to serve as the notice in lieu of a deed notice;

2. For a property that is owned by the U.S. Department of Defense, and no deed is associated with the [site] **property**, the person responsible for conducting the remediation shall [draft] **prepare** an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to (d) below, to serve as the notice in lieu of a deed notice; or

3. For a property that is owned by any person not described in (c)1 or 2 above, the person responsible for conducting the remediation shall [provide the Department with a draft] **prepare** a deed notice pursuant to (d) below.

(d) The person responsible for conducting the remediation [who elects to] **that will use a deed notice as part of a remedial action for a contaminated site shall [submit a draft] prepare a deed notice [to the**

Department, as part of the remedial action work plan pursuant to N.J.A.C. 7:26E-6.2(a)16,] that:

1. Is worded exactly as the model document in N.J.A.C. 7:26E Appendix E and the Department's Deed Notice Guidance; and

2. Includes copies of all required maps that:

i. Are GIS compatible [with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>] and are prepared using the Department's GIS guidance at <http://www.state.nj.us/dep/srp/srra/regs/techgis/>;

ii.-v. (No change.)

(e) The person responsible for conducting the remediation who proposes to use a deed notice as part of a remedial action for a contaminated site shall submit a final draft of the deed notice to the Department as part of the remedial action report pursuant to N.J.A.C. 7:26E-6.6, unless the Department directs its submission at an earlier time.]

[(f)] (e) [Within 45 calendar days after the receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the] The person responsible for conducting the remediation that will use a deed notice as part of a remedial action for a contaminated site shall comply with the following, as applicable:

1. If there is a deed for the property, the person shall have the owner of the property record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the [site] property is located;

2. If the property to which the notice applies is a local, county or State roadway, the person shall provide a paper copy of the document referenced in (c)1 above, and an electronic copy in a read only format, including all of the exhibits, to the following, as applicable:

i. Each road department of each municipality in which the [site] property is located;

ii. Each road department of each county in which the [site] property is located;

iii.-iv. (No change.)

3. In all other circumstances, the person shall provide a paper copy of the recorded deed notice, stamped "Filed," or notice, as applicable, and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in [(g)] (f) below.

[(g)] (f) [Within 45 calendar days after receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the] The person responsible for conducting the remediation that will use a deed notice prepared pursuant to (d) above, as part of a remedial action for a contaminated site, shall provide, as applicable, a paper copy of the recorded deed notice or document referenced in (c)1 above, and an electronic copy in read only format, including all exhibits, to the following:

1. The [Department's assigned case manager] Department;

2. The municipal clerk, mayor and town council of each municipality in which the [site] property is located;

3. The local, county, and regional health department in each municipality and county in which the [site] property is located;

4. Each gas, electric, water, sewer, cable company and all other utilities that service the [site] property or have a license or easement to cross the [site] property;

5. The Pinelands Commission if the [site] property is located within an area subject to the jurisdiction of the Pinelands Commission; and

6. (No change.)

[(h)] (g) Any person who chooses to redevelop or change the use of [a site] real property in a manner inconsistent with a remedial action that includes an engineering and/or institutional control, or conduct additional remediation or other activities that [may compromise the integrity of an engineering control, such that the remedy no longer meets the applicable health risk standard, or is no longer protective of public health, safety and of the environment, shall obtain the Department's prior written approval of such activities by submitting:] would result in the need to file a new

deed notice or replace a declaration of environmental restrictions associated with the real property, shall comply with N.J.A.C. 7:26C-2.4.

[1. A memorandum of agreement application, pursuant to N.J.A.C. 7:26C-3, for the Department's oversight of activity, if the person is not already subject to the Department's oversight for the site;

2. A remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 prior to implementation of such activities; and

3. A request to the Department, pursuant to (i) below, to remove or modify, as appropriate, the declaration of environmental restrictions or deed notice.

(i) Any person may submit a written request along with the memorandum of agreement application, to the assigned case manager at Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434, Attention: Case Assignment Section, to remove or modify a remedial action that includes an engineering and/or institutional control. The person shall submit a copy of the existing deed notice or declaration of environmental restrictions stamped "filed" and the reason for the removal or modification based on the following:

1. The performance of subsequent remediation;

2. A change in conditions at the site;

3. The Department's revision of soil remediation standards; or

4. A change in the maintenance or monitoring requirements in this chapter.

5. Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434, Attention: Case Assignment Section.

(j) The Department will evaluate the request submitted pursuant to (h) above and within 90 calendar days after the Department's receipt of the written request will either:

1. Approve the request with the condition that:

i. The property owner records with the office of each county recording officer, pursuant to (f) above, a notice executed by the Department, that the use of the site is no longer restricted or that the restriction has been changed and that the declaration of environmental restrictions or deed notice is therefore either terminated or modified. Any Department approved modified declaration of environmental restrictions or deed notice delineating the new restrictions shall be recorded pursuant to this section;

ii. The applicant provides written notice to each municipality in which the site is located, with a copy to the Department sent to the address provided at N.J.A.C. 7:26C-1.4, of the removal or change of the restrictive use conditions; and

iii. The applicant provides an electronic copy in a read only format, of all information required in (c) above, for the approved modified declaration of environmental restrictions or deed notice as required pursuant to (f) and (g) above; or

2. Issue a written denial of the request.]

7:26E-8.3 [Groundwater] Ground water classification exception areas

(a) (No change.)

[(b) The person responsible for conducting the remediation shall submit the following information to the Department as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2:

1. For each groundwater sampling point, a list of all contaminants and their concentrations, that do not meet the groundwater quality standards, from the most recent 24 months of groundwater sampling;

2. A description of the fate and transport of the contaminant plume, using the most mobile and persistent contaminants present that exceed the ground water quality standards, including:

i. The horizontal and vertical distances that the contaminated groundwater plume is expected to travel before contaminant concentrations decrease to or below the applicable groundwater quality standards;

ii. A proposed expiration date for the classification exception area; and

iii. All other information required by Appendix F, incorporated herein by reference;

3. The following maps consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2;

i. A USGS Quadrangle map (paper copy only), indicating the location of the site;

ii. A map, in paper and electronic formats, indicating the predicted extent of the groundwater contaminant plume; and

iii. A map (paper copy only) showing all properties, according to tax block and lot with a reference to the year of the referenced tax map, under which the contaminant plume is located and is expected to migrate;

4. Information regarding current and projected use of the groundwater in the aquifer(s) in which the groundwater classification exception area is located, as follows:

i. The current groundwater use based on the most recent well search conducted pursuant to this chapter; and

ii. The future groundwater use for a 25-year planning horizon based on the following, without limitation:

(1) The New Jersey Water Supply Master Plan;

(2) Department of Environmental Protection, Bureau of Water Allocation;

(3) Municipal master plans;

(4) Zoning plans;

(5) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

(6) Local planning officials;

(7) County and local boards of health; and

(8) Local and/or county ordinances restricting installation of potable wells; and

5. Copies of the certified letters, return receipt requested, notifying the following persons of the need to establish the groundwater classification exception area:

i. The municipal and county clerks for each municipality and county in which the groundwater classification exception area will be located;

ii. The local, county and regional health department for each municipality and county in which the groundwater classification exception area will be located;

iii. The designated County Environmental Health Act agency for each county in which the groundwater classification exception area will be located;

iv. The county planning board for each county in which the groundwater classification exception area will be located;

v. The Pinelands Commission if the groundwater classification exception area will be located within the jurisdiction of that Commission;

vi. New Jersey Department of Environmental Protection, Water Supply Administration:

(1) Bureau of Safe Drinking Water; and

(2) Bureau of Water Allocation; and

vii. If the groundwater classification exception area is located in a groundwater use area, each owner of any real property within the groundwater classification exception area.

(c) The Department will establish a groundwater classification exception area based upon the projected area of the contaminant plume in the groundwater, pursuant to (b) above.

(d) The Department may revise or reestablish a groundwater classification exception area at any time to more accurately reflect groundwater conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6.

(e) The Department will remove a groundwater classification exception area based upon groundwater data, collected pursuant to N.J.A.C. 7:26E-8.6(a)7, that indicate that the contaminant concentrations in the groundwater meet all of the applicable groundwater quality standards.]

(b) The person responsible for conducting the remediation shall submit to the Department a completed CEA/Well Restriction Area (WRA) Permit Fact Sheet form, and the following information:

1. For each ground water sampling point used to define the CEA, or the subset of those points on the maps required by (b)3 below, provide data tables that include the following data and information as applicable:

i. All contaminants and their concentrations, that exceed the ground water quality standards, from the most recent 24 months of ground water sampling;

ii. If ground water contaminants in the CEA may discharge to a surface water body, include the surface water quality standards applicable to that surface water body pursuant to the Surface Water Quality Standards, N.J.A.C. 7:9B;

iii. The applicable vapor intrusion ground water screening levels pursuant to the Department's Vapor Intrusion Guidance, or site-specific vapor intrusion screening levels for ground water; and

iv. The depth below ground surface to the water table, the approximate depth of the ground water contamination and, where it is known that the top of ground water contamination is below the water table, the thickness of the clean water lens above the contamination;

2. A description of the fate and transport of the contaminant plume, using all available data for the most mobile and persistent contaminants present that exceed the ground water quality standards, including the fate and transport of contaminants in the plume that may volatilize and migrate in the vapor phase. For a classification exception area (CEA) involving chlorinated volatile organic compounds, the description shall address sequential reductive dechlorination of the contaminants. The production of degradation products must be considered when calculating duration and extent of the CEA. The CEA shall be the sum of each individual contaminant duration and extent in ground water. The fate and transport description shall also include:

i. The horizontal and vertical distances that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to or below the applicable ground water quality standards, including, but not limited to:

(1) A brief conceptual site model description; and

(2) A summary and description of all data, information, interpretations, and software used to describe the plume fate and transport and to produce the map required pursuant to (c)3iii below;

ii. The expected duration of the CEA; and

iii. For volatile contaminants in ground water, include a discussion of how changes in property use or conditions could effect the fate and transport of the ground water contamination or vapors emanating from the ground water contamination pursuant to the Department's Vapor Intrusion Guidance;

3. The following maps and a cross section, as paper copies and in the electronic formats indicated in this paragraph, consistent with Department GIS guidance found on the Department's web site, using data for the most mobile and persistent contaminants from the most recent 24 months:

i. A United States Geological Survey (USGS) Quadrangle map in electronic pdf format indicating the location of the site;

ii. A map in electronic pdf format showing all properties, according to tax block and lot with a reference to the year of the tax map used, under which the contaminant plume is located and is expected to migrate;

iii. A map in both electronic pdf format and GIS compatible format indicating the known and predicted extent of the most mobile and persistent ground water contaminants, the prevailing ground water flow direction, the proposed CEA boundary, and the locations and identifying name/number of each monitoring well or ground water sampling points and any sentinel wells required by N.J.A.C. 7:26E-6.3. Identify the subset of wells that define the furthest downgradient extent of the contamination, the greatest width of the contamination, and at least one well representative of the highest levels of ground water contamination;

iv. A cross section map in both electronic pdf format and GIS compatible format drawn along the prevailing ground water flow direction and the approximate ground water contaminant plume centerline indicating the location of wells and borings used to draw the cross section, the generalized location of the water table, generalized hydrostratigraphy and the known and predicted extent of the contaminant plume, and the proposed CEA boundaries; and

v. A map in both electronic pdf format and GIS compatible format, separate or combined with a map required pursuant to (b)3iii above, showing the location of any area(s) of concern that caused the ground water contamination and the location and

name/number of each downgradient monitoring well(s) closest to the area(s) of concern. The North American Industry Classification System (NAICS) code for the operations that caused the contamination, if known, shall be indicated on the CEA/WRA Fact Sheet Form and the attribute table for the GIS map;

4. Documentation of current and projected use of the ground water in the aquifer(s) in which the ground water CEA is located, as follows:

i. The current ground water use based on the most recent well search conducted pursuant to this chapter; and

ii. The future ground water use for a 25-year planning horizon based on the following, without limitation:

(1) Municipal master plans;

(2) Zoning plans;

(3) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

(4) Local planning officials;

(5) County and local boards of health; and

(6) Local and/or county ordinances restricting installation of potable wells; and

5. Notification, using the CEA/WRA Fact Sheet Form, that certified letters, return receipt requested, have been sent informing the following persons of the need to establish the ground water CEA and a list of the names and addresses of those persons, based on the proposed boundaries of the CEA:

i. The municipal and county clerks for each municipality and county in which the ground water classification exception area will be located;

ii. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;

iii. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;

iv. The county planning board for each county in which the ground water classification exception area will be located;

v. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;

vi. New Jersey Department of Environmental Protection, Water Supply Administration:

(1) Bureau of Safe Drinking Water; and

(2) Bureau of Water Systems and Well Permitting of Water Allocation; and

vii. Each owner of any real property that will be within the foot print of the ground water CEA.

(c) The Department will establish a ground water CEA based upon the actual and projected area and depth of the contaminant plume in the ground water, pursuant to (b) above. A final CEA/WRA Permit Fact Sheet issued by the Department will contain the effective date establishing the CEA and its expiration date.

(d) The Department may revise or reestablish a ground water CEA at any time to more accurately reflect ground water conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6. The Department will issue an updated CEA/WRA Permit Fact Sheet if the CEA is revised or reestablished.

(e) The Department will remove a ground water CEA based upon ground water data, collected pursuant to N.J.A.C. 7:26E-8.6 that indicate that the contaminant concentrations in the ground water meet all of the applicable ground water quality standards.

7:26E-8.4 Monitoring, maintenance, and biennial certification—who has obligation and when

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

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control as part of a remediation shall submit to the Department a certification, pursuant to this section and consistent with N.J.A.C. [7:26C-1.2(a)1]

7:26E-1.5 on a Remedial Action Protectiveness Certification form provided by the Department, according to the following schedule:

1.-3. (No change.)

(d)-(e) (No change.)

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

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions shall:

1.-3. (No change.)

4. Develop a detailed log of how the persons responsible for monitoring the protectiveness of the remedial action have maintained and evaluated the engineering control in compliance with this section. The log shall be completed for the time since the first certification due date pursuant to N.J.A.C. 7:26E-8.4[(e)], or the last certification and monitoring report was submitted to the Department, whichever is more recent.

(b) The persons responsible for monitoring the protectiveness of a remedial action shall prepare a [monitoring report that] **biennial certification report along with a Remedial Action Protectiveness Certification form, available from the Department, which includes the following information:**

1. (No change.)

2. Site identifiers (as applicable):

i.-viii. (No change.)

ix. The tax block and lot number; [and]

x. The name of each municipality and county in which the site is located; and

xi. The name and license number of the licensed site remediation professional, if applicable;

3.-4. (No change.)

5. The results of the comparison of applicable laws and regulations pursuant to (a)[5]3 above;

6.-10. (No change.)

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

1. (No change.)

2. Include with the certification a written monitoring report pursuant to (b) above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department **with a Remedial Action Protectiveness Certification form available from the Department;** and

3. (No change.)

(d) (No change.)

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

(a) **The person responsible for conducting the remediation shall conduct the monitoring and maintenance of a ground water remedial action, and submit a biennial certification, as required by this section, unless the Department has established a ground water classification exception area for a site pursuant to N.J.A.C. 7:26E-3.12(b)6i.**

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

1. (No change.)

2. Determine whether there are any planned changes within [the] a 25-year water use planning horizon for the aquifer(s) in which the [groundwater] **ground water** classification exception area is located since the Department established the [groundwater] **ground water** classification exception area or the last completed biennial review, whichever is more recent, **based upon a review of the following**[. This determination shall be made by reviewing all plans, records and other relevant information from the following sources, without limitation]:

[i. The New Jersey Water Supply Master Plan;

ii. Department of Environmental Protection, Bureau of Water Allocation;]

[iii.] i. (No change in text.)

[iv.] ii. [Zoning] **Local zoning** plans;

[v.] iii. Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines, **wells or well fields**;

Recodify existing vi.-viii. as iv.-vi. (No change in text.)

3. Identify whether there have been any actual changes in the [groundwater] **ground water** use in the water use planning area since the Department established the [groundwater] **ground water** classification exception area or the last completed biennial review, whichever is more recent. Changes shall be identified by:

i. Completing a [Department computer generated] well search [(contact the Bureau of Water Allocation)] **using the Department's CEA Biennial Certification Compliance: Tools for Performing Well Searches for CEA Biennial Certifications** for all wells within one mile up-gradient, side-gradient and down-gradient of the [groundwater] **ground water** classification exception area; and

ii. Identifying all wells, other than [groundwater] **ground water** monitoring wells, installed within one mile up-gradient, side-gradient and down-gradient of the [groundwater] **ground water** classification exception area since the Department established the [groundwater] **ground water** classification exception area or the last completed biennial review, whichever is more recent, using the well search [format at Appendix B] **information available on the Department's web site**;

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

i. (No change.)

ii. [Report to the Department, pursuant to N.J.A.C. 7:26E-4.4(g)11,] **Identify any damaged or vandalized** monitoring wells and either repair or decommission damaged monitoring wells pursuant to N.J.A.C. 7:9D or replace the monitoring wells, as necessary; and

iii. (No change.)

5. (No change.)

6. Determine whether:

i. Any of the actual or proposed changes in the [groundwater] **ground water** use identified pursuant to [(a)2] (b)2 and 3 above have influenced or may influence the protectiveness of the remedial action that includes the [groundwater] **ground water** classification exception area **and, if necessary, conduct additional remediation, modify the remedial action, or propose a revision to the ground water classification exception area, and apply for a modification of the ground water remedial action permit to ensure that the remedial action remains protective of the public health and safety and the environment**; [and]

ii. There is a need to reevaluate the fate and transport of the [groundwater contamination] **ground water** contaminant plume **or the contaminants in the plume with regard to the risk of vapor intrusion, and, if necessary, [to revise] conduct additional remediation, modify the remedial action, or propose a revision to the [groundwater] ground water** classification exception area, **and apply for a modification of the ground water remedial action permit** to ensure that the remedial action remains protective of the public health and safety and the environment; and

iii. **There are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety. If such changes are identified, perform additional public outreach, consistent with the notification requirements at N.J.A.C. 7:26E-8.3(b)5, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk using the NJDEP Vapor Intrusion Guidance on the Department's web site**; and

7. Assess [groundwater] **ground water** quality as follows:

i. Within [120] **180** calendar days after the projected expiration of the [groundwater] **ground water** classification exception area, collect at least two rounds of [groundwater] **ground water** samples such that the time between sampling events shall account for seasonal fluctuations in the [groundwater] **ground water** table and the number of [groundwater] **ground water** samples collected are representative of the entire

horizontal and vertical extent of the [groundwater] **ground water** classification exception area;

ii. (No change.)

iii. At any other time prior to the projected expiration of the [groundwater] **ground water** classification exception area, [groundwater] **ground water** sampling [is optional] **may be performed** to determine whether the [groundwater] **ground water** meets the applicable [groundwater] **ground water** quality standards. The number of samples collected and the time between sampling events shall be consistent with [(a)7i] (b)7i above. If [groundwater] **ground water** samples indicate that contaminant concentrations have decreased to or below the applicable [groundwater] **ground water** quality standards throughout the [groundwater] **ground water** classification exception area, then any person may request that the Department remove the [groundwater] **ground water** classification exception area.

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

1. (No change.)

2. Site identifiers, as applicable:

i.-vii. (No change.)

viii. The name of each municipality and county in which the site is located; **and**

ix. The name and the license number of the licensed site remediation professional if applicable;

3.-4. (No change.)

5. The results of the evaluation of the changes in [groundwater] **ground water** use conducted pursuant to [(a)2] (b)2 and 3 above, **including locating and identifying on a scaled map all wells and/or waterlines found within one mile from any part of the boundaries of the ground water classification exception area**;

6. The maintenance and evaluation log for each monitoring well pursuant to [(a)4] (b)4 above, including:

i. A [copy of any report submitted to the Department,] **description of any well damage or vandalism identified or repairs completed** pursuant to N.J.A.C. 7:26E-4.4(g)11[, concerning damaged monitoring wells]; and

ii. A copy of the [well closure report] **Well Abandonment Report** for each monitoring well used to establish the [groundwater] **ground water** classification exception area that has been decommissioned pursuant to N.J.S.A. 58:4A-1 et seq.[,] and N.J.A.C. 7:9D since the Department established the [groundwater] **ground water** classification exception area or the last completed biennial review, whichever is more recent;

7. (No change.)

8. A discussion of [whether]:

i. [Any of the actual] **Actual** or proposed changes in the [groundwater] **ground water** use [have influenced or may influence the protectiveness of the remedial action that includes the groundwater classification exception area] **pursuant to (b)6i above, including any additional remediation conducted, modification of the remedial action, or proposed revision to the ground water classification exception area, and apply for a modification of the ground water remedial action permit to ensure that the remedial action remains protective of the public health and safety and the environment**; [and]

ii. [There is a need to reevaluate] **The reevaluation** of the fate and transport of the [groundwater] **ground water** contamination plume [and to revise] **pursuant to (b)6ii above, including any additional remediation conducted, modification of the remedial action, or proposed revision of the [groundwater] ground water** classification exception area, **and apply for a modification of the ground water remedial action permit** to ensure that the remedial action remains protective of the public health and safety and the environment; **and**

iii. **The evaluation of any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants pursuant to (b)6iii above, including any additional remediation conducted to address the vapor intrusion risk using the Department's Vapor Intrusion Guidance, and apply for a modification of the ground water remedial action permit.**

9. (No change.)

10. A [description and map of a proposed] revised [groundwater] **ground water** classification exception area[, in both paper and electronic format] **application** consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2**8.3**, if [groundwater] **ground water** monitoring pursuant to this subchapter indicates that a revision to the [groundwater] **ground water** classification exception area is necessary;

11. The dates and results of inspections and maintenance, including all [test and] **ground water** sampling results[, of] **for** each [groundwater] **ground water** classification exception area;

12. A description of any additional **remediation or** action taken to ensure the protectiveness of the remedial action that includes the [groundwater] **ground water** classification exception area; [and]

13. For the first biennial certification required after the projected expiration of the [groundwater] **ground water** classification exception area, if the contaminant concentrations in the [groundwater] **ground water** have not decreased to or below the applicable [groundwater] **ground water** quality standards throughout the classification exception area, the person responsible for evaluating the protectiveness shall submit:

i. A narrative, detailing why [groundwater] **ground water** contamination is still present; [and]

ii. [A re-evaluation of the groundwater quality standards pursuant to N.J.A.C. 7:26E-8.3(b), based on the current configuration of the groundwater contaminant plume.] **A description of any additional remediation conducted; and**

iii. **A revised ground water classification exception area application pursuant to (c)10 above; and**

14. A certification, in a format as specified in the Department's CEA Guidance and based on the evaluation required by this section, that the remedial action continues to be protective of the public health and safety and the environment.

[c] The persons responsible for monitoring the protectiveness of a remedial action that includes a groundwater classification exception area shall:

1. Certify in a format acceptable to the Department that, based upon the monitoring report required pursuant to (b) above, the groundwater classification exception area continues to provide notice of the groundwater contamination and the remedial action continues to be protective of the public health and safety and the environment;

2. Submit a report pursuant to (b) above, in both paper copy and in electronic format acceptable to the Department; and

3. Submit the certification and the report required by (c)1 and 2 above, according to the schedule in N.J.A.C. 7:26E-8.4, to:

i. Each external agency that the Department copied when it established the groundwater classification exception area;

ii. Each property owner that the Department copied when it established the groundwater classification exception area; and

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

(d) The persons responsible for monitoring the protectiveness of a remedial action that includes a ground water classification exception area shall submit the certification required by (c)14 above, with a form available from the Department, to the entities listed in (d)1 and 2 below, and according to the schedule at N.J.A.C. 7:26E-8.4(c). The persons shall include in the notification a statement that the biennial certification report supporting the certification is available upon request from the persons responsible for monitoring the protectiveness of a remedial action and include appropriate contact information. The entities to notify are:

1. Each external agency that was notified about the ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3(b)5; and

2. Each property owner notified about the ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3(b)5vii.

7:26E-8.7 Monitoring, maintenance, and biennial certification—
engineering and institutional controls

(a) (No change.)

(b) For each engineering and institutional control, the persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall prepare a monitoring report that includes the following information:

1. (No change.)

2. Site identifiers (as applicable):

i.-v. (No change.)

vi. The date of each [no further action letter] **final remediation document** for the site that included an engineering and/or institutional control;

vii. The name of the Department's case manager, **if applicable**, for the site at the time of each [no further action letter] **final remediation document**;

viii. (No change.)

ix. The tax block and lot number; [and]

x. The name of each municipality and county in which the site is located; **and**

xi. The name and the license number of the licensed site remediation professional, if applicable;

3.-9. (No change.)

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall:

1.-2. (No change.)

3. Submit the certification to the Department pursuant to [the schedule and address in] N.J.A.C. 7:26E-[8.4(e)1]1.5(a)2.

APPENDIX B

(RESERVED)

APPENDIX F

(RESERVED)

APPENDIX H

MODEL PUBLIC NOTICE FOR A DGW PROPOSAL

The model public notice in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to publication in appropriate local newspapers. As provided at N.J.A.C. 7:26E-8.3(e)7.2(c), the wording of this model public notice shall not be otherwise changed or modified.

Public Notice

This notice is being given to inform the public that as part of the remediation of [Site Name] at [street address], Block: _____ Lots: _____, in [Municipality], [_____] County, a proposal has been submitted to the New Jersey Department of Environmental Protection (Department) {requesting a permit-by-rule authorization} to discharge to ground water in accordance with a **permit issued pursuant to** the provisions of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., its implementing regulations the New Jersey Pollutant Discharge Elimination [system] **System**, N.J.A.C. 7:14A; the Ground Water Quality Standards, N.J.A.C. {7:9-6} **7:9C**; and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The {NJDEP} **Department's** Site Remediation {and Waste Management} Program is {overseeing the remediation under case} **reviewing the proposal to discharge to ground water for the purpose of remediating a contaminated site with the program interest # [_____].**

Brief description of the proposed discharge: [Include a description of the site including the {approved} remedial action, type of discharge (e.g., treated ground water or in situ bioremediation), discharge unit (e.g., injection well, overland flow, lagoon, etc.) and treatment proposed and the name and description of the {aquifer} **formation receiving the discharger**]. {Copies of the plans, which include the proposed discharge to ground water,} **A copy of this public notice** have been sent to the {Mayor,} Municipal Clerk{, Planning Board, Sewerage Authority, Health Officer, and Environmental Commission of} **and designated local health official for [Municipality, County or region].**

{The proposed plan to discharge to ground water} A **copy of the DGW proposal** is {also} available **from the person responsible for conducting the remediation [include the name and address of the person conducting the remediation],** or as part of the administrative record which is on file at the offices of the Department, Site Remediation {and Waste Management} Program, located at 401 East State Street, Trenton, Mercer County, New Jersey [or add alternate location]. The file may be reviewed under the New Jersey Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et seq. Information regarding the OPRA procedures is available at <http://www.state.nj.us/dep/opra/oprainfo.html>.

Interested persons may submit written comments regarding the {discharge to ground water portion of remediation} DGW proposal to the Department [addressed to [Case Manager, NJDEP, Address]] **at the address listed below** and to the owner or operator of the facility at [name and address of person/contact submitting {Plan} **DGW proposal**]. All comments shall be submitted within 30 calendar days of the date of this public notice. All persons who believe that {any condition specific to the proposed discharge to ground water within the remedial action workplan} **the DGW proposal** is inappropriate, must raise all reasonably ascertainable issues and submit in writing to the Department all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons that relate to the {requirements to be applied to the proposed discharge} **DGW proposal** will be considered by the Department, provided that the Department receives the comments by the close of the public comment period. After the close of the public comment period, the Department will {approve or modify} **render a decision regarding** the proposed discharge. The Department will respond to all significant and timely comments with its {final} decision **regarding the DGW proposal**. Each person who has submitted written comments will receive notice of the Department’s {final} decision.

Any interested person may request in writing that the Department hold a non-adversarial public hearing on the {plan to discharge to ground water} **DGW proposal**. This request shall state the nature of the issues to be raised in the proposed {meeting} **hearing** and shall be submitted within 30 calendar days of the date of this public notice to the {Case Manager, at the} address cited {above} **below**. A public hearing will be conducted whenever the Department determines that there is a significant degree of public interest in the discharge to ground water decision. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public {meeting} **hearing**.

Comments and written requests for a non-adversarial public hearing shall be sent to:

ATTN: DGW proposal
Site Remediation {and Waste Management} **Program**
NJ Department of Environmental Protection
[Name of {Case Manager} **Department contact**]
[Address of {Case Manager} **Department contact**]
{ATTN: Non-adversarial public hearing request}

{Additional information concerning the proposal may be obtained from [Name of person/contact submitting the proposal, phone #] or the [NJDEP Case Manager, Name of Bureau phone #].}

CHAPTER 38

HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:38-1.4 Definitions

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

“Administrative consent order” means, in accordance with the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, an administrative order which is signed by one or more persons and the Department; and may be in the form of a memorandum of understanding for public entities at the Department’s discretion.]

...

“**Final remediation document**” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-1.3.

...

“**Licensed site remediation professional**” means an individual who has been issued a license pursuant to N.J.S.A. 58:10C-1 et seq.

...

“Memorandum of agreement” means, in accordance with the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, a written agreement between the Department and one or more persons to conduct remediation of a site or an area of concern.]

...

“No further action letter” means, in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, a written determination by the Department that, based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area(s) of concern, or any other site to which a discharge originating at the has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations. The Department may issue a “no further action letter” if contaminants remain on the site with appropriate engineering and institutional controls.]

...

SUBCHAPTER 2. JURISDICTION, APPLICABILITY AND EXEMPTIONS

7:38-2.4 Highlands applicability determination

(a) (No change.)

(b) Any person proposing to undertake any activity in the preservation area that requires any environmental land use or water permit from the Department other than, as provided at (c) below, a NJPDES permit or TWA, shall either clearly stipulate that the proposed activity is subject to the Highlands Act in an application to the Department for an HPAA, or obtain a Highlands Applicability Determination, before submitting an application for the environmental land use or water permit unless the activity is one of the following:

1.-7. (No change.)

8. The remediation of any contaminated site pursuant to N.J.S.A. [58:10B-1 et seq. conducted in accordance with a memorandum of agreement or remedial action workplan] **58:10C-1 et seq.**, provided no residential, commercial, or industrial development is undertaken concurrently with, or subsequent to, the remediation. Any concurrent or subsequent development at the site is subject to the requirements of this chapter for a Highlands applicability determination and HPAA as applicable;

9.-10. (No change.)

(c)-(g) (No change.)

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. (No change.)

2. Track Two: A former or current commercial or industrial site for which:

i. Prior to the issuance of a [No Further Action (NFA) letter] **final remediation document**, a remedial action report was completed confirming the presence of contamination onsite, and documenting the current or previous use as a commercial or industrial site;

ii. The Department **or a licensed site remediation professional** has issued [an NFA letter] **a final remediation document** for the entire site for which the brownfield designation is sought as of July 1, 1993, or later, pursuant to N.J.A.C. 7:26C-[2.6]6; and

iii. No discharge of a contaminant has occurred on the site since the date of the [NFA letter] **final remediation document**. Sites where a discharge of a contaminant has occurred on the site since the Department **or a licensed site remediation professional** has issued [the NFA letter] **a final remediation document** must apply for designation through Track Three; or

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 professional** has [not] issued a [NFA letter] **final remediation document**.

(c) (No change.)

(d) For a Track Two site, the Department may designate as a Highlands brownfield only that portion of a site that meets one or both of the following:

1. Areas on which remediation has been approved by **either** the Department **or a licensed site remediation professional** and for which the Department **or a licensed site remediation professional** has issued a [NFA letter] **final remediation document**; or

2. (No change.)

(e) (No change.)

(f) For a Track Three site for which remedial activity, in addition to a Preliminary Assessment and Site Investigation confirming the existence of contamination onsite has occurred, the Department may designate as a Highlands brownfield only that portion of a site that meets one or more of the following:

1. Areas for which a Department-approved **or licensed site remediation professional-approved** delineation of soil contamination has been completed, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

2. (No change.)

3. Areas disturbed for remediation activities, (but not new residential, commercial or industrial development), in accordance with a Department **or licensed site remediation professional** approved Remedial Action Workplan, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

(g)-(j) (No change.)

(k) Once the Department designates a site as a Highlands brownfield, and the Council has identified all or part of the brownfield as appropriate for redevelopment in accordance with N.J.S.A. 13:20-9b and 13:20-11a(6)(h), an applicant shall be eligible for a HPAA with a waiver for redevelopment under this section if the applicant demonstrates that:

1.-2. (No change.)

3. For a Track One Highlands brownfield:

i. As of May 9, 2005, the applicant is or was remediating or closing, or has completed remediation or closure of a landfill that ceased operation before January 1, 1982 in accordance with:

(1) (No change.)

(2) A Remedial Action Workplan approved by the Department **or by a licensed site remediation professional**, and [issued] pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6; or

ii. (No change.)

4. For a Track Two Highlands brownfield, the applicant demonstrates that no discharge of a contaminant has occurred on the site since the [NFA letter] **final remediation document** was issued [by the Department];

5. For a Track Three Highlands brownfield, the applicant [has obtained an Oversight Document pursuant to the Department Oversight of] **is remediating the site pursuant to the Administrative Requirements** for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, as applicable;

6.-8. (No change.)

(l) Any waiver approved in accordance with this section shall be conditioned upon the receipt of [an NFA letter] **a final remediation document**, or equivalent approval for sanitary landfills issued by the Department with respect to the area of the site designated as a Highlands

brownfield and identified by the Council as appropriate for redevelopment.

SUBCHAPTER 9. APPLICATION CONTENTS

7:38-9.2 Application requirements for a Highlands Applicability Determination

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

(d) In addition to providing all the information required at (b) and (c) above, the following information shall be provided if an applicant is seeking a letter of exemption from the requirements of the Highlands Act:

1.-14. (No change.)

15. For the remediation of any contaminated site pursuant to N.J.S.A. [58:10B] **58:10C-1** et seq. pursuant to N.J.A.C. 7:38-2.3(a)15:

i.-iii. (No change.)

iv. The name of the **DEP** case manager [handling or supervising remediation at DEP] **or licensed site remediation professional assigned to the case**, if any;

16.-17. (No change.)

(e) (No change.)

7:38-9.6 Additional application requirements for a Highlands Preservation Area Approval with waiver

(a)-(e) (No change.)

(f) In order to obtain Department-designation of a brownfield in accordance with N.J.A.C. 7:38-6.6, all applicants shall provide an HRAD obtained in accordance with the requirements at N.J.A.C. 7:38-9.4. In addition, the following information is required:

1. (No change.)

2. For a designation in accordance with N.J.A.C. 7:38-6.6(b)2:

i. A copy of [a No Further Action (NFA) letter] **the final remediation document** for the entire site [issued by the Department];

ii. A summary of the remedial action report completed prior to the issuance of the [NFA letter] **final remediation document** that confirms the presence of contamination onsite and documents the current or previous use as a commercial or industrial site;

iii. Certification that no discharge of a hazardous substance has occurred onsite since the date of the [NFA letter] **final remediation document issued** pursuant to the [Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-[1.2]1.6;**

iv. (No change.)

3.-5. (No change.)

(g) (No change.)

(h) In addition to the requirements at (g) above, the following information is required to obtain a waiver for redevelopment based upon a Department-designated brownfield:

1. For a waiver based upon a designation in accordance with N.J.A.C. 7:38-6.6(b)1 for a landfill that ceased operation prior to January 1, 1982:

i. (No change.)

ii. A Remedial Action Workplan approved by the Department **or a licensed site remediation professional**, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6;

2. (No change.)

3. For a waiver based upon designation in accordance with N.J.A.C. 7:38-6.6(b)2, certification that no discharge of a hazardous substance has occurred on the site since the date of the [NFA letter] **final remediation document**, pursuant to the [Department Oversight of] **Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-[1.2]1.6;**

4. For a waiver based upon a designation in accordance with N.J.A.C. 7:38-6.6(b)3, [a valid Oversight Document pursuant to the Department Oversight of] **evidence documenting that remediation is being conducted pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or the Industrial Sites Recovery Act rules, N.J.A.C. 7:26B, as applicable, [agreeing to conduct all remediation] necessary to obtain a [NFA letter] final remediation document** pursuant to N.J.A.C. 7:26C-[2.6]6.

(i)-(k) (No change.)

SPECIAL ADOPTION

ENVIRONMENTAL PROTECTION

CHAPTER 45
RULES FOR THE REVIEW ZONE OF THE DELAWARE AND
RARITAN CANAL STATE PARK

SUBCHAPTER 8. STORMWATER RUNOFF AND WATER
QUALITY IMPACT REVIEW

7:45-8.5 Specific recharge standards

(a) The minimum design and performance standards for groundwater recharge are as follows:

1. (No change.)
2. The groundwater recharge requirement does not apply to redevelopment projects that are subject to the following types of existing stormwater:

i. 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 Department **or licensed site remediation professional** approved remedial action work plans or landfill closure plans and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

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

ENVIRONMENTAL PROTECTION

(a)

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

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. 7:11; 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 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. 7:11 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. 7:11-1.5 (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-subparagraph, 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 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, 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.

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.

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 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 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 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 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 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” 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).

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).

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.

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.

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

CHAPTER II
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 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

7:11-3.3 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;

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:

...
“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

(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

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.)

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; 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 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

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.

(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 or by contacting the Department at the address 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, and the Department determines that all outstanding fees and costs not contested have been paid and approves that request;

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.)

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.]

["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 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 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.

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

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

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.)

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.)

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 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 WARNDP 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.)
 - 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.)

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.)

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:

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 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 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.)

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.)

(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.)

(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 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.)

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 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:

ADOPTIONS

- 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 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.)

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

ENVIRONMENTAL PROTECTION

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.)
- 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)-(l) (No change.)

(a)

**LAND USE MANAGEMENT
DIVISION OF LAND USE REGULATION**

**Notice of Acceptance of Community Development
Boundaries Formally Approved by the New Jersey
State Planning Commission as Boundaries for
Certain CAFRA Centers under N.J.A.C. 7:7E-5B.3
Cape May Point CAFRA Village
Ocean City CAFRA Regional Center
Notice of Administrative Changes
N.J.A.C. 7:7E Appendices 3 and 5**

Take notice that, in accordance with N.J.A.C. 7:7E-5B.3, the New Jersey Department of Environmental Protection (Department) has determined to accept the community development boundaries that have been formally approved by the State Planning Commission as the boundaries for certain centers in the coastal zone. In each case, the Department evaluated the boundaries and determined that they are consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and the Coastal Zone Management rules, N.J.A.C. 7:7E. The Department has determined to accept the following community development boundaries: Cape May Point Village Center (Borough of Cape May Point, Cape May County) and Ocean City Regional Center (City of Ocean City, Cape May County).

In accordance with N.J.A.C. 7:7E-5B.3(c), the boundaries accepted by the Department will be operative 30 calendar days from the date of publication of this notice in the New Jersey Register. The centers described by the accepted operative boundaries will be incorporated into N.J.A.C. 7:7E-5B as CAFRA centers for purposes of applying the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and 5B. Maps indicating the operative boundaries of the new CAFRA centers are available on the Department's Geographic Information System (GIS) and may be reviewed at the Department, 401 East State Street, Trenton, New Jersey 08625. An appointment for review can be scheduled by calling (609) 292-1143.

The resulting administrative changes to Appendices 3 and 5 are indicated below and shall be operative May 19, 2010.

State Planning Commission Center Designation

Cape May Point Village Center

The Borough of Cape May Point (Borough) filed a petition with the State Planning Commission in August 2007, pursuant to N.J.A.C. 5:85-7, seeking to amend the State Plan Policy Map of the State Development and Redevelopment Plan (State Plan) to have Cape May Point Borough designated as a Village Center under the State Plan as part of the Borough's overall submittal for plan endorsement. As discussed further below, the plan endorsement process was initiated at a time when the then-existing Cape May Point Village Center was scheduled to expire on January 7, 2008 under the provisions of the State Planning Commission's rules. In a report dated March 7, 2008, the Executive Director of the Office of Smart Growth recommended approval of the petition.

The Plan Implementation Committee of the State Planning Commission conducted a public hearing on the petition filed by the Borough on June 24, 2009. The Plan Implementation Committee reviewed and considered the report of the Executive Director of the Office of Smart Growth, State agency comments and the public comments submitted at the public hearing. The Committee recommended

The Department believes process improvements that facilitate the issuance of permits that are consistent with the applicable standards and that are issued in a coordinated and timely fashion are beneficial to the regulated community, the Department, and the environment. Streamlining permitting will conserve the resources of all involved and maintain proper focus on achieving substantive environmental protections. As the Permit Efficiency Review Task Force's recommendations and Governor Christie's Executive Orders recognize, the process of obtaining a permit from the Department should not stand in the way of development that is otherwise allowable under applicable environmental protection law and standards.

4. COMMENT: Although many of the State's environmental regulations could be improved, the Department ought not curtail any protections or delay any rules based on the Governor's Executive Orders.

RESPONSE: The Department, in order to inform the reviews of pending proposed rules being conducted by the Department and the Red Tape Review Group established under Executive Order No. 3 issued by Governor Christie on January 20, 2010, extended or reopened the public comment period for certain pending proposals. (See notice of extension or reopening of comment periods and informal stakeholder meetings for pending Department of Environmental Protection proposals suspended under Executive Order No. 1 (2010), <http://www.nj.gov/dep/rules/notices.html>, 42 N.J.R. 642(a).) In accordance with Executive Order Nos. 1 and 3, the Red Tape Review Group's task is, among other things, to examine various proposed administrative rules and regulations by a number of State agencies prior to their adoption and make detailed recommendations to the Governor to rescind, repeal or amend those rules. Based on those recommendations, the Commissioner of the Department will determine whether or not to proceed with adoption or amendment of the Department's affected proposals.

The Executive Orders and the Red Tape Review process expressly recognize that some rules must be adopted in order to prevent an adverse impact to public safety or security or public health; prevent prejudice to the State with regard to receipt of funding or certifications from the Federal government; allow State agencies to exercise their essential powers, duties and functions; and comply with any judicial deadline. Rule proposals that would result in such adverse impacts if adoption were delayed therefore were not suspended. Executive Order No. 2 also directs State agencies to implement the "common sense principles" in all rulemaking while keeping in mind the core missions of the agency; public health, safety, welfare and the environment; and the agency's underlying regulatory objectives. In determining whether to proceed with its rule proposals and for all future rulemaking, the Department will necessarily take all of these factors into consideration.

Federal Standards Statement

Executive Order No. 27 (1994), and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:11 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, no further analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:11.

Full text of the adopted amendments follows:

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.

...
 "Potable water" means drinking water, water for other personal uses, and water for purposes requiring a supply of water which the Department determines is suitable for human consumption pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10. "Potable water"

does not include water for use in fire fighting or for agricultural purposes, or for other non-potable purposes.

...

7:11-1.8 Notices and other communications

(a) All claims, notices, requests, and other communications required or permitted under this chapter shall be given in writing and sent by certified mail, return receipt requested or by other means which provides a receipt showing the date of mailing and the date of delivery. All such communications sent to the Department by certified mail shall be sent to the following address:

Department of Environmental Protection
 Environmental Claims Administration
 PO Box 413
 Trenton, New Jersey 08625-0413

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

(a)

SITE REMEDIATION PROGRAM

Notice of Administrative Corrections Specially Adopted Rules to Implement the Site Remediation Reform Act, P.L. 2009, c. 60 Ground Water Quality Standards

N.J.A.C. 7:9C-1.1 and 7:9C Appendix Table 1

Underground Storage Tanks

N.J.A.C. 7:14B-3.5 and 15.1

Industrial Site Recovery Act Rules

N.J.A.C. 7:26B-1.4, 1.5, 1.10, 4.3 and 8.1

Administrative Requirements for the Remediation of Contaminated Sites

N.J.A.C. 7:26C-1.3, 1.5, 3.3, 4.3, 5.1, 5.13, 6.5, 7.2, 9.5, 9.10, 9.11 and 10.5, and 7:26C Appendices A and B

Remediation Standards

N.J.A.C. 7:26D Appendix 1 Table 1A

Technical Requirements for Site Remediation

N.J.A.C. 7:26E-1.4, 1.8, 1.9, 1.14, 1.17, 1.18, 2.1, 3.6, 3.7, 4.4, 4.8, 6.3 and 6.7, and 7:26E Appendices A and H

Highlands Water Protection and Planning Act Rules

N.J.A.C. 7:38-2.4 and 9.2

Take notice that the Department of Environmental Protection discovered errors in the following rules: Ground Water Quality Standards, N.J.A.C. 7:9C; Underground Storage Tanks, N.J.A.C. 7:14B; Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; Remediation Standards, N.J.A.C. 7:26D; 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)). The corrections set forth in this notice are the result of review of the special adopted rules and amendments, and are in addition to those set forth in the Department's notice of administrative corrections published in the April 19, 2010 New Jersey Register at 42 N.J.R. 778(a).

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

At N.J.A.C. 7:9C-1.1(b), the missing closing parenthesis in the citation to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., is added.

At N.J.A.C. 7:9C Appendix Table 1, the spelling of "Phenol" is corrected in the "Constituent" column, and the CAS No. is corrected from 08-95-2 to 108-95-2 in the "CASRN" column. This Appendix was originally promulgated as part of N.J.A.C. 7:9-6, which subchapter was recodified with amendments effective October 4, 2005 (see 36 N.J.R. 4374(b) and 37 N.J.R. 4226(b)). While the proposal Summary appropriately describes the amendments proposed to the entry for Phenol, CAS number 108-95-2 in Appendix Table 1, the published proposed rule text of Table 1 truncated the CAS number by placing the number 1, which is the first number of the CAS number, 108-95-2, at the end of the substance name, resulting in the erroneous substance name "Phenol1" and an erroneous CAS number, "08-95-2." This error persisted in the published notice of adoption and into the Code, through the 10-5-05 Code update. The Department is now correcting this misprint.

At N.J.A.C. 7:9C Appendix Table 1, Explanation of Terms, the spelling of "nephelometric" in the term "(Total)" is corrected.

At N.J.A.C. 7:14B-3.5(d), the citation is corrected from N.J.A.C. 7:26C-9 to N.J.A.C. 7:26C-4.

At N.J.A.C. 7:14B-15.1(i), the mailing address is corrected.

At N.J.A.C. 7:26B-1.4, the definition of "Transferring ownership or operations," paragraph 5, the citation is corrected from N.J.A.C. 7:26B-2.1(a)4 to N.J.A.C. 7:26B-2.1(a)5.

At N.J.A.C. 7:26B-1.5(a) and 4.3(a), the web address is corrected to www.nj.gov/dep/srp/srra/forms.

At N.J.A.C. 7:26B-1.10(b)1, N.J.A.C. 7:26C-4.3(a)5, at the table in N.J.A.C. 7:26C-9.5(b) in the violation for N.J.A.C. 7:26E-8.2(e)3, and N.J.A.C. 7:26E-6.3(f)1, the word "remedial" is replaced with the word "response" in the term "remedial action outcome" to match the term defined in N.J.A.C. 7:26C-1.4.

At N.J.A.C. 7:26B-8.1(a), the missing word "with" is added.

At N.J.A.C. 7:26B-8.1(b), the citation is corrected from N.J.A.C. 7:26C-4 and 5 to N.J.A.C. 7:26C-4.5 because N.J.A.C. 7:26C-5 has nothing to do with Department costs to review remediation documents, whereas this is the purpose of N.J.A.C. 7:26C-4.5.

At N.J.A.C. 7:26C-1.3, in the definition of "licensed site remediation professional," the missing "et" is added to "et seq." in the statutory citation.

At N.J.A.C. 7:26C-1.5(b)1, the punctuation at the end of the introductory paragraph is corrected, replacing the period with a colon.

At N.J.A.C. 7:26C-3.3(a)3, the spelling of "non-aqueous" is corrected.

At N.J.A.C. 7:26C-5.1(a)5, the description originally codified at N.J.A.C. 7:26C-5.1(a)7 is added, as both N.J.A.C. 7:26C-5.1(a)5 and 7 pertain to the requirements at N.J.A.C. 7:26C-5.11. The citation in N.J.A.C. 7:26C-5.1(a)7 to N.J.A.C. 7:26C-5.13 should have been to N.J.A.C. 7:26C-5.11.

At N.J.A.C. 7:26C-5.1(a)6, the word "and" is added at the end, as N.J.A.C. 7:26C-5.1(a)7 is being deleted.

Existing N.J.A.C. 7:26C-5.1(a)7 is being deleted, as this information is now included in N.J.A.C. 7:26C-5.1(a).

At N.J.A.C. 7:26C-5.1(a)8, the paragraph is recodified as N.J.A.C. 7:26E-5.1(a)7, and the internal citation is corrected from N.J.A.C. 7:26C-5.14 to N.J.A.C. 7:26C-5.13.

At N.J.A.C. 7:26C-5.13(d), "monies" in the second sentence is corrected as "moneys" to match the plural word form used in the first sentence.

At N.J.A.C. 7:26C-6.5(b)2, the spelling of "Tertiary" is corrected.

At N.J.A.C. 7:26C-7.2(a)1iii, the spacing within the citation to N.J.S.A. 58:10-23.11 et seq. is corrected.

At N.J.A.C. 7:26C-7.2(b)4, the cross-reference is corrected from N.J.A.C. 7:26C-7.8 to N.J.A.C. 7:26C-7.7.

At the Table in N.J.A.C. 7:26C-9.5(b), in the violation for N.J.A.C. 7:14B-9.5(b), "insure" is corrected as "ensure"; in the citation N.J.A.C. 7:14B-10.1(a)2, the opening parenthesis is added before "a"; in the violation for N.J.A.C. 7:14B-10.3(b)1, "profession engineer" is corrected as "professional engineer"; immediately before the violation for N.J.A.C. 7:26C-13.2(a), adding the header row designating Subchapter 13,

Remediation of Unregulated Heating Oil Tank Systems; at the violation for N.J.A.C. 7:26E-1.12(b)1, a hyphen is added to "non-aqueous"; the violation for N.J.A.C. 7:26E-1.12(b)4 is deleted, as this rule provision does not exist; and in the violation for N.J.A.C. 7:26E-5.1(c), the phrase "standards rule and guidelines" is corrected as "standards, rules and guidelines" to reflect the subsection's content.

At N.J.A.C. 7:26C-9.10(d)2, the punctuation in the last line of the address is corrected by the placement of a colon after "Attention."

At N.J.A.C. 7:26C-9.11(b)1, the incomplete phrase "remove the discharge or threatened of a hazardous substance" is completed through the addition of "discharge" after "threatened." The missing term is evident from the context of the phrase, and matches the use of "discharge or threatened discharge" in N.J.A.C. 7:26C-9.11(c)1.

At N.J.A.C. 7:26C-10.5(b)3, "therefore" is corrected as "therefor."

At N.J.A.C. 7:26C Appendix A, a superfluous "the" is deleted from subparagraph 6a.

At N.J.A.C. 7:26C Appendix B, in the fourth paragraph within paragraph 5, the incomplete last sentence, "The new Deed Notice shall be executed and recorded by," is completed by the addition of "[name of person or corporation etc. filing new deed notice]." The missing text is identical to that for the same purpose in paragraph 4, which also addresses the execution of a new deed notice, and in keeping with the acting party description ("[name of person/corporation etc.]" in the preceding third paragraph within paragraph 5.

At N.J.A.C. 7:26D Appendix 1, Table 1A, the spelling of the word "Health" is corrected in the column heading "Ingestion-Dermal Health Based Criterion."

At N.J.A.C. 7:26D Appendix 1, Table 1A, the CAS No. for Zinc is corrected from 7740-66-6 to 7440-66-6.

At N.J.A.C. 7:26E-1.4(k), a superfluous "either" is deleted.

At N.J.A.C. 7:26E-1.4(n), the word "except" is corrected to "exempt."

At N.J.A.C. 7:26E-1.8, in the definition for "impermeable," "10<-7>" is replaced with "10⁻⁷."

At N.J.A.C. 7:26E-1.9(d)2, a superfluous "the" is deleted.

At N.J.A.C. 7:26E-1.14(b)3iv, 1.17(c)1 and 1.18(d)1, the cross-reference from N.J.A.C. 7:26E-2.1(a)17 is corrected to N.J.A.C. 7:26E-2.1(a)16.

At N.J.A.C. 7:26E-1.14(b)4 and 1.18(d)2, the mailing address to which indoor air sampling data are to be sent at the New Jersey Department of Health and Senior Services is corrected.

At N.J.A.C. 7:26E-2.1(a)4iii, "%2F" is replaced with a superscripted ® (registered trademark symbol) throughout the subparagraph.

At N.J.A.C. 7:26E-2.1(a)13, the word "Program" is added after the phrase "Contract Laboratory" to correct the name of the document.

At N.J.A.C. 7:26E-2.1(d), Table 2-1, the spelling of "Naphtha" in the "Light Petroleum Distillates" Petroleum Product is corrected.

At N.J.A.C. 7:26E-2.1(d), Table 2-1, for the petroleum product category "Waste Vehicular Crankcase Oil," in the "Soil/Sediment" column, footnote "1" is added to "VO+TICs," as this footnote applies to all VO+TICs listed in this table.

At N.J.A.C. 7:26E-3.6(a)4i, the spelling of "contaminant" is corrected.

At N.J.A.C. 7:26E-3.7(a)2 and 4.4(a)4ii, the word "Geodata" after the web address is corrected to the text "Digital Data."

At N.J.A.C. 7:26E-4.4(g)4, the spelling of "stratigraphy" is corrected.

At N.J.A.C. 7:26E-4.8(c)12, the web address is corrected to <http://www.nj.gov/dep/srp/guidance/techgis/>.

At N.J.A.C. 7:26E-6.7(b)7, "on" is replaced with "and."

At N.J.A.C. 7:26E Appendix A, footnote 2, the spelling of "arochlor" is corrected.

At N.J.A.C. 7:26E Appendix H, in the second sentence of the second paragraph of the Public Notice, "have been sent" is corrected as "has been sent" to match the singular "copy."

At N.J.A.C. 7:38-2.4(b)8 and 9.2(d)15, the statutory cross-reference is changed from SRRA, N.J.S.A. 58:10C-1 et seq., to the Brownfield Act, N.J.S.A. 58:10B-1 et seq., to comport the rule text with the exemptions provisions of the Highlands Water Protection and Planning Act (the Highlands Act) at N.J.S.A. 13:20-28 that specifically exempt sites that are being remediated according to the Brownfield Act, but not according to SRRA. Since the Brownfield Act was amended by SRRA and cross-

references back to SRRA, this change does not affect the universe of sites to which this Highlands Act exemption applies.

Full text of the corrected rules follows (additions indicated in boldface thus; deletions indicated in italicized brackets /thus/):

CHAPTER 9C
GROUND WATER QUALITY STANDARDS

SUBCHAPTER 1. GROUND WATER QUALITY STANDARDS

7:9C-1.1 Scope of chapter

(a) (No change.)

(b) This chapter provides the basis for protection of ambient ground water quality, through the establishment of constituent standards for ground water pollutants. These constituent standards are applicable to the development of: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C.

7:14A); ground water remediation standards; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including non-point and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1 et seq.), the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

(c) (No change.)

APPENDIX

Table 1

Specific Ground Water Quality Criteria - Class II-A and Practical Quantitation Levels

<u>Constituent</u>	<u>CASRN</u>	<u>Ground Water Quality Criterion*</u>	<u>Practical Quantitation Level (PQL)*</u>	<u>Higher of PQL and Ground Water Quality Criterion (ug/L)*</u>
...				
/Phenol/ Phenol	/08-95-2/ 108-95-2	2,000	10	2,000
...				

Explanation of Terms:

...

(Total) means the concentration of metal in an unfiltered sample following treatment with hot dilute mineral acid (as defined in "Methods for Chemical Analysis of Water & Wastes," USEPA-600/4-79-020, March 1979) or other digestion defined by the analytical method. However samples that contain less than 1 /nephelometric/ **nephelometric** turbidity unit (NTU) and are properly preserved, may be directly analyzed without digestion.

...

CHAPTER 14B
UNDERGROUND STORAGE TANKS

SUBCHAPTER 3. FEES

7:14B-3.5 Program fees and oversight costs

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

(d) The cost for the Department review of any remediation document not listed in (c) above shall be assessed pursuant to N.J.A.C. 7:26C-/9/4.

(e) (No change.)

SUBCHAPTER 15. FINANCIAL RESPONSIBILITY REQUIREMENTS

7:14B-15.1 Applicability and general requirements

(a)-(h) (No change.)

(i) Within 30 calendar days after the cancellation or expiration of any form of financial assurance established to meet the requirements of this chapter, the issuing financial institution shall notify the Department in writing of the expiration or cancellation. The financial institution shall include in the notification the name of the insured policy holder, the policy number as applicable and the address of all sites covered by the financial mechanism. The written notification shall be sent to the address below:

New Jersey Department of Environmental Protection
/Division of Remediation Management and Response
Bureau of Fund Management, Compliance & Recovery/
Bureau of Case Assignment & Initial Notice
PO Box 028

401 East State Street
Trenton, NJ 08625-0028
Attn: Registration and Billing Unit

CHAPTER 26B
INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.4 Definitions

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

...

"Transferring ownership or operations" means:

1.-4. (No change.)

5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, "family" means any of the relations included at N.J.A.C. 7:26B-2.1(a)/4/5.

...

7:26B-1.5 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/ **www.nj.gov/dep/srp/srra/forms** or by contacting the Department at the address 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.)

7:26B-1.10 Liability for ISRA compliance

(a) (No change.)

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

1. The Department has issued a no further action letter, or a licensed site remediation professional has issued a [remedial] **response** action outcome, for the industrial establishment pursuant to N.J.A.C. 7:26C-6;

2.-4. (No change.)

(c)-(g) (No change.)

SUBCHAPTER 4. REMEDIATION AGREEMENT AND REMEDIATION CERTIFICATION

7:26B-4.3 Remediation certification

(a) An owner or operator of an industrial establishment who wishes to transfer ownership or operations of the industrial establishment prior to completion of all applicable requirements of ISRA and this chapter shall submit to the Department a completed Remediation Certification form, available at the Department's website at [www.nj.gov/dep/srp/srra/forms] **www.nj.gov/dep/srp/srra/forms**, that includes the following:

1.-4. (No change.)

SUBCHAPTER 8. PROGRAM FEES AND OVERSIGHT COSTS

7:26B-8.1 Fee schedule

(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance **with** N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

1.-13. (No change.)

(b) The cost for the Department review of any remediation document not listed in (a) above shall be assessed pursuant to N.J.A.C. 7:26C-4 and 5/4.5.

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

CHAPTER 26C

ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.3 Definitions

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

...

"Licensed site remediation professional" means an individual who has been issued a license pursuant to N.J.S.A. 58:10C-1 **et seq.**

...

7:26C-1.5 Certifications

(a) (No change.)

(b) The person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a) shall certify all submissions as follows:

1. For all documents that are required to be certified pursuant to the applicable provisions of the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, the person responsible for conducting the remediation shall include the following certification with the document[.]:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. (No change.)

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

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation shall:

1.-2. (No change.)

3. Complete the installation of a light [non-aquous] **non-aqueous** phase liquid (LNAPL) recovery system, initiate operational monitoring and submit an interim remedial action report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), no later than one year from:

i.-ii. (No change.)

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

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.3 Individual review fees

(a) The person responsible for conducting the remediation shall submit to the Department, at the address noted on the appropriate document submission form or questionnaire, provided by the Department at [www.nj.gov/dep/srp/srra/forms], the applicable nonrefundable document review fee pursuant to this section each time that the person submits any of the following documents to the Department unless the person is subject to an annual remediation fee:

1.-4. (No change.)

5. Child care center [remedial] **response** action outcome \$225.00. or child care center renewal certification

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

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE

7:26C-5.1 Scope

(a) This subchapter establishes the requirements for:

1.-4. (No change.)

5. The procedures for adjusting the amount of the remediation funding source **and for returning the remediation funding source**, in N.J.A.C. 7:26C-5.11;

6. The disbursement of funds from a remediation funding source, in N.J.A.C. 7:26C-5.12; **and**

[7. The return of the remediation funding source, in N.J.A.C. 7:26C-5.13; and]

[8.] 7. The procedures the Department will use to draw on the funding in the remediation funding source when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.14/5.13.

7:26C-5.13 Failure to perform the remediation

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

(d) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the moneys in the remediation funding source established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the [monies] **moneys** to the petitioner.

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.5 Scope of final remediation document and covenant not to sue

(a) (No change.)

(b) Any covenant not to sue that accompanies a final remediation document is without prejudice to any rights that the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund may have against the person responsible for

conducting the remediation and any person in any way responsible for a discharge, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, with respect to liability for:

- 1. (No change.)
- 2. Cleanup and removal costs, damages, and injunctive relief available to the Plaintiffs in the United States District Court for the District of New Jersey, in the case captioned *NJDEP et al. v. Amerada Hess Corp. et al.*, C.A. No. 3:07-5284, and subsequently pending in the United States District Court for the Southern District of New York, captioned as *In Re; Methyl [Tertiary] Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, MDL No. 1358; and
- 3. (No change.)

SUBCHAPTER 7. REMEDIAL ACTION PERMITS

7:26C-7.2 Permittees of remedial action permits

(a) Each of the following persons shall comply with this subchapter, including any applicable remedial action permit the Department issues pursuant to this subchapter:

- 1. The permittees for a remedial action permit include, without limitation, each of the following statutory permittees:
 - i.-ii. (No change.)
 - iii. Any other person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-/23.11et/23.11 et seq., for any hazardous substance that was discharged; and

- iv. (No change.)
- 2. (No change.)
- (b) If there is more than one person responsible for compliance with a remedial action permit pursuant to (a) above, each such person, as a co-permittee, is jointly and severally liable for:
 - 1.-3. (No change.)
 - 4. Maintenance of financial assurance for engineering controls pursuant to N.J.A.C. 7:26C-/7.8/7.7.

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

- (a) (No change.)
- (b) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
...				
<u>Underground Storage Tanks N.J.A.C. 7:14B</u>				
...				
9 Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems				
...				
Failure to insure ensure the site investigation report is prepared by individual certified in subsurface evaluation per N.J.A.C. 7:14B-13 or a licensed site remediation professional, as required, depending upon the date that closure was initiated.	7:14B-9.5(b)	NM		\$8,000
...				
10 Permitting Requirements for Underground Storage Tanks				
...				
Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.	7:14B-10.1(a)2	M	30	\$4,000
...				
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or upgrade which are signed and sealed by a New Jersey profession professional engineer.	7:14B-10.3(b)1	M	30	\$4,000
...				
<u>Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C</u>				
...				
8 Access				
...				
Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.	7:26C-8.2(d)	M	30	\$4,000
...				
13 Remediation of Unregulated Heating Oil Tank Systems				
Failure to use either an appropriately certified subsurface evaluator or a licensed site	7:26C-13.2(a)	NM		\$8,000

remediation professional to perform the remediation of a discharge from an unregulated heating oil tank system.

...

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

...

1 General Information

...

Failure to notify the Department of the discovery of light non-aqueous phase liquid (LNAPL) and initiate free product recovery as required. 7:26E-1.12(b)1 NM \$20,000

...

[Failure to complete the installation of a recovery system, initiate operational monitoring, and submit required information concerning LNAPL recovery within required timeframe. 7:26E-1.12(b)4 NM \$20,000]

...

5 Remedial Action Selection

...

Failure to select a remedial action that reduces contamination to below all applicable remediation standards or eliminates exposure to contamination above the applicable remediation standards based on the current and future land use for the site and all listed standards, rules and guidelines. 7:26E-5.1(c) NM \$8,000

...

8 Engineering and Institutional Controls

Failure to include a copy of the recorded deed notice, stamped "Filed," or notice, as applicable, with the [Remedial] **Response** Action Outcome and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in N.J.A.C. 7:26E-8.2(g). 7:26E-8.2(e)3 NM \$8,000

...

7:26C-9.10 Procedures for requesting and conducting adjudicatory hearings

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

(d) The violator shall send the request for an adjudicatory hearing to:

1. (No change.)

2. New Jersey Department of Environmental Protection
Bureau of Enforcement and Investigations
PO Box 028
Trenton, New Jersey 08625-0028
Attention: Hearing Request

1. Clean up and remove the discharge or threatened **discharge** of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. (No change.)
(c)-(g) (No change.)

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.5 Application for technical assistance grant

(a) (No change.)

(b) After reviewing the application for eligibility, administrative completeness, and technical acceptability, the Department will notify the contact person for the community group in writing as follows:

1.-2. (No change.)

3. The community group is not eligible for a technical assistance grant, with a statement of the reason(s) [therefore] **therefor**.

(c) (No change.)

7:26C-9.11 Spill Compensation and Control Act directive

(a) (No change.)

(b) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a hazardous substance at a site to:

APPENDIX A

DEVELOPER CERTIFICATION

IN THE MATTER OF THE :
[Insert Site Name, : DEVELOPER
Program Interest Number (Preferred ID)] : CERTIFICATION
AND :

[Insert Name of Person] :

Name of Authorized Individual

Authorized Individual's Title

Name of Person

Address of Person

hereby certifies, on behalf of [insert name of person], that he or she is authorized to make this binding Certification for the [describe here the real property that [insert name of person] is remediating, including any name by which the Site is known, the street address, all blocks and lots, the municipality, county and the DEP program interest name and program interest number (preferred ID)] [(the Site)], and, with regard to that Site, [insert name of person] further certifies as follows:

1.-5. (No change.)

6. [Insert name of person] is not a corporate successor to, affiliated with, or otherwise related to any person described below such that [insert name of person] would be liable for the contamination other than by acquiring title to the site:

a. Any entity that [the] [Insert name of person] has reason to believe has discharged at the Site any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b.-c. (No change.)

7.-9. (No change.)

...

APPENDIX B

MODEL TERMINATION OF DEED NOTICE

FILED AT THE OFFICE OF THE
REGISTER OF
[county] COUNTY

IN DEED BOOK [volume], Pages

[pages]

AS TO

BLOCK(S), LOT(S), TAX MAP OF THE [county] County

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____

Recorded by: _____

[Signature, Officer of County
Recording Office]
[Print name below signature]

This Termination of Deed Notice is made as of [month day, year] by [name of property owner].

1.-4. (No change.)

5. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice or the date the new Deed Notice for Block(s) _____, Lot(s) _____ is recorded in the Office of the Register of [county], whichever is later, or, if this Termination of Deed Notice and the new Deed Notice are simultaneously recorded in the Office of the Register of [county], on the date of such simultaneous recording.

...

{Appropriate consecutive paragraph number}. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s) _____, soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by [name of person or corporation etc. filing new deed notice].

...

A.-D. (No change.)

EXHIBITS A and B

(No change.)

CHAPTER 26D
REMEDIATION STANDARDS

APPENDIX 1

SOIL REMEDIATION STANDARDS TABLES

Table 1A - Residential Direct Contact Health Based Criteria and Soil Remediation Standards (mg/kg)

Contaminant	CAS No.	Ingestion-Dermal [Health] Health Based Criterion	Inhalation Health Based Criterion	Soil PQL	Residential Direct Contact Soil Remediation Standard
...					
Zinc	[7740-66-6] 7440-66-6	23,000	NA	6	23,000

CHAPTER 26E
TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.4 Notification and public outreach

(a)-(j) (No change.)

(k) If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements, to raise the topographic level in the floodplain, or to construct the engineering controls approved by the Department in [either] a remedial action workplan pursuant to N.J.A.C. 7:26C-8, the person shall obtain the Department's prior approval, comply with the Department's Alternative Fill Protocol, and comply with all of the following:

1.-2. (No change.)

(l)-(m) (No change.)

(n) If contamination migrates off site and the affected media is limited to historic fill, the person responsible for conducting the remediation is [except] exempt from the requirements of (l) above.

(o)-(s) (No change.)

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:

...
"Impermeable" means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of [10<-7>] 10⁻⁷ cm/sec at the maximum anticipated hydrostatic pressure.
...

7:26E-1.9 General remediation requirements

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

(d) The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter as follows:

1. (No change.)

2. One copy on CD of the site-specific health and safety plan pursuant to N.J.A.C. 7:26E-1.10; quality assurance project plan, pursuant to N.J.A.C. 7:26E-2.2, with [the] each remedial phase report as applicable;

3.-6. (No change.)

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.-2. (No change.)

3. Within five days after identifying the IEC condition, submit the following to the Department:

i.-iii. (No change.)

iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)/17/16, with a Potable Water Data form available from the Department;

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
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.)

7:26E-1.17 Receptor evaluation—ground water

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

(c) If no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)/17/16 with the Full Laboratory Data Deliverables form available from the Department; and

2. (No change.)

(d) (No change.)

7:26E-1.18 Receptor evaluation—vapor intrusion

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

(d) If no contaminant concentration is detected in any indoor air sample in excess of any Department indoor air screening level, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)/17/16 with the Full Laboratory Data Deliverables form available from the Department;

2. Submit all analytical results 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; and/

NJDHSS
Indoor Environments Program
135 E. State Street
PO Box 369
4th Floor
Trenton, NJ 08625-0369; and

3. (No change.)

(e)-(h) (No change.)

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

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

1.-3. (No change.)

4. Non-aqueous samples to be analyzed for volatile organics shall be sampled using the procedures specified in either USEPA SW846 Method 5035 (USEPA Publication "Test Methods for Evaluating Solid Waste," third edition, final update III, December 1996, incorporated herein by reference, as amended and supplemented) or the USEPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi Media, Multi Concentration, Revision OLMO4.2, incorporated herein by reference, as amended and supplemented. All samples are to be preserved in the field with the appropriate preservation solution except for the following:

i.-ii. (No change.)

iii. Samples collected using a field core sampling/storage device (that is, En Core/²F[®] or equivalent. En Core/²F[®] is a product of En Novative Technologies Inc. of Green Bay, Wisconsin.) and the samples are shipped to and analyzed by the laboratory within 48 hours of sampling or the samples are shipped to the laboratory and transferred to vials containing the appropriate preservation solution within 48 hours of sampling need not be preserved in the field.

5.-12. (No change.)

13. Acceptable matrix cleanup methods include, without limitation, those methods contained in the EPA Publication SW846 or the EPA "Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date of sample analysis.

14.-18. (No change.)

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

(d) The person responsible for conducting the remediation shall analyze samples for petroleum hydrocarbons contamination (PHC) pursuant to the Department's Protocol for Addressing EPH Contamination Guidance and as follows:

1.-3. (No change.)

TABLE 2-1

ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS

Petroleum Product	Soil/Sediment	Water
...		
Light Petroleum Distillates (/Naphtha/ Naphtha, Stoddard Solvent, Paint Thinner, etc.)	VO+TICs ¹	VO+TICs ¹
...		
Waste Vehicular Crankcase Oil	PHC ³ . Analyze 25 percent of the samples for VO+TICs ¹ , SVO+TICs ² , PCBs, Lead when PHC are detected. ⁷	VO+TICs ¹ , SVO+TICs ² , Lead
...		

(e) (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.6 Site investigation—soil

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

1.-3. (No change.)

4. All soil samples to be analyzed for volatile organics shall be collected as follows:

i. A bulk sampling device that will collect an intact core (for example, spitspoon) shall be used to minimize [contaminant] **contaminant** loss during sampling; and

ii.-iii. (No change.)

5.-7. (No change.)

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

7:26E-3.7 Site investigation—groundwater

(a) Except as provided in (b) below, the site investigation of each area of concern shall include at least one groundwater sample if any soil contaminant detected in the area of concern has a water solubility greater than 100 milligrams per liter at 20 degrees Celsius to 25 degrees Celsius as documented by a peer-reviewed reference; and

1. (No change.)

2. Any part of the area of concern at which the soil contamination was detected is located within 2,000 feet of a public supply well, as determined from a map of public supply wells which is available from the Department's Bureau of Revenue, Maps and Publications (609-777-1038), or through the Department's internet home page (<http://www.state.nj.us/dep/njgs>), then select "[Geodata] **Digital Data**"). A groundwater sample is not required if documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.13) demonstrating that groundwater sampling was not necessary.

(b)-(g) (No change.)

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.4 Remedial investigation of ground water

(a) A remedial investigation of groundwater for an area of concern shall be conducted if:

1.-3. (No change.)

4. Any contaminant in an area of concern has a water solubility greater than 100 milligrams per liter at 20 degrees Celsius to 25 degrees Celsius as listed in a peer reviewed reference; and

i. (No change.)

ii. Any part of the area of concern at which the soil contamination was detected is located within 2,000 feet of a public supply well, as determined from a map of public supply wells which is available from the Department Bureau of Revenue, Maps and Publications (609-777-1038) or through the Department's Internet home page (<http://www.state.nj.us/dep/njgs>), then select "[Geodata] **Digital Data**"). A groundwater sample is not required if documentation acceptable to the Department is provided in the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why such sampling was not considered necessary.

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

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

1.-3. (No change.)

4. Have split spoon samples collected during drilling through unconsolidated or overburden material using American Society of Testing Materials (ASTM) Method D1586-84, incorporated herein by reference, if appropriate. Split spoon samples shall be logged every five feet and at any change in soil lithology and at all zones that show obvious signs of contamination. At least one drilling location per area of concern shall include continuous split spoon samples to define the subsurface [stratigraphy] **stratigraphy**. Drilling logs shall include all data required pursuant to N.J.A.C. 7:26E-3.6, Soil investigations. Other methods may be used if documentation acceptable to the Department is provided indicating that the methods were appropriate;

5.-11. (No change.)

(h)-(i) (No change.)

7:26E-4.8 Remedial investigation report

- (a)-(b) (No change.)
- (c) The remedial investigation report shall include the following data and information:
 - 1.-11. (No change.)
 - 12. The results of any ecological assessments and evaluations conducted, including, without limitation, characterization of natural resource injuries, in accordance with N.J.A.C. 7:26E-4.7(b). This information shall be submitted in a format compatible with the Department's Geographic Information System (see N.J.A.C. 7:1 Appendix A. For additional guidance, see the version of the Department's "Guidance for the submission and use of Data in GIS Compatible Formats" most recent to the time of submission. This guidance document may be found at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm> / <http://www.nj.gov/dep/srp/guidance/techgis>.) In lieu of an ecological investigation or an ecological risk assessment for groundwater, the person responsible for conducting the remediation shall include the following information in the remedial investigation report:
 - i.-iii. (No change.)
 - 13.-15. (No change.)
 - (d)-(g) (No change.)

SUBCHAPTER 6. REMEDIAL ACTION

7:26E-6.3 Specific remedial action requirements

- (a)-(e) (No change.)
- (f) The person responsible for conducting the remediation that is implementing an active ground water remediation shall include a monitoring plan in the remedial action workplan with a schedule designed to demonstrate that:
 - 1. There is a decreasing trend of contaminant concentrations in the ground water and that the ground water remediation standards will be attained in the treatment zone using the Mann-Whitney U test using Appendix C or the Department's /Remedial/ **Response** Action Outcome guidance shall be used make this determination;
 - 2.-4. (No change.)
 - (g)-(h) (No change.)
- 7:26E-6.7 Remedial action report
 - (a) (No change.)
 - (b) The person responsible for conducting the remediation shall include the following in the remedial action report:
 - 1.-6. (No change.)
 - 7. A copy of a deed notice, stamped "Filed" if applicable pursuant to N.J.A.C. 7:26E-8.2(d), along with a Remedial Action Permit form [on/ **and** a remedial action permit application fee pursuant to N.J.A.C. 7:26C-4.4; and
 - 8. (No change.)
 - (c)-(g) (No change.)

APPENDIX A

Laboratory Data Deliverables Formats

...² Method blanks for nonaqueous samples shall consist of performing the entire analytical procedure without any actual sample being present. The appropriate amount of sodium sulfate as specified in the current Statements of Work for Organics would be substituted as the "sample" for the semivolatle and pesticide/~~arochlor~~/**arochlor** fractions.

APPENDIX H

MODEL PUBLIC NOTICE FOR A DGW PROPOSAL

The model public notice in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to publication in appropriate local newspapers. As provided at N.J.A.C. 7:26E-7.2(c), the wording of this model public notice shall not be otherwise changed or modified.

Public Notice

...

Brief description of the proposed discharge: [Include a description of the site including the remedial action, type of discharge (e.g., treated ground water or in situ bioremediation), discharge unit (e.g., injection well, overland flow, lagoon, etc.) and treatment proposed and the name and description of the formation receiving the discharger]. A copy of this public notice /have/ **has** been sent to the Municipal Clerk and designated local health official for [Municipality, County or region].

...

CHAPTER 38

HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES

SUBCHAPTER 2. JURISDICTION, APPLICABILITY AND EXEMPTIONS

7:38-2.4 Highlands applicability determination

- (a) (No change.)
- (b) Any person proposing to undertake any activity in the preservation area that requires any environmental land use or water permit from the Department other than, as provided at (c) below, a NJPDES permit or TWA, shall either clearly stipulate that the proposed activity is subject to the Highlands Act in an application to the Department for an HPAA, or obtain a Highlands Applicability Determination, before submitting an application for the environmental land use or water permit unless the activity is one of the following:
 - 1.-7. (No change.)
 - 8. The remediation of any contaminated site pursuant to N.J.S.A. /58:10C-1 et seq./ **58:10B-1 et seq.**, provided no residential, commercial, or industrial development is undertaken concurrently with, or subsequent to, the remediation. Any concurrent or subsequent development at the site is subject to the requirements of this chapter for a Highlands applicability determination and HPAA as applicable;
 - 9.-10. (No change.)
 - (c)-(g) (No change.)

SUBCHAPTER 9. APPLICATION CONTENTS

7:38-9.2 Application requirements for a Highlands Applicability Determination

- (a)-(c) (No change.)
- (d) In addition to providing all the information required at (b) and (c) above, the following information shall be provided if an applicant is seeking a letter of exemption from the requirements of the Highlands Act:
 - 1.-14. (No change.)
 - 15. For the remediation of any contaminated site pursuant to N.J.S.A. /58:10C-1 et seq./ **58:10B-1 et seq.** pursuant to N.J.A.C. 7:38-2.3(a)15:
 - i.-iv. (No change.)
 - 16.-17. (No change.)
 - (e)-(f) (No change.)

HEALTH AND SENIOR SERVICES

(a)

DIVISION OF HEALTH INFRASTRUCTURE
PREPAREDNESS AND EMERGENCY RESPONSE
OFFICE OF EMERGENCY MEDICAL SERVICES

Notice of Waiver of Administrative Rule at N.J.A.C. 8:40A-7.2(c)

Take notice that, in compliance with P.L. 2009, c. 174, codified at N.J.S.A. 26:2K-63 and 64 ("the Law"), the Department grants a general waiver with respect to the requirements of N.J.A.C. 8:40A-7.2(c) to persons acting in the capacity of an Emergency Medical Technician-Basic, certified or recognized by the Department in accordance with the standards set forth in N.J.A.C. 8:40A. The waiver applies to all currently certified New Jersey EMT-Basics and individuals certified as New Jersey EMT-Basics who receive certification on or after August 1, 2010.

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ENVIRONMENTAL PROTECTION

(a)

SITE REMEDIATION PROGRAM

Administrative Requirements for the Remediation of Contaminated Sites; Technical Requirements for Site Remediation

Timeframes, Vapor Intrusion and Form Names

Proposed Amendments: N.J.A.C. 7:26C-3.2, 3.3, 3.5 and 9.5; and 7:26E-1.8, 1.12, 1.14, 1.15, 1.17, 1.18, 3.2 and 3.3

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1K-6 et seq.; 58:10-23.11a et seq.; 58:10A-1 et seq.; 58:10B-1 et seq.; and 58:10C-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 06-10-09.

Proposal Number: PRN 2010-235.

Submit written comments by December 3, 2010 to:

Leslie W. Ledogar, Esq.
Attn.: DEP Docket No. 06-10-09
Office of Legal Affairs
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate the Department's use of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department is providing a 60-day comment period on this notice of proposal, this proposal is exempted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

The Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., establishes an affirmative obligation for certain entities to remediate contaminated sites (see N.J.S.A. 58:10B-1.3). It also provides that in most instances, a remediation may proceed without prior Department

approval as long as the remediation is conducted by or under the supervision of a licensed site remediation professional. SRRA also authorizes the Department to promulgate mandatory timeframes for certain remediation milestones. These milestones are set forth in SRRA at N.J.S.A. 58:10C-28 and they apply to the person responsible for conducting the remediation, whether or not that person is using a licensed site remediation professional, and whether the remediation was initiated prior to, on, or after the effective date of the Department's rules that established them (here, November 4, 2009). SRRA also provides that if a person responsible for conducting the remediation does not complete a remediation milestone within the mandatory timeframe established by the Department, the Department must exercise direct oversight of the site, phase or condition (see N.J.S.A. 58:10C-27).

On November 4, 2009, the Department adopted interim rules to implement the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and related statutory amendments. The interim rules include the new Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules, at N.J.A.C. 7:26C, and amendments to other rule chapters related to site remediation including the Technical Requirements for Site Remediation rules (Technical Requirements), N.J.A.C. 7:26E. Pursuant to SRRA, N.J.S.A. 58:10C-29, these interim rules became effective upon filing with the Office of Administrative Law, and will sunset 18 months after the effective date of November 4, 2009 unless the Department readopts them in accordance with the Administrative Procedure Act.

In the interim rules, the Department established mandatory timeframes for the following four of the seven remediation milestones enumerated in SRRA, and set those timeframes at one year from a specific trigger date unique to that milestone: (1) submitting an initial receptor evaluation, (2) addressing immediate environmental concerns, (3) addressing the interim remedial measure for remediating free product, and (4) submitting the preliminary assessment and site investigation reports. See the ARRCS rules at N.J.A.C. 7:26C-3.3. The Technical Requirements establish regulatory timeframes for certain aspects of remediation, the achievement of which is designed to help the person responsible for conducting the remediation complete the statutorily specified remediation milestones within the mandatory timeframes set forth in the ARRCS rules.

Since the adoption of the interim rules, the Department has conducted extensive stakeholder outreach. During stakeholder input sessions, commenters uniformly expressed concern that persons responsible for conducting the remediation of sites will inevitably be subject to direct Department oversight because the mandatory timeframes established in the ARRCS rules at N.J.A.C. 7:26C-3.3 are too short. Additionally, although the Department provided a three-month "safety cushion" between the regulatory timeframes and mandatory timeframes so that the Department could work with the person responsible for conducting the remediation to ensure that the person does not run the risk of being placed in direct Department oversight, the concern remains that the regulatory timeframes established in the Technical Requirements as milestones to be

completed on the way to meeting mandatory timeframes are also too short.

Therefore, the Department is proposing to amend the mandatory remediation timeframes established in the ARRCs rules at N.J.A.C. 7:26C-3.3 by extending them for one additional year, and is also proposing to amend the regulatory timeframes set forth in the Technical Requirements in order to afford the person responsible for conducting the remediation a full one-year "safety cushion."

Stakeholders were also concerned that the definition of an immediate environmental concern for areas of concern involving indoor air in the Technical Requirements is too conservative to trigger an immediate environmental concern and is not consistent with the definition of immediate environmental concern in SRRA. The definition of "immediate environmental concern" for indoor air in SRRA is "confirmed contamination at the site of a nature that either dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure." The definition in the Technical Requirements uses the indoor air screening levels contained in the Department's Vapor Intrusion Guidance as the trigger for considering an area of concern involving indoor air to be an immediate environmental concern. In order to make the definition of immediate environmental concern in the Technical Requirements comport with the definition in SRRA, the Department is proposing to amend the trigger for an immediate environmental concern in indoor air in the Technical Requirements from an exceedance of the screening level to the exceedance of the rapid action level contained in or developed consistent with the Department's Vapor Intrusion Guidance published on the Department's website at <http://www.nj.gov/dep/srp/guidance/vaporintrusion/vig.htm>. In addition, the Department is proposing to add new requirements and related regulatory timeframes for the evaluation and mitigation of an immediate environmental concern condition affecting indoor air.

I. Proposed Amendments to the Administrative Requirements for the Remediation of Contaminated Sites Rules

N.J.A.C. 7:26C-3.3 establishes mandatory remediation timeframes for submitting preliminary assessment and site investigation reports, submitting the initial receptor evaluation report, initiating immediate environmental concern source control, and installing a light non-aqueous phase liquid (LNAPL) free product interim remedial measure. The Department proposes to amend all of the mandatory timeframes set forth in N.J.A.C. 7:26C-3.3(a) from one year to two years, beginning on either March 1, 2010 or on the date of a triggering event for the specific provision. Examples of triggering dates include the date remediation was commenced, immediate environmental concern condition was initially reported to the Department, or LNAPL was discovered. Both the Department and stakeholders have found that the currently codified mandatory timeframes do not take into account site-specific circumstances that may cause an unavoidable delay in achieving the timeframes. Additionally, extending these mandatory timeframes will serve as a bridge between the interim rules and the final rule to be adopted in 2012 to allow for the Department to collect more data concerning the time it actually takes in different circumstances to achieve the remediation goals enumerated in the mandatory timeframe provisions of SRRA.

In addition, the Department proposes to amend N.J.A.C. 7:26C-3.3(a)1 to add a phrase that clarifies that it is pursuant to the Industrial Site Recovery Act (ISRA, N.J.S.A. 13:1K-6 et seq.) that a preliminary assessment and site investigation are required, and that it is pursuant to the Underground Storage of Hazardous Substances Act (UST Act, N.J.S.A. 58:10A-21 et seq.) that a site investigation, only is required.

The Department proposes to amend N.J.A.C. 7:26C-3.3(a)1i, recodified (a)3i, and recodified (a)4i, deleting the language differentiating the start date for the mandatory timeframe for cases where remediation was initiated prior to or on or after November 4, 2009. The Department has determined that all cases will have the same start date for the mandatory timeframes, regardless of when remediation is initiated.

The Department proposes to recodify from N.J.A.C. 7:26C-3.3(a)1 the phrase "and the initial receptor evaluation" to new N.J.A.C. 7:26C-3.3(a)2, and expanding new N.J.A.C. 7:26C-3.3(a)2 to require that the

initial receptor evaluation report is to include only the information known at the time the report is submitted. The Department separated the mandatory timeframe for the initial receptor from the mandatory timeframes for the preliminary assessment and/or site investigation reports to emphasize that these are two distinct mandatory timeframes. Because of the addition of this new paragraph, the Department proposes to recodify N.J.A.C. 7:26C-3.3(a)2 and 3 as (a)3 and 4.

At recodified N.J.A.C. 7:26C-3.3(a)3, the Department proposes to delete the phrase "complete the delineation of the immediate environmental concern contaminant source" at the beginning of the paragraph. The Department is making this change to acknowledge that it is not always possible to fully delineate the source of contamination that has resulted in an area of immediate environmental concern within the two year timeframe. However, receptors must be addressed pursuant to the Technical Requirements at N.J.A.C. 7:26E-1.14; receptor control is mandated to occur within 60 days after the person responsible for conducting the remediation identifies the immediate environmental concern condition.

The Department proposes to amend recodified N.J.A.C. 7:26C-3.3(a)4 by adding the phrase "free product" to reflect that the mandatory timeframe for installation of an LNAPL recovery system applies to the presence of free product, not residual product. The person responsible for conducting the remediation is still required to address any residual product at the site, pursuant to N.J.A.C. 7:26E-6.1(d). In addition, the Department proposes to replace the phrase "recovery system" with the phrase "interim remedial measure" to clarify that the actions required at recodified N.J.A.C. 7:26C-3.3(a)4 are being taken as part of an interim remedial action to address the LNAPL free product. A recovery system may be required for the residual product in a subsequent remedial phase.

N.J.A.C. 7:26C-9, Enforcement, establishes the procedures for the Department to issue administrative orders and to assess civil administrative penalties. N.J.A.C. 7:26C-9.5 establishes grace periods that apply to minor violations prior to the assessment of a civil administrative penalty. The Department proposes to amend the table of violations and penalties at N.J.A.C. 7:26C-9.5(b) as follows:

- Amend the base penalty for the violation of N.J.A.C. 7:26C-3.3(a)1, the requirement to submit a preliminary assessment and site investigation report, from \$8,000 to \$20,000, so that the penalty for violation of this mandatory timeframe both reflects the seriousness of this violation and is consistent with the penalty amounts associated with other similar penalties in the rule for violation of other mandatory timeframes noted in paragraphs (a)2 through 4;
- Add a violation for existing N.J.A.C. 7:26E-1.14(b)4. It should be noted that the table currently has a violation for N.J.A.C. 7:26E-1.14(b)4, but that based on the description of the violation, this violation is actually for existing N.J.A.C. 7:26E-1.14(b)5. As noted below, this error is being corrected as a recodification within the table. The violation for N.J.A.C. 7:26E-1.14(b)4 is classified as a non-minor violation with a base penalty of \$20,000; this classification and base penalty are identical to those for the other subsections in N.J.A.C. 7:26E-1.14(b); and
- Comport the description of the violation with the rule text, including updating citations to the rule text to reflect proposed recodifications within the various rules. This includes the violations for N.J.A.C. 7:26C-3.3(a)2, 3, and 4, and N.J.A.C. 7:26E-1.12(b)2, 1.14(b)5, and 1.14(d).

II. Proposed Amendments to the Technical Requirements for Site Remediation Rules

N.J.A.C. 7:26E-1, General Information, establishes the general requirements and information required for all phases of a remediation, and N.J.A.C. 7:26E-1.8 contains definitions. The Department proposes to amend the definition of "immediate environmental concern," changing the vapor intrusion trigger to the rapid action level described in the Department's Vapor Intrusion Guidance. The Department is making this change in response to stakeholder input and to comport the Department's rules with the definition of "immediate environmental concern condition" in SRRA.

The Department proposes to define "rapid action level" as the phrase is defined in the Department's Vapor Intrusion guidance.

N.J.A.C. 7:26E-1.12 concerns control of ongoing sources and implementation of interim remedial measures. The Department proposes to amend N.J.A.C. 7:26E-1.12(b)2 by deleting the phrase “complete delineation of the free product.” The Department is making this change so that the actions of this regulatory timeframe mirror those of the matching statutory timeframe in the ARCS rules proposed herein to be recodified as N.J.A.C. 7:26C-3.3(a)4. The Department also proposes to replace the phrase “recovery system” with the phrase “interim remedial measure,” an amendment that is identical to the amendment proposed in the ARCS rules at recodified N.J.A.C. 7:26C-3.3(a)4. Additionally, the Department proposes to change the regulatory timeframe for completing certain tasks associated with the remediation of LNAPL from 270 days to one year, based on stakeholder input.

N.J.A.C. 7:26E-1.14 concerns immediate environmental concerns. The Department proposes to amend N.J.A.C. 7:26E-1.14(b)2 to include different regulatory timeframes for addressing immediate environmental concerns for vapor intrusion, as opposed to the regulatory timeframes for immediate environmental concerns for potable water and soils contaminated above acute concentrations. The Department proposes to amend N.J.A.C. 7:26E-1.14(b)2i and iii to better indicate the type of immediate environmental concern condition to which each subparagraph applies. Additionally, at N.J.A.C. 7:26E-1.14(b)2ii, the Department proposes to allow the person responsible for conducting the remediation 14 days to mitigate the infiltration of vapors into structures impacted by vapor intrusion. The Department recognizes that it is often difficult to gain access to a home or building in a short amount of time in order to implement the initial response actions required to mitigate vapor intrusion conditions (for example, sealing cracks in basements or floor slabs). The Department proposes to amend N.J.A.C. 7:26E-1.14(b)3 to allow the person responsible for conducting the remediation 14 days to submit certain information to the Department regarding the immediate environmental concern condition, rather than the current five days. The Department is making this change to comport with the change made in N.J.A.C. 7:26E-1.14(b)3.

The Department proposes to amend N.J.A.C. 7:26E-1.14(b)3iv, requiring the person responsible for conducting the remediation to submit all analytical results with full laboratory data deliverables for all immediate environmental concern conditions identified, not just potable water immediate environmental concern conditions. The Department believes that it is necessary for all such data to be submitted to ensure proper quality control and assurance of all immediate environmental concern conditions and to ensure that all decisions concerning immediate environmental concern conditions are based upon reliable, accurate data.

The Department proposes to amend N.J.A.C. 7:26E-1.14(b)4, extending the regulatory timeframe for the person responsible for conducting the remediation to submit the analytical results from indoor air sampling to the New Jersey Department of Health and Senior Services from five days to 14 days as a more reasonable timeframe for completing this task.

The Department proposes to amend N.J.A.C. 7:26E-1.14(b)5ii to state that a vapor intrusion immediate environmental concern condition exists if the concentration of a contaminant in indoor air exceeds a vapor intrusion rapid action level for a contaminant as listed in the Department’s Vapor Intrusion Guidance, rather than the indoor air screening level listed in that same Guidance. Moreover, if a rapid action level for a particular contaminant is not included in the Vapor Intrusion Guidance, the person responsible for conducting the remediation will be required to contact the Department to develop a site-specific rapid action level. The Department is making these changes to reflect the proposed changes in the definition of immediate environmental concern. Lastly, it is required that the person responsible for conducting the remediation install a vapor mitigation system at each property where the indoor air sample concentrations exceed a rapid action level.

The Department proposes to amend the regulatory timeframe in N.J.A.C. 7:26E-1.14(d) for completing certain tasks associated with the mitigation of the immediate environmental concern condition from 270 days to one year. The Department determined that it was reasonable to extend the regulatory timeframe by three months to allow the person responsible for conducting the remediation additional time to complete the required tasks before the Department might initiate an enforcement

action. The Department also proposes to add the phrase “either March 1, 2010 or” in the first line of the subsection to make this regulatory timeframe mirror those of the matching mandatory timeframe in the ARCS rules at N.J.A.C. 7:26C-3.3(a)2. The Department also proposes to delete the phrase “complete the delineation of the IEC contaminant source” from N.J.A.C. 7:26E-1.14(d) so that this provision is consistent with the proposed amendments in N.J.A.C. 7:26C-3.3(a).

N.J.A.C. 7:26E-1.15 concerns general and reporting requirements for the receptor evaluation. The Department proposes to amend N.J.A.C. 7:26E-1.15(b), which is an exemption from having to submit a receptor evaluation. Currently, if the person responsible for conducting the remediation completes an unrestricted remedial action and a final remediation document is issued by the Department within 270 days after initiating the remediation, the person responsible for conducting the remediation does not have to submit a receptor evaluation. The Department proposes to amend this subsection to change the regulatory timeframe from 270 days to one year, to change the term “unrestricted remedial action” to “unrestricted use remedial action,” and to add the concept that the final remediation document may be issued either by the Department or may be filed with the Department by an LSRP.

The Department proposes to amend the regulatory timeframe cited in N.J.A.C. 7:26E-1.15(c), from “November 26, 2010, or with the submittal of a site investigation report” to “March 1, 2011 or one year after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).” The Department is making this change to make the regulatory timeframe consistent with the mandatory timeframe for submitting an initial receptor evaluation.

The Department proposes to further amend N.J.A.C. 7:26E-1.15(c) to include the phrase “which shall contain the information that is known by the person responsible for conducting the remediation at the time the report is submitted.” The Department is making this change to acknowledge that not all information may be known or available at this stage of the remediation.

N.J.A.C. 7:26E-1.18 concerns the requirements for the receptor evaluation for vapor intrusion. The Department proposes to amend N.J.A.C. 7:26E-1.18(c)2vi(1) and (2) by changing the reference to the vapor intrusion indoor air screening levels to the vapor intrusion rapid action levels to reflect the proposed amendments in the definition of immediate environmental concern. Specifically, the Department proposes to require at N.J.A.C. 7:26E-1.18(c)2vi(1) that an additional determination as to whether indoor air contaminants are also greater than the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii, and if so, then the requirement to determine whether the contaminants are likely to be associated with an on-site discharge or may be attributed to background sources is triggered. Similarly, at N.J.A.C. 7:26E-1.18(c)2vi(2), the Department proposes to substitute for indoor air screening levels the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii.

The Department proposes to amend N.J.A.C. 7:26E-1.18(f) by adding new paragraph (f)1. This new paragraph sets forth the requirements for how to proceed with the receptor evaluation when the concentration of contaminants in indoor air is greater than the indoor air screening levels but below the rapid action levels. The purpose of the initial 14-day regulatory timeframe is to ensure that the Department is made aware of the exceedances of the indoor air screening level, and that subsequent information will be submitted to the Department regarding the need to implement an engineered system response. The purpose of the initial 60-day regulatory timeframe is to allow for the determination of whether an engineered system response is necessary. For example, at a residential location, simply sealing cracks in the basement or floor slab may be sufficient to mitigate the vapor intrusion impacts, without the need for a full engineered system response. This regulatory timeframe will allow the person responsible for conducting the remediation to perform these actions and evaluate whether the actions mitigated the impacts and to determine whether additional mitigation is necessary to protect human health. The remaining regulatory timeframes are identical to those for the vapor intrusion immediate environmental concern. The Department believes that these regulatory timeframes are reasonable for performing these activities. The Department also proposes to recodify the latter portion of N.J.A.C. 7:26E-1.18(f) at proposed new paragraph (f)2.

Subchapter 3 concerns preliminary assessment and site investigation requirements. The Department proposes to amend N.J.A.C. 7:26E-3.2(a) to add a phrase that clarifies that it is pursuant to ISRA (N.J.S.A. 13:1K-6 et seq.) that a preliminary assessment is required. This is similar to the change noted above concerning the amendment to N.J.A.C. 7:26C-3.3(a)1.

The Department proposes to amend N.J.A.C. 7:26E-3.3(e) to add a phrase that clarifies that it is pursuant to ISRA (N.J.S.A. 13:1K-6 et seq.) and the UST Act (N.J.S.A. 58:10A-21 et seq.) that a site investigation is required. This is similar to the change noted above concerning the amendment to N.J.A.C. 7:26C-3.3(a)1.

The Department proposes to amend N.J.A.C. 7:26E-3.3(e)1 and 2 to change the regulatory timeframes for submitting a site investigation from either November 26, 2010 or 270 days after initiation of remediation to either March 1, 2011 or one year after initiation of remediation, to make this regulatory timeframe consistent with the proposed changes to all mandatory timeframes and the associated regulatory timeframes.

III. Form Names

As part of the rulemaking effort to readopt the interim rules adopted by the Department on November 4, 2009 (see 41 N.J.R. 4467(a), December 7, 2009) that the Department anticipates filing in the near term, the Department is planning to propose a global amendment to delete the specific names of all forms from N.J.A.C. 7:14B, 7:26C and 7:26E. To that extent, the Department is proposing to similarly amend the form names in both the ARRCs rules and the Technical Requirements rules included in the rule text affected by the other amendments proposed herein. The proposed amendment will delete specific form names and instead direct the person responsible for conducting the remediation to the Department's website address www.nj.gov/dep/srp/srra/forms. The Department recognizes that the names of the various forms may change over time, forms may become obsolete, and new forms may be required. The Department does not want to have to amend rules each time a form name changes. Directing the person responsible for conducting the remediation to the website allows the Department greater flexibility to make such changes in the future. To ensure that the person responsible for conducting the remediation chooses the correct form, the Department had included on its webpage a table that lists each form by using a name that indicates the subject of the form and a cross reference to the citation in the New Jersey Administrative Code to which the form pertains. Also included on this table are the version number of the form and the date that the form was last updated, and a link to the downloadable version of that form. This webpage is updated appropriately as form names change, and forms are added or removed, and alerts concerning form updates appear at the top of the page.

Social Impact

It is critical to the health of our citizens and the environment, as well as to the health of our communities, to remediate contaminated sites in New Jersey as quickly as possible while maintaining the strict clean up standards the Department has always applied. The proposed amendments help accomplish this goal and thus will have a positive social impact on the citizens of New Jersey. The Site Remediation Reform Act established an affirmative obligation for certain persons to remediate contaminated sites, and granted the Department the authority to establish mandatory timeframes concerning when those persons are required to complete certain aspects of the remediation. The proposed amendments will have a positive social impact in that contaminated sites will be remediated in a timely manner but will more accurately reflect the actual time that it takes to complete these tasks. The amendments concerning immediate environmental concern vapor intrusion conditions will have a positive social impact because the person responsible for conducting the remediation will be better able to remediate worst-case contaminated sites first (that is, those with indoor air sample concentrations that exceed the vapor intrusion the rapid action level), rather than requiring that all vapor intrusion cases be treated the same. There is also positive social impact in that vapor intrusion conditions in which the vapor intrusion indoor air screening levels are exceeded will also require remediation. This will further New Jersey's safe and healthy communities goal by ensuring that all New Jersey communities are free from unacceptable human health and

ecological risks due to direct exposure from hazardous substances that have been discharged at contaminated sites.

Economic Impact

The direct economic impact of the proposed amendments on the persons responsible for conducting the remediation of contaminated sites in New Jersey is expected to be positive, as the proposed amendments represent more realistic timeframes for completing the various tasks, and therefore will allow those persons to better allocate financial resources to remediate contaminated sites. Additionally, the Department believes that there will be an overall cost savings associated with the timeframes. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated which often adds to the overall cost of remediation. If the remediation of contaminated sites is completed in a timelier manner, the overall remediation will be less expensive. Additionally, the sooner such sites are remediated, the sooner they can be put to better use and often may generate more taxes for local and State government.

Environmental Impact

Although the proposed amendments extend certain timeframes for remediation, they will have a positive environmental impact by allowing persons responsible for conducting the remediation to better allocate resources to remediate contaminated sites, and allow them to take a more studied approach to the remediation, and therefore implement a more effective remedial action. This means less human and ecological exposure to the contamination, thus less negative consequences to humans and our precious natural resources.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. Following are analyses for each rule that is being amended by these proposed amendments:

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

The proposed amendments to the mandatory timeframes promulgated in the ARRCs rules do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the ARRCs rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 CFR Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site, with or without Department oversight. Therefore, there are no Federal provisions with which to compare the provisions of the ARRCs rules. Based on this analysis, the Department has determined that the proposed amendments do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

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

The Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, were promulgated under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and these State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. In addition, the EPA has delegated its Underground Storage Tank program to New Jersey pursuant to 40 CFR 280. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department has compared these proposed amendments to the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response

Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 et seq., and the Resource Conservation and Recovery Act (RCRA) of 1980, 42 U.S.C. §§ 6901 and 6991 et seq.

The establishment of regulatory timeframes for the completion of certain remedial work is more stringent than equivalent Federal programs; the Federal programs do not establish remediation timeframes at all. Rather, the Federal remediation programs, allow the remediation of contaminated sites to be conducted on site specific schedules. Prior to the adoption of remediation timeframes, the Department also permitted remediation to proceed on site specific schedules, but has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. Accordingly, the Department established regulatory timeframes for the completion of remediation tasks that lead up to the mandatory remediation milestone so that the person responsible for conducting the remediation completes the statutorily mandated remediation milestones within the mandatory time frames set forth in the ARRCs rules. This ensures that site cleanups are not unnecessarily prolonged, and ensures that remediating parties are not unnecessarily pushed into the direct Department oversight program. The Department believes that there will be an overall cost savings associated with the timeframes. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated, which often adds to the overall cost of remediation. Additionally, if the remediation of contaminated sites is completed in a timelier manner, such sites can be put to better use and often can result in increased ratables for local and State government.

Jobs Impact

The proposed amendments should have a positive impact on jobs in New Jersey. The remediation of sites requires the hiring of people skilled in fields such as environmental consulting and technology, as well as laboratory analysis. Additionally, by remediating sites in a timelier manner, the sooner such sites can be put to better use and potentially create jobs in New Jersey.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has determined that the proposed amendments impact State agriculture only when a discharge occurs on a farm. The presence of leaking underground storage tanks and storage areas for pesticides and fertilizers are sources of contamination on some farms. A discharge of a hazardous substance at a farm has the ability to harm human health and the environment the same as a discharge at any other type of site, and thus must be remediated in accordance with all environmental rules and statutes. Therefore, the proposed amendments may have an impact on the agricultural community in New Jersey. To the extent that a discharge occurs on a farm, the extension of the mandatory and regulatory remediation timeframes will allow the farmer additional time to remediate that discharge. To the extent that the discharge impacts indoor air quality, the amendments concerning when and at what level indoor air quality must be mitigated comport the requirement to respond with the risks associated with exposure to hazardous vapors.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full-time employees. The proposed amendments apply to any party remediating a contaminated site, including owners and operators of small businesses, and, therefore, small businesses will be affected by these rules. Examples of small businesses to which the rules apply include independent gasoline service stations, dry cleaners, and consulting firms that employ LSRPs.

The need to remediate a site is based on the contamination present, regardless of the type of business involved. A discharge of a hazardous substance endangers public health, safety and welfare, and cannot be correlated to the size of the business. Therefore, there are no exemptions from the proposed amendments for small businesses.

The various compliance requirements and their associated costs are discussed in the Summary, Economic Impact and Federal Standards

Analysis above. In order to comply with the requirements of the rules to which these amendments are proposed, it is likely that small businesses will need to engage the services of consultants and/or professional engineers. The proposed amendments that extend the remediation timeframes will likely have a positive impact on small businesses because the small businesses will not have to pay a premium to their consultants or engineers to ensure that the current timeframes are met.

The proposed amendments concerning vapor intrusion thresholds will also likely have a positive impact on small businesses. Stakeholders, including small businesses, expressed concern that the triggers for qualifying an area or condition at a site as an immediate environmental concern due to the existence of hazardous vapors in indoor air were too conservative and not consistent with the definition of immediate environmental concern in SRRRA. In response to these concerns, the proposed amendments change the trigger for an immediate environmental concern in indoor air from an exceedance of the Indoor Screening Level to an exceedance of the Rapid Action Level contained in or developed consistent with the Department's Vapor Intrusion Guidance are less stringent. If indoor air contamination is detected at levels above the Indoor Screening Level but below the Rapid Action Level, remediation will still be required, but the small business will have an additional period of time during which to conduct this remediation.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' impact on smart growth and the implementation of the State Plan. The Governor's order on smart growth calls for conservation of New Jersey's natural resources, revitalization of its urban centers, and protection of the quality of the State's environment, while promoting beneficial economic growth, development and renewal.

The proposed amendments support the principles of smart growth by promoting efficient and timely cleanups of contaminated sites by replacing Department oversight of remediation with the licensing of private sector remediation services. The proposed extensions of various timeframes more realistically reflect the time that it takes to achieve the affected remediation milestones while ensuring that remediations are conducted in a timely manner, thereby ensuring that sites are quickly returned to beneficial use.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated this rulemaking to determine the impact, if any, on the affordability of housing. Because these amendments concern the remediation of sites contaminated by a discharge of a hazardous substance, the Department has determined that the amendments will impose an insignificant impact because there is an extreme unlikelihood that the amendments will evoke a change in the average costs associated with housing.

Smart Growth Development Impact

Pursuant to N.J.S.A. 52:14B-4(a), as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated this rulemaking to determine the impact, if any, on the types and number of housing units to which the proposed rule will apply; the increase or decrease in the availability of affordable housing which will be affected by the regulation; and whether the proposed rule will affect in any manner new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. Because these rules concern the remediation of sites contaminated by a discharge of a hazardous substance, the Department has determined that the proposed amendments will impose an insignificant impact because there is an extreme unlikelihood that the amendments will evoke a change in the housing production, including new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 26C
ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF
CONTAMINATED SITES

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND
EXTENSION REQUESTS

7:26C-3.2 Regulatory timeframes

- (a) (No change.)
- (b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:
 1. Complete a [Remediation Timeframe Extension Request] form, [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:
 - i.-iv. (No change.)
 2. (No change.)
 - (c)-(d) (No change.)

7:26C-3.3 Mandatory remediation timeframes

- (a) The person responsible for conducting the remediation shall:
 1. **If required to conduct a preliminary assessment and site investigation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or a site investigation pursuant to the New Jersey Underground Storage of Hazardous Substances, N.J.S.A. 58:10A-21 et seq., [Submit] submit the preliminary assessment[,] and/or site investigation report, as applicable, [and the initial receptor evaluation] within [one] two years from the later of the following dates:**
 - i. March 1, 2010 [if remediation was initiated prior to November 4, 2009]; or
 - ii. (No change.)
 2. **Submit the initial receptor evaluation report containing the information required by N.J.A.C. 7:26E-1.16 through 1.19 known at the time the report is submitted within two years from the later of the following dates:**
 - i. **March 1, 2010;** or
 - ii. **When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b) occurs;**

[2.] 3. [Complete the delineation of the immediate environmental concern contaminant source, initiate] **Initiate** immediate environmental concern contaminant source control and submit [to the Department] an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at

N.J.A.C. 7:26E-1.14, no later than [one] **two** years from the later of the following dates:

- i. March 1, 2010 [if remediation was initiated prior to November 4, 2009]; or
 - ii. (No change.)
- [3.] **4. Complete the installation of a light non-aqueous phase liquid (LNAPL) [recovery system] free product interim remedial measure, initiate operational monitoring and submit an [interim remedial action] LNAPL Free Product Interim Remedial Measures report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), [no later than one year] within two years from the later of the following dates:**
- i. March 1, 2010 [if remediation was initiated prior to November 4, 2009]; or
 - ii. (No change.)
 - (b)-(d) (No change.)

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

- (a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:
 1. The person shall provide a written rationale for the request in a completed [Remediation Timeframe Extension Request Form available from the Department] **form found on the Department's website at www.nj.gov/dep/srp/srra/forms** and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:
 - i.-iv. (No change.)
 2. (No change.)
 - (b)-(d) (No change.)

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

- (a) (No change.)
- (b) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

Subchapter and Violation	Citation	Type of Violation	Grace Period Days	Base Penalty
...				
<u>Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C</u>				
...				
3 Remediation Timeframes and Extension Requests				
...				
Failure to comply with the mandatory timeframe for submittal of a preliminary assessment and site investigation report.	7:26C-3.3(a)1	NM		[\$8,000] \$20,000
Failure to comply with the mandatory timeframe for submittal of an initial receptor evaluation report.	7:26C-3.3(a)[1]2	NM		\$20,000
Failure to comply with the mandatory timeframe for [delineation of the immediate environmental concern contaminant source,] initiation of immediate environmental concern contaminant source control and submittal of Immediate Environmental Concern Contaminant Source Control Report.	7:26C-3.3(a)[2]3	NM		\$20,000
Failure to comply with the mandatory timeframe for [delineation of light non-aqueous phase liquid (LNAPL) free product,] completion of light non-aqueous	7:26C-3.3(a)[3]4	NM		\$20,000

phase liquid (LNAPL) recovery system installation, initiation of LNAPL recovery system monitoring, and submittal of interim remedial action report.

...

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

1 General Information

...

Failure to complete [LNAPL delineation,] installation of [recovery system] LNAPL interim remedial measure, initiate operational monitoring and submit report within the required timeframe.	7:26E-1.12(b)2	NM	\$20,000
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...

Failure to submit indoor air data to DHSS within the required timeframe.	7:26E-1.14(b)4	NM	\$20,000
Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.14(b)[4]5	NM	\$20,000

...

Failure to initiate control of the IEC contaminant source using the Department’s guidance[, complete the delineation of the IEC contaminant source,] and submit an IEC contaminant source control report with the required form within the required timeframe.	7:26E-1.14(d)	NM	\$20,000
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...

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 the context clearly indicates otherwise:

...

“Immediate environmental concern” means a condition at a contaminated site where any of the following types of contamination or any of the following conditions related to the discharges at the site are found at the site:

1. (No change).
2. Contamination in indoor air at a level greater than any vapor intrusion [indoor air screening] **rapid action level** [described] **included in or developed consistent with** the Department’s Vapor Intrusion Guidance;
- 3.-5. (No change.)

...

“**Rapid action level**” means a level for indoor air defined in the Department’s Vapor Intrusion Guidance that triggers an immediate environmental concern condition.

...

7:26E-1.12 Control of ongoing sources and implementation of interim remedial measures

- (a) (No change.)
- (b) The person responsible for conducting the remediation shall follow the Department’s Light Non-aqueous Phase Liquid (LNAPL) Free Product Interim Remedial Measures guidance concerning free product removal as follows:

1. Within 60 days after either March 1, 2010 or LNAPL is identified, whichever is later, initiate the recovery of free product and notify the Department on a form [available from the Department] **found on the Department’s website at www.nj.gov/dep/srp/srra/forms**; and
2. Within [270 days] **one year** after either March 1, 2010 or LNAPL is identified, whichever is later, [complete delineation of the free product; and] complete the installation of [a] **an LNAPL [recovery system] interim remedial measure**, initiate operational monitoring, and submit [an] a Free Product Interim Remedial Measures Report with a form, **found on the Department’s website at www.nj.gov/dep/srp/srra/forms**, to the Department that documents the actions taken pursuant to this subsection.

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. (No change.)
2. [Within five days after identifying the IEC condition, mitigate] **Mitigate** the IEC impacts as applicable as follows:

- i. [Provide] **For potable water immediate environmental concerns, within five days after identifying the IEC condition, provide** bottled water to the residents of each property where contaminant concentrations exceed any remediation standard for Class II ground water;

- ii. [Mitigate] **For vapor intrusion immediate environmental concerns, within 14 days after identifying the IEC condition, mitigate** the infiltration of vapors into structures impacted by vapor intrusion; **and**
- iii. [Restrict] **For soils contaminated above acute levels, within five days after identifying the IEC condition, restrict** access to soil contaminated above acute levels;

3. Within [five] **14** days after identifying the IEC condition, submit the following to the Department:

- i. A completed [IEC Response Action] form [available from the Department] **found on the Department’s website at www.nj.gov/dep/srp/srra/forms**;

- ii. A completed IEC Information Spreadsheet [available from the Department] **found on the Department’s website at www.nj.gov/dep/srp/srra/forms**;

- iii. (No change.)
- iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)16, with [a Potable Water Data] **an appropriate form for the type of IEC condition** [available from the Department] **found on the Department’s website at www.nj.gov/dep/srp/srra/forms**;

4. Within [five] **14** 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
 Indoor Environments Program
 135 E. State Street
 PO Box 369
 4th Floor
 Trenton, NJ 08625-0369; and

5. Within 60 days after identifying the IEC condition, implement the following IEC engineered system response actions:

- i. (No change.)
- ii. [Install a vapor mitigation system at each property where contaminant concentrations exceed any applicable vapor intrusion indoor

air screening level that is available in the Department's Vapor Intrusion Guidance] **When contaminant concentrations in indoor air are detected above the indoor air screening level, determine whether the contaminant concentrations also exceed the rapid action levels listed in the Department's Vapor Intrusion Guidance, or, if no rapid action level exists for a contaminant in the Department's Vapor Intrusion Guidance, contact the Department to have a site-specific rapid action level determined for the contaminant, and if the rapid action level is exceeded install a vapor mitigation system at each property where indoor air levels exceed the rapid action level;** and

iii. (No change.)

(c) Within 120 days after identifying the IEC condition, the person responsible for conducting the remediation shall submit an IEC engineered system response action report with an updated [IEC Response Action] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, that includes the following:

1.-5. (No change.)

(d) Within [270 days] **one year** after **either March 1, 2010** or identifying the IEC condition, the person responsible for conducting the remediation shall initiate control of the IEC contaminant source using the Department's IEC Guidance[, complete the delineation of the IEC contaminant source,] and submit an IEC contaminant source control report, with an updated [IEC Response Action] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms** that includes descriptions of each of the following:

1.-3. (No change.)

7:26E-1.15 Receptor evaluation—general and reporting requirements

(a) (No change.)

(b) The person responsible for conducting the remediation who completes an unrestricted use remedial action is not required to conduct a receptor evaluation when a final remediation document is **either issued by the Department** or is filed with the Department **by a licensed site remediation professional** within [270 days] **one year** after initiating the remediation.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation, on a [Receptor Evaluation] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, by [November 26, 2010, or with the submittal of a site investigation report] **March 1, 2011 or one year after the initiation of remediation**, pursuant to N.J.A.C. 7:26C-2.2(b), whichever is later, **which shall contain the information that is known by the person responsible for conducting the remediation at the time the report is submitted.**

(d) The person responsible for conducting the remediation shall submit an updated receptor evaluation report on a [Receptor Evaluation] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms** with the following documents, as applicable:

1.-2. (No change.)

(e) (No change.)

7:26E-1.17 Receptor evaluation—ground water

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

(c) If no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)16 with the [Full Laboratory Data Deliverables] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**; and

2. (No change.)

(d) (No change.)

7:26E-1.18 Receptor evaluation—vapor intrusion

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

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. (No change.)

2. Implement the Vapor Intrusion Guidance, including, but not limited to:

i.-v. (No change.)

vi. Evaluate the results of indoor air sampling as follows:

(1) If the results are greater than the Department's vapor intrusion indoor air screening level, the person shall determine whether **the contaminants are also greater than the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii, and if so determine whether the contaminants are** likely to be associated with a discharge at the site or may be attributed to background sources;

(2) If the results are greater [then] **than** the vapor intrusion [indoor air screening] **rapid action level as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii**, the person shall immediately notify the Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14;

(3) If the results are greater [then] **than** the Department's Health Department Notification Levels for indoor air the person shall immediately notify:

(A)-(B) (No change.)

(4) (No change.)

(d)-(e) (No change.)

(f) If the person responsible for conducting the remediation determines that no IEC condition exists, but the vapor intrusion pathway is still of concern, the person shall:

1. If the results are between the indoor air screening level and the rapid action level determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii:

i. Within 14 days of receipt of data showing exceedances of the indoor air screening levels, notify the Department of the exceedances on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

ii. Within 60 days of receipt of data showing exceedances of the indoor air screening levels, submit a plan to the Department to mitigate the exposure;

iii. Within 120 days of receipt of data showing exceedances of the indoor air screening levels, implement the plan; and

iv. Within 180 days of receipt of data showing exceedances of the indoor air screening levels, submit a mitigation response action report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

(1) A description of all mitigation actions that have been completed, including the date that each action that was conducted;

(2) A summary of all analytical data related to the vapor intrusion investigation and mitigation response; and

(3) All maps and figures related to the vapor intrusion investigation and mitigation response; or

2. If the results are below the indoor air screening levels, or are above the indoor air screening levels but below the rapid action levels and a determination has been made that a mitigation system is not necessary, complete a vapor intrusion investigation as part of the site investigation or remedial investigation, as applicable.

(g)-(h) (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation **who is required to conduct a preliminary assessment pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.,** shall prepare a preliminary assessment report which:

1.-6. (No change.)

(b) (No change.)

7:26E-3.3 Site investigation

(a)-(d) (No change.)

(e) The person responsible for conducting the remediation **who is required to conduct a site investigation pursuant to the Industrial**

Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or the New Jersey Underground Storage of Hazardous Substances, N.J.S.A. 58:10A-21 et seq., shall complete the site investigation and submit a site investigation report with a [Preliminary Assessment/Site Investigation] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms** by the later of the following:

1. By [November 26, 2010] **March 1, 2011**; or
2. [Two hundred seventy days] **One year** after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).

CORRECTIONS

(a)

THE COMMISSIONER

Records Designated Confidential

Proposed New Rules: N.J.A.C. 10A:22-2.3, 10A:31-6.10 and 10A:34-1.6

Authorized By: Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 2C:52-1 et seq., 47:1A-1 through 47:1A-5 and 2A:4A-60 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-234.

Submit written comments by December 3, 2010 to:

Karen J. Wells, Supervisor, Administrative Rules Unit
Office of the Commissioner
New Jersey Department of Corrections
P.O. Box 863
Trenton, New Jersey 08625-0863

The agency proposal follows:

Summary

The Department of Corrections has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

The Open Public Records Act (OPRA) provides that all government records shall be subject to public access unless exempt from such access by P.L. 1963 c. 73 as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; rule promulgated under the authority of any statute or Executive Order of the Governor; rules of Court; any Federal law, Federal regulation or Federal order. The Commissioner, pursuant to N.J.S.A. 47:1A-1 et seq., Executive Orders No. 9 (1963), 21 (2002) and 26 (2002), proposes to classify as exempt from public access certain records held or controlled by the Department or agencies within the Department of Corrections. The Act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The new rules proposed in N.J.A.C. 10A:22-2.3, 10A:31-6.10 and 10A:34-1.6 are designed to serve both these legislative policies by facilitating public access to government records while at the same time, balancing citizens' reasonable expectations of privacy and the integrity and effectiveness of government operations. The rules set forth a list of records that are designated confidential and shall not be released for purposes of ensuring safety and security within the Department of Corrections. These rules include, but are not limited to, certain informant documents, investigative records and medical records.

Social Impact

The proposed new rules, implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c. 404. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State, unless exempt by law or rule, but also calls upon a public agency to safeguard from public

disclosure access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules, attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records. The proposed new rules also provide safeguards to protect the legitimate privacy interests of persons and affected parties.

Economic Impact

The proposed new rules will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records (see N.J.S.A. 47:1A-5). The proposed new rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. §§550a et seq., does not apply to records of State, county and municipal government and does not constitute a Federal standard.

Jobs Impact

The proposed new rules will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The proposed new rules shall have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on Department of Corrections staff in regard to records being requested by persons who are seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. The cost to the State, county or municipal of providing the record does not depend on whether the requester is a small business.

Smart Growth Impact

The proposed new rules shall have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rules shall have no impact on housing affordability. The proposed new rules concerning records designated confidential affect inmates, the New Jersey Department of Corrections, county and municipal governmental entities responsible for the enforcement of the rules.

Smart Growth Development Impact

The proposed new rules shall have no impact on smart growth development because they would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed new rules concerning records designated confidential affects inmates, the New Jersey Department of Corrections, county and municipal governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 22
RECORDS

SUBCHAPTER 2. GOVERNMENT RECORDS

10A:22-2.3 [(Reserved)] **Records designated confidential**

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order

(a)

**SITE REMEDIATION PROGRAM
Notice of Administrative Corrections
Administrative Requirements for the Remediation of
Contaminated Sites
Procedures for Assessment and Payment of Civil
Administrative Penalties
N.J.A.C. 7:26C-9.9**

Take notice that the Department of Environmental Protection discovered errors in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C. 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)). The corrections set forth in this notice are the result of review of the special adopted rules and amendments, and are in addition to those set forth in the Department's notice of administrative corrections published in the April 19, 2010 New Jersey Register at 42 N.J.R. 778(a) and in the August 16, 2010 New Jersey Register at 42 N.J.R. 1862(a). This notice of administrative corrections is published pursuant to N.J.A.C. 1:30-2.7.

At N.J.A.C. 7:26C-9.9(a), the citation to N.J.A.C. 7:26C-10.1(a) should be to N.J.A.C. 7:26C-9.5(b). N.J.A.C. 7:26C-10.1 is the purpose and scope section of the Technical Assistance Grants subchapter; the tables listing the civil administrative penalties for violations are in N.J.A.C. 7:26C-9.5(b).

At N.J.A.C. 7:26C-9.9(a)5, the citation to N.J.A.C. 7:26C-9.6 should be to N.J.A.C. 7:26C-9.10. N.J.A.C. 7:26C-9.6 concerns penalty adjustment factors; the procedures for requesting and conducting adjudicatory hearings are set forth in N.J.A.C. 7:26C-9.10.

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

7:26C-9.9 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations listed in N.J.A.C. 7:26C-[10.1(a)]**9.5(b)**, the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. In each notice of civil administrative penalty assessment the Department shall:

1.-4. (No change.)

5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-[9.6]**9.10**.

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

HIGHER EDUCATION

(b)

**COMMISSION ON HIGHER EDUCATION
EDUCATIONAL OPPORTUNITY FUND
Notice of Administrative Changes
Administrative Policies and Procedures
Undergraduate EOF Financial Eligibility
Financial Eligibility for Initial Article III Student
Grants
N.J.A.C. 9A:11-2.3**

Take notice that, in accordance with N.J.A.C. 9A:11-2.3(a), the Educational Opportunity Fund Board of Directors announces a change in the effective date of the EOF Income Eligibility Scale. The EOF Income Eligibility Scale is based on 200 percent of the annual Federal poverty guidelines (that is, doubled) as published annually in the Federal Register.

Full text of the changed rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

9A:11-2.3 Financial eligibility for initial Article III student grants

(a) The EOF Income Eligibility Scale is based on 200 percent of the annual Federal poverty guideline (that is, doubled) as published annually by the United States Department of Health and Human Services in the Federal Register. This benchmark was established to reflect an eligible target population consistent with the intent of the original legislation. The EOF Executive Director shall inform institutions of annual adjustments to the EOF Income Eligibility Scale each summer, and the gross income limits set forth in this subsection shall be updated through a notice of administrative changes published in the New Jersey Register.

1. Except provided in (d), (e), (g), (h), and (i) below, dependent and independent students are financially eligible for an initial Article III student grant if their gross household income does not exceed the applicable amounts set forth in the EOF Income Eligibility Scale, as follows.

Academic Year [2010-11] **2011-12**

Applicants with a Household size of	Gross Income Not to Exceed
1	\$ 21,660
2	29,140
3	36,620
4	44,100
5	51,580
6	59,060
7	66,540
8	74,020

2. For each additional member of the household, an allowance of \$7,480 shall be added to this amount in order to determine EOF eligibility for the [2010-11] **2011-12** academic year.

3. (No change.)

(b)-(k) (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Biological Products for Diagnostic or Therapeutic Purposes

Readoption: N.J.A.C. 2:6

Proposed: September 7, 2010 at 42 N.J.R. 1933(a).
 Adopted: January 26, 2011 by the State Board of Agriculture and Douglas H. Fisher, Secretary.
 Filed: January 28, 2011 as R.2011 d.071, **without change**.
 Authority: N.J.S.A. 4:5-104 et seq.
 Effective Date: January 28, 2011.
 Expiration Date: January 28, 2016.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. Biologics are either licensed or conditionally licensed by the Food and Drug Administration (FDA) (Public Health Services Act, Section 351 42 U.S.C. §242) or by the United States Department of Agriculture (USDA) pursuant to 9 CFR 101 through 123. States may then impose additional restrictions upon the availability of some biologics based on disease prevalence and eradication in each state. For biologics that are licensed by the FDA or USDA, New Jersey imposes no additional standards. Only those biologics that are conditionally licensed are required to have additional reporting and recordkeeping as discussed more fully in the notice of proposal Regulatory Flexibility Analysis at 42 N.J.R. 1933(a). However, since this is explicitly permitted by the Federal government, these rules are not exceeding any Federal standards and therefore, no Federal standards analysis is necessary.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:6.

(b)

DIVISION OF PLANT INDUSTRY

Diseases of Bees

Readoption: N.J.A.C. 2:24

Proposed: August 2, 2010 at 42 N.J.R. 1647(a).
 Adopted: October 27, 2010 by the State Board of Agriculture, Douglas H. Fisher, Secretary, Department of Agriculture.
 Filed: January 25, 2011 as R.2011 d.062, **without change**.
 Authority: N.J.S.A. 4:6-1 et seq.
 Effective Date: January 25, 2011.
 Expiration Date: January 25, 2016.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

The requirements of the New Jersey Department of Agriculture, Division of Plant Industry regarding bee disease and other conditions unfavorable to the development of bees within the State are dictated by

N.J.S.A. 4:6-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:24.

ENVIRONMENTAL PROTECTION

(c)

SITE REMEDIATION PROGRAM

Administrative Requirements for the Remediation of Contaminated Sites; Technical Requirements for Site Remediation

Timeframes, Vapor Intrusion and Form Names

Adopted Amendments: N.J.A.C. 7:26C-3.2, 3.3, 3.5 and 9.5; and 7:26E-1.8, 1.12, 1.14, 1.15, 1.17, 1.18, 3.2 and 3.3

Proposed: October 4, 2010 at 42 N.J.R. 2297(a) (see also 42 N.J.R. 2360(a)).
 Adopted: January 26, 2011 by Bob Martin, Commissioner, Department of Environmental Protection.
 Filed: January 28, 2011 as R.2011 d.072, **with substantive changes** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).
 Authority: N.J.S.A. 13:1K-6 et seq.; 58:10-23.11a et seq.; 58:10A-1 et seq.; 58:10B-1 et seq.; and 58:10C-1 et seq.
 DEP Docket Number: 06-10-09.
 Effective Date: February 22, 2011.
 Expiration Date: May 4, 2011, N.J.A.C. 7:26C;
 May 17, 2012, N.J.A.C. 7:26E.

The New Jersey Department of Environmental Protection (the Department) hereby adopts the amendments to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules, N.J.A.C. 7:26C, and to the Technical Requirements for Site Remediation rules (Technical Requirements), N.J.A.C. 7:26E, that extend certain mandatory and regulatory remediation timeframes, amend the requirements for mitigation of vapor intrusion, amend the penalty table consistent with the other amendments, and revise certain form names.

The proposal was published in the New Jersey Register on October 4, 2010 at 42 N.J.R. 2297(a). The comment period closed on December 3, 2010.

Summary of Hearing Officer's Recommendations and Agency Responses:

The Department held two public hearings on the proposal (see 42 N.J.R. 2360(a)), the first on November 1, 2010 in the Department's Public Hearing Room, 401 E. State St., Trenton, and the second on November 3, 2010 at the New Jersey Water Supply Authority, 1851 Route 31, Clinton. Five people attended the first public hearing, of which four presented oral comments. One person attended the second public hearing and that person presented oral comments. Len Romino, Assistant Director of the Responsible Party Remediation Element, served as Hearing Officer.

The Hearing Officer has recommended that the proposal be adopted with the changes described below in the Summary of Public Comments and Agency Responses. The Department accepts the Hearing Officer's recommendation.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs
 ATTN: DEP Docket No. 06-10-09
 401 East State Street, 4th Floor
 PO Box 402
 Trenton, New Jersey 08625-0402

This adoption document may also be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

Summary of Public Comments and Agency Responses

The following persons submitted comments on the proposal:

1. John R. Dalvet
2. Elizabeth George-Cheniara, New Jersey Business Association
3. Michael G. McGuiness, National Association of Industrial and Office Parks
4. Michael L. Pisauo, New Jersey Environmental Lobby
5. David Pringle, New Jersey Environmental Federation
6. Anthony Russo, Chemical Council of New Jersey/Site Remediation Industry Network
7. Jeff Tittel, New Jersey Sierra Club
8. Bill Wolfe, New Jersey Public Employees for Environmental Responsibility

The comments received and the Department's responses are summarized below. The number(s) in parenthesis after each comment identify the respective commenter(s) listed above.

General support for the amendments

1. COMMENT: The commenter is appreciative of the Department's responsiveness to concerns raised by stakeholders and members of the regulated community. The proposed amendments reflect an understanding of the challenges inherent in remediation projects. (2)

2. COMMENT: The commenter is pleased by the Department's efforts to amend the ARRCs rules and Technical Requirements to provide more realistic timeframes within which remediation tasks must be completed. The commenter encourages the Department to continue its stakeholder processes to garner such valuable feedback about the practical aspects and complexities of remediation and translate these insights into its rulemaking. (2)

3. COMMENT: The commenter commends the Department for extending the mandatory timeframes. As stated in the rule proposal summary, given the complexity and nature of site cleanups, the original timeframes were not achievable and therefore placed sites in jeopardy. The commenter also appreciates the stakeholder process the Department has undertaken to implement the requirements of the Site Remediation Reform Act (SRRA). The commenter firmly believes that these discussions and interactions will result in a more workable cleanup program. (6)

RESPONSE TO COMMENTS 1 THROUGH 3: The Department appreciates the commenters' support of this rulemaking effort.

General opposition to the amendments

4. COMMENT: The Department has not complied with Governor Christie's Executive Order No. 2 (EO No. 2). That order specifically requires advanced notice of rule proposals to avoid, "... certain ill advised rules from being adopted." The proposal is ill advised and the environmental, public health and public interest communities have not had any advanced notice or the opportunity to participate in accordance with the procedures prescribed under EO No. 2. (8)

RESPONSE: The Department believes that the proposal, including the pre-proposal outreach that the Department conducted, and its analysis of the commonsense principles enumerated in EO No. 2, do meet the requirements of EO No. 2. The amendments that the Department is adopting herein are in response to comments that the Department received in connection with its regular consultation with stakeholders at regularly scheduled meetings, to which the Department invited stakeholders representing varied constituencies, including representatives from the environmental community. The amendments are performance-based and strike a "reasonable balance between the underlying regulatory objectives and the burdens imposed by the regulatory activities" as required by EO No. 2 section 3a. Specifically, the amendments provide for an extension of certain remediation timeframes, which achieves the Department's objective of protecting public health and the environment by

ensuring that remediation activities are conducted within a promulgated timeframe, while also ensuring that the timeframes are reasonable and not overly burdensome.

5. COMMENT: The commenter objects to an extension of any remediation timeframe because to do so would unnecessarily delay Department approval of site remediation projects. This is in conflict with the Commissioner's stated goal that Departmental approvals must be expedited. (8)

RESPONSE: An extension of a remediation deadline does not implicate any Departmental approvals. The ARRCs rules are designed to allow a person responsible for conducting the remediation to proceed without Department approval, thereby expediting the remediation of contaminated sites. An extension of a remediation timeframe ensures that persons responsible for conducting remediation and their licensed site remediation professionals (LSRPs) have enough time to be thorough in conducting the remediation tasks that must be completed within the set timeframe, while also ensuring that these sites do not become subject to direct Departmental oversight pursuant to N.J.S.A. 58:10C-27 due to missing that timeframe. SRRA mandates that when a person is subject to direct oversight, the Department must approve each phase of the remediation. There may be instances when those approvals could result in delays in the remediation that are neither beneficial to human health and the environment nor helpful towards accomplishing the Department's goal of expediting the remediation of contaminated sites. Accordingly, the Department believes that extending remediation timeframes furthers its goal of thorough and timely site investigation and cleanup.

6. COMMENT: Multiple stakeholder groups are working on both procedural and substantive modifications to the existing Technical Requirements, and this process is resulting in weaker rules, particularly since the members of those stakeholder groups represent only industry interests, to the exclusion of public and environmental interests. (8)

RESPONSE: The Department acknowledges it is currently engaged in a major stakeholder outreach process concerning the provisions of the Technical Requirements. However, those amendments are not a part of this rulemaking and are therefore beyond the scope of this adoption. The Department has made and continues to make every effort to include interested parties in the stakeholder process, and public interest and environmental group representatives are members of several of the stakeholder guidance committees.

7. COMMENT: The commenter is concerned that the extension of the timeframes will mean that there will be a delay in cleaning up sites to appropriate levels. Although it is understood that there may be the need for some delay, extending timeframes for one year will undermine the intent of the legislation, and will cause more contamination of the environment. (7)

RESPONSE: Pursuant to the adopted amendments, only the mandatory remediation timeframes set forth in the ARRCs rules are being extended by one year. The regulatory timeframes codified in the Technical Requirements, which are designed to help the person responsible for conducting the remediation complete the statutorily specified remediation milestones within the mandatory timeframes set forth in the ARRCs rules, are being extended by three months. Compliance with both regulatory and mandatory timeframes is enforceable, and there are significant penalties for non-compliance. Requiring compliance with the remediation timeframes (or any extensions thereto) is intended to ensure that the remediation continues to be conducted and in a timely fashion. The extension of those timeframes and the associated mandatory timeframes will help ensure that the person responsible for conducting the remediation and the LSRP have enough time to make informed decisions about how best to conduct the remediation in a manner that is of the greatest protection to public health, safety and the environment.

The Department has determined to extend the mandatory and regulatory timeframes based on its experience and on stakeholder input since implementing the interim rules, which indicated that the timeframes initially adopted may have been unrealistically short. The Department acknowledges that the LSRP remediation paradigm is still a relatively new paradigm. The mandatory timeframes established in this adoption reflect the Department's current thinking concerning the balance between protecting public health and the environment and ensuring that sites are

remediated quickly and efficiently. The Department strives for continuous improvement. As the Department gains more experience and data concerning the LSRP remediation paradigm, it may consider changing the timeframes, including possibly shortening them.

8. COMMENT: The tradeoff that the environmental community was told existed in terms of privatizing the program was that the public benefit would flow from the mandatory requirements that were established. By both delaying and weakening the implementation of mandatory time tables, the amendments are totally contrary to the entire thrust of the legislation that mandated these rules. (8)

RESPONSE: The Department has not privatized the remediation program. Rather, the Department continues to have a significant role in remediation decision making at sites and areas of concern that pose the greatest environmental risk to public health, safety and the environment and will be reviewing the work performed by LSRPs on all sites being remediated in this State.

Use of Rapid Action Level to trigger vapor intrusion Immediate Environmental Concern condition

9. COMMENT: The commenter supports the amendment which substitutes an exceedance of the rapid action levels for exceedance of the indoor air screening levels to determine if an area of concern is an area of immediate environmental concern. This will allow persons responsible for conducting the remediation and the LSRP more time to develop the most cost effective and efficient strategy possible while limiting direct Department oversight to only the most heavily impacted sites. (1)

RESPONSE: The Department appreciates the commenter's support.

10. COMMENT: The Department is proposing the use of the rapid action level to trigger an immediate environmental concern (IEC) condition. Page 37 of the October 2005 NJDEP Vapor Intrusion Guidance states, "The Department has developed indoor air concentrations to determine when prompt actions are indicated to address the potential for adverse VI related impacts. Table 2 presents Rapid Action Levels (RAL) . . . By policy, the Department has based the RAL values on a factor of 100 times the cancer health based residential [indoor air screening level] IASL or a factor of 2 times the non-cancer health-based residential IASL (presented in Table G-4)."

SRRA defines "immediate environmental concern" as: ". . . (3) confirmed contamination at the site of a nature that either [sic] dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure; or (4) any other condition that poses an immediate threat to the environment or to the public health and safety (emphasis added)." Both "acute" and "immediate" are terms that describe the same set of conditions. The term "acute" is defined by the United States Environmental Protection Agency (USEPA) Integrated Risk Information System (IRIS) as, "one dose or multiple doses of short duration spanning less than or equal to 24 hours." Therefore, as defined by SRRA, an immediate environmental concern has the documented potential to produce negative short-term effects and not long term chronic effects. Although SRRA does not provide a specific basis for developing indoor air levels for an immediate environmental concern, it does specify that they have to be "acute" or have an "immediate threat." Nevertheless, the Department has elected to use the non-promulgated rapid action levels, which are based on the non-promulgated IASLs. IASLs are "cancer health based," intended to be protective over a lifetime of exposure, and are not for use as acute exposure limits. Immediate environmental concerns, by their definition are not long-term conditions, and do not and should not represent conditions that persist over a lifetime. (6)

11. COMMENT: Until the Department develops "acute/immediate threat" vapor intrusion action levels for an immediate environmental concern, a technically appropriate action level could be the Health Department Notification Levels (HDNL - listed on Table 2 of the October 2005 Vapor Intrusion Guidance), provided they are based only on the Agency for Toxic Substances Disease Registry (ATSDR) acute Minimum Risk Level (MRL) (or the intermediate MRL in the absence of an acute MRL). According to the ATSDR, "An MRL is an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse non-cancer health effects over a specified duration of exposure." (6)

RESPONSE TO COMMENTS 10 AND 11: The definition of an "immediate environmental concern" in SRRA describes four conditions, joined by the conjunction "or." For an immediate environmental concern to exist, any of the four conditions must be satisfied, but not necessarily all of them must be. The first condition pertains to groundwater to be used for potable purposes and is therefore not relevant to this Response.

The second condition is ". . . confirmed contamination that has migrated into an occupied or confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services . . ." The infiltration of vapors at concentrations above the rapid action levels represents an "unacceptable human health exposure" pursuant to the second condition in the statutory definition of "immediate environmental concern."

The third condition is ". . . confirmed contamination at the site of a nature that either [sic] dermal contact, ingestion, or inhalation of contamination could result in an acute human health exposure . . ." The commenter is correct that the ATSDR MRLs apply to acute concentrations. However, MRLs have not been developed for a sufficient number of contaminants, and the Department does not believe that the MRLs that have been developed are protective enough of all end-points to address all "unacceptable human health exposures."

The fourth condition is broadly worded to include "any other condition that poses an immediate threat to the environment or to the public health and safety." The infiltration of vapors at concentrations above the rapid action levels represents an "immediate threat" pursuant to the fourth condition in the statutory definition of "immediate environmental concern." Accordingly, exceedances of the rapid action levels are the appropriate criteria for the Department to use when setting vapor intrusion pathway immediate environmental concern investigation triggers.

12. COMMENT: The commenters object to substituting "rapid action level" for "indoor air screening" in the definition of "immediate environmental concern." This is a significant change from the Department's prior policy and a significant increase in exposure to people. The commenter states that the Administration has, on multiple occasions, indicated that it will not weaken environmental laws. As buildings become better sealed, more and more pollutants are accumulating in our buildings. This increased exposure makes it more important that the levels of pollutants in our indoor spaces be mitigated to levels that are as protective of human health as possible. (4, 5)

13. COMMENT: The commenter supports the amendment that specifies that detection of contaminants in indoor air should trigger a requirement to implement vapor intrusion mitigation. However, the commenter disagrees with what level should trigger the requirement. The proposal to change the trigger value for the vapor intrusion immediate environmental concern condition from the current value of the indoor air screen levels to the rapid action levels listed in the NJDEP Vapor Intrusion Guidance weakens the current vapor intrusion numeric values by a range, depending on the parameter, from two to 100 times, thus making protection of the public's health two to 100 times weaker. The indoor air screening levels were derived based on risk assessment in accordance with the statutory one in a million cancer risk standard. The Department may not weaken those values in the way they have in this proposal. (8)

RESPONSE TO COMMENTS 12 AND 13: The Department does not consider changing the immediate environmental concern trigger for the vapor intrusion pathway from the indoor air screening levels to the rapid action levels to be a weakening of the regulation. Using the rapid action levels as the trigger for establishing the vapor intrusion immediate environmental concern condition better comports with the consensus reached by the Department and the stakeholders when developing the NJDEP Vapor Intrusion Guidance. The Vapor Intrusion Guidance states, "The Department has prepared rapid action levels . . . that represent trigger levels for the initiation of prompt action at occupied buildings to further investigate the VI pathway and/or minimize impacts to building occupants through the implementation of an interim remedial measure (IRM). The VI investigation can proceed following the mitigation of the RAL exceedance."

Even though the indoor air screening levels no longer serve as the trigger to be considered for evaluating an immediate environmental concern condition, the rule as amended at N.J.A.C. 7:26E-1.18(f) requires the person responsible for conducting the remediation to remediate indoor air vapor contamination related to the vapor intrusion pathway to the indoor air screening levels, which meet the one in one million risk for carcinogens or the hazard index of one for non-carcinogens.

14. COMMENT: The Department must promulgate any acute effect action levels through the rulemaking process and not publish them as a policy statement. (6)

RESPONSE: SRRA at N.J.S.A. 58:10C-14c requires the LSRP to employ certain enumerated remedial action performance standards when providing professional services for the remediation of contaminated sites. Third on the list of remedial action performance standards are “. . . any available and appropriate technical guidelines concerning site remediation as issued by the Department . . .” N.J.S.A. 58:10C-14c(3). When issuing guidelines, SRRA requires that the Department “. . . provide interested parties the opportunity to participate in the development and review of the technical guidelines issued for the remediation of contaminated sites.” N.J.S.A. 58:10C-14c(3).

The Department’s October 1995 Vapor Intrusion Guidance, as amended in 2006 and 2007, contains the Department’s guidelines for determining whether an immediate environmental concern condition exists due to toxic vapors indoors. These guidelines were developed in consultation with multiple external stakeholders, including environmental consultants, the laboratory community, the USEPA, the Site Remediation Industry Network (SRIN), and the Technical Regulations Advisory Committee (TRAC). This guidance document is currently being updated through the ongoing stakeholder process being conducted by Department in connection with the transformation of the Site Remediation program.

Moreover, SRRA at N.J.S.A. 58:10C-14a requires the person responsible for conducting the remediation to certify all documents submitted to the Department, and also requires the LSRP to certify that the work was performed and the documents submitted are consistent with all applicable remediation requirements established by the Department, which includes Department issued guidelines. The requirement for the person responsible for conducting the remediation to follow Department guidelines is in addition to the requirement to apply the standards enumerated at N.J.S.A. 58:10C-14c(1) and (2), which include remediation standards and technical standards that the Department has adopted pursuant to the Brownfield Act; those standards are codified in the Remediation Standards at N.J.A.C. 7:26D, and the Technical Requirements at N.J.A.C. 7:26E.

15. COMMENT: At N.J.A.C. 7:26E-1.14, Immediate environmental concern requirements, the Department should not change the requirement concerning certain activities associated with immediate environmental concerns from being “complete” to being “initiated.” Not only is the Department extending the time frame for these activities, but it is also changing the actual technical requirements, and the Department should not adopt these amendments. (8)

RESPONSE: The amendments to N.J.A.C. 7:26E-1.14 do not change the requirements from completion of an activity to only initiating an activity. Rather, N.J.A.C. 7:26E-1.14(b) sets forth the specific tasks that must be undertaken when the person responsible for conducting the remediation identifies an immediate environmental concern, and specifies the number of days within which each of those tasks must be accomplished.

16. COMMENT: A new phrase inserted in the definition of “immediate environmental concern” at N.J.A.C. 7:26E-1.8 that states, “developed consistent with the vapor intrusion guidance,” and it seemed to follow an “or,” which leads the commenter to believe that the NJDEP Vapor Intrusion Guidance itself no longer becomes binding, and that there could be alternative approaches, alternative methodologies, or alternative screening calls that could replace or supplant the NJDEP Vapor Intrusion Guidance. The commenter seeks clarification and suggests that the phrase be eliminated, as it does not seem to serve a purpose and it undermines the enforceability of the NJDEP Vapor Intrusion Guidance and creates all kinds of potential abuses for applicants to determine their own methods to try to demonstrate compliance. The commenter believes that the NJDEP Vapor Intrusion Guidance includes

rapid action levels for only 13 parameters, whereas there are indoor air screening levels for over 50 contaminants. The commenter believes that decisions will be made based on a much smaller set of contaminants. (8)

RESPONSE: As the commenter notes, Table 2 of the NJDEP Vapor Intrusion Guidance includes rapid action levels for only 13 parameters. The person responsible for conducting the remediation is required to use the rapid action levels included in the NJDEP Vapor Intrusion Guidance. Importantly, however, if no rapid action level is listed for a particular contaminant of concern in the NJDEP Vapor Intrusion Guidance, the person responsible for conducting the remediation must develop a rapid action level using the methodologies described in the NJDEP Vapor Intrusion Guidance. The amended provision should not be interpreted to mean that the NJDEP Vapor Intrusion Guidance is not to be used as the means of properly investigating the vapor intrusion pathway.

17. COMMENT: At the present time there are no promulgated “acute levels” for soils. Neither the NJDEP Vapor Intrusion Guidance nor any other regulation defines “acute” soil levels. The requirement at N.J.A.C. 7:26E-1.14(b)2iii to, within five days after identifying an immediate environmental concern condition for soils contaminated above acute levels, restrict access to that soil, should be clarified or deleted. (6)

RESPONSE: The commenter is correct that currently there are no promulgated or defined acute soil remediation standards. However, historically, the Department has developed acute soil remediation standards on a site-by-site basis, as needed. Pursuant to the Technical Requirements, the person responsible for conducting the remediation is required to sample the soils at a particular site, if necessary. If contaminants are present, it is incumbent upon the LSRP to use his or her professional judgment to determine whether the concentrations are representative of acute levels. As a part of the decision making process, the LSRP may contact the Department to determine if contamination exists at levels that would present an acute exposure risk.

18. COMMENT: Paragraph (f)1 of N.J.A.C. 7:26E-1.18, Receptor evaluation - vapor intrusion, requires that when the rapid action level is not exceeded, a mitigation plan must be submitted to the Department within 60 days of receipt of data showing exceedances of the indoor air screening levels, and the plan must be implemented within 120 days. Since such action mitigates chronic effects (defined by the USEPA IRIS as “occurring over an extended period of time, or a significant fraction of . . . the individual’s lifetime”), these timeframes are unnecessarily aggressive, considering that, in many cases, the remediating party will need to complete further sampling and analysis to better and fully define the extent of the concern. Especially when access to third party property is needed, these timeframes do not provide adequate time to properly complete data collection, nor determine an appropriate response to the condition found. Since even the rapid action levels are “chronic” numbers, it is not appropriate to use a similar timeframe process as for an immediate environmental concern condition. As a result, unless an “acute” condition exists, the timeframes for addressing the vapor intrusion should be similar to that of contaminated soil. As an interim alternative, the response timeframes should be amended to be 120 and 180 days, respectively, and the reporting timeframe extended to 270 days. (6)

RESPONSE: The Department does not believe that the timeframes are unnecessarily aggressive. Rather, delaying the remediation of indoor air vapors beyond these timeframes would unnecessarily continue the exposure to occupants of the structures to contaminated vapors at concentrations of concern in a situation where exposure has already warranted the establishment of an immediate environmental concern area.

Regarding third party property access, both SRRA and ARRCs state that the Department may grant extensions to mandatory timeframes on a case-by-case basis as a result of, “a delay in obtaining access to property, provided the person responsible for conducting the remediation demonstrates that good faith efforts have been undertaken to gain access, access has not been granted by the property owner, and, after good faith efforts have been exhausted, a complaint was filed in the Superior Court to gain access.” See N.J.S.A. 58:10C-28d(1) and N.J.A.C. 7:26C-3.5(d)1.

19. COMMENT: The commenter notes the phrase “attributed to background sources,” at N.J.A.C. 7:26E-1.18(c)2vi(1), which would allow an applicant to demonstrate that the indoor contamination was due to household products or construction materials or off-gassing of

household chemicals, as opposed to contamination from groundwater, opens up the site remediation program to scientific debate about what is the source of the contaminant. In the meantime, the occupant of the building and that occupant's health does not necessarily depend on the source of the contamination. A vapor mitigation system would mitigate the impacts from the vapor intrusion, regardless of the source. Therefore, if an indoor air vapor immediate environmental concern is identified, the Department should be under an obligation to require it to be remediated, regardless of whether the source was from household chemicals or the groundwater. It is a human exposure and it should be corrected and those risks reduced. The commenter is troubled by this language, particularly given some in the chemical industry who consistently argue that the sources are not attributed to their contamination but to household products. (8)

20. COMMENT: N.J.A.C. 7:26E-1.18(f)2 states that, "if the results are below the indoor air screening levels, or are above the indoor air screening levels but below the rapid action levels and a determination has been made that a mitigation system is not necessary," the person responsible for conducting the remediation shall complete a vapor intrusion investigation. Who is charged with the responsibility to make the determination that a mitigation system is not necessary? The commenter believes that the rule as currently written allows that this determination may be made by the licensed site professional or other responsible party. However, allowing the LSRP or other responsible person to make this determination is inappropriate. There does not seem to be any criteria or standards by which the Department could evaluate whether the determination was correct and whether it is protective of public health and the environment. As part of the adoption, the Department should clarify who makes this determination, what is the basis for the determination, and what are the risk levels within the gray area between the indoor air screening values and the rapid action levels. (8)

RESPONSE TO COMMENTS 19 AND 20: The purpose of the vapor intrusion investigation is to determine whether volatile contamination migrating from a site or area of concern is impacting a structure. Part of this investigation includes determining whether the contaminants detected inside of the structure are from the contaminants associated with the site or area of concern, or from sources associated with the structure itself. If the investigation determines that the indoor air vapor contamination is solely caused by a source or sources associated with the structure itself, the person responsible for conducting the remediation is not liable under the Spill Compensation Control Act for mitigating this contamination because Spill Compensation Control Act liability only extends to "discharges" of "hazardous substances." For situations where the person responsible for conducting the remediation determines that the indoor air vapor contamination in a structure is in any way caused by a discharge at the site, then the person responsible for conducting the remediation is responsible for addressing the vapor intrusion contamination. The NJDEP Vapor Intrusion Guidance explains how to evaluate and address the vapor intrusion pathway, including situations where there are potentially additional sources associated with the structure.

In situations where the indoor air screening levels are exceeded but the rapid action levels are not, the person responsible for conducting the remediation is still required to remediate the vapor intrusion indoor air contamination to or below the indoor air screening levels. It should be noted that for situations where the source of contamination is inside of a structure, installation of a mitigation system will most likely not be effective in addressing the indoor source or mitigating impacts to the occupants.

The person responsible for conducting the remediation, with the assistance of an LSRP, is responsible for determining whether the source of the vapor intrusion contamination is from a discharge at the site or area of concern or from the structure itself, as well as whether and what type of mitigation system is necessary. The LSRP will base this determination on his or her professional judgment, within the technical guidance the Department has provided via the NJDEP Vapor Intrusion Guidance. The LSRP making sound remedial decisions based on his or her professional judgment is the foundation of the LSRP program.

Regulatory timeframes

21. COMMENT: Under the Technical Requirements amendments proposed at N.J.A.C. 7:26E-3.3(e)1, the PA/SI Report deadline for ISRA and UST cleanups was extended from 270 days to one year from the initiation of remediation. However, the deadline for submission of the Remedial Investigation Workplan under the ISRA rules at N.J.A.C. 7:26B-6.1(d) was not changed and is still 270 days. The commenter presumes the Department did not intend to require submission of the RIW before the PA/SI. (3)

22. COMMENT: Under the ISRA rules at N.J.A.C. 7:26B-6.1(e), the Remedial Investigation Report is still due within 420 days of the submission of the general information notice, which is less than two months from the one-year due date for completing the PA/SI. Again, we presume that the Department did not intend this. The ISRA rule deadline should be revised to conform with the timeframes set forth in these October 4, 2010 amendments to the Technical Requirements. (3)

23. COMMENT: Under the UST rules at N.J.A.C. 7:14B-8.3(a), the Remedial Investigation Report is due within 270 calendar days after notification of a discharge or by November 25, 2010, whichever is later. This would put submission of the RIR prior to the submission of the PA/SI, which we presume the Department did not intend. (3)

RESPONSE TO COMMENTS 21 THROUGH 23: The Department will be proposing an amendment to the ISRA and UST rules in May, 2011 for adoption in May of 2012 to correct any such inconsistencies. That subsequent proposal will take all regulatory timeframes and remediation requirements out of the ISRA and UST rules. Instead, these rules will reference the Technical Requirements for all remediation requirements, including the regulatory timeframes for implementation.

24. COMMENT: Proposed N.J.A.C. 7:26E-1.12(b)2 extends the regulatory timeframe from nine months to one year for remediation tasks of Light Non-Aqueous Phase Liquid free product removal. The commenter supports this extension as necessary to support the efforts of the regulated community to timely complete remediation requirements. (2)

RESPONSE: The Department appreciates the commenter's support of this amendment.

25. COMMENT: The amendment at N.J.A.C. 7:26E-1.14(d) states, "Within one year after either March 1, 2010 or identifying the IEC condition, the person responsible for conducting the remediation shall initiate control of the IEC contaminant source . . ." It appears that the words "whichever is later" were omitted. That qualification was used consistently throughout the amendments and we presume this was a typographical error. (3)

RESPONSE: The Department appreciates the commenter pointing out this inconsistency in the regulatory text and will amend, on adoption, N.J.A.C. 7:26E-1.14(d). As the commenter points out, throughout the rules concerning timeframes by which certain remedial steps must be accomplished, the Department consistently states "whichever is later," and this subsection should also have included such a qualification. To not include such a qualification at N.J.A.C. 7:26E-1.14(d) when it is included elsewhere throughout the rules leads to a logical inconsistency that should be rectified on adoption.

26. COMMENT: The Department proposes a number of changes to N.J.A.C. 7:26E-1.14 that increase the regulatory timeframe from five days to 14 days to take certain actions for areas of immediate environmental concern. For example, proposed N.J.A.C. 7:26E-1.14(b)2ii extends the regulatory timeframe from five days to 14 days to mitigate vapors that have infiltrated structures. Similarly, proposed N.J.A.C. 7:26E-1.14(b)4 extends the regulatory timeframe from five days to 14 days to submit the analytical results from all indoor air sampling to the New Jersey Department of Health and Senior Services. The Department also proposes an increased timeframe (from 270 days to one year) for the completion of some mitigation tasks for immediate environmental concern conditions at N.J.A.C. 7:26E-1.14(d).

These proposed amendments are in line with other proposed time extensions in that they are more realistic expectations of the time necessary to complete the tasks and therefore should be adopted. (2)

RESPONSE: The Department appreciates the support for the amendments.

Mandatory timeframes

27. COMMENT: The Department will benefit from increasing mandatory and regulatory timeframes. Making the mandatory timeframes more realistic will result in fewer parties being in direct oversight where parties are under strict Department oversight. This will allow the Department to allocate its resources more efficiently by focusing on the most heavily contaminated sites that pose the greatest risk to human health and the environment. Having fewer Department case managers and personnel overseeing contaminated sites will allow the Department to consume less taxpayer resources as more oversight is borne by LSRPs. Less Department oversight of contaminated sites is consistent with the purpose of SRRA of allocating more responsibility and costs from the public sector to the private sector where resources are more efficiently utilized.

The rule changes are also consistent with the purpose of SRRA of developing the most efficient and effective remediation strategy for each site. Recognizing more realistic timeframes considering unique circumstances and delays encountered remediating sites will result in more time to plan the best remedial strategy possible. Responsible parties and LSRPs will have an additional year to perform site investigations resulting in more accurate delineations of site impacts. This will produce more efficient remedial strategies and less supplemental remediation proposals will be required to obtain a final site closure. (1)

28. COMMENT: Proposed N.J.A.C. 7:26C-3.3(a)1 increases all mandatory timeframes from one year to two years for the submission of the preliminary assessment and or the site investigation report. The proposed extension of the mandatory timeframe would alleviate concerns identified by stakeholders that the current one year timeframe would undoubtedly be impossible to meet and result in enforcement action. Clearly, this extension should be adopted as it is practical and would support remediation efforts. (2)

RESPONSE TO COMMENTS 27 AND 28: The Department appreciates the commenters' support in this rulemaking effort.

Forms

29. COMMENT: The commenter is generally in favor of reducing the need of the Department to needlessly amend regulations to account for new forms and changes of form names. However, the commenter is concerned about this particular amendment. Currently, the rule provides under N.J.A.C. 7:26C-3.2(b)1 that a remediation timeframe extension request form must be completed no later than 30 days prior to the end date of the regulatory timeframe. The new rule provides that a responsible person must complete a form found on the Department website. This direction is unfortunately too vague to provide enough guidance to the responsible party and may lead to claims that the Department was not clear enough and therefore the responsible party should not be responsible for a violation. The commenter suggests that the Department revise this proposed change to provide that the responsible party provide and complete the appropriate form requesting an extension. This should be definitive enough to provide the responsible party sufficient guidance so there is no confusion. (4)

RESPONSE: The Department deleted the specific names of the forms from the rule text so that if the form name changes, the Department would not have to formally propose and adopt an amendment to the rule text to correct the name of the form pursuant to the requirements of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq.

As pointed out in the proposal, to ensure that the person responsible for conducting the remediation chooses the correct form, the Department has included on its webpage a table that lists each form by using a name that indicates the subject of the form and a cross reference to the citation in the New Jersey Administrative Code to which the form pertains. Also included on this table are the version number of the form and the date that the form was last updated, and a link to the downloadable version of that form. This webpage is updated appropriately as form names change, and forms are added or removed, and alerts concerning form updates appear at the top of the page. That said, the Department recognizes that there may be occasions on which the wrong form is inadvertently attached to a document being submitted to the Department. In those anticipated rare instances, the Department will not penalize the person for submitting the wrong form.

The Department is working on making the link in the provision of the rule referencing a form take the reader directly to the referenced form when one is reading the rule on the Department's website. The Department will send a listserv message when that service is available. Until then, the reader should go to the forms link indicated in the rule and find the form either by searching the names of the documents listed or finding the rule citation that corresponds to the form required by the rule.

30. COMMENT: The commenter looked at the Department's form referenced at N.J.A.C. 7:26C-3.2 and the form does not follow the statute. There are criteria in the statute for the regulatory timeframes. The form should reflect the statute. (8)

RESPONSE: The forms do not have the force of regulation; rather, they are a management tool the Department developed to make it easier to gather and track data. However, each of the forms cross references the citation to the New Jersey Administrative Code that requires that a particular form be submitted. It is through the Code that the Department enforces the applicable statute.

The form to which the commenter refers is the Remediation Timeframe Extension Request form. This form is to be used when the person responsible for conducting the remediation wishes to seek an extension of a regulatory, mandatory, or expedited site specific timeframe. On this form, the person responsible for conducting the remediation must certify that the request is for an extension of (1) a regulatory time frame and that the request meets all of the requirements set forth at N.J.A.C. 7:26C-3.2, (2) a mandatory or an expedited timeframe and that the request meets all of the requirements set forth at N.J.A.C. 7:26C-3.5, or (3) a regulatory, a mandatory or an expedited site specific timeframe that requires written Department approval pursuant to N.J.A.C. 7:26C-3.2 and 3.5.

Extension requests

31. COMMENT: N.J.A.C. 7:26C-3.5 contains a clause that provides that if the Department did not affirmatively deny the extension request, the extension request is deemed to have been approved. The commenter believes this to be the exact opposite of what should be occurring, because the Department does not have the adequate resources to adequately review all extension requests. The commenter notes that there could be cases where extension requests were submitted to the Department but did not get sufficient review and therefore would be deemed approved, and that would not make sense. This is part of the interim rules, and should be corrected as part of the next set of rulemaking for final rules for the program. (8)

32. COMMENT: SRRA at N.J.S.A. 58:10C-28 provides the criteria for when the Department shall provide extensions to the mandatory timeframes under specific conditions and when the Department may provide extensions to the timeframes. The criteria are descriptive and prescribe a clear and limited basis that the Department must consider. Those criteria are 1) risk to human health and the environment; 2) the results of the receptor evaluation; 3) ongoing commercial operations at the site; 4) the operations of the facility has resulted in no release of groundwater or surface water; and 5) impacts to the other sites. Those determinations and those decisions are allowable under the statute only on a site-specific basis and the Department cannot do that by rule. In this case, the Department seems to be adopting a rule that would apply to all sites that would allow extensions without going through a site-specific determination. (8)

RESPONSE TO COMMENTS 31 AND 32: The extension of mandatory timeframes outlined at N.J.A.C. 7:26C-3.5 reflects the requirements in SRRA for mandatory timeframe extensions and are not the subject of this rulemaking. SRRA at N.J.S.A. 58:10C-28 states that mandatory timeframe extension requests shall be deemed to be granted by the Department in the following circumstances: (1) a delay by the department in reviewing or granting a permit, provided that there was a timely filing of a technically and administratively complete permit application; (2) a delay in the provision of State funding for remediation, provided that there was a timely filing of a technically and administratively complete application for funding; or (3) a delay by the department for an approval or permit required for long-term operation, maintenance and monitoring of an engineering control at the site provided the request for approval or permit application is technically and

administratively complete. The Department has incorporated this statutory language into ARRCs at N.J.A.C. 7:26C-3.5 and is not proposing to amend it by this rulemaking. N.J.A.C. 7:26C-3.2(c) provides that an extension request for a regulatory timeframe submitted in accordance with the requirements outlined in N.J.A.C. 7:26C-3.2(b) shall be deemed to be approved by the Department unless the Department notifies the person in writing that the extension request is denied. The extension procedure for regulatory timeframes is not addressed in the statute.

33. COMMENT: The commenter believes there are policy flaws and fatal legal flaws in the proposal. Certain provisions are *ultra vires*. Certain provisions are directly contrary to the statute. Certain provisions are arbitrary and capricious and lack any factual basis. Certain provisions are clearly inconsistent with legislative intent. Furthermore, the rationale has to reflect N.J.S.A. 58:10C-28, which establishes the mandate that the Department develop mandatory timeframes, and the statute very clearly states that the basis for the mandatory timeframes shall be to protect public health and the environment. The Department should provide evidence that supports the proposal with respect to how extensions of the timeframes can in any way protect public health and the environment. (8)

34. COMMENT: The commenter requests that the Department explain its thinking in amending the rules to allow a blanket extension to the timeframes, when the statute places the burden on an applicant or an LSRP to go through a site-specific determination. The commenter does not believe the statute gives the Department the authority to develop rules for these extensions. (8)

35. COMMENT: As the Department noted in its Social Impact statement, "it is critical to the health of our citizens and the environment, as well as the health of our communities, to remediate contaminated sites New Jersey as quickly as possible while maintaining strict cleanup standards the Department has always applied." Providing an additional year for a responsible person to comply with the requirements of this section is counter to the obligations of the Department to protect the health of its citizens and the environment. Further, this amendment is unnecessary. The current rule provides under N.J.A.C. 26C-3.3(d) that a responsible party may request an extension of the mandatory time frames. Providing a blanket extension to all sites no matter how long remediation at a give site has been in progress does not comport with the Department's obligation to move site remediation forward.

Amending these rules to provide a blanket extension runs counter to SRRA. SRRA provides for extensions when the Department has delayed on their part or when necessary for other factors. N.J.S.A. 58:10C-28(c) and (d). These statutory requirements are implemented by the Department in N.J.A.C. 7:26C-3.5. By requiring the responsible party to make an application for an extension SRRA forces sites to be cleaned up and not encouraging delay. By providing an additional one year for the preliminary assessment and site investigation, the Department rewards those that have not moved appropriately in their obligations and punishes those who have abided by the law. The proposal is counter to law as it does not require the responsible party to provide a rationale behind the delay in complying with the law. (4)

RESPONSE TO COMMENTS 33 THROUGH 35: SRRA, at N.J.S.A. 58:10C-28.a, sets forth the remediation phases and activities for which the Department must establish mandatory and expedited site specific timeframes. Mandatory timeframes are the default timeframes by which a person responsible for conducting the remediation must complete a particular remediation activity. Expedited site specific timeframes are timeframes the Department will develop when protection of public health and the environment necessitates that the site be cleaned up more quickly than pursuant to the codified regulatory and mandatory timeframes. The mandatory timeframes are codified in the ARRCs rule at N.J.A.C. 7:26C-3.3, and the provisions concerning establishing an expedited site specific timeframe are codified at N.J.A.C. 7:26C-3.4.

The four criteria cited by the commenter are four of the five criteria the Department must use when developing timeframes. Those five criteria are: (1) the potential risk to the public health, safety, and the environment; (2) the results of the receptor evaluation; (3) the ongoing industrial or commercial operations at the site; (4) whether, for operating industrial or commercial facilities, there are no releases of contamination to the groundwater or surface water from the site; and (5) the complexity

of the contaminated site. The Department used these criteria to develop the mandatory timeframes and has promulgated the criteria as the ones the Department will use when determining if an expedited site specific timeframes is necessary.

N.J.S.A. 58:10C-28.c and 28.d set forth the circumstances under which the Department has the discretion to grant extensions and those circumstances when the Department must grant extensions, respectively. Discretionary extensions are to be granted on a site specific basis. See also N.J.A.C. 7:26C-3.5(d), where the Department codified the discretionary criteria. The "shall" category cases are not discretionary. As provided in SRRA at N.J.S.A. 58C-28.c and codified at N.J.A.C. 7:26C-3.5(c), if the person responsible for conducting the remediation meets the listed criteria, that person is deemed to have an extension of the mandatory or expedited site specific timeframe.

As mentioned in the Response to Comment 7, the Department has determined to extend the mandatory and regulatory timeframes based on its experience and on stakeholder input since implementing the interim rule, which indicated that the timeframes initially adopted may have been unrealistically short. The Department acknowledges that the LSRP remediation paradigm is still a relatively new paradigm. The mandatory timeframes established in this adoption reflect the Department's current thinking concerning the balance between protecting public health and the environment and ensuring that sites are remediated quickly and efficiently. As the Department gains more experience and data concerning the LSRP remediation paradigm, it may consider changing the timeframes, including possibly shortening them.

36. COMMENT: The proposal rule Summary stated that the reason the Department is proposing to extend the regulatory timeframes is to provide a "safety cushion" to help persons responsible for conducting the remediation to meet the mandatory timeframes outlined in N.J.A.C. 7:26C-3.3. The commenter asks for evidence stakeholders provided to the Department that would support the need for extensions in regulatory timeframes. (8)

37. COMMENT: The proposal says that the basis for the regulatory timeframes is to provide "a safety cushion" for the regulated community because the regulated community felt that the proposed adopted interim timetables for the mandatory timetables were "too short."

Clearly, this rule proposal is not considering any impact on human health and the environment and is purely based upon compliance obligations of the regulated community. That is not allowable under the statute. Nowhere does the statute say that the Department should consider the regulated community's concerns about providing a safety cushion. (5, 8)

RESPONSE TO COMMENTS 36 AND 37: The "safety cushion" to which the Department referred in the Summary of the proposal of the amendments to the ARRCs rules and Technical Requirements concerns building in time for a person responsible for conducting the remediation who may encounter problems with meeting a regulatory timeframe to be able to still remain in compliance with the mandatory timeframe. Pursuant to SRRA at N.J.S.A. 58:10C-27, the Department must undertake direct oversight of a remediation conducted by a person who misses a mandatory timeframe. Overseeing the remediation of a case that is in direct oversight places an enormous burden on the Department and may hinder the remediation. Placing a significant number of cases under direct oversight would defeat the purpose of the LSRP program, which was to relieve the Department from overseeing the remediation of every case in favor of having enough resources for the Department to focus on the cases that pose the greatest risk to public health and the environment. In addition, the extension of the regulatory timeframes ensures that sites are properly, yet timely, remediated so that they are protective of public health, safety and the environment. Providing an adequate amount of time for the person responsible for conducting the remediation to do a thorough job in conducting the required remedial work avoids "sloppy" workplans and reports which may result from rushing to meet an inadequate timeframe. The "safety cushion" alluded to in the rule proposal is good for the person responsible for conducting the remediation, the Department and the citizens of New Jersey as a whole.

Impact statements

38. COMMENT: The commenter asks that the Department identify the number of immediate environmental concern cases, the name of the site, the location of the site, the contaminant of concern, the level detected, the applicable regulatory standard, should it be soil or groundwater or indoor air intrusion issue, the exposure pathway, and the date that the immediate environmental concern condition was discovered by either the responsible party or the Department so the public would have some understanding of how the extension of the timeframes could impact public health and the environment and how the case was progressing. (8)

RESPONSE: The specifics of the data that the commenter is requesting can be found in the reports located in the Department's database in Data Miner at <http://www.nj.gov/dep/opra/online.html>. For example, Data Miner shows that there are currently 586 immediate environmental concern cases in the Department's database. Of these, 189 involve vapor intrusion, 367 involve potable well contamination and nine involve direct contact. The remaining 21 immediate environmental concern cases do not contain information concerning the type of immediate environmental concern.

39. COMMENT: The commenter does not understand the rationale and justification for the extension, at N.J.A.C. 7:26E-1.15, of the receptor evaluation timeframe, from November of 2010 to March 2011, and questions what are the impacts on human health and the environment. The Department should have provided in its proposal of this amendment site specific statistics concerning how extending this timeframe would actually impact human health and the environment or public health and the environment as a part of the basis for the proposal, so that the public may better understand the impacts. (8)

40. COMMENT: The commenter notes that the proposal at N.J.A.C. 7:26C-3.3 adds the timeframe for submitting the initial receptor evaluation to two years. If the extension results in the creation of exposure pathways and increased chance of exposure to individuals, then the extension of the receptor evaluation deadline will result in a negative impact to human health and the environment, which is contrary to the statutory requirement that human health and the environment be protected. (8)

RESPONSE TO COMMENTS 39 AND 40: As mentioned in the Environmental Impact statement in the proposal, although the proposed amendments extend certain timeframes for remediation, they will have a positive environmental impact by allowing persons responsible for conducting the remediation to better allocate resources to remediate contaminated sites, and allow them to take a more studied approach to the remediation, and therefore implement a more effective remedial action. This means less human and ecological exposure to the contamination, and therefore fewer negative consequences to human health and to the State's natural resources.

41. COMMENT: The proposed Environmental Impact statement in the rule proposal states that the extension of the timeframes will result in an environmental benefit by allowing persons responsible for conducting the remediation to better allocate resources to remediate the sites and provide for better studies in order to implement a more effective remedial action. The commenter does not agree with this premise. The allocation of a company's resources has nothing to do with the protection and public health of the environment. In addition, the Department does not know how a person responsible for conducting the remediation allocates the resources for remediation, thus it can't be a basis for the proposal.

How a remediating entity allocates those resources is completely outside the scope of the Department's consideration. Rather, the regulated community would more likely be chilled by that kind of thinking. The Department's premise as stated in the Environmental Impact statement results in an arbitrary proposal having no factual or permissive regulatory basis. (8)

RESPONSE: The Department's experience in implementing the Technical Requirements and overseeing the remediation of contaminated sites for more than 20 years has shown that the way the person responsible for conducting the remediation allocates its resources (including personnel, financial, and time) has significant impact on the quality of the remediation of a contaminated site. Persons responsible for conducting the remediation have represented to the Department that

having a known and reasonable time to conduct remediation has better enabled them to budget for the steps and studies necessary to determine the most protective and cost effective remedial actions. The Department is basing its premise on its experience in overseeing the remediation of contaminated sites and on the factual input it has received from persons responsible for conducting remediation.

Initial receptor evaluation reporting

42. COMMENT: Proposed N.J.A.C. 7:26C-3.3(a)2 limits the required information for the initial receptor evaluation report to only that which is known when the report is submitted. Proposed N.J.A.C. 7:26C-3.3(a)3 deletes the requirement that the immediate environment concern contaminant source be delineated. Both proposed amendments should be adopted as they are practical measures that recognize that every task of the remediation action may not be accomplished within the two-year timeframe. (2)

43. COMMENT: Proposed N.J.A.C. 7:26E-1.15(c) is amended to require that the information on the initial receptor evaluation would be only that which "is known by the person responsible for conducting the remediation at the time the report is submitted." As the Department acknowledges, this proposed amendment reflects the reality of remediation projects that "not all information may be known or available at this stage of the remediation," and therefore should be adopted. (2)

RESPONSE TO COMMENTS 42 AND 43: The Department appreciates the commenters' support of this rulemaking.

Civil administrative penalties

44. COMMENT: The penalty description at N.J.A.C. 7:26C-9.5 related to N.J.A.C. 7:26C-3.3(a)3, recodified as N.J.A.C. 7:26C-3.3(a)4, is not consistent with the text of the proposed rule amendment. Specifically, the penalty description references LNAPL "recovery system installation," whereas the amended language of the proposed rule has deleted the requirement of a recovery system and has replaced it with a "free product interim remedial measure." The penalty language should be revised accordingly. (6)

RESPONSE: The Department agrees that the description of the penalty should accurately reflect the content of the paragraph to which it refers. On adoption, at the table in N.J.A.C. 7:26C-9.5(b), in the violation for N.J.A.C. 7:26C-3.3(a)3, recodified as N.J.A.C. 7:26C-3.3(a)4, the Department will correct the phrase "recovery system installation" to "free product interim remedial measure" to more accurately reflect the content of the paragraph to which it refers.

45. COMMENT: The Department proposes at N.J.A.C. 7:26E-9.5 to amend the base penalty for failure to submit a preliminary assessment from \$8,000 to \$20,000. This increase is not justified and should be deleted. This increase is contrary to both the Red Tape Review Commission's report and the Governor's Executive Orders, which strive to reduce the burdens on industry. This penalty would apply equally to a large, multi-media investigation by a large and/or sophisticated company with consulting expertise, as well as to a small mom-and-pop dry cleaner or other small business, or even the heirs of such a company attempting to address legacy issues associated with historic family-owned businesses. Since these are non-minor penalties and the Department has no discretion to deviate from the issuance of the penalty, nor adjust the amount, the base amount should be kept at the lower level. Also, the Department should provide the rationale as to how the \$20,000 penalty was determined. (6)

RESPONSE: N.J.A.C. 7:26C-3.3(a)1 requires that the preliminary assessment and site investigation report be submitted to the Department within the mandatory timeframe established in the rule. The Department does not anticipate that the increase in the base penalty for a violation of N.J.A.C. 7:26C-3.3(a)1 will place any additional burden on the person responsible for conducting the remediation that remains in compliance with the mandatory timeframes. However, the effects of the contamination remaining in the environment on public health and the environment are the same regardless of the size of the site; thus, the penalty should not be assessed differently based on the type of business. The mandatory timeframes adopted at N.J.A.C. 7:26C-3 are critical to the success of the remediation program because they ensure that parties will timely remediate sites without Department oversight. The public must be

assured that sites that are being remediated with a LSRP will be remediated in a timely manner without the Department directing the pace of the remediation.

As noted in the proposal, the Department is increasing the penalty from \$8,000 to \$20,000 so that the penalty both reflects the seriousness of this violation and is consistent with the penalty for other violations of the same gravity noted in N.J.A.C. 7:26C-3.3(a)2 through 4. The timeframes are mandatory. The penalties in N.J.A.C. 7:26C-9.5 are the base penalties for violation of the listed provisions.

46. COMMENT: Proposed N.J.A.C. 7:26C-9.5(b) increases the base penalty amount from \$8,000 to \$20,000 for failing to comply with the mandatory timeframe for submitting a preliminary assessment and site investigation report. The Department explains that this change is needed to reflect the seriousness of the violation and to be consistent with other penalties for violating mandatory timeframes. The Department also proposes a new penalty in the amount of \$20,000 for failing to submit indoor air data to DHSS within the required timeframe.

The Department should maintain the base penalty associated with preliminary assessments and site investigation reports at the current assessment of \$8,000. Given that the Site Remediation Program reforms are still in their infancy stage, it is not unreasonable to expect that some administrative missteps may occur as the regulated community and its environmental consultants (LSRPs or otherwise) adjust to the new program requirements. Specific to this rule, the concept and requirement of meeting mandatory timeframes, in addition to the regulatory timeframes, is a new element of the site remediation program.

Further, the potential of being assessed increased penalties (anywhere upwards of the proposed \$20,000) would only serve as a deterrent to the undertaking of remediation projects, rather than being a means to ensure that preliminary assessments and site investigation reports are submitted within the prescribed mandatory timeframe, which is the intended purpose of the Department. In these harsh economic times, the Department should ensure that any enforcement actions that impose monetary penalties truly fit the violation and the environmental harm incurred from the infraction. (2)

RESPONSE: The penalties for violations of mandatory timeframes must serve as a deterrent from delaying or stalling the remediation effort. However, the threat of a penalty should not be a deterrent to undertaking a remediation. In fact, pursuant to the Brownfield Act, the person responsible for conducting the remediation has an affirmative obligation to remediate (N.J.S.A. 58:10B-3). Therefore, once a discharge is discovered, the person responsible for conducting the remediation must proceed with the remediation.

The Department is extending the mandatory timeframes based on comments from the regulated community that the extension would be more reflective of the time it takes to conduct the remediation tasks that are the subject of the existing mandatory timeframes. Thus, the penalty should not be a deterrent to undertaking remediation since compliance with the timeframe should be achievable. The rules at N.J.A.C. 7:26C-3.2 and 3.5 allow for that person to seek an extension of the regulatory and mandatory timeframes if certain conditions exist at a site. Extensions are irrelevant where no remediation is underway. The Department agrees that the reforms to the remediation process contained in SRRA are still in their infancy stage and that it will take time for the regulated community to adjust to the new program requirements. That is why the Legislature established a three-year phase in process for the new program. However, the Department does not believe that missing a mandatory timeframe is an "administrative misstep." Rather, missing a mandatory timeframe indicates to the Department that the person responsible for conducting the remediation has already missed the applicable regulatory timeframe and has failed to take advantage of the extension requests that would allow for more appropriate management of the remediation.

47. COMMENT: The commenter approves of the changes provided in the penalty sections at N.J.A.C. 7:26C-9.5. Penalties should serve as a true deterrent for violating the rules. (4)

RESPONSE: The Department appreciates the commenter's support for this rule initiative.

Miscellaneous

48. COMMENT: The commenter states that the interim rule, which was not subject to public comment, has a number of major flaws, including the fact that there no mandatory time frames as required by the statute for remedial investigation, for remedial action or "Completion of remedial action," in spite of the legislative direction that mandates the Department to establish timeframes for these remediation phases. (8)

RESPONSE: The Department anticipates proposing regulatory and mandatory timeframes for the remedial investigation and the remedial action phases in May, 2011 for adoption in May, 2012.

49. COMMENT: The commenter recognizes that there have been some delays in trying to get the LSRP program off the ground because of a failure in getting appointments to the Board, but is concerned that this delay for one year not only goes against the statutory intent of the law, but it will mean more pollution as we keep the interim rules and programs in place, which we believe have less oversight and less accountability. (7)

RESPONSE: The commenter's concerns about the constitution of the LSRP Board are beyond the scope of this rulemaking. The LSRP program has been functioning since November 4, 2009. There are over 435 temporarily licensed LSRPs and they are actively remediating sites.

50. COMMENT: The public hearings on this proposal were held the day before an election and the day after an election, thereby suppressing public participation. Additionally, reporters that would otherwise have been interested in attending these meetings were forced to miss them because they were engaged in election coverage. The commenter believes that the hearings were held on these dates in order to thwart public awareness. Additionally, the commenter states that the sites selected for public hearings were inappropriate because they were not located in counties in which the majority of contaminated sites are located, thereby frustrating the ability of the public to participate. (8)

RESPONSE: In scheduling the public hearings, the Department considered dates that were in the middle of the public comment period, which was open from October 4 to December 3, 2010. When choosing venues, the Department scheduled one hearing in central New Jersey and one in the northern portion of the State. An important factor in venue selection was the cost to use the venue. The Department's public hearing room and the New Jersey Water Supply Authority were free of charge to the Department and available during the window the Department sought to have the hearings.

Additionally, on September 29, 2010, the Department faxed a copy of the proposal to each of the 14 news organizations that maintains a press office in the State House; included in that group are the Atlantic City Press, the New Jersey Network, the Trenton Times, the New York Times and the Philadelphia Inquirer.

As mentioned above, the Department makes every effort to invite members of all constituent groups.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. Following are analyses for each rule that is being amended by these adopted amendments:

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

The adopted amendments to the mandatory timeframes promulgated in the ARRCs rules do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the ARRCs rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 CFR Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site, with or without Department oversight. Therefore, there are no Federal provisions with which to compare the provisions of the ARRCs rules. Based on this analysis, the

Department has determined that the adopted amendments do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

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

The Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, were promulgated under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and these State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. In addition, the EPA has delegated its Underground Storage Tank program to New Jersey pursuant to 40 CFR 280. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department has compared these adopted amendments to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 et seq., and the Resource Conservation and Recovery Act (RCRA) of 1980, 42 U.S.C. §§ 6901 and 6991 et seq.

The establishment of regulatory timeframes for the completion of certain remedial work is more stringent than equivalent Federal programs; the Federal programs do not establish remediation timeframes at all. Rather, the Federal remediation programs allow the remediation of contaminated sites to be conducted on site specific schedules. Prior to the adoption of remediation timeframes, the Department also permitted remediation to proceed on site specific schedules, but has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. Accordingly, the Department established regulatory timeframes for the completion of remediation tasks that lead up to the mandatory remediation milestone so that the person responsible for conducting the remediation completes the statutorily mandated remediation milestones within the mandatory time frames set forth in the ARRCs rules. This ensures that site cleanups are not unnecessarily prolonged, and ensures that remediating parties are not unnecessarily pushed into the direct Department oversight program. The Department believes that there will be an overall cost savings associated with the timeframes. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated, which often adds to the overall cost of remediation. Additionally, if the remediation of contaminated sites is completed in a timelier manner, such sites can be put to better use and often can result in increased ratables for local and State government.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 26C ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.2 Regulatory timeframes

(a) (No change.)

(b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:

1. Complete a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:

i.-iv. (No change.)

2. (No change.)

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

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation shall:

1. If required to conduct a preliminary assessment and site investigation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or a site investigation pursuant to the New Jersey Underground Storage of Hazardous Substances, N.J.S.A. 58:10A-21 et seq., submit the preliminary assessment and/or site investigation report, as applicable, within two years from the later of the following dates:

i. March 1, 2010; or

ii. (No change.)

2. Submit the initial receptor evaluation report containing the information required by N.J.A.C. 7:26E-1.16 through 1.19 known at the time the report is submitted within two years from the later of the following dates:

i. March 1, 2010; or

ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b) occurs;

3. Initiate immediate environmental concern contaminant source control and submit an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14, no later than two years from the later of the following dates:

i. March 1, 2010; or

ii. (No change.)

4. Complete the installation of a light non-aqueous phase liquid (LNAPL) free product interim remedial measure, initiate operational monitoring and submit an LNAPL Free Product Interim Remedial Measures report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), within two years from the later of the following dates:

i. March 1, 2010; or

ii. (No change.)

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

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

(a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:

1. The person shall provide a written rationale for the request in a completed form found on the Department's website at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:

i.-iv. (No change.)

2. (No change.)

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

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

(a) (No change.)

(b) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

ADOPTIONS

ENVIRONMENTAL PROTECTION

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
...				
<u>Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C</u>				
...				
3 Remediation Timeframes and Extension Requests				
...				
Failure to comply with the mandatory timeframe for submittal of a preliminary assessment and site investigation report.	7:26C-3.3(a)1	NM		\$20,000
Failure to comply with the mandatory timeframe for submittal of an initial receptor evaluation report.	7:26C-3.3(a)2	NM		\$20,000
Failure to comply with the mandatory timeframe for initiation of immediate environmental concern contaminant source control and submittal of Immediate Environmental Concern Contaminant Source Control Report.	7:26C-3.3(a)3	NM		\$20,000
Failure to comply with the mandatory timeframe for completion of light non-aqueous phase liquid (LNAPL) *[recovery system installation]* free product interim remedial measure* , initiation of LNAPL recovery system monitoring, and submittal of interim remedial action report.	7:26C-3.3(a)4	NM		\$20,000
...				
<u>Technical Requirements for Site Remediation N.J.A.C. 7:26E</u>				
1 General Information				
...				
Failure to complete installation of LNAPL interim remedial measure, initiate operational monitoring and submit report within the required timeframe.	7:26E-1.12(b)2	NM		\$20,000
...				
Failure to submit indoor air data to DHSS within the required timeframe.	7:26E-1.14(b)4	NM		\$20,000
Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.14(b)5	NM		\$20,000
...				
Failure to initiate control of the IEC contaminant source using the Department's guidance and submit an IEC contaminant source control report with the required form within the required timeframe.	7:26E-1.14(d)	NM		\$20,000
...				

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 the context clearly indicates otherwise:

...
 "Immediate environmental concern" means a condition at a contaminated site where any of the following types of contamination or any of the following conditions related to the discharges at the site are found at the site:

1. (No change.)
2. Contamination in indoor air at a level greater than any vapor intrusion rapid action level included in or developed consistent with the Department's Vapor Intrusion Guidance;
- 3.-5. (No change.)

...
 "Rapid action level" means a level for indoor air defined in the Department's Vapor Intrusion Guidance that triggers an immediate environmental concern condition.

7:26E-1.12 Control of ongoing sources and implementation of interim remedial measures

- (a) (No change.)
- (b) The person responsible for conducting the remediation shall follow the Department's Light Non-aqueous Phase Liquid (LNAPL) Free

Product Interim Remedial Measures guidance concerning free product removal as follows:

1. Within 60 days after either March 1, 2010 or LNAPL is identified, whichever is later, initiate the recovery of free product and notify the Department on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms; and

2. Within one year after either March 1, 2010 or LNAPL is identified, whichever is later, complete the installation of an LNAPL interim remedial measure, initiate operational monitoring, and submit a Free Product Interim Remedial Measures Report with a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the Department that documents the actions taken pursuant to this subsection.

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. (No change.)
2. Mitigate the IEC impacts as applicable as follows:
 - i. For potable water immediate environmental concerns, within five days after identifying the IEC condition, provide bottled water to the residents of each property where contaminant concentrations exceed any remediation standard for Class II ground water;
 - ii. For vapor intrusion immediate environmental concerns, within 14 days after identifying the IEC condition, mitigate the infiltration of vapors into structures impacted by vapor intrusion; and
 - iii. For soils contaminated above acute levels, within five days after identifying the IEC condition, restrict access to soil contaminated above acute levels;

3. Within 14 days after identifying the IEC condition, submit the following to the Department:

i. A completed form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

ii. A completed IEC Information Spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms;

iii. (No change.)

iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)16, with an appropriate form for the type of IEC condition found on the Department's website at www.nj.gov/dep/srp/srra/forms;

4. Within 14 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
Indoor Environments Program
135 E. State Street
PO Box 369
4th Floor
Trenton, NJ 08625-0369; and

5. Within 60 days after identifying the IEC condition, implement the following IEC engineered system response actions:

i. (No change.)

ii. When contaminant concentrations in indoor air are detected above the indoor air screening level, determine whether the contaminant concentrations also exceed the rapid action levels listed in the Department's Vapor Intrusion Guidance, or, if no rapid action level exists for a contaminant in the Department's Vapor Intrusion Guidance, contact the Department to have a site-specific rapid action level determined for the contaminant, and if the rapid action level is exceeded install a vapor mitigation system at each property where indoor air levels exceed the rapid action level; and

iii. (No change.)

(c) Within 120 days after identifying the IEC condition, the person responsible for conducting the remediation shall submit an IEC engineered system response action report with an updated form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1.-5. (No change.)

(d) Within one year after either March 1, 2010 or identifying the IEC condition, ***whichever is later,*** the person responsible for conducting the remediation shall initiate control of the IEC contaminant source using the Department's IEC Guidance and submit an IEC contaminant source control report, with an updated form found on the Department's website at www.nj.gov/dep/srp/srra/forms that includes descriptions of each of the following:

1.-3. (No change.)

7:26E-1.15 Receptor evaluation—general and reporting requirements

(a) (No change.)

(b) The person responsible for conducting the remediation who completes an unrestricted use remedial action is not required to conduct a receptor evaluation when a final remediation document is either issued by the Department or is filed with the Department by a licensed site remediation professional within one year after initiating the remediation.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, by March 1, 2011 or one year after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b), whichever is later, which shall contain the information that is known by the person responsible for conducting the remediation at the time the report is submitted.

(d) The person responsible for conducting the remediation shall submit an updated receptor evaluation report on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms with the following documents, as applicable:

1.-2. (No change.)

(e) (No change.)

7:26E-1.17 Receptor evaluation—ground water

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

(c) If no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard,

within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)16 with the form found on the Department's website at www.nj.gov/dep/srp/srra/forms; and

2. (No change.)

(d) (No change.)

7:26E-1.18 Receptor evaluation—vapor intrusion

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

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. (No change.)

2. Implement the Vapor Intrusion Guidance, including, but not limited to:

i.-v. (No change.)

vi. Evaluate the results of indoor air sampling as follows:

(1) If the results are greater than the Department's vapor intrusion indoor air screening level, the person shall determine whether the contaminants are also greater than the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii, and if so determine whether the contaminants are likely to be associated with a discharge at the site or may be attributed to background sources;

(2) If the results are greater than the vapor intrusion rapid action level as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii, the person shall immediately notify the Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14;

(3) If the results are greater than the Department's Health Department Notification Levels for indoor air the person shall immediately notify:

(A)-(B) (No change.)

(4) (No change.)

(d)-(e) (No change.)

(f) If the person responsible for conducting the remediation determines that no IEC condition exists, but the vapor intrusion pathway is still of concern, the person shall:

1. If the results are between the indoor air screening level and the rapid action level determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii:

i. Within 14 days of receipt of data showing exceedances of the indoor air screening levels, notify the Department of the exceedances on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

ii. Within 60 days of receipt of data showing exceedances of the indoor air screening levels, submit a plan to the Department to mitigate the exposure;

iii. Within 120 days of receipt of data showing exceedances of the indoor air screening levels, implement the plan; and

iv. Within 180 days of receipt of data showing exceedances of the indoor air screening levels, submit a mitigation response action report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

(1) A description of all mitigation actions that have been completed, including the date that each action that was conducted;

(2) A summary of all analytical data related to the vapor intrusion investigation and mitigation response; and

(3) All maps and figures related to the vapor intrusion investigation and mitigation response; or

2. If the results are below the indoor air screening levels, or are above the indoor air screening levels but below the rapid action levels and a determination has been made that a mitigation system is not necessary, complete a vapor intrusion investigation as part of the site investigation or remedial investigation, as applicable.

(g)-(h) (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation who is required to conduct a preliminary assessment pursuant to the Industrial

Site Recovery Act, N.J.S.A. 13:1K-6 et seq., shall prepare a preliminary assessment report which:

- 1.-6. (No change.)
- (b) (No change.)

7:26E-3.3 Site investigation

- (a)-(d) (No change.)

(e) The person responsible for conducting the remediation who is required to conduct a site investigation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or the New Jersey Underground Storage of Hazardous Substances, N.J.S.A. 58:10A-21 et seq., shall complete the site investigation and submit a site investigation report with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms by the later of the following:

1. By March 1, 2011; or
2. One year after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).

HEALTH AND SENIOR SERVICES

(a)

HEALTH INFRASTRUCTURE PREPAREDNESS AND EMERGENCY RESPONSE

DIVISION OF PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES

CLINICAL LABORATORY IMPROVEMENT SERVICE Collection, Processing, Storage and Distribution of Blood

Readoption: N.J.A.C. 8:8

Proposed: August 16, 2010 at 42 N.J.R. 1771(a).

Adopted: January 13, 2011 by Poonam Alaigh, MD, MSHCPM, FACP, Commissioner, Department of Health and Senior Services, (in consultation with the Public Health Council, Herbert Yardley, M.A., Chair).

Filed: January 19, 2011 as R.2011 d.056, **without change**.

Authority: N.J.S.A. 26:1A-7 and 26:2A-7; and Reorganization Plan No. 003-2005.

Effective Date: January 19, 2011.

Expiration Date: January 19, 2016.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on September 13, 2010, with Dennis McDonough, Director, Clinical Laboratory Improvement Service, presiding. No one appeared to testify. The hearing record may be reviewed by contacting Dennis McDonough, Director, Clinical Laboratory Improvement Service, New Jersey Department of Health and Senior Services, Box 361, Trenton, New Jersey, 08625-0361.

Summary of Public Comment and Agency response:

No comments were received either in writing or at the public hearing.

Federal Standards Analysis

The Federal rules at 21 CFR Parts 600 through 640, address blood banking and recent rules at 21 CFR Parts 1270 and 1271 address hematopoietic progenitor cell blood banks. The State is required to meet or exceed minimum Federal standards for blood banks. The FDA oversight focuses primarily on electronic data and quality management issues and recordkeeping, while the State concentrates on standards for transfusion services and emphasizes donor testing requirements. The FDA and the State laws have distinct enforcement powers that have been utilized successfully in a cooperative fashion in cases of seriously deficient practices in blood banking. Together the two agencies ensure an effective oversight mechanism to maintain blood safety and protect public health. Safety of the blood supply continues to be a concern for

members of the general public, who perceive themselves as potential blood consumers.

New Jersey's blood bank rules exceed the FDA donor testing requirements by requiring blood banks to test donor's blood for hepatitis B core antibody (anti-HBc) in addition to the FDA required tests. New Jersey, like the national standard setting agency for blood banks and transfusion services and other state agencies, continues to require anti-HBc testing as one of the required donor screening tests. Anti-HBc testing identifies donors with asymptomatic or unrecognized infection with hepatitis B virus (HBV) infection and was recommended as a surrogate marker to identify persons infected with non-A, non-B (NANB) hepatitis agents. The continuing requirement of anti-HBc testing poses no additional financial burden since all blood banks in New Jersey have been performing this test as required by the national accrediting agency for blood banks and other state agencies outside New Jersey.

New Jersey's blood bank rules currently require reporting of donors testing positive for Hepatitis B or C, HIV 1 and 2 and other reportable diseases listed in N.J.A.C. 8:57-1 and 2 to the Department of Communicable Disease Services and the Division of HIV/AIDS Services. This reporting allows the Department to follow-up to ensure that positive donors receive medical treatment, to identify contacts of positive donors who may be infected for testing and treatment, as needed, and provide counseling and education to promote healthy behaviors. Federal regulations do not address this reporting requirement, electing to leave this up to the states, which may have rules that differ from other states.

The State also provides regulated parties and consumers with rapid responses to their inquiries. The State is often in a better position to respond and address these problems than the FDA since it is familiar with local conditions.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:8.

(b)

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

HEALTH FACILITIES EVALUATION AND LICENSING DIVISION

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

Hospital Licensing Standards

Readoption with Amendments: N.J.A.C. 8:43G

Proposed: August 16, 2010 at 42 N.J.R. 1774(a) (see also, 42 N.J.R. 2561(a)).

Adopted: January 11, 2011 by Poonam Alaigh, MD, MSHCPM, FACP, Commissioner, Department of Health and Senior Services (with the approval of the Health Care Administration Board).

Filed: January 18, 2011 as R.2011 d.055, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5(b).

Effective Dates: January 18, 2011, Readoption;
February 22, 2011, Amendments.

Expiration Date: January 18, 2016.

Summary of Hearing Officer's Recommendations and Agency Response:

The public comment period for the notice of proposal was originally scheduled to close on October 15, 2010. "Based upon sufficient public interest specifically as it relates to N.J.A.C. 8:43G-6, which establishes standards for hospital anesthesia services," the Department determined to convene a public hearing and to extend the comment period to November 15, 2010. 42 N.J.R. 2561(a) (November 1, 2010).

The Department convened a public hearing on November 8, 2010. Walter C. Kowalski, Legal Specialist, Office of Legal and Regulatory Compliance, served as hearing officer. Thirty three persons provided

7:1J-6.9 Remediation of discharge which is subject of claim

The Department may require the claimant to enter into an oversight document pursuant to the Procedures for Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C, to review any information regarding the remediation of a discharge that is the subject of a claim. In the instance where the claimant has a compensable claim, the Department will waive oversight costs pursuant to N.J.A.C. 7:26C-9.

New Rule, R.1998 d.67, effective January 20, 1998.
See: 29 N.J.R. 4365(a), 29 N.J.R. 4594(a), 30 N.J.R. 336(b).

7:26B-1.5 Forms and submissions

Any forms or applications required by this chapter may be obtained from and returned to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protec-
tion
401 East State Street
PO Box 432
Trenton, New Jersey 08625-0432

Amended by R.2003 d.133, effective March 17, 2003.
See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

7:26B-2.2 Applicability determinations

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

1. Submit a completed application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. In summary, the information required in the application includes: the name of the business conducted on site, the NAICS number of the business, the location of the business, or description of the proposed transaction, a description of operations conducted on site, the name of the person owning the real

property, and information regarding the presence of hazardous substances used in the operations on site;

2. Grant written permission for the Department to enter and inspect the site and operations for which the applicability determination is requested;

3. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.1 required for applicability determinations; and

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

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

1. Identify each direct owner and each indirect owner of the industrial establishment;

2. Identify whether the indirect owner has exerted fiscal control over the direct owner or industrial establishment including, but not limited to, imposing any restriction upon the financing, borrowing, budgeting, dividends and cash management of the direct owner or industrial establishment;

3. List all persons that are officers and directors for both the direct owner and the indirect owner of the industrial establishment to establish whether the officers, directors and employees of the indirect owner constitute a majority of the directors of the direct owner or the industrial establishment or such smaller number of directors as is sufficient to effectively direct the management and policies of the direct owner or the industrial establishment;

4. Identify whether the officers, directors and employees of the indirect owner are involved in the day-to-day operations of the direct owner or the industrial establishment and whether the day-to-day operations of the direct owner or the industrial establishment are relevant to the generation, manufacture, handling, storage or disposal of hazardous substances or hazardous wastes;

5. Identify whether the indirect owner has the ability to control the activities, policies or decisions of the direct owner or the industrial establishment and whether these activities, policies or decisions are relevant to the generation, handling, storage or disposal of hazardous substances or hazardous wastes; and

6. The applicant shall provide any additional information which may be relevant to this determination.

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

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

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

3. Identify:

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

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

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

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

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

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

1. Identify whether the transferor is transferring more than 50 percent of the voting or ownership interest in the direct owner or operator or indirect owner of an industrial establishment. There is a rebuttable presumption that any person who has more than 50 percent of the voting or ownership interest holds a controlling interest in that direct owner or operator or indirect owner; or

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

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

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

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

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

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

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

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

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).

See: 36 N.J.R. 2931(a).

In (a)1, substituted "NAICS" for "SIC"

Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.

See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).

Provisions of R.2004 d.206 adopted without change.

7:26B-2.3 De minimis quantity exemption

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

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

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

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

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

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

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

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

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

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

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).

See: 36 N.J.R. 2931(a).

In (d), substituted "NAICS numbers of 424210, 446110, 446120 or 446191 as qualified by the limitations noted in Appendix C" for "SIC number of 5122".

Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.

See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).

Provisions of R.2004 d.206 adopted without change.

7:26B-3.1 Prenotice filing conference

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

7:26B-4.1 Remediation agreement

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

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

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

(c) The language for the remediation agreement shall conform to the language in the standard remediation agreement pursuant to Appendix A, incorporated herein by reference, to the greatest extent practicable, as determined by the Department.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (a)5, added "pursuant to the remediation funding source requirements of N.J.A.C. 7:26C-7" at the end.

APPENDIX A

STANDARD ISRA REMEDIATION AGREEMENT

The standard ISRA remediation agreement contains references to [Person], [amount], and other blank brackets []. Upon the Department's issuance or entry of a remediation agreement, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document. The matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF :
THE [Name of the site] : REMEDIATION
SITE AND [Name of : AGREEMENT
operator]
AND [Name of owner] :
ISRA Case #[] :

This Remediation Agreement is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "Department" or "DEP") by N.J.S.A. 13:1D-1 et seq., the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director for the Industrial Site Evaluation Element within the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [], Lot [] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter "Property"), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").

2. On [date], [Corporation/entity/individual] submitted to the Department an application for a Remediation Agreement pursuant to N.J.A.C. 7:26B-4.1. This Remediation Agreement

application is incorporated herein by reference and includes the following information:

A. Transaction

Seller: []

Buyer: []

Description: []

B. Person(s) executing this Remediation Agreement and responsible for conducting the remediation of the [] industrial establishment (hereinafter referred to as Person(s)).

Lead Person:

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

Person: [Any other Person(s)]

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

3. The Department and the [Person(s)] expressly agree that the terms and conditions of this Remediation Agreement shall apply separately to each of the industrial establishments listed in paragraph 1 above. Furthermore, the Department and the [Person(s)] agree to administer and complete all applicable ISRA program requirements, including the remediation funding source requirements and any other remedial measures undertaken pursuant to this Remediation Agreement and ISRA, for the industrial establishment.

4. The transaction described in paragraph 2.A above is the transfer of ownership or operations of an industrial establishment as defined by ISRA. The Department and [Person(s)] expressly agree that the transaction described in paragraph 2.A above is subject to ISRA. [Person(s)] has requested that the Department prepare a Remediation Agreement which, when effective, will allow the transaction described in paragraph 2.A above to be consummated prior to the completion of all administrative and remediation requirements pursuant to ISRA.

5. By entering into this Remediation Agreement, [Person(s)] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable] nor waives any rights or defenses with regard to the site except as specifically provided in this Remediation Agreement.

6. The scope of the remediation required by this Remediation Agreement includes all contaminants within the meaning of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et

seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (hereinafter "contaminants") at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

7. [Additional provisions may be added at the Department's discretion].

AGREEMENT

I. Remedial Investigation Requirements

1. Within [] calendar days after the effective date of this Remediation Agreement, as set forth in paragraph 67 below (hereinafter "the effective date of this Remediation Agreement"), or as otherwise approved in writing by the Department, [Person] agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E, including a schedule pursuant to N.J.A.C. 7:26E-4.2(b). [Person] agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

2. Within [] calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the RI Work Plan to conform to the Department's comments and agrees to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Work Plan.

3. Upon receipt of the Department's written final approval of the RI Work Plan, [Person] agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

4. [Person] agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

5. If upon review of the RI Report the Department determines that additional remedial investigation is required, the Department shall notify [Person] of the additional work that is required. [Person] agrees to submit to the Department another RI Workplan and schedule for the additional work. Upon approval of the RI Workplan for the additional required work, [Person] agrees to conduct additional remedial investigation and submit another RI Report pursuant to the approved schedule.

6. Within [] calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, [Person] agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Report.

II. Remedial Action Requirements

7. Within [] calendar days after receipt of the Department's written approval of the RI Report, [Person] agrees to submit to the Department a Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

8. Within [] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the Department's comments and agrees to submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Work Plan.

9. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, [Person] agrees to implement the approved Remedial Action Work Plan in accordance with the schedule therein.

10. [Person] agrees to submit to the Department a Remedial Action Report (hereinafter "RA Report") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the RA Work Plan and the schedule therein.

11. If upon review of the RA Report the Department determines that additional remediation is required, [Person] agrees to conduct additional remediation as required by the Department including submission of additional workplans and reports, as applicable.

12. Within [] calendar days after receipt of the Department's written comments on the RA Report, or longer as authorized by the Department, [Person] agrees to modify the RA Report to conform to the Department's comments, and agrees to submit the modified RA Report to the Department. The determination as to whether or not the modified RA

Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments, and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Report.

III. Additional Remedial Investigation and Remedial Action

13. If at any time that this Remediation Agreement is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, [Person(s)] agrees to conduct such additional remediation as the Department directs.

14. If the Department determines that no further action is required at the [] industrial establishment, [Person(s)] shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6.7, within thirty (30) calendar days or longer as authorized by the Department from receipt of the Department's request for the submission of the negative declaration.

IV. Progress Reports

15. [Person] agrees to submit quarterly progress reports which detail the status of [Person's] compliance with this Remediation Agreement to the Department in accordance with N.J.A.C. 7:26E-6.6. [Person] agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Remediation Agreement. [Person] agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. [Person] may request that the Department allow progress reports to be submitted semi-annually or annually.

V. Project Coordination

16. [Person] agrees to submit to the Department all documents required by this Remediation Agreement, including correspondence relating to force majeure issues pursuant to Section X. of this Agreement by delivery with an acknowledgment of receipt from the Department. The date that the Department executes the acknowledgment will be the date the Department uses to determine [Person's] compliance with the requirements of this Remediation Agreement for purposes of assessing penalties and availing itself of any other applicable remedies.

17. Within seven (7) calendar days after the effective date of this Remediation Agreement, [Person(s)] agrees to submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this Remediation Agreement. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to [Person's] agent, identified in paragraph 46. below of the

date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

18. Within seven (7) days after the effective date of this Remediation Agreement the Department will identify the individual who will be the Department's contact for all matters concerning this Remediation Agreement. Unless the Department otherwise directs in writing, [Person] agrees to submit all payments and [number of copies] copies of all documents required by this Remediation Agreement to the Department's contact.

19. [Person] agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to paragraph 18, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

20. The Department will consider a written request for an extension of time to perform any requirement under this Remediation Agreement, provided that [Person] submits any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

VI. Remediation Funding Source and Remediation Funding Source Surcharge

21. [Person] agrees to establish and maintain during the life of this Remediation Agreement a remediation funding source in an amount equal to the Department approved estimate of the remediation costs related to compliance with this Remediation Agreement, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the site, pursuant to N.J.A.C. 7:26C-7. [Person] agrees that the initial amount is \$[].

22. [Person] agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

VII. Project Cost Review

23. Beginning three hundred sixty-five (365) calendar days after the effective date of this Remediation Agreement, and annually thereafter on the same calendar day, [Person] agrees to submit to the Department a detailed review of all remediation costs expended by [Person] to comply with this Remediation Agreement, including:

- (a) A detailed summary of all monies spent to date pursuant to this Remediation Agreement;
- (b) The detailed estimated remediation costs required to comply with this Remediation Agreement, including all operation, maintenance and monitoring costs; and
- (c) The reason for any changes from the previously submitted cost review.

24. At any time after [Person] submits the first cost review pursuant to the preceding paragraph [Person] may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Remediation Agreement. If the Department grants written approval to such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

25. If the estimated costs of meeting [Person's] obligations in this Remediation Agreement at any time increase to an amount greater than the remediation funding source, [Person] agrees to, within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

26. If [Person] remediates the Site to a restricted use remediation standard and [Person] implements institutional and engineering controls, [Person] shall maintain the remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount necessary to pay for the maintenance of the engineering and institutional controls.

VIII. Oversight Cost Reimbursement

27. All submissions required pursuant to this Remediation Agreement shall be accompanied by all appropriate fees pursuant to N.J.A.C. 7:26B-8.

28. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to the paragraph 30 below, determined pursuant to N.J.A.C. 7:26B-8, [Person(s)] agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period invoiced in the Department's summary.

29. [Person] agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Remediation Agreement as provided herein for those oversight costs that have accrued prior to that termination.

30. [Person] also agrees to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in paragraph 28, above, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

IX. Reservation of Rights

31. The Department reserves the right to unilaterally terminate this Remediation Agreement in the event that the Department determines that [Person] has violated the terms of

this Remediation Agreement. Before the Department unilaterally terminates this Remediation Agreement, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and [Person] shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

32. Nothing in this Remediation Agreement precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person(s)] for violations of this Remediation Agreement. In any such action brought by the Department under this Remediation Agreement for injunctive relief, civil, or civil administrative penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this Remediation Agreement, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the Remediation Agreement. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Remediation Agreement, except as provide in paragraph 45. of this Agreement. Under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Remediation Agreement.

33. This Remediation Agreement shall not be constructed to affect or waive the claims of Federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

34. Except as otherwise stated in this Remediation Agreement, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Remediation Agreement, [Person] reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

35. Except as otherwise set forth herein, by the execution of this Remediation Agreement the does not release [Person], from any liabilities or obligations [Person] may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

36. Nothing in this Remediation Agreement shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the [] industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.

X. Force Majeure

37. If any event specified in the following paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Remediation Agreement, [Person] shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] shall take all necessary action to prevent or minimize any such delay.

38. The Department will extend in writing the time for compliance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

(a) [Person] has complied with the notice requirements of the preceding paragraph;

(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Person]; and

(c) [Person] has taken all necessary action to prevent or minimize any such delay.

39. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

40. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this Remediation Agreement;

(c) Contractor's breach, unless [Person] demonstrates that such breach falls within paragraph 38. below; and

(d) Failure to obtain access required to implement this Remediation Agreement, unless denied by a court of competent jurisdiction.

XI. Penalties

41. [OPTIONAL-- [Person(s)] agrees to pay a penalty in the amount of \$ _____ for its violation of _____, and shall submit to the Department a certified check made payable to the "Treasurer, State of New Jersey" for \$[].00, no later than [Person(s)] execution and submittal to the Department of the Remediation Agreement. The Department's acceptance of the penalty shall not be construed as a waiver of the Department's right to compel [Person(s)] to specifically perform their obligations under this Remediation Agreement.]

42. [Person] agrees to pay penalties for its violations of this Remediation Agreement, or for its failure to implement and maintain institutional controls including, by way of example, a deed notice or declaration of environmental restriction that are part of a remedial action implemented pursuant to this Remediation Agreement order, according to the amounts and conditions in N.J.A.C. 7:26C-10.

43. [Person] agrees that its payment of a penalty pursuant to this Remediation Agreement does not alter [Person's] responsibility to complete any requirement of this Remediation Agreement.

44. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement.] [List each non-DEP party to this Remediation Agreement] are jointly and severally liable for penalties for violations of this Remediation Agreement.

XII. Dispute Resolution

45. In the event a conflict arises between [Person] and the Department, [Person] may initiate the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

XIII. General Provisions

46. [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Remediation Agreement unless and until [Person] provides the Department with the name, title address and telephone number of [Person's] new agent.

[Name, title, address and telephone number of [Person's] agent]

47. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site to which [Person] has access, at all times, for the purpose of monitoring [Person's] compliance with this Remediation Agreement and/or to perform any remedial activities [Person] fails to perform as required by this Remediation Agreement. [Person] agrees that the Department's right of access pursuant to this paragraph shall continue after the Department's termination of this Remediation Agreement pursuant to paragraph 64., below.

48. [Person] agrees to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

49. [Person] agrees to provide a copy of this Remediation Agreement to each contractor and subcontractor retained to perform the work required by this Remediation Agreement and agrees to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Remediation Agreement. [Person] agrees to be responsible to the Department for ensuring

that its contractors and subcontractors perform the work herein in accordance with this Remediation Agreement.

50. Nothing in this Remediation Agreement relieves [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this Remediation Agreement shall not excuse [Person(s)] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Remediation Agreement. This Remediation Agreement shall not preclude the Department from requiring that [Person(s)] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Remediation Agreement if the terms and conditions of any such permit are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by [Person(s)] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations, N.J.A.C. 7:14A-1 et seq., then [Person(s)] agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

51. All work plans, schedules, and other documents required by this Remediation Agreement and approved in writing by the Department are incorporated herein and made a part hereof.

52. Upon the receipt of a written request from the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, were developed pursuant to this Remediation Agreement. [Person] reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

53. [Person] agrees to comply with this Remediation Agreement, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

54. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by [Person(s)] and the Department. Any amendment to this Remediation Agreement shall be executed by the Department and [Person(s)]. The Department reserves the right to require the resolution of any outstanding violations of the applicable regulations or this

Remediation Agreement prior to executing any such amendment.

55. [Person] waives its rights to an administrative hearing concerning the entry of this Remediation Agreement.

56. This Remediation Agreement shall be governed and interpreted under the laws of the State of New Jersey.

57. If any provision of this Remediation Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Remediation Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Remediation Agreement shall be valid and enforced to the fullest extent permitted by law.

58. This Remediation Agreement represents the entire integrated agreement between the Department and [Person] concerning the site subject to this Remediation Agreement and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

59. Within thirty (30) calendar days after the effective date of this Remediation Agreement, [Person] agrees to record a copy of this Remediation Agreement with the County Clerk, [] County, State of New Jersey and agrees to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Remediation Agreement stamped "Filed" by the County Clerk.

60. This Remediation Agreement shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the industrial establishment or site shall alter party's responsibilities under this Remediation Agreement.

61. [Person's] document retention policy notwithstanding, [Person] agrees to preserve, during the pendency of this Remediation Agreement and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of [Person's] divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] re-

serves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to data related to site conditions, sampling, or monitoring.

62. [Person(s)] agrees to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] agrees to submit a cost review pursuant to this Remediation Agreement to the Department. [Person(s)] agrees to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] agrees to obtain and submit to the Department additional financial assurance pursuant to this Remediation Agreement.

63. If [Person] remediates the site to a restricted use standard as defined in N.J.A.C. 7:26E-1.8 and [Person] implements institutional and engineering controls, this Remediation Agreement shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source until the Department determines that the site is remediated to the applicable unrestricted use standard.

64. If [Person] remediates contaminated soil at the site to the Department's unrestricted use soil standard as defined at N.J.A.C. 7:26E-1.8, and any other contaminated media to the applicable remediation standard, the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by [Person] of written notice from the Department stating that [Person] has completed the remediation required by this Remediation Agreement in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Remediation Agreement and therefore [Person] does not need to continue to maintain a remediation funding source or pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Remediation Agreement is thereby terminated. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Remediation Agreement.

65. Except as provided in paragraph 52. above, [Person] may assert a claim of confidentiality for any information sub-

mitted by [Person] pursuant to this Remediation Agreement, by following the Department's procedures in N.J.A.C. 7:26B-7.

66. [Person(s)] agrees to submit to the Department, two copies of the executed original Remediation Agreement, each with the original signature of [Person] or its authorized representative, and documentary evidence such as a corporate resolution, or a certification by a corporate officer, that the signatory has the authority to bind [Person(s)] to the terms of this Remediation Agreement, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

67. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the Department and [Person(s)].

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: _____ By: _____

Assistant Director
Site Remediation Program
[NAME OF PERSON EXECUTING
AGREEMENT]

Date: _____ By: _____

[of]

Print Full Name Signed Above

Title

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In AGREEMENT, added a second sentence in 7, added a reference to days in 9, deleted a reference to Industrial Site Evaluation Element in 14, and changed N.J.A.C. reference in 16; and in NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, substituted a reference to Site Remediation Program for a reference to Responsible Party Cleanup Element.

Amended by R.2003 d.133, effective March 17, 2003.

See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

In AGREEMENT, added the last sentence in 7.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).

See: 36 N.J.R. 2931(a).

Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.

See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).

Provisions of R.2004 d.206 adopted without change.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote the appendix.

CHAPTER 26C

**DEPARTMENT OVERSIGHT OF THE
REMEDICATION OF CONTAMINATED SITES**

Authority

N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq.,
58:10-23.11 et seq., 58:10A-1 et seq., 58:10A-21 et seq.
and 58:10B-1 et seq.

Source and Effective Date

R.2003 d.198, effective April 21, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was extended by gubernatorial directive from April 21, 2008 to April 21, 2010. See: 40 N.J.R. 2474(b).

Chapter Historical Note

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was adopted as R.1993 d.186, effective May 17, 1993. See: 24 N.J.R. 1281(b), 25 N.J.R. 2002(a).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 28 N.J.R. 5499(a), 29 N.J.R. 704(a).

Pursuant to Executive Order No. 66(1978), Chapter 26C was re-adopted as R.1997 d.499, effective October 23, 1997. As part of R.1997 d.499, Subchapter 2, Procedures for the Identification of the Appropriate Oversight Document, was renamed Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5, Administrative Consent Orders; Subchapter 6, Hazardous Discharge Site Remediation Fund; Subchapter 7, Remediation Funding Source; Subchapter 8, Site Access; Subchapter 9, Oversight Costs; and Subchapter 10, Civil Administrative Penalties and Requests for Adjudicatory Hearings, were adopted as new rules; Appendix A, Standard Memorandum of Agreement; Appendix E, Standard Letter of Credit; Appendix F, Standard Standby Trust Agreement; Appendix G, Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard Publicly Conducted Administrative Consent Order was recodified as Appendix B, effective November 17, 1997. See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was readopted as R.2003 d.198, effective April 21, 2003. See: Source and Effective Date. See, also, section annotations.

Subchapter 2, Oversight Documents and No Further Action Letters, was renamed Oversight Documents, No Further Action Letters, and Remediation of Unregulated Heating Oil Tank Systems by R.2008 d.322, effective November 3, 2008. See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Public Notice. See: 41 N.J.R. 4324(a).

Law Review and Journal Commentaries

Historic Pesticide Contamination Task Force Issues Report. Bruce S. Katcher, 155 N.J.L.J. 1155 (1999).

ISRA: What You Need to Know. Richard J. Conway, Jr., 160 N.J.Law. 16 (Mag.) (April 1994).

New Growth in Old Ground. Bernard A. Weintraub, 147 N.J.L.J. 761 No. 7, S-1 (1997).

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

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SUBCHAPTER I. GENERAL INFORMATION

7:26C-1.1 Scope

This chapter identifies the administrative procedures for a person to participate in the remediation of a contaminated site or of a potentially contaminated site under Department oversight, and presents the procedures to determine the applicable oversight document.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Rewrote (a), and eliminated the paragraph delineation; and deleted existing (b) through (d).

Case Notes

Provision of environmental cleanup agreement requiring purchaser to provide subsequent purchaser or lessee with copy of any declaration of

environmental restrictions imposed or required for site was ambiguous under New Jersey law as to whether it obligated purchaser to execute declaration that would be required only if vendor remediated property to less stringent standard, or merely imposed duty for purchaser to provide copies of any previously executed declaration. *Sumitomo Machinery Corp. of America, Inc. v. AlliedSignal, Inc.*, C.A.3 (N.J.)1996, 81 F.3d 328.

7:26C-1.2 Certifications

(a) Certifications, signed as specified in (b) below, shall be submitted to the Department as follows:

1. Except as specified in (a)2 below, for all documents that are required to be certified pursuant to the applicable provisions of N.J.A.C. 7:14B, 7:26B, 7:26C, and 7:26E, the person responsible for conducting the remediation shall include the following certification with the document.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. For remediation funding sources:

"I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-7 shall be maintained until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(b) The certifications required in (a)1 and 2 above shall be signed and dated original certifications, not photocopies, and shall be notarized.

(c) The person submitting the certification required by (a)1 and 2 above shall ensure that they are signed as follows:

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

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

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

(d) A duly authorized representative of the person described in (c)1 through 3 above may sign the certification required in (a)1 and 2 above. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (c) above;

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

3. The written authorization is submitted to the Department along with the certification.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Rewrote (a); deleted existing (b) and (c); recodified existing (c)1 and (c)2 as (a)1 and (a)2; deleted existing (c)2iv; recodified existing (d) as (b); and inserted new (c) and (d).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote the introductory paragraph of (a)1.

7:26C-1.3 Definitions

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

“Administrative consent order” means an administrative order which is signed by one or more persons and the Department; and may be in the form of a memorandum of understanding for public entities at the Department’s discretion.

“Applicant” means a corporation, partnership, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district that has applied to the Department for a loan or grant.

“Area of concern” means any location defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Authority” means the New Jersey Economic Development Authority.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.).

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

“Conditional hardship grant” means a grant to an eligible owner or operator as provided in N.J.S.A. 58:10A-37.5.

“Contaminated site” means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Contamination” or “contaminant” means any discharged hazardous substance as defined in N.J.S.A. 58:10-23.11b, hazardous waste as defined in N.J.S.A. 13:1E-38, or pollutant as defined in N.J.S.A. 58:10A-3.

“Covenant not to sue” means a document which shall be identical in wording to Appendix C, incorporated herein by reference.

“Deed notice” means a document defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

“Directive” means a document the Department issues pursuant to N.J.S.A. 58:10-23.11 et seq. and 13:1D-1 et seq., to, among other things, notify the recipient thereof that the Department has determined that it is necessary to clean up and remove or arrange for the cleanup and removal of a discharge and that the Department believes the recipient is a person who may be subject to liability for the hazardous substance that was discharged.

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Engineering controls” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Environmental medium” means any such medium defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“EPA” means the United States Environmental Protection Agency.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

“Hazardous substance” means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, at N.J.A.C. 7:1E-1.7.

“Hazardous waste” means any solid waste as defined in the Hazardous Waste Regulations, at N.J.A.C. 7:26G-5.

“Immediate environmental concern” means a condition defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Industrial establishment” means any place defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-8.

“Innovative remedial action technology” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Memorandum of agreement” means a written agreement between the Department and one or more persons to conduct remediation of a site or an area of concern.

“Memorandum of understanding” means an oversight document executed by the Department and a public entity, similar to the form of an administrative consent order.

“Multiple responsible parties” means five or more unrelated responsible parties, as determined by the Department, involved at a contaminated site.

“Natural resources” means all media defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

“Operator” means any person defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

“Oversight costs” means all cleanup and removal costs as defined by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, that the Department incurs in overseeing the remediation conducted by the person responsible for conducting the remediation, calculated in accordance with the formula included at N.J.A.C. 7:26C-9.3.

“Oversight document” means any document the Department or a court issues to define the role of a person partici-

pating in the remediation of a contaminated site or area of concern, and may include, without limitation, an administrative order, administrative consent order, court order, memorandum of understanding, memorandum of agreement, or remediation agreement.

“Person responsible for conducting remediation” means a person responsible for conducting remediation as defined pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Petroleum” means petroleum defined pursuant to Underground Storage Tanks rules, at N.J.A.C. 7:14B-1.6.

“Pollutant” means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

“Preliminary assessment” means the first phase in the process of identifying areas of concern defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-3.1.

“Public entity” means any county, municipality, or public school district, but shall not include any authority created by those entities.

“RCRA” means the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.).

“Regulated tank system” means an underground storage tank system defined pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B.

“Remedial action” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remedial action workplan” or “RAW” means a plan for the remedial action to be undertaken at a contaminated site defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

“Remedial investigation” means actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remediation agreement” means an agreement defined as such pursuant to the Industrial Site Recovery Act Regulations, at N.J.A.C. 7:26B-1.4.

“Remediation costs” means all costs associated with the remediation, including the Department’s oversight costs.

“Responsible party” means a person who is in any way responsible for a contaminated site, or for the contaminants at a site including, for the purposes of this chapter, each owner or operator, and any other person obligated by law to clean up and remove contaminants at a site.

“Restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Restricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Site investigation” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Spill Act” means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

“Underground storage tank” means an underground storage tank defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Unrestricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Amended “Administrative consent order”, “Commissioner”, “Contaminated site”, “Department”, “Directive”, “Discharge”, “Environmental medium”, “Immediate environmental concern”, “Memorandum of agreement”, “Memorandum of understanding”, “Natural resources”, “Oversight document”, “Owner”, “Preliminary assessment”, “Remedial action”, “Remedial investigation”, “Remediation”, and “Site investigation”; added “Area of concern”, “Contamination”, “Declaration of environmental restrictions”, “Engineering controls”, “Financial assistance”, “Industrial establishment”, “Institutional controls”, “ISRA”, “No further action letter”, “Operator”, “Remedial action workplan”, “Remediation agreement”, “Restricted use standard”, and “Unrestricted use standard”; and deleted “Contaminant”, “Decision document”, “ECRA”, “Hazardous constituent”, “Operable unit”, “Operation, maintenance and monitoring”, “Priority site”, “Record of decision”, “Remedial alternative analysis”, “Remedial design”, and “Solicitation document”.

Amended by R.1998 d.155, effective April 6, 1998.

See: 29 N.J.R. 5154(a), 30 N.J.R. 1321(a).

Inserted “Applicant”, “Authority”, “Conditional hardship grant”, “Fund”, “Petroleum”, “Public entity”, “Regulated tank systems”, “Underground storage tank”, and “Underground storage tank system”.

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Inserted “Covenant not to sue”, “Innovative remedial action technology”, “Limited restricted use remedial action”, “Restricted use remedial action” and “Unrestricted use remedial action”; rewrote “Declaration of environmental restrictions” as “Deed notice”; and rewrote “Institutional controls”.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Added definition “Grace period”.

Administrative Correction.

See: 38 N.J.R. 4693(d).

Amended by R.2007 d.274, effective August 20, 2007.

See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).

In definition “Oversight costs”, deleted “or in overseeing the remediation conducted by a contractor on behalf of the Department” following “conducting the remediation”.

Case Notes

Trial court correctly held that N.J.S.A. 58:10B-3.1 did not authorize the New Jersey Department of Environmental Protection to remove a remediator as the remediating party for a contaminated site that it had previously owned as no oversight document had been executed. *N.L. Indus., Inc. v. N.J. Dep’t of Envtl. Prot.*, 397 N.J. Super. 127, 936 A.2d 469, 2007 N.J. Super. LEXIS 368 (App.Div. 2007).

Commercial general liability insurer’s engineering costs for remedial investigation were “defense expenses,” rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J. Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

7:26C-1.4 Dispute resolution

(a) Any person conducting remediation with Department oversight may initiate the Department’s dispute resolution process or the expedited dispute resolution process set forth in this section to resolve certain issues which arise that were not resolved at the case manager level, except as noted in (I) below.

(b) Any person conducting remediation with Department oversight may initiate this process by submitting a written request, to the section chief of the case manager overseeing the remediation of the site, which shall include all of the following:

1. The site name, address, and contaminated site list number;
2. The name of the case manager overseeing the remediation of the site;
3. The name, address, and telephone number, of the person making the request;
4. A summary of the issue not resolved including a brief discussion of why the Department’s decision is not appropriate;
5. A description of previous efforts to resolve the issue;
6. A recommendation for resolution of the issue not resolved; and
7. A request for a meeting with the Department, if appropriate or desired.

(c) The section chief shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (b) above. The written response shall include the name, address, and telephone number of the bureau chief.

(d) If the requester is not satisfied with the resolution provided by the section chief, the requester may submit a written request for resolution of the issue to the bureau chief identified in the written response in (c) above. The written request shall include all the information in (b) above.

(e) The bureau chief shall contact the requester by telephone to provide a response and shall provide a written re-

sponse within seven calendar days after receipt of the written request in (d) above. The written response shall include the name, address, and telephone number of the assistant director.

(f) If the requester is not satisfied with the resolution provided by the bureau chief, the requester may submit a written request for resolution to the assistant director identified in the written response in (e) above. The written request shall include all the information in (b) above.

(g) The assistant director shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (f) above. The written response shall include the name, address, and telephone number of the director.

(h) If the requester is not satisfied with the resolution provided by the assistant director, the requester may continue the process in (b) through (g) above with the Director, Assistant Commissioner, and Commissioner or his or her designee.

(i) Any person may initiate the expedited dispute resolution process, instead of the process set forth in (b) through (h), above, by making a written request to the Commissioner or his or her designee, for an expedited review of the issue. The Commissioner, or his or her designee, shall issue a decision regarding the disputed issues within 21 calendar days after receipt of the request.

(j) If resolution of the disputed issues is not achieved through the process set forth in (b) through (i) above, the person may initiate the Department's alternate dispute resolution process by submitting a written request to the Commissioner.

(k) If resolution cannot be achieved through the alternate dispute resolution process and the Department determines the matter to be a contested case, the Department may transfer the matter to the Office of Administrative Law for scheduling of an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(l) The dispute resolution process set forth in (b) through (j) above does not apply to:

1. Issues regarding oversight costs;
 - i. Issues regarding oversight costs shall be resolved pursuant to N.J.A.C. 7:26C-9.4;
2. Technical issues which arise during Department oversight of remediation; or
3. Legal issues.

(m) The Department shall not act upon a request for dispute resolution unless it is submitted in writing and includes all the information in (b) above.

New Rule, R.1997 d.499, effective November 17, 1997.
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Former N.J.A.C. 7:26C-1.4, "Liberal construction", recodified to N.J.A.C. 7:26C-1.7.
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

7:26C-1.5 General provisions

(a) Any person that the Department allows to participate in the remediation of a contaminated site with Department oversight shall comply with the provisions of this section.

(b) A person conducting the remediation of a contaminated site with Department oversight shall pay all applicable oversight costs pursuant to N.J.A.C. 7:26C-9.

(c) Any person conducting remediation at a site pursuant to an oversight document or a court order shall, in addition to any other obligation required by law, notify the Department immediately upon knowledge of any condition posing an immediate environmental concern to the public health and safety or the environment. The Department may stop any remediation and any construction, improvement, or change at the contaminated site, due to the immediate environmental concern caused by contaminants.

(d) Nothing in this chapter shall be construed as limiting:

1. Any legal, equitable or administrative remedies against any person which the Department may have under any applicable law or regulation;
2. The Department's discretion to pursue or to refrain from pursuing any such remedies; or
3. Except as otherwise stated in this chapter, any legal, equitable or administrative remedy which the party responsible for conducting the remediation may have under any applicable law or regulation.

(e) Failure to comply with the requirements associated with this chapter may result in the Department instituting proceedings to assess and collect civil or civil administrative penalties or penalties pursuant to N.J.A.C. 7:26C-10, or any other legal or equitable relief.

(f) The participation by any person in any of the procedures outlined in this chapter shall not relieve that person from responsibility to comply with all other applicable statutes and regulations. Except as otherwise stated in this chapter, nothing shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation.

(g) Nothing in this chapter prohibits a person from assessing or investigating a potentially contaminated site without the Department's oversight unless:

1. The Department issues a directive pursuant to N.J.S.A. 58:10-23.11f; or
2. The person has actual notice that the Department has begun publicly funded remediation.

New Rule, R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Former N.J.A.C. 7:26C-1.5, "Severability", recodified to N.J.A.C. 7:26C-1.8.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (b), substituted "the" for "a" preceding "remediation" and deleted "of those activities" preceding "shall pay"; in (c), substituted "or" for "and" preceding "the environment" and inserted "remediation and any" preceding "construction, improvement, or change"; deleted (h) and (i).

7:26C-1.6 Forms and submissions

Unless otherwise instructed by the Department, any person may obtain any forms or applications required by this chapter at the following address, and shall submit all forms, applications and documents required by this chapter to:

New Jersey Department of Environmental
Protection
Division of Remediation Support
Case Assignment Section
401 East State Street, 5th floor
PO Box 434
Trenton, New Jersey 08625-0434

New Rule, R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-1.7 Liberal construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of the law.

Recodified from N.J.A.C. 7:26C-1.4 by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

7:26C-1.8 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from N.J.A.C. 7:26C-1.5 by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

SUBCHAPTER 2. OVERSIGHT DOCUMENTS, NO FURTHER ACTION LETTERS, AND REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-2.1 Scope

(a) This subchapter identifies:

1. The oversight documents available for remediation of contaminated sites;

2. The conditions that a person must meet before the Department will issue a no further action letter;

3. The procedures for owners and operators of unregulated heating oil tank systems to obtain No Further Action letters pursuant to N.J.A.C. 7:26C-2.6 for remediation of discharges from their unregulated heating oil tank system by using an individual or business firm certified in the classification of subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or 16 in lieu of obtaining Department oversight through a memorandum of agreement; and

4. When the Department shall issue a covenant not to sue.

(b) In instances where a site is the subject of remediation pursuant to Federal or other State regulatory or enforcement mechanisms, the Department, in an exercise of its discretion, will decide to either:

1. Allow a regulatory or enforcement mechanism already in effect at the site to control a person's remediation of the site;

2. Pursue additional regulatory or enforcement mechanisms, including, but not limited to, those described in this subchapter; or

3. A combination of (b)1 and 2 above.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Deleted existing (a)1, (a)3, and (a)4; recodified existing (a)2 as (a)1; inserted new (a)2 and (a)3; and deleted (c) and (c)1 through (c)3.

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (a), substituted "but not" for "and/or into the waters except" following "lands" in 3, and added 4.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), rewrote 2 and 3 and substituted "When" for "The conditions under which" in 4; rewrote (b).

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Rewrote (a)3.

7:26C-2.2 Memorandum of agreement

If the Department, in the exercise of its enforcement discretion, chooses to allow a person who is not subject to the Industrial Site Recovery Act or the New Jersey Underground Storage of Hazardous Substances Act to conduct remediation at a known or suspected contaminated site, or area/areas of concern at a site, which the Department has not scheduled for publicly funded remediation, then such participation shall be governed by a memorandum of agreement in accordance with N.J.A.C. 7:26C-3.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-2.3 Administrative consent order

(a) Except as provided in (b) below, when the Department chooses to allow a person to conduct remediation at a site which has been scheduled for publicly funded remediation, such participation shall be governed by an administrative consent order, or a memorandum of understanding where appropriate, pursuant to N.J.A.C. 7:26C-5.2.

(b) The Department may, in exercise of its enforcement discretion, allow a person to conduct remediation of a site that has been scheduled for publicly funded remediation as follows:

1. The Department may allow a person who is currently conducting the remediation pursuant to and in compliance with the Industrial Site Recovery Act or the New Jersey Underground Storage of Hazardous Substances Act to continue remediation under those authorities and not require the execution of an administrative consent order; and

2. The Department may allow a person who is currently conducting the remediation pursuant to and in compliance with memorandum of agreement to continue the remediation under the memorandum of agreement as provided in N.J.A.C. 7:26C-3.4.

(c) If a court of the State of New Jersey orders a person to conduct remediation at a contaminated site, the requirements of the court order may be implemented pursuant to an oversight document in the form of an administrative consent order, unless otherwise specified by the court order.

(d) The Department will include in each administrative consent order provisions that conform to the requirements in N.J.A.C. 7:26C-5.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Rewrote (b); inserted new (c); and recodified existing (c) as (d).

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (b), changed N.J.A.C. reference.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote (a) and (b).

7:26C-2.4 Administrative order

(a) The Department may issue an administrative order for the remediation of a contaminated site.

(b) The Department will include, in each administrative order for the remediation of a contaminated site, provisions that conform to the requirements in N.J.A.C. 7:26C-5 to the extent appropriate to the particular enforcement action.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote (a).

7:26C-2.5 Remediation of discharges from unregulated heating oil tank systems

(a) Except as provided in (d) below, in order for the person responsible for conducting the remediation of discharges from an unregulated heating oil tank system as defined in the Underground Storage Tank rules at N.J.A.C. 7:14B-1.6, to obtain a no further action letter from the Department as described in N.J.A.C. 7:26C-2.6, that person shall employ an individual working for a business firm certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-13 or 16 to conduct the remediation in lieu of obtaining Department oversight.

(b) The Department will issue a no further action letter in accordance with N.J.A.C. 7:26C-2.6, upon receipt and review of the following:

1. A certification by the individual certified pursuant to N.J.A.C. 7:14B-13 or 16 to perform the remediation that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated does not meet any of the criteria listed at N.J.A.C. 7:26C-2.5(d) and that the remediation performed was pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover contamination, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties";

2. A completed Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire, which includes questions about general information concerning the location of the tank, the site owner, and the documents being submitted, as well as site specific information such as the conditions at the site, the soil and ground water samples taken and the remedial action taken to remediate the site. The questionnaire may be obtained from the Department's website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable fixed oversight cost as set forth at N.J.A.C. 7:26C-9.2; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.7.

(c) All submissions required by this section shall be made to:

Site Remediation Program
New Jersey Department of Environmental
Protection
401 E. State St.
P.O. Box 028
Trenton, NJ 08625-0028

(d) The person responsible for conducting the remediation of the unregulated heating oil system shall obtain Department oversight of the remediation of a discharge from unregulated heating oil tank system in order to obtain a No Further Action letter pursuant to N.J.A.C. 7:26C-2.6 if any of the conditions in (d)1 through 9 below apply. Department oversight shall be through a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order, as applicable pursuant to this chapter.

1. The discharge from the unregulated heating oil tank system results in an immediate environmental concern condition as defined by the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8;

2. Ground water contamination resulting from the discharge from the unregulated heating oil tank system is within 100 feet of a potable well which is located either within the property boundaries or beyond the property boundaries of the property on which the discharge occurred;

3. Ground water contamination resulting from the discharge from the unregulated heating oil tank system has migrated beyond the property boundaries of the property on which the discharge occurred;

4. The discharge from the unregulated heating oil tank system results in conditions which require a vapor intrusion

investigation pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.4(h)3viii;

5. The discharge from the unregulated heating oil tank system impacts any surface water body or wetlands;

6. The person responsible for conducting the remediation is implementing a restricted or limited restricted use remedial action as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8;

7. The remediation of the discharge includes any variance from the Technical Requirements for Site Remediation pursuant to N.J.A.C. 7:26E-1.6(c) or (d);

8. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit-by-rule pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.3(c), or an On-Scene Coordinator Discharge Authorization pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et. seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan (NCP) regulations at 40 CFR Part 300; or

9. The remediation is required by or in the process of being conducted pursuant to an Administrative Consent Order, Administrative Order or a Judicial Order.

Repeal and New Rule, R.2008 d.322, effective November 3, 2008.
See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Section was "Review of a remedial action report for remediation of discharges from an underground storage tank not regulated pursuant to N.J.A.C. 7:14B".

7:26C-2.6 No further action letters

(a) The Department shall issue no further action letters:

1. Based upon information available to the Department at the time the Department makes its determination pursuant to this section;

2. Based upon a person's completion of all applicable requirements in the Technical Requirements for Site

Remediation, N.J.A.C. 7:26E, at the time the no further action letter is issued;

3. For an entire site or one or more areas of concern, including all areas to which a discharge originating at the site or area of concern may have migrated, independent of a person's liability for the contamination or other status as a developer, responsible party, volunteer, or any other alleged status, except as specifically provided in this section; and

4. According to specific tax block and lot or other specific identification of the property that was remediated.

(b) The Department shall issue a no further action letter when the Department determines, based upon either a preliminary assessment or site investigation, that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standard;
2. The ground water remediation standards in the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.13; and
3. All other applicable remediation standards.

(c) The Department shall issue a no further action letter upon the completion of all remediation required by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including, without limitation, when, as applicable:

1. All contaminated soil has been remediated:
 - i. To the most stringent soil remediation standard; or
 - ii. Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard; and
2. All contaminated groundwater has been remediated:
 - i. To the applicable ground water quality standard; or
 - ii. The Department has:
 - (1) Determined, based upon eight quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards, at N.J.A.C. 7:9C, and approved a natural attenuation ground water remedial action;
 - (2) Estimated the time period during which the concentration of contaminants in the ground water will not meet the applicable remediation standard pursuant to the Ground Water Quality Standards, at N.J.A.C. 7:9C; and

(3) Established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3.

(d) The Department shall require additional remediation after it has issued a no further action letter for a site or area of concern if any of the following occur:

1. A discharge which occurred prior to the issuance of a no further action letter is discovered after the issuance of the no further action letter;
2. The Department adopts an amendment to a remediation standard that decreases the standard by an order of magnitude after the issuance of a no further action letter;
3. A contaminant exposure pathway from a discharge that predates the no further action letter is identified after the issuance of the no further action letter;
4. The person with the obligation to comply with the conditions of the no further action letter fails to do so; or
5. Other factors exist that demonstrate that the approved remediation is no longer protective of public health, safety and the environment.

(e) In any situation listed in (d) above, the Department may:

1. Rescind or modify a previously issued no further action letter;
 - i. The Department shall use its best efforts to notify the original recipient of the no further action letter, as well as the current owner and operator of the site that is the subject of the no further action letter, when rescinding or modifying the no further action letter; and
2. Require all additional remediation necessary to:
 - i. Fully implement any site remediation regulatory program; and
 - ii. Protect the public health and safety and the environment.

(f) The Department may rescind a no further action letter for failure to make complete payment of oversight costs due pursuant to N.J.A.C. 7:26C-9, provided such costs are not being contested pursuant to N.J.A.C. 7:26C-9.4.

(g) Pursuant to N.J.S.A. 58:10B-13.1, whenever the Department issues a no further action letter pursuant to this section, the Department shall issue the covenant not to sue included in Appendix C of this chapter, incorporated herein by reference, to the person(s) that conducted the remediation.

Repeal and New Rule, R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Section was "Court action".

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (a)1iii and (a)2iii, substituted references to deed notices for references to declarations of environmental restrictions; rewrote (d)1; and added (e) and (f).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Administrative correction.

See: 37 N.J.R. 4245(a).

SUBCHAPTER 3. ADMINISTRATIVE PROCESS FOR VOLUNTARY CLEANUPS

7:26C-3.1 Scope

(a) This subchapter identifies the following:

1. The procedures and requirements for a person to request the Department's oversight of remediation through a memorandum of agreement;
2. The general requirements for a memorandum of agreement;
3. The procedures for termination of a memorandum of agreement; and
4. The procedures by which a person remediating a contaminated site pursuant to a memorandum of agreement, which the Department subsequently schedules for a publicly funded remediation, may continue the remediation of the site under a memorandum of agreement.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), substituted "request" for "acquire" in 1, added a new 3 and recodified former 3 as 4.

7:26C-3.2 Memorandum of agreement application

(a) Any person not subject to the New Jersey Underground Storage of Hazardous Substances Act or the Industrial Site Recovery Act may request the Department's oversight of remediation or any phase thereof at a site which the Department has not scheduled for publicly funded remediation by submitting a memorandum of agreement application including the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot. In addition, submit the following information if known: Department case name and case manager name, program interest name, program interest number (preferred ID), acreage and geographic boundaries;
2. The name, address, and telephone number of the current property owner;
3. The name, address, and telephone number of the current business operator and/or business owner of the site;
4. A detailed description of the scope of remediation for which Department oversight is being requested, including a detailed schedule pursuant to N.J.A.C. 7:26E;

5. The name, address, email address, and telephone number of the applicant's contact; and

6. A check made payable to the Department in the amount of \$1,000 if the Department has terminated a prior memorandum of agreement with the applicant, for the subject site or for any other site, pursuant to N.J.A.C. 7:26C-3.3(c)1i through iii.

(b) The Department shall review the application and shall respond in writing, within 30 calendar days after receipt of the application, to the contact person identified in the application as follows:

1. The Department has determined that the memorandum of agreement application is administratively complete and the Department has decided:

- i. To accept the applicant's offer to conduct the remediation; or
- ii. Not to accept the applicant's offer to conduct remediation because:

(1) The applicant has not fulfilled its prior agreement to pay the Department's oversight costs for oversight of remediation for another site; or

(2) The Department has otherwise decided not to allow the applicant to conduct the remediation, in which case the Department will list the factors that have aided the Department in making its determination not to accept the applicant's offer.

2. If a memorandum of agreement application is not accepted by the Department in accordance with (b)1ii(1) or (2) above, and the applicant would like the Department to oversee the remediation, the applicant may execute an administrative consent order pursuant to N.J.A.C. 7:26C-5.

3. The Department has determined that the memorandum of agreement application is administratively incomplete and shall inform the applicant of any deficiencies and any additional information necessary for the Department's review.

4. For the purposes of this section, applicant includes any individual or entity, including without limitation, a public or private corporation, company, firm, partnership, joint stock company, the United States and any of its political subdivisions, the State of New Jersey or any of its political subdivisions within the State, or any of the other meanings which apply to the common understanding of the term. Applicant also includes any sibling, spouse, child, parent, grandparent, spouse of the child, child of a sibling, or sibling of a parent of the applicant.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

In (a), deleted "information" from the end; in (a)4, deleted "and" from the end; in (a)5, substituted "; and" for a period at the end; added (a)6; in

(b)1ii(1), deleted “or for a previous remediation phase at this site” following “another site”; in (b)1ii(2), deleted “; or” from the end; inserted new (b)2; recodified former (b)2 as present (b)3; and inserted new (b)4.

7:26C-3.3 Memorandum of agreement by rule

(a) Upon the applicant’s receipt of the Department’s written acceptance of the applicant’s offer to conduct the remediation, pursuant to N.J.A.C. 7:26C-3.2(b)1i, the applicant has a memorandum of agreement with the Department which includes:

1. The application;
2. The Department’s written acceptance; and
3. The following provisions:
 - i. The applicant shall pay the Department’s oversight costs pursuant to N.J.A.C. 7:26C-9 and this obligation continues, for those oversight costs that have accrued prior to termination, after the Department’s termination of the memorandum of agreement;
 - ii. The applicant shall submit all data generated or collected while conducting remediation pursuant to the MOA concerning the site and the contaminants at the site, and this obligation continues, for data generated or collected prior to termination, after the Department’s termination of the memorandum of agreement.
 - iii. The applicant shall conduct all remediation pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 - iv. Within 30 calendar days after the Department’s receipt of any submission pursuant to the memorandum of agreement, the Department shall inform the person conducting the remediation in writing of any administrative deficiencies in the submittal, pursuant to N.J.A.C. 7:26E, that shall prevent the Department from conducting its review and of a date for the person conducting the remediation to re-forward the revised submittal to the Department. Once the Department determines that the submission is administratively complete, the Department shall notify the person conducting the remediation in writing of the time frame required for the Department to complete the review. This review shall include a determination by the Department whether or not all remediation activities have been carried out consistent with applicable rules, standards, and guidelines; and
 - v. The applicant shall immediately notify the Department in writing of any change of identity, address, or telephone number of the contact;

(b) The procedure for the person responsible for conducting the remediation to have the Department terminate a memorandum of agreement is as follows:

1. The person responsible for conducting the remediation pursuant to a memorandum of agreement may request that the Department terminate the memorandum of agreement by:

- i. Notifying the Department in writing of its request; and
- ii. Submitting all data that the person has generated or collected concerning the site and contaminants at the site.

2. The Department shall cease review of any submittals under the memorandum of agreement on the date it receives the notice of intent to terminate described in (b)1i above.

3. Upon receipt of the person’s request, the Department will send the person requesting the termination of a memorandum of agreement a bill for its outstanding oversight costs pursuant to N.J.A.C. 7:26C-9.1.

4. The person requesting termination of the memorandum of agreement shall reimburse the Department in full for all of that person’s outstanding oversight costs.

5. When the Department determines that the person requesting the termination of the memorandum of agreement has complied with the requirements of (b)1 and 4 above, the Department will terminate the memorandum of agreement in a written letter to the person requesting the termination.

(c) The Department may unilaterally terminate a memorandum of agreement pursuant to this section as follows:

1. The Department determines that it is necessary to terminate a memorandum of agreement when the person responsible for conducting the remediation pursuant to the memorandum of agreement:

- i. Has not made scheduled submissions to the Department pursuant to the schedule set forth in the MOA application which is a part of the MOA;
- ii. Has failed to pay the Department’s oversight costs pursuant to N.J.A.C. 7:26C-9; or
- iii. Has failed to submit documents required by a memorandum of agreement in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department’s written comments.

2. When the Department has scheduled the site for publicly funded remediation.

3. The Department may provide the person responsible for conducting the remediation a period of time to correct the deficiency identified in (c)1i through iii, above, in order to achieve compliance with the memorandum of agreement and avoid termination of the memorandum of agreement pursuant to (c)3 below.

4. To terminate a memorandum of agreement pursuant to this section, the Department will issue a notice of termination to the person responsible for conducting the remediation and to the MOA applicant, property owner and all parties designated as a contact on the MOA application or amendments thereto if any of these parties are different from the person responsible for conducting the remediation. The notification shall contain the following:

- i. That the Department is ceasing review of any submittals under the memorandum of agreement;
- ii. That the memorandum of agreement is terminated;
- iii. The reason(s) that the Department is terminating the memorandum of agreement;
- iv. That the person responsible for conducting remediation shall pay the amount of the person's oversight cost when billed by the Department and that the obligation to pay oversight costs continues after the Department's termination of the memorandum of agreement pursuant to (a)3i above; and
- v. That the person responsible for conducting remediation must submit all data generated or collected, concerning the site and the contaminants at the site, that has not already been submitted within 30 calendar days from the date on the Notice of Termination and that the obligation to submit the data continues after the Department's termination of the memorandum of agreement pursuant to 3.3(a)3ii above.

5. If a responsible party's memorandum of agreement is terminated pursuant to this subsection, the Department may pursue an enforcement action against the responsible party for violations of any statute or implementing rule, conduct the remediation using public funds and recover those costs from the responsible party, or any other actions permitted under law.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (b)3, substituted references to deed notices for references to declarations of environmental restrictions throughout, and inserted "responsible for conducting the remediation" following "person" in the second sentence; and in (c), inserted N.J.A.C. reference.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote (a) and (c).

7:26C-3.4 Remediation of a site, scheduled for a publicly funded remediation

(a) The Department will provide written notification to the person responsible for conducting the remediation pursuant to a memorandum of agreement when the Department schedules the site for publicly funded remediation.

(b) The Department may, in its sole discretion, allow a person to continue remediation pursuant to a memorandum of agreement at a site which the Department subsequently schedules for publicly funded remediation if:

1. The person entered into the memorandum of agreement prior to the site being scheduled for publicly funded remediation;
2. That person is conducting remediation in compliance with all applicable regulations and approved schedules;
3. The memorandum of agreement includes all the phases of the remediation for the entire site, or is amended to include all of the phases of remediation for the entire site; and
4. That person submits to the Department a schedule to complete the remainder of the remediation, and the Department approves that schedule.

(c) Except as provided in (b) above, if the Department chooses to allow a person who has had its MOA terminated pursuant to N.J.A.C. 7:26C-3.3(c)1iv to conduct remediation of a site, such participation shall be governed by an Administrative Consent Order in accordance with N.J.A.C. 7:26C-2.3.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Section was "Remediation of a site, scheduled for a publicly funded remediation, pursuant to a memorandum of agreement". Added (c).

SUBCHAPTER 4. SPILL COMPENSATION AND CONTROL ACT DIRECTIVE

7:26C-4.1 Scope

This subchapter identifies the procedures and requirements for a person to respond to a Spill Compensation and Control Act directive issued by the Department.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

7:26C-4.2 Spill Compensation and Control Act directive

(a) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a hazardous substance at a site to:

1. Clean up and remove the discharge of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or

any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(b) A directive is intended to constitute a clear, written notice of a person's potential liability under N.J.S.A. 58:10-23.11 et seq., for any cleanup and removal costs and to provide that person a timely opportunity to respond to the directive.

(c) To the extent possible, the Department will provide in the directive general notice as to:

1. The site of the discharge or threatened discharge;
2. The identity of those responsible parties receiving the directive;
3. The connection of each such responsible party to the discharge;
4. The nature of the necessary remediation or the estimated remediation costs;
5. The actions that the responsible parties are directed to take;
6. The manner and timetable for the undertaking of the remediation; and
7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) In those instances where the Department directs a responsible party to clean up and remove a hazardous sub-

stance, the Department will require an administrative consent order in order to provide assurance that any remediation required by that directive will be performed in a timely and proper fashion. These administrative consent orders shall conform to N.J.A.C. 7:26C-5.

(f) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

(g) The responsible party shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party shall make such payment in mitigation of any liability that it may possess and comply with (h) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the responsible party decides not to comply with the directive, the directive recipient shall indicate in writing that it chooses not to take any actions to comply with the directive.

(h) If the responsible party chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the responsible party shall submit a written response to the Department according to the requirements in the directive. The responsible party shall include in the response a detailed explanation of the person's reasons for its decision, including all good cause defenses therefor.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

SUBCHAPTER 5. ADMINISTRATIVE CONSENT ORDERS

7:26C-5.1 Scope

(a) This subchapter presents:

1. The types of administrative consent orders available for the remediation of sites; and
2. The procedures and timeframes for entering into administrative consent orders with the Department.

Amended by R.1997 d.499, effective November 17, 1997.
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).
Rewrote (a)1 and (a)2; deleted (a)3; and added (d).
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Deleted (b) through (d).

7:26C-5.2 Types and language of administrative consent orders

(a) The Department may choose to allow a person to participate in the remediation of a site through an administrative consent order as described in (b) through (f) below.

(b) The administrative consent order in Appendix A, incorporated herein by reference, is applicable in all situations, provided, however, that the Department may modify that administrative consent order to allow:

1. Multiple responsible parties to conduct only the remedial investigation phase of the remediation of a contaminated site; and
2. A person to conduct only the remedial action phase of the remediation of a contaminated site when the remedial investigation phase has been completed.
3. For any person implementing the entire remediation at a site for which that person has received approval for a property tax exemption pursuant to P.L. 1995, c.413, the Environment Opportunity Zone Act, the standard administrative consent order shall be used without the remediation funding source requirements.
4. For a public entity:

i. Conducting the entire remediation, a memorandum of understanding in the form of the administrative consent order shall be used excluding the remediation funding source requirements;

ii. Conducting the remedial investigation only, a memorandum of understanding in the form of the administrative consent order shall be used excluding the remedial action section and the remediation funding source requirements; or

iii. Implementing the remedial action, a memorandum of understanding in the form of the administrative consent order shall be used without the remedial investigation and remediation funding source requirements.

(c) If a contaminated site does not fit within any of the specific categories described in (b) above, the Department will select the administrative consent order based upon the similarity of the contaminated site and person to the categories listed in this subchapter or upon other factors in the exercise of its discretion.

(d) When any person agrees to pay the Department for all of its remediation costs, the administrative consent order shall be consistent with the standard administrative consent order in Appendix B, incorporated herein by reference.

(e) If the Department agrees to allow a person to implement any remediation phase at a site which is undergoing publicly funded remediation; the person shall enter into an administrative consent order which incorporates the appropriate sections of the remediation phase(s).

(f) Nothing in this section shall be construed as limiting the Department from settling additional issues in an administrative consent order.

Recodified from N.J.A.C. 7:26C-5.4 and amended by R.1997 d.499, effective November 17, 1997.
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Inserted new (a); recodified existing (a) and (b) as (b) and (c); inserted new (c)1; recodified existing (b)1 and (b)2 as (c)2 and (c)3; inserted new (c)4; recodified existing (b)3 as (c)5; inserted new (c)5ii; recodified existing (b)5ii as (c)5iii; deleted existing (b)4; recodified existing (c) and (d) as (d) and (e); inserted new (f); recodified existing (e) as (g); and deleted existing (f) and (g). Former N.J.A.C. 7:26C-5.3, "Deferral to an existing regulatory or enforcement mechanism", recodified to N.J.A.C. 7:26C-5.2.

Recodified from N.J.A.C. 7:26C-5.3 and amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section. Former N.J.A.C. 7:26C-5.2, Deferral to an existing regulatory or enforcement mechanism, repealed.

Case Notes

Timely administrative review had to be included in hazardous discharge site remediation. *E.I. du Pont de Nemours and Co. v. State, Dept. of Environmental Protection and Energy*, 283 N.J.Super. 331, 661 A.2d 1314 (A.D.1995).

7:26C-5.3 Procedures for entry into administrative consent orders

(a) If the Department agrees to allow a person to conduct the remediation of a site pursuant to N.J.A.C. 7:26C-5.2, the Department will provide the person with two copies of the appropriate administrative consent order. The person shall submit two signed originals of the administrative consent order pursuant to this subchapter, to be signed by the Department, within the time period specified below.

1. The Department will notify, in writing, the person of a time period, that shall not exceed 60 calendar days, for that person to comply with (a) above. The Department in the exercise of its enforcement discretion may extend the period for up to 30 calendar days. The Department may extend the period further as needed in instances where a decision regarding award of a grant or loan to fund remediation, pursuant to N.J.A.C. 7:26C-6 or 11, is pending.

2. In those circumstances where the Department determines that a contaminated site involves multiple responsible parties, the Department may establish an initial period, that shall not exceed 60 calendar days, during which the responsible parties have the opportunity to organize into a single representative body. Whether or not a single representative body is formed during this initial period, the time period provided to enter into an administrative consent order shall commence as specified in the written notice given pursuant to (a)3 below.

3. In those circumstances where the Department determines that the site involves multiple responsible parties, the Department will notify in writing those responsible parties of which it is aware subsequent to the initial 60 calendar day time period referenced in (a)2 above, of a time period that shall not exceed 90 calendar days at the conclusion of which the multiple responsible parties shall comply with (a) above. The Department, in the exercise of its enforcement discretion, may extend the period for up to 30 calendar days. The Department may extend the period further as needed in instances where a decision regarding award of a grant or loan to fund remediation, pursuant to N.J.A.C. 7:26C-6 or 11, is pending.

4. Notwithstanding (a)1, 2, and 3 above, if the Department determines that remediation is necessary to address an immediate environmental concern at a contaminated site, the Department shall specify the appropriate time period to enter into an administrative consent order.

(b) If a person does not execute the appropriate administrative consent order within the time frame the Department establishes pursuant to (a) above, that person may participate in the publicly funded remediation of a contaminated site by paying all or part of the remediation costs. Any partial payment by a person will mitigate, but will not satisfy, the liability of the person for the Department's cleanup and removal costs, statutory penalties and treble damages.

Recodified from N.J.A.C. 7:26C-5.5 and amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Rewrote (a); inserted new (a)3; recodified existing (a)3 as (a)4; deleted (b); recodified existing (c) and (d) as (b) and (c); and added new (d). Former N.J.A.C. 7:26C-5.4, "Types and language of responsible party administrative consent orders", recodified to N.J.A.C. 7:26C-5.3.

Recodified from N.J.A.C. 7:26C-5.4 and amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section. Former N.J.A.C. 7:26C-5.3, Types and language of administrative consent orders, recodified to N.J.A.C. 7:26C-5.2.

Case Notes

Commercial general liability insurer's engineering costs for remedial investigation were "defense expenses," rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J.Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

SUBCHAPTER 6. HAZARDOUS DISCHARGE SITE REMEDIATION FUND**7:26C-6.1 Scope and requirements**

(a) This subchapter provides the requirements for any person to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund.

(b) As a condition for receiving a loan or a grant, the applicant must be under the oversight of the Department pursuant to the Industrial Site Recovery Act or the Underground Storage Tank program or an oversight document executed pursuant to this chapter.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Designated the existing paragraph as (a), deleted "who meets the eligibility requirements of N.J.A.C. 19:13-8" following "for any person" and substituted "a loan" for "financial assistance" preceding "or a grant"; added (b).

7:26C-6.2 Application for loans and grants

(a) A person that elects to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund shall submit an application on forms available from the Department and a written request, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, to the Department which includes the following information:

1. If known, the name of the Department bureau overseeing the remediation if any, the program interest number (preferred ID) and the name of the assigned Department case manager;

2. A statement by the applicant whether the application is for a loan or a grant, or both, and identification of the provision within the New Jersey Economic Development Authority's Authority Assistance Programs rules, at N.J.A.C. 19:31-8.3, that supports the applicant's request for a loan or grant or both;

3. A detailed description of the remediation to be completed at the site, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, for which the applicant intends to use the loan or grant;

4. A detailed cost estimate for the completion of remediation listed at (a)3 above. For any portion of the proposed remediation listed in (a)3 above which concerns an underground storage tank regulated by Underground Storage Tanks rules, N.J.A.C. 7:14B, that portion of the cost estimate shall be prepared by an individual certified pursuant to N.J.A.C. 7:14B-13.1;

5. The total amount of loan or grant requested;

6. A statement as to whether the applicant has any violations, outstanding fees or penalties with the Department.

i. Any applicant not in compliance with all applicable Department rules shall submit to the Department a written description of, and explanation for, the noncompliance including a list of all violations and outstanding fees, and penalties. The applicant shall specifically state whether the violations, fees, or penalties are currently being contested in a manner prescribed by law and whether the violations, fees and penalties resulted from a lack of financial resources to perform the required remediation;

7. A description and the amount of any other funding sources available to the applicant;

8. The last three annual financial statements of the applicant, who is not applying for an innocent party grant or who is not a municipal entity. An applicant that is a homeowner applying to remediate discharges at the applicant's domicile shall submit copies of the applicant's last three Federal income tax returns;

9. If an applicant is requesting an innocent party grant:

i. Proof that the Department has approved the remedial investigation;

ii. A copy of the deed to the site;

iii. A statement that:

(1) Neither the applicant nor any person authorized by the applicant to use the contaminated site used any hazardous substance that was discharged at the contaminated site; and

(2) Neither the applicant nor any person authorized by the applicant to use the contaminated site

discharged any hazardous substance at the contaminated site;

10. A statement, with all necessary supporting documentation, by an applicant required to establish a remediation funding source, or that has voluntarily undertaken the remediation of a site, that the applicant cannot obtain an environmental insurance policy or a line of credit, cannot establish a remediation trust fund, and cannot provide a self-guarantee pursuant to N.J.A.C. 7:26C-7; and

11. If the applicant is a public entity, the following additional information shall be submitted:

i. For both loans and grants, provide proof that:

(1) The applicant is the current owner of the site;

(2) The applicant holds the tax sale certificate for the site and the date that the certificate was obtained;

(3) The applicant obtained title to the site through foreclosure; or

(4) The applicant passed a resolution or ordinance to acquire title to the site for purposes of redevelopment.

ii. For a grant, the applicant shall submit proof that it passed a resolution or ordinance for the comprehensive development or redevelopment of the site, or other demonstration that a realistic opportunity exists for development or redevelopment within three years.

(b) Any person required to establish a remediation funding source that elects to apply for a loan or a grant to satisfy all or a portion of the remediation funding source requirements shall submit all the information required in (a) above upon:

1. Submission of a remediation agreement application pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-4; or

2. Submission of a remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-6; or

3. Receipt of an administrative consent order from the Department pursuant to N.J.A.C. 7:26C-5.3.

(c) A person seeking to amend an approved loan or grant award shall submit to the Department the information required in (a) above with respect to the amendment.

(d) The Department shall review the applicant's request for a loan and/or a grant, or amendment thereto, based on the information provided by the applicant in accordance with (a) and (c) above, and will notify the applicant in writing within 30 calendar days after receipt of the application as follows:

1. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively and technically complete and the Department has referred the request to the New Jersey Economic Development Authority for financial review in accordance with New Jersey Economic Development Authority's Authority Assistance Programs rules, at N.J.A.C. 19:31-8;

2. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively and/or technically incomplete and the Department cannot take further action on the application until the deficiencies listed in the Department's notification are corrected; or

3. The applicant is not eligible for a loan and/or a grant, or amendment thereto, from the Hazardous Discharge Site Remediation Fund and a statement of the reason(s) therefor.

(e) In the event that the New Jersey Economic Development Authority determines that the person is able to establish a remediation funding source, the person required to establish a remediation funding source shall establish the full amount of the remediation funding source in accordance with N.J.A.C. 7:26C-7, within 14 calendar days after the person's receipt of notice from the New Jersey Economic Development Authority that the application for a loan and/or a grant from the Hazardous Discharge Site Remediation Fund has been denied.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

7:26C-6.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs that were incurred prior to application provided that:

1. The remediation costs were incurred after June 16, 1993; and
2. The Department has approved the remediation associated with the remediation costs.

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

7:26C-6.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-7.10 for the disbursement of funds.

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

SUBCHAPTER 7. REMEDIATION FUNDING SOURCE

7:26C-7.1 Scope

(a) This subchapter identifies:

1. The types of remediation funding sources available;
2. The requirements for the establishment, maintenance, and disbursement of the remediation funding source; and
3. The requirements for payment of the remediation funding source surcharge.

7:26C-7.2 Establishing remediation funding sources

(a) Any person required to conduct remediation at a contaminated site, pursuant to a court order, an administrative consent order, a remediation agreement or a Department approved remedial action workplan for an industrial establishment, shall establish and maintain a remediation funding source pursuant to this subchapter, except as provided in (b) below.

(b) If the Department approves an innovative remedial action technology, or an unrestricted use or limited restricted use remedial action, for all or part of the remedial action at a contaminated site or area(s) of concern, or if a person has received approval for a property tax exemption pursuant to the Environment Opportunity Zone Act, N.J.S.A. 54:4-3.149 et seq.:

1. Any person otherwise required to establish a remediation funding source for the site or area of concern is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action; and
2. The Department shall release any existing remediation funding source consistent with (b)1 above and pursuant to N.J.A.C. 7:26C-7.11.

(c) Any person required to establish a remediation funding source shall establish and maintain a remediation funding source:

1. In an amount equal to or greater than the estimated cost of implementing the remediation, including, without limitation, the estimated cost of monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8; and
2. For a period not less than the actual time necessary to complete the remediation, including, without limitation monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8.

(d) The person required to establish a remediation funding source may use any one or any combination of the following forms:

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-7.4;
2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-7.5;
3. A line of credit agreement in accordance with N.J.A.C. 7:26C-7.6;
4. A self-guarantee in accordance with N.J.A.C. 7:26C-7.7; or
5. A loan or a grant in accordance with N.J.A.C. 7:26C-6 and 19:31-8.

(e) Any person may establish a remediation funding source pursuant to this section, other than a self-guarantee, for any other person required to establish a remediation funding source.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Inserted a new (b); and recodified former (b) through (d) as (c) through (e).

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-7.3 Determination of remediation funding source amount

(a) A person required to establish a remediation funding source shall submit the information required by (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a)2, to the Department:

1. Within 30 calendar days after receipt of an administrative consent order from the Department pursuant to N.J.A.C. 7:26C-5.3;
2. Upon submission to the Department of an application for a remediation agreement pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4; or
3. Upon submission to the Department of a remedial action workplan for an industrial establishment pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-6.

(b) The person establishing a remediation funding source shall submit the following information pursuant to (a) above:

1. A list of all known areas of concern at the site; and
2. A cost estimate for the remediation of the site performed in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(c) The Department may, in its discretion:

1. Require the submission of any documentation including, but not limited to, any workplans or reports that were used to determine the cost estimate submitted pursuant to (b)2 above; and
2. Request a revised cost estimate if the documentation used to determine the cost estimate is incomplete, inaccurate or deficient.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-7.4 Remediation trust fund requirements

(a) Any person who chooses to establish a remediation trust fund agreement as a remediation funding source pursuant to this subchapter shall submit the original remediation trust fund agreement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to 13, 14 calendar days after:
 - i. The receipt of the Department's approval of the remedial action workplan; or
 - ii. The execution of a remediation agreement;
2. Along with the signed copies of an administrative consent order; or
3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The remediation trust fund agreement shall be executed by an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency and shall specify the following:

1. The applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
2. That the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;
3. That the trustee may only disburse those funds from the remediation trust fund that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;
4. That the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation and for management of the remediation trust fund; and
5. That the Department is the sole beneficiary of the remediation trust fund.

(c) Any person using a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least

30 calendar days prior to the anniversary date of establishment of the remediation trust fund, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved, and continuation of the trust for the next 12-month period.

(d) The person required to establish the remediation funding source may at any time submit a written request to the Department to substitute the remediation trust fund agreement with an alternate remediation funding source pursuant to this subchapter. The Department shall return the original remediation trust fund agreement to the trustee for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

7:26C-7.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source pursuant to this subchapter shall submit an original environmental insurance policy pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 30 calendar days after:
 - i. The receipt of the Department's approval of the remedial action workplan; or
 - ii. The execution of a remediation agreement;
2. Along with the signed copies of an administrative consent order; or
3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The environmental insurance policy shall be issued by an entity licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey and shall specify the following:

1. The applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
2. That the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department;
3. That the insurer may only disburse those funds from the environmental insurance policy that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;

4. That the funds in the environmental insurance policy will be utilized solely for the purposes of conducting the remediation; and

5. That the Department is the sole beneficiary of the environmental insurance policy.

(c) Any person using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of establishment of the environmental insurance policy, submit to the Department a written statement from the insurance company confirming the value of the environmental insurance policy in an amount that the Department has approved, and renewal of the environmental insurance policy for the next 12-month period.

(d) The person required to establish the remediation funding source may at any time submit a written request to the Department to substitute the environmental insurance policy with an alternate remediation funding source pursuant to this subchapter. The Department shall return the original environmental insurance policy to that person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

7:26C-7.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit agreement as a remediation funding source pursuant to this subchapter shall submit an original line of credit agreement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 14 calendar days after:
 - i. The receipt of the Department's approval of the remedial action workplan; or
 - ii. The execution of a remediation agreement;
2. Along with the signed copies of an administrative consent order; or
3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The line of credit agreement shall be issued by an entity licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank, and shall specify the following:

1. The applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

2. That the line of credit agreement shall not be revoked or terminated without the prior written approval of the Department;

3. That the person providing the line of credit shall only disburse those funds from the line of credit that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;

4. That the funds in the line of credit shall be utilized solely for the purposes of conducting the remediation and for management of the line of credit; and

5. That the Department may access the line of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-7.12(c) and (d).

(c) Any person using a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of establishment of the line of credit, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved, and renewal of the line of credit for the next 12-month period.

(d) The person that has established the remediation funding source may at any time submit a written request to the Department to substitute the line of credit with an alternate remediation funding source pursuant to this subchapter. The Department shall return the original line of credit agreement to that person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-7.7 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall submit a written statement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a), to the Department:

1. Upon submission to the Department of an application for a remediation agreement pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-4; or

2. Upon submission to the Department of a remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-6;

3. Along with the signed copies of an administrative consent order; or

4. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The person requesting the Department's approval to use a self-guarantee pursuant to this subchapter shall include the following in the written statement required by (a) above:

1. Information that demonstrates that the estimated cost of the remediation that the Department has approved does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;

2. Information that demonstrates that the individual or entity has sufficient net cash provided by operating activities, as defined by the American Institute for Certified Public Accountants, to pay for the remediation during the next 12-month period;

3. Audited financial statements for the preceding fiscal year that ended closest in time to the date of the self-guarantee statement, prepared in accordance with the American Institute for Certified Public Accountants guidelines, including but not limited to income statement, balance sheet and consolidated statement of cash flow, that demonstrates that the individual or entity has sufficient cash flow to pay for the remediation during the next 12-month period;

4. The applicable case number, the program interest name, program interest number (preferred ID), site name, site address, and the estimated cost of remediation determined in accordance with N.J.A.C. 7:26C-7.3(b); and

5. A statement from the chief financial officer or similar officer that the information in the written request is true to the best of the requester's information, knowledge and belief and meets the requirements of N.J.S.A. 58:10B-3(f).

(c) The Department shall notify the person seeking to provide a self-guarantee whether or not that person satisfies the self-guarantee requirements as outlined at (b) above.

(d) The self-guarantee shall be valid for one year from the date of the Department's written approval of the self-guarantee. Thereafter, the person shall:

1. Comply with the requirements of (a) and (b) above, annually, to provide a self-guarantee for each successive year that that person is required to maintain a remediation funding source and wishes to continue to provide a self-guarantee; and

2. Submit the information required by (a) and (b) above to the Department 30 calendar days prior to the date of expiration of the existing statement.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-7.8 Remediation funding source surcharge

(a) A person required to establish and maintain a remediation funding source that elects to establish the remediation funding source by one or any combination of the following: a remediation trust fund, a line of credit, or an environmental insurance policy, shall submit to the Department a remediation funding source surcharge pursuant to (b) below.

(b) The person, pursuant to (a) above, shall submit the remediation funding source surcharge to the Department and shall:

1. Pay, by cashier's or certified check payable to the New Jersey Economic Development Authority, a remediation funding source surcharge in an amount equal to one percent of the Department approved amount of the remediation funding source; and

2. Submit the remediation funding source surcharge within 30 calendar days after the effective date of the oversight document, receipt of the Department's approval of the remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or court order and annually thereafter on the same date until the Department notifies the person in writing that the person has satisfied the requirements of the court order, oversight document, or Department approved remedial action workplan for an industrial establishment and the remediation funding source is no longer needed.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

7:26C-7.9 Changes in the remediation funding source amount

(a) The person required to establish a remediation funding source may at any time submit to the Department a request to approve a reduction in the amount of the remediation funding source, along with a revised remediation cost estimate.

(b) The Department shall respond to requests pursuant to (a) above within 90 calendar days after the Department's receipt of such request.

(c) Upon receipt of a written approval from the Department, the person required to establish the remediation funding source may decrease the remediation funding source amount to an amount equal to the amount approved by the Department.

(d) The person required to establish the remediation funding source shall increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation within 30 calendar days after:

1. Completion of the remediation cost review required pursuant to N.J.A.C. 7:26C-5;
2. Execution of a remediation agreement pursuant to the Industrial Site Recovery Act rules, N.J.A.C. 7:26B; or
3. Receipt of written notice from the Department that the cost of the remediation has increased.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Inserted a new (b); and recodified former (b) and (c) as (c) and (d).
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), substituted "required to establish a" for "that has established the"; in (b), substituted "(a) above" for "N.J.A.C. 7:26C-7.9(a)"; in (c), substituted "required to establish" for "that has established"; rewrote (d).

7:26C-7.10 Disbursements from the remediation funding source

(a) A person who has established either a remediation trust fund, an environmental insurance policy or a line of credit in satisfaction of the requirements of this subchapter may submit to the Department once every three months a written request to use the remediation funding source to pay for the actual remediation costs, which includes the following information:

1. Identification of the site, including name, address, case number (if applicable), program interest name and program interest number (preferred ID), and status of the remediation;
2. An updated, detailed estimate of implementing the remediation including without limitation the estimated cost of maintaining and monitoring all necessary engineering and institutional controls;
3. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed;
4. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request; and
5. The amount of the disbursement requested based on (a)3 and 4 above and the remediation remaining to be completed at the site.

(b) Within 30 calendar days after the Department's receipt of the written request submitted pursuant to (a) above, the Department shall review the request and shall respond as follows:

1. The information is complete and the disbursement amount represents actual remediation costs therefore the disbursement is approved;

2. The information is complete, however, the requested disbursement amount includes remediation costs that the Department has not approved, and therefore, the Department will only disburse funds for the approved remediation costs; or

3. The information is incomplete, indicating the missing information, and the Department shall not give further consideration to the disbursement request until the requester submits all the required information.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-7.11 Return of the remediation funding source

(a) The Department shall notify in writing the person required to establish the remediation funding source, when that person is no longer required to maintain the remediation funding source.

(b) The Department shall return the remediation funding source pursuant to (c) below when:

1. The Department determines that the person responsible for conducting the remediation has completed all the substantive and financial requirements of:

- i. The oversight document;
- ii. Court order; or
- iii. Department approved remedial action workplan for an industrial establishment; or

2. The Department approves in writing one of the following for the final remedial action for the site:

- i. An innovative remedial action technology;
- ii. A limited restricted use remedial action; or
- iii. An unrestricted use remedial action.

(c) When the Department makes one of the findings or approvals listed in (b) above, the Department shall allow the person responsible for establishing the remediation funding source to terminate or modify the remediation funding source consistent with the finding or approval. The Department shall only allow that person to terminate the remediation funding source if there is no additional remediation necessary at the site.

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Rewrote (b); and added (c).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), substituted "required to establish" for "that has been established" and "source, when that person" for "source, that the person"; in (b), inserted "for the final remedial action for the site" in the introductory paragraph of 2; in (c), substituted "necessary at" for "which has not yet been completed".

7:26C-7.12 Failure to perform the remediation

(a) The Department shall notify in writing the person required to establish a remediation funding source if the Department determines that the person responsible for conducting the remediation has failed to perform the remediation as required pursuant to an oversight document, court order or Department approved remedial action workplan. The person shall have 30 calendar days after receipt of such notice, unless otherwise extended in writing by the Department, to perform the obligation(s) not performed.

(b) The Department shall provide a copy of the notification in (a) above to the current owners and operators of the site when the person required to establish the remediation funding source has failed to remediate the site.

(c) Thirty calendar days after the person's receipt of the notification in (a) above, the Department may, in its sole discretion, perform the remediation of a site using the funds in the remediation funding source.

(d) The Department may, in its discretion, disburse all or some of the monies to a person, other than the person who established the remediation funding source pursuant to this subchapter, after that other person has completed the remediation of the contaminated site with the Department's oversight.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

This subchapter identifies the minimum requirements for a person planning to conduct remediation of real property not owned by that person, to obtain access to that property.

7:26C-8.2 Site access

(a) Any person responsible for conducting remediation of real property not owned by that person shall take all appropriate actions to obtain the access necessary to implement the remediation as outlined in (b) below.

(b) The person responsible for conducting remediation of real property not owned by that person that requires access to that property shall send a written request via certified mail, return receipt requested, with a copy to the Department, for access to the property, to each owner which shall include:

1. A copy of the oversight document or a description of the regulatory program pursuant to which remediation is being conducted;
2. A site map indicating each area for which access is needed;

3. A description of the reason access is needed and the extent of access needed;

4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and

5. A request that the site owner respond in writing to the person requesting access within 30 calendar days after receipt of the written request.

(c) If the owner of the property does not respond, the person conducting the remediation shall send a second written request by certified mail return receipt requested, with a copy to the Department, to the property owner. The second written request shall include a copy of the first written request detailed in (b) above.

(d) Nothing contained in this section shall be construed to relieve any person conducting remediation of that person's obligations to conduct remediation at any portion of a site or area(s) of concern to which the person has access.

(e) The person responsible for conducting the remediation shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access if an access agreement with the property owner is not reached. The person responsible for conducting the remediation shall provide written confirmation to the Department of the initiation of such action. Upon request by the Department the person responsible for conducting the remediation shall submit a copy of the court order that indicates that the Superior Court denied access to the property.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (b), substituted "the reason access is needed" for "why" in 3; in (c), substituted "shall" for "may" preceding "send a second written request".

SUBCHAPTER 9. OVERSIGHT COSTS

7:26C-9.1 Scope

(a) This subchapter provides:

1. The fixed cost schedule for Department review of a preliminary assessment report, site investigation report or biennial certification submitted by any person;

2. The fixed costs schedule for a person to obtain Department oversight of remediation of a discharge from an underground storage tank not regulated by N.J.A.C. 7:14B;

3. The oversight cost formula for Department oversight activities to be directly billed to the person conducting the remediation of a site not subject to the fixed costs set forth at N.J.A.C. 7:26C-9.2; and

4. The procedures and criteria by which the recipient of a bill for Department oversight costs calculated pursuant to N.J.A.C. 7:26C-9.3(d) may contest those oversight costs.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.

7:26C-9.2 Fixed oversight costs

(a) The applicable fixed costs, required by this section upon submittal to the Department of each request or submission, are as follows:

1. Preliminary assessment report	\$375.00
2. Site investigation report	\$750.00
3. Unregulated Heating Oil Tank System Remediation Questionnaire and remedial action report	\$400.00
i. This is limited to underground storage tanks not regulated by N.J.A.C. 7:14B.	
4. Biennial Certification	\$375.00

(b) The fixed costs required by (a) above are:

1. Nonrefundable;
2. Not one time costs;
3. Required with each and every applicable submittal made to the Department; and
4. The minimum oversight costs to obtain the Department's review of the preliminary assessment report, site investigation report, remedial action report for an underground storage tank not regulated by N.J.A.C. 7:14B, and a biennial certification. The Department may use the oversight cost formula at N.J.A.C. 7:26C-9.3(d) to assess its oversight cost in lieu of the fixed oversight costs listed in (a) above, based on (c), below.

(c) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to the oversight cost formula in N.J.A.C. 7:26C-9.3(d) if the Department's actual costs to review the preliminary assessment report, site investigation report, remedial action report for an underground storage tank not regulated by N.J.A.C. 7:14B, or biennial certification are three or more times greater than the applicable fixed oversight cost in (a) above.

(d) The Department shall use the oversight cost formula in N.J.A.C. 7:26C-9.3(d) to determine its oversight costs for review of all documents pertaining to a remedial investigation and a remedial action for all sites. Sites where the only area of concern is an underground storage tank not regulated by N.J.A.C. 7:14B are excepted from this requirement.

(e) The person responsible for conducting the remediation who submits any of the reports listed at (a) above for Department review shall submit the applicable fixed cost along with

each report. The Department shall not review a preliminary assessment report, site investigation report, biennial certification, or remedial action report for remediation of a discharge from an underground storage tank not regulated by N.J.A.C. 7:14B, unless and until the Department receives the fixed cost as listed in (a) above.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2007 d.274, effective August 20, 2007.

See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).

In (a)1 through (a)4, updated the fee amounts; in (a)3, deleted the asterisk following "report"; deleted the footnote following (a)4; rewrote (b); added new (c) and (d); recodified former (c) as (e); and in new (e), added the first sentence, inserted "not regulated by N.J.A.C. 7:14B", and deleted "appropriate" preceding "fixed cost as listed".

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (a)3, substituted "Unregulated Heating Oil Tank System Remediation Questionnaire and remedial action report" for "Remedial action report for tanks not regulated by N.J.A.C. 7:14B"; and added (a)3i.

7:26C-9.3 Oversight cost formula

(a) Oversight costs are due to the Department, at the address provided at N.J.A.C. 7:26C-9.5, within 30 calendar days after receipt from the Department of a bill for the Department's oversight costs for the period being charged.

(b) The Department shall include the following information in the bill for the Department's oversight costs referenced in (a) above:

1. The site job number;
2. The name of each staff member performing work on the site;
3. The number of hours spent by each staff member working on the site; and
4. The dollar amount of the oversight costs calculated pursuant to (d) below.

(c) The Department shall send a bill based on the formula in (d) below to the person responsible for conducting the remediation at regular intervals throughout the duration of the remediation.

(d) The Department's oversight costs are based upon the following formulas:

Oversight Costs = direct program costs + indirect program costs + expenses; or for persons signing the Developer's Certification found in Appendix D and for persons responsible for conducting the remediation of discharged substances at their primary residence, Oversight Costs = direct program costs + expenses, where:

1. Direct program costs = (number of coded hours x hourly salary rate) x (1 + salary additive factor) x (1 + fringe benefit factor)

i. Number of coded hours represents the sum of hours each NJDEP employee has coded to the site specific job number. Actual hours for all NJDEP employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to NJDEP employees' reimbursable "down time." Reimbursable "down time" includes vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling-employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive is the sum of the reimbursable "down time" divided by the net Department regular salary for a given fiscal year. The net Department regular salary is calculated by subtracting from the Department regular salary employees' reimbursable and non-reimbursable "down time." Non-reimbursable "down time" includes absent without pay, fire called by State Fire Warden, conferences and seminars, voluntary furlough, family leave, and suspension without pay;

iv. The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of

the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-state funded programs; and

2. Indirect program costs = (number of coded hours x hourly salary rate) x (1 + indirect program cost factor)

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments";

ii. The components of the indirect program cost rate include the Department's operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Site Remediation Program. In addition, the indirect cost rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, the Division of Financial Management and General Services, and the Division of Personnel;

iii. The total of these indirect costs is divided by the total costs of the Site Remediation Program to determine the indirect cost rate; and

3. Expenses represent any other site specific costs including, but not limited to, laboratory analysis or contractor expenses. These expenses shall be billed directly as a formula add on.

(e) Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the 30 calendar day period established at (a) above, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

(f) Failure to pay oversight costs may result in the Department:

1. Not issuing a no further action letter pursuant to N.J.A.C. 7:26C-2.6;

2. Ceasing all further oversight of the remediation; and

3. Taking enforcement action to compel compliance.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Rewrote (a); in (d)1, deleted a reference to Indirect Cost Factor in the introductory paragraph, and deleted v through viii; and in (f), deleted "and the indirect cost rate" following "benefit rate".

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-9.4 Oversight cost review

(a) To contest an oversight cost calculated pursuant to N.J.A.C. 7:26C-9.3(d), any person shall, within 30 calendar days after the person's receipt of the bill for the oversight cost from the Department, submit a written request to the Department, at the address provided at (c) below, for an oversight cost review pursuant to (d) below.

(b) The Department shall deny an oversight cost review request if the request is based on the following:

1. An employee's hourly salary rate;
2. The Department's salary additive rate or fringe benefit rate; or
3. Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit an oversight cost review request to the Department at the following address:

Attention: Oversight Cost Review Request
New Jersey Department of Environmental Protection
Division of Remediation Support
Office of Fiscal Support Services
401 E. State Street
PO Box 413
Trenton, NJ 08625-0413

(d) The following information shall be included in a request for an oversight cost review:

1. A copy of the bill;
2. Payment of all uncontested charges, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address and telephone number of the person making the request;
6. Information supporting the request or other written documents relied upon to support the request; and
7. A request for an informal meeting with Department representatives, if appropriate and desired.

(e) If any information or the payment required by (d) above is not included, the Department shall deny a request for an oversight cost review.

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a new bill which shall be due and payable within 30 calendar days after receipt.

(g) The Department may, if it determines that the factual issues involving an oversight cost dispute cannot be resolved informally, determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(h) If the Department does not determine the matter to be a contested case and, therefore, not subject to an adjudicatory hearing, the Department shall issue written notification for this determination. This determination shall be considered a final agency action.

(i) If the objector does not file a request for an oversight cost review within 30 calendar days after the objector's receipt of the bill for the oversight cost from the Department, the full amount of the oversight cost shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-9.3(g).

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (b)2, deleted a reference to indirect rate.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (b), substituted "deny" for "not accept" preceding "an oversight" in the introductory paragraph; in (d), rewrote 7 and deleted 8.

7:26C-9.5 Payment for oversight costs

All payments of oversight costs required by this subchapter shall be made by certified check, attorney check, money order, or by personal check. Checks and money orders shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all payments of oversight costs shall be made to the address indicated on the invoice.

SUBCHAPTER 10. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26C-10.1 Scope

(a) This subchapter governs the Department's assessment of civil administrative penalties for a person's failure to remediate a discharge as required by:

1. Administrative orders issued pursuant to any of the Department's statutory authorities;
2. Administrative consent orders issued pursuant to N.J.A.C. 7:26C-5;
3. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B;
4. Industrial Site Recovery Act remediation agreements issued pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
5. The Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1, 3 and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; and
7. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(b) This subchapter:

- i. Identifies those violations where a grace period will be afforded for correction of the violation;
- ii. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period; and
- iii. Governs the procedures for requesting an adjudicatory hearing on enforcement actions the Department takes pursuant to this subchapter.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote the section.

7:26C-10.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, or a requirement of any of the rules listed in N.J.A.C. 7:26C-10.1(a) constitutes an additional, separate and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Except as provided in N.J.A.C. 7:26C-10.3(d) or 10.5, each day during which a violation continues constitutes an additional, separate, and distinct offense.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provisions provided for by any other statute or rule in connection with the violation for which the assessment is levied.

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty

provisions may request in writing that the Department amend their document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-10. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote (a); in (b), substituted "Except as provided in N.J.A.C. 7:26C-10.3(d) or 10.5, each" for "Each"; in (c), inserted "or rule"; and added (d).

7:26C-10.3 Grace period applicability; procedures

(a) Each violation identified in the penalty table at N.J.A.C. 7:26C-10.4(c) by an "M" in the Type of Violation column, for which conditions at (c) below are satisfied, is a violation and is subject to a grace period, the length of which is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty table at N.J.A.C. 7:26C-10.4(c) by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department shall provide a grace period for any violation identified as minor under this section, provided that the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department;

3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for a violation of the same requirement within the preceding 12-month period; and

4. The person responsible for the violation has not been identified by the Department as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department will issue a notice of violation to the person responsible for a minor violation that:

- i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation and in addition, shall not consider the minor violation as an offense pursuant to N.J.A.C. 7:26C-10.2.

3. The person responsible for a violation shall submit to the Department, at the address indicated in the notice of violation, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, and signed by the person responsible for conducting the remediation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, certified in accordance with N.J.A.C. 7:26C-1.2, no later than one week before the end of the specified grace period and shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. If the person is unable to meet this deadline due to extenuating circumstances, the person may still request the extension, which request shall explain the reason for the delay in requesting the extension. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose an additional risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within the approved extension, if any, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(e) The provisions of this subchapter, including the penalty provisions of N.J.A.C. 7:26C-10.4, do not apply to persons remediating sites pursuant to a Memorandum of Agreement.

New Rule, R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Former N.J.A.C. 7:26C-10.3, Procedures for assessment and payment of civil administrative penalties, recodified to N.J.A.C. 7:26C-10.8.

7:26C-10.4 Civil administrative penalty determination

(a) The amount of a civil administrative penalty shall be determined as follows:

1. The Department shall identify the violation listed in the table in (c) below;

2. The Department shall determine whether the violation is identified by an "M" or "NM" in the "Type of Violation" column;

3. For a violation identified by an "M" as minor in the "Type of Violation" column, the Department shall apply the provisions of N.J.A.C. 7:26C-10.3.

4. For a violation identified by an "NM" as non-minor in the "Type of Violation" column, or for a violation that is identified by an "M" as minor in the "Type of Violation" column, but for which the conditions at N.J.A.C. 7:26C-10.3 are not satisfied, the Department shall:

i. Identify the corresponding base penalty dollar amount for the rule violated as listed in (c) below; and

ii. Adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-10.5(a), as applicable.

(b) The Department may multiply the penalty calculated pursuant to (a)4 above by the number of days the violation existed.

(c) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

1. Discharges of Petroleum and Other Hazardous Substances N.J.A.C. 7:1E

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
5 Discharge Notification, Response and Reporting	7:1E-			
Failure to conduct remediation in accordance with N.J.A.C. 7:26E.	7:1E-5.7(a)2i and 3	NM		\$20,000

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

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
1 General Information	7:26E-			
Failure to immediately notify the Department of contamination that is caused by a discharge that is not already known to the Department.	7:26E-1.4(b)1	NM		\$8,000
Failure to immediately notify Department of immediate environmental concern conditions.	7:26E-1.4(b)2	NM		\$8,000
Failure to notify the Department of contamination that has migrated onto the site.	7:26E-1.4(c)	M	30	\$3,000
Failure to provide a copy of the remedial action workplan or updates or status reports if requested by the municipality.	7:26E-1.4(d)	M	30	\$3,000
Failure to identify and document sensitive populations and resources.	7:26E-1.4(f)1	M	30	\$3,000
Failure to determine whether the site is located in the same municipality as an Environmental Justice neighborhood.	7:26E-1.4(f)2	M	30	\$3,000
Failure to determine whether any non-English speaking people inhabit or use each residential area, school, child care facility, park, playground, surface water and potable wells.	7:26E-1.4(f)3	M	30	\$3,000
Failure to generate a sensitive population and resource map.	7:26E-1.4(f)4	M	30	\$3,000
Failure to submit a Sensitive Population and Resource Checklist as required.	7:26E-1.4(f)5	M	30	\$3,000
Failure to provide public notice of remediation activities at the site using either a sign or notification letters.	7:26E-1.4(g)	NM		\$8,000
Failure to post a sign two weeks prior to the initiation of field activities for the remedial investigation or single phase remediation.	7:26E-1.4(h)	M	30	\$3,000
Failure to maintain a sign as required.	7:26E-1.4(h)3	M	30	\$3,000
Failure to ensure that the sign is of the proper size, is legible and contains the proper information.	7:26E-1.4(h)4	M	30	\$3,000
Failure to submit a photograph of the sign as required.	7:26E-1.4(h)5	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to provide public notice by sending letters as required.	7:26E-1.4(i)	M	30	\$3,000
Failure to send additional notification of excess fill material as required.	7:26E-1.4(j)	NM		\$8,000
Failure to send fact sheet as required.	7:26E-1.4(k)	M	30	\$3,000
Failure to publish fact sheet as display advertisement in local newspaper.	7:26E-1.4(k)6	M	30	\$3,000
Failure to submit copy of fact sheet and display advertisement as required.	7:26E-1.4(k)6	M	30	\$3,000
Failure to publish an updated fact sheet as display advertisement in local newspaper.	7:26E-1.4(k)7	M	30	\$3,000
Failure to submit copy of an updated fact sheet and display advertisement as required.	7:26E-1.4(k)7	M	30	\$3,000
Failure to conduct notification to the owner of the affected adjoining property as required.	7:26E-1.4(l)	M	30	\$3,000
Failure to conduct additional public outreach when the Department determined there is substantial public interest.	7:26E-1.4(o)	NM		\$8,000
Failure to make submissions to, and/or get approvals from, Pinelands Commission.	7:26E-1.4(q)	M	30	\$4,000
Failure to submit work plans or reports in a timely manner per schedule applicable pursuant to N.J.A.C. 7:26C, oversight document or ISRA or UST rules.	7:26E-1.6(b)	M	30	\$8,000
Failure to comply with format and content requirements of N.J.A.C. 7:26E-2 through 8 for work plans and reports submitted.	7:26E-1.6(b)	M	30	\$4,000
Failure to prepare or implement health and safety plan.	7:26E-1.9	NM		\$8,000
Failure to implement an interim response action to contain or stabilize contamination.	7:26E-1.11(a)	NM		\$20,000
Failure to conduct interim response action for Immediate Environmental Concern condition.	7:26E-1.11(b)	NM		\$20,000
Failure to submit written documentation of all interim response action to the Department.	7:26E-1.11(c)	NM		\$20,000
Failure to conduct remediation with Department oversight in situations where such oversight is required.	7:26E-1.12	NM		\$5,000
2 Quality Assurance for Sampling and Laboratory Analysis				
Failure to use laboratory that has appropriate certification.	7:26E-2.1(a)1	NM		\$5,000
Failure to use appropriate analytical method.	7:26E-2.1(a)3	M	60	\$4,000
Failure to use required sampling procedures and analytical methods for volatile organics.	7:26E-2.1(a)4	M	60	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to select and document appropriate alternate analytical method, where method does not exist for specific parameter/matrix.	7:26E-2.1(a)5	M	30	\$4,000
Failure to follow QA/QC procedures specified in analytical method.	7:26E-2.1(a)7	M	60	\$4,000
Failure to report solid analyses in a dry weight basis.	7:26E-2.1(a)8	M	30	\$4,000
Failure to perform sample matrix cleanup when required.	7:26E-2.1(a)9	M	60	\$4,000
Failure to perform required sample matrix cleanup using acceptable matrix cleanup methods.	7:26E-2.1(a)10	M	60	\$4,000
Failure to ensure use of acceptable method to detect free and/or residual product.	7:26E-2.1(a)11	M	30	\$4,000
Failure to use GC/MS for volatile/semi-volatile contaminants as required.	7:26E-2.1(a)12	M	60	\$4,000
Failure to provide Appendix A laboratory deliverables, as specified.	7:26E-2.1(a)13	M	30	\$4,000
Failure to use applicable industry methods for sample collection and handling.	7:26E-2.1(a)14	M	60	\$4,000
Failure to comply with time constraints for sample preservation and delivery to laboratory.	7:26E-2.1(a)15	M	60	\$4,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	M	30	\$4,000
Failure to collect samples from each AOC for contaminants which may be present, or to analyze for Target Compound List plus TICs/Target Analyte List, hexavalent chromium, petroleum hydrocarbons, and pH in areas where contaminants are unknown or not well documented.	7:26E-2.1(c)	M	60	\$4,000
Failure to analyze samples from petroleum storage and discharge areas for required parameters.	7:26E-2.1(d)	M	60	\$4,000
Failure to further address tentatively identified compounds as required.	7:26E-2.1(e)	M	60	\$4,000
Failure to submit quality assurance project plan, as required.	7:26E-2.2(a)	M	30	\$8,000
3 Preliminary Assessment and Site Investigation				
Failure to conduct a preliminary assessment	7:26E-3.1(c)	NM		\$8,000
Failure to investigate historical information	7:26E-3.1(c)1	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to conduct a site visit.	7:26E-3.1(c)2	M	30	\$4,000
Failure to submit preliminary assessment report in required format.	7:26E-3.2(a)1 and 2	M	30	\$4,000
Failure to include maps and plans in preliminary assessment report.	7:26E-3.2(a)3	M	30	\$4,000
Failure to include a recommendation for each area of concern.	7:26E-3.2(a)4	M	30	\$4,000
Failure to include a recommendation for each area of concern for which a no further action letter was previously issued.	7:26E-3.2(a)5	M	30	\$4,000
Failure to include required documentation to support recommendations for each area of concern for which a no further action letter was previously issued.	7:26E-3.2(b)	M	30	\$4,000
Failure to conduct a site investigation that satisfies listed requirements.	7:26E-3.3(b)	NM		\$8,000
Failure to submit site investigation report as required.	7:26E-3.3(c)	M	30	\$8,000
Failure to properly locate samples, including biasing as required, and obtaining Department approval to modify sampling locations.	7:26E-3.4(a)	M	30	\$4,000
Failure to collect and analyze site investigation samples pursuant to N.J.A.C. 7:26E-2.	7:26E-3.4(b)	M	60	\$4,000
Submitting site investigation data generated from composite samples.	7:26E-3.4(c)	M	60	\$4,000
Failure to conduct necessary site investigation of building interiors.	7:26E-3.5	M	30	\$4,000
Failure to conduct site investigation of soil according to general technical requirements.	7:26E-3.6(a)	M	30	\$4,000
Failure to conduct a soil investigation survey.	7:26E-3.6(a)1	M	30	\$4,000
Failure to collect soil samples for analysis & subsurface profiling.	7:26E-3.6(a)2	M	30	\$4,000
Failure to collect soil samples for initial characterization at 0-6 inches.	7:26E-3.6(a)3	M	30	\$4,000
Failure to properly collect soil samples for volatile organic analysis.	7:26E-3.6(a)4	M	30	\$4,000
Failure to properly collect soil samples in six-inch increments or to document sample recovery problems.	7:26E-3.6(a)5	M	30	\$4,000
Failure to collect and document additional samples below specified depths upon encountering filling or regrading.	7:26E-3.6(a)6	M	30	\$4,000
Failure to collect soil sample in saturated zone.	7:26E-3.6(a)7	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to conduct site investigation of soil according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.	7:26E-3.6(c)2	M	60	\$4,000
Failure to conduct site investigation of ground water when required by measured soil contamination at an area of concern.	7:26E-3.7(a)	M	60	\$5,000
Failure to implement QA/QC requirements as part of site investigation of ground water.	7:26E-3.7(c)1	M	60	\$4,000
Failure to utilize proper sampling methods in the collection of ground water samples.	7:26E-3.7(c)2	M	30	\$4,000
Failure to properly locate ground water sampling points.	7:26E-3.7(c)3	M	30	\$4,000
Failure to collect the required number of ground water samples.	7:26E-3.7(d)	M	30	\$4,000
Failure to properly evaluate ground water site investigation sampling results.	7:26E-3.7(e)	M	30	\$4,000
Failure to resample ground water to confirm the presence of contamination.	7:26E-3.7(e)2	M	60	\$4,000
Failure to take required actions upon confirmation of ground water contamination including conduct well search, notify the Department, determine ground water flow, or sample potable wells.	7:26E-3.7(e)3	NM		\$20,000
Failure to commence a potable water investigation within 30 calendar days after property acquisition.	7:26E-3.7(f)	NM		\$20,000
Failure to conduct a background investigation that supports a position that the presence of a ground water contaminant in excess of the applicable remediation standard is due to background ground water contamination.	7:26E-3.7(g)	M	90	\$4,000
Failure to evaluate evidence of discharges to surface water or sediment.	7:26E-3.8(a)	M	30	\$5,000
Failure to properly conduct site investigation of surface water and sediment.	7:26E-3.8(b)	M	60	\$4,000
Failure to properly conduct site investigation of above ground tanks over unpaved soil.	7:26E-3.9(a)1	M	30	\$4,000
Failure to properly conduct site investigation of above ground tanks over paved surfaces.	7:26E-3.9(a)2	M	30	\$4,000
Failure to properly conduct site investigation of underground storage tanks.	7:26E-3.9(a)3	M	30	\$4,000
Failure to properly conduct site investigation of all above grade piping.	7:26E-3.9(a)4	M	30	\$4,000
Failure to properly conduct site investigation of all below grade piping.	7:26E-3.9(a)5	M	30	\$4,000
Failure to properly conduct site investigation of loading and unloading areas.	7:26E-3.9(a)6	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to properly conduct site investigation of all pads.	7:26E-3.9(b)1	M	30	\$4,000
Failure to properly conduct site investigation of all storage and staging areas over permeable cover.	7:26E-3.9(b)2	M	30	\$4,000
Failure to properly conduct site investigation of all surface impoundments.	7:26E-3.9(c)	M	30	\$4,000
Failure to properly conduct site investigation of all drainage systems.	7:26E-3.9(d)	M	30	\$4,000
Failure to properly conduct site investigation of all discharge and waste disposal systems and areas.	7:26E-3.9(e)	M	30	\$4,000
Failure to properly conduct site investigation of any area of concern not addressed pursuant to previous requirements.	7:26E-3.9(f)	M	30	\$4,000
Failure to conduct a baseline ecological evaluation according to general technical requirements.	7:26E-3.11(a)	M	60	\$5,000
Failure to evaluate all data collected in the preliminary assessment and site investigation to identify site-specific contaminants of ecological concern.	7:26E-3.11(a)1	M	30	\$4,000
Failure to identify environmentally sensitive natural resources.	7:26E-3.11(a)2	M	30	\$4,000
Failure to identify potential contamination migration pathways.	7:26E-3.11(a)3	M	30	\$4,000
Failure to draw accurate conclusions regarding the need for further ecological investigation based on the requirements in this section.	7:26E-3.11(a)4	M	60	\$4,000
Failure to conduct a site investigation of historic fill as required.	7:26E-3.12(a)	M	30	\$5,000
Failure to demonstrate that historic fill is not contaminated above the applicable residential soil remediation standards.	7:26E-3.12(b)	M	60	\$4,000
Failure to conduct required ground water sampling when a site with historical fill is in an area where ground water is used for potable water.	7:26E-3.12(c)	M	60	\$4,000
Failure to present and discuss all of the information identified and collected in the site investigation report.	7:26E-3.13(a)	M	30	\$4,000
Failure to include historical information in the site investigation report.	7:26E-3.13(b)1	M	30	\$4,000
Failure to include a description of the site's physical setting in the site investigation report.	7:26E-3.13(b)2	M	30	\$4,000
Failure to include an overview of site investigation execution and results in the site investigation report.	7:26E-3.13(b)3	M	30	\$4,000
Failure to include findings and recommendations in the site investigation report.	7:26E-3.13(b)4	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include all analytical data as required in the site investigation report.	7:26E-3.13(c)1	M	30	\$4,000
Failure to include a summary table of analytical methods and quality assurance indicators in the site investigation report.	7:26E-3.13(c)2	M	30	\$4,000
Failure to include a summary results table in the site investigation report.	7:26E-3.13(c)3	M	30	\$4,000
Failure to include stratigraphic logs in the site investigation report.	7:26E-3.13(c)4	M	30	\$4,000
Failure to include stratigraphic cross sections in the site investigation report.	7:26E-3.13(c)5	M	30	\$4,000
Failure to include soil borings, piezometer or monitoring well records in the site investigation report.	7:26E-3.13(c)6	M	30	\$4,000
Failure to include information for each monitoring well sampled for each ground water sampling event in the site investigation report.	7:26E-3.13(c)7	M	30	\$4,000
Failure to include in the site investigation report any other data obtained pursuant to N.J.A.C. 7:26E-3.3 through 3.12.	7:26E-3.13(c)8	M	30	\$4,000
Failure to include any required map or diagram in the site investigation report.	7:26E-3.13(d)	M	30	\$4,000
4 Remedial Investigations				
Failure to delineate the horizontal and vertical extent of contamination to the applicable remediation standard, including the extent to which contamination has migrated off the property.	7:26E-4.1(b)	M	90	\$5,000
Failure to submit a remedial investigation workplan that conforms to the general requirements of this section.	7:26E-4.2(a)	M	30	\$8,000
Failure to include in the remedial investigation workplan a detailed schedule.	7:26E-4.2(b)1	M	30	\$4,000
Failure to include in the remedial investigation workplan a description of the role of the principal personnel.	7:26E-4.2(b)2	M	30	\$4,000
Failure to include in the remedial investigation workplan the required historical information.	7:26E-4.2(b)3	M	30	\$4,000
Failure to include in the remedial investigation workplan the required site description.	7:26E-4.2(b)4	M	30	\$4,000
Failure to include in the remedial investigation workplan a description of each area of concern.	7:26E-4.2(b)5	M	30	\$4,000
Failure to include in the remedial investigation workplan a sampling summary table for each area of concern.	7:26E-4.2(b)6	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the remedial investigation workplan a map of the proposed sampling locations.	7:26E-4.2(b)7	M	30	\$4,000
Failure to include in the remedial investigation workplan other sampling proposals for treatability, bench scale or pilot studies, data for permit effluent limits or ecological investigations.	7:26E-4.2(b)8	M	30	\$4,000
Failure to include in the remedial investigation workplan a quality assurance project plan.	7:26E-4.2(b)9	M	30	\$4,000
Failure to include in the remedial investigation workplan a health and safety plan.	7:26E-4.2(b)10	M	30	\$4,000
Failure to conduct a remedial investigation of soil at a contaminated site.	7:26E-4.3(a)	NM		\$5,000
Failure to conduct the remedial investigation of soil according to general technical requirements.	7:26E-4.3(b)	M	90	\$4,000
Failure to conduct a remedial investigation of ground water when required.	7:26E-4.4(a)	NM		\$8,000
Failure to provide information necessary to support a position that ground water sampling is not necessary.	7:26E-4.4(b)	M	30	\$4,000
Failure to conduct a remedial investigation of ground water according to general technical requirements.	7:26E-4.4(c)	M	90	\$4,000
Failure to collect ground water samples using acceptable professional methods such as those described in the then effective NJDEP Field Sampling Procedures Manual, or to gain Department approval of an alternate method.	7:26E-4.4(d)	M	30	\$4,000
Failure to properly locate all ground water sampling points.	7:26E-4.4(e)	M	30	\$4,000
Failure to collect the appropriate number of ground water samples.	7:26E-4.4(f)	M	30	\$4,000
Failure to comply with requirements for monitoring wells and piezometers.	7:26E-4.4(g)	M	30	\$4,000
Failure to evaluate the results of the initial ground water analyses.	7:26E-4.4(h)	M	30	\$4,000
Failure to properly perform confirmation ground water sampling.	7:26E-4.4(h)2	M	60	\$4,000
Failure to fully investigate confirmed groundwater contamination and potential impacts, or to conduct a background investigation that supports a position that groundwater contamination is from an offsite source.	7:26E-4.4(h)3	M	30	\$5,000
Failure to delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including free and residual product.	7:26E-4.4(h)3i	M	90	\$4,000
Failure to confirm ground water flow direction.	7:26E-4.4(h)3ii	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to adequately characterize the impacted aquifer.	7:26E-4.4(h)3iii	M	60	\$4,000
Failure to provide documentation for ground water flow system model.	7:26E-4.4(h)3iv	M	30	\$4,000
Failure to properly perform a well search.	7:26E-4.4(h)3v	NM		\$20,000
Failure to properly sample potable and supply wells which are suspected to be contaminated.	7:26E-4.4(h)3vi	NM		\$20,000
Failure to properly evaluate any surface water body potentially impacted by contaminated ground water.	7:26E-4.4(h)3vii	NM		\$20,000
Failure to properly evaluate any subsurface utilities, basements or other structures potentially impacted by vapor hazards related to contaminated ground water.	7:26E-4.4(h)3viii	NM		\$20,000
Failure to properly evaluate current and potential ground water uses for the 25-year planning horizon.	7:26E-4.4(h)3ix	M	30	\$4,000
Failure to properly conduct soil gas studies when required.	7:26E-4.4(i)	M	30	\$4,000
Failure to properly conduct a remedial investigation of surface water, wetlands and sediment.	7:26E-4.5(a)	NM		\$8,000
Failure to properly conduct the remedial investigation of surface water, wetlands and sediment in accordance with the general technical requirements.	7:26E-4.5(b)	M	30	\$4,000
Failure to properly document a position that a remedial investigation of surface water is not necessary.	7:26E-4.5(c)	M	30	\$4,000
Failure to conduct a surface water investigation as required.	7:26E-4.5(d)	M	30	\$4,000
Failure to include in the remedial investigation an investigation of all landfills.	7:26E-4.6(a)	NM		\$8,000
Failure to conduct an investigation of all landfills as required.	7:26E-4.6(a)1 through 4	M	90	\$4,000
Failure to conduct the remedial investigation of historic fill according to the general technical requirements.	7:26E-4.6(b)	M	30	\$4,000
Failure to conduct ground water sampling when required to document that ground water is not contaminated in an area of historic fill.	7:26E-4.6(b)6	M	60	\$4,000
Failure to conduct an ecological risk assessment according to general technical requirements.	7:26E-4.7(a)	M	60	\$5,000
Failure to present the results of an ecological risk assessment in a ecological risk assessment report that conforms to the specific requirements.	7:26E-4.7(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the remedial investigation report the requirements of N.J.A.C. 7:26E-3.13, and the results of additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the approved remedial investigation workplan.	7:26E-4.8(a)	M	30	\$4,000
Failure to include in the remedial investigation report the historical information described in N.J.A.C. 7:26E-4.2(b)3.	7:26E-4.8(b)1	M	30	\$4,000
Failure to include in the remedial investigation report a description of the physical setting pursuant N.J.A.C. 7:26E-4.2(b)4.	7:26E-4.8(b)2	M	30	\$4,000
Failure to include in the remedial investigation report a technical overview as described in N.J.A.C. 7:26E-3.13(b)3 and this section.	7:26E-4.8(b)3	M	30	\$4,000
Failure to include in the remedial investigation report findings and recommendations pursuant to N.J.A.C. 7:26E-3.13(b)4 as updated by the remedial investigation requirements of N.J.A.C. 7:26E-4.	7:26E-4.8(b)4	M	30	\$4,000
Failure to include in the remedial investigation report the analytical results and laboratory deliverables.	7:26E-4.8(c)1	M	30	\$4,000
Failure to include in the remedial investigation report a summary table of analytical methods and quality assurance indicators.	7:26E-4.8(c)2	M	30	\$4,000
Failure to include in the remedial investigation report a sampling results summary table that conforms to the requirements of this section.	7:26E-4.8(c)3	M	30	\$4,000
Failure to include in the remedial investigation report the stratigraphic logs.	7:26E-4.8(c)4	M	30	\$4,000
Failure to include in the remedial investigation report the stratigraphic cross sections.	7:26E-4.8(c)5	M	30	\$4,000
Failure to include in the remedial investigation report all of the soil boring, piezometer, and monitoring well records.	7:26E-4.8(c)6	M	30	\$4,000
Failure to include in the remedial investigation report the required information for each monitoring well sampled.	7:26E-4.8(c)7	M	30	\$4,000
Failure to include in the remedial investigation report the ground water elevation of each monitoring well.	7:26E-4.8(c)8	M	30	\$4,000
Failure to include in the remedial investigation report the summary of inventory control records review.	7:26E-4.8(c)9	M	30	\$4,000
Failure to include in the remedial investigation report the results of treatability, bench scale or pilot studies or other data collected to support the remedy selection.	7:26E-4.8(c)10	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the remedial investigation report data necessary to develop permit limitations.	7:26E-4.8(c)11	M	30	\$4,000
Failure to include in the remedial investigation report the results of ecological assessments and evaluations.	7:26E-4.8(c)12	M	30	\$4,000
Failure to include in the remedial investigation report a summary of records pertaining to the nature of landfill waste and to submit copies of such records.	7:26E-4.8(c)13	M	30	\$4,000
Failure to include in the remedial investigation report the description of the historic fill material.	7:26E-4.8(c)14	M	30	\$4,000
Failure to include in the remedial investigation report all other data and information obtained pursuant to N.J.A.C. 7:26E-4.	7:26E-4.8(c)15	M	30	\$4,000
Failure to include in the remedial investigation report any of the required maps or diagrams in the prescribed formats.	7:26E-4.8(d)	M	30	\$4,000
5 Remedial Action Selection				
Failure to establish remedial action objectives/goals as required.	7:26E-5.1(b)	M	30	\$4,000
Failure to select a remedial action which is protective of public health and safety and the environment.	7:26E-5.1(c)1	M	30	\$4,000
Failure to select a remedial action which is implementable.	7:26E-5.1(c)2	M	30	\$4,000
Failure to select a remedial action which is consistent with other applicable Federal, State and local laws and regulations.	7:26E-5.1(c)3	M	30	\$4,000
Failure to select a remedial action which takes into account the community responses and the local land use Master Plan.	7:26E-5.1(c)4	M	30	\$4,000
Failure to select a remedial action free of potential to cause injury to natural resources.	7:26E-5.1(c)5	M	30	\$4,000
Failure to include in an application for use of an innovative remedial action technology any of the required information.	7:26E-5.1(d)	M	30	\$4,000
Failure to comply with the Department's requirements for use of engineering and institutional controls at N.J.A.C. 7:26E-8.	7:26E-5.1(e)	NM		\$8,000
Failure to submit for approval a Remedial Action Selection Report for a restricted use remedial action.	7:26E-5.2(a)1	M	30	\$8,000
Failure to submit for approval a Remedial Action Selection Report for a remedial action that utilizes an innovative remedial action technology.	7:26E-5.2(a)2	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit for approval a Remedial Action Selection Report for a remedial action that will take longer than five years to complete.	7:26E-5.2(a)3	M	30	\$8,000
Failure to submit for approval a Remedial Action Selection Report for a remedial action that is being implemented to address ground water, surface water, sediment contamination or ecological impact.	7:26E-5.2(a)4	M	30	\$8,000
Failure to present the Remedial Action Selection Report in a format that complies to N.J.A.C. 7:26E-5.2(c).	7:26E-5.2(c)	M	30	\$4,000
Failure to submit the Remedial Action Selection Report with the Remedial Investigation Report or the Remedial Action Workplan as required.	7:26E-5.2(d)	M	30	\$4,000
Failure to submit the Remedial Action Selection Report with the Remedial Action Report.	7:26E-5.2(e)	M	30	\$4,000
6 Remedial Action				
Failure to notify the Department and the local governing body pursuant to N.J.A.C. 7:26E-1.4.	7:26E-6.1(a)	NM		\$8,000
Implementation of a remedial action that has not been approved by the Department when such approval is required.	7:26E-6.1(b)1	NM		\$5,000
Implementation of a remedial action that fails to comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department.	7:26E-6.1(b)2	NM		\$5,000
Implementation of a remedial action that fails to comply with all applicable Federal, State and local laws, regulations and requirements.	7:26E-6.1(b)3	NM		\$5,000
Implementation of a remedial action that caused an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another.	7:26E-6.1(b)4	NM		\$20,000
Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.	7:26E-6.1(d)	NM		\$20,000
Failure to establish institutional controls for a restricted use or a limited use remedy.	7:26E-6.1(e)	NM		\$8,000
Failure to conduct the remediation of historic fill pursuant to N.J.A.C. 7:26E-6.2(c), or for other fill material pursuant to N.J.A.C. 7:26E-5.1.	7:26E-6.1(f)	M	30	\$5,000
Failure to submit a Remedial Action Workplan when required, according to the applicable schedule and which complies to the specified format.	7:26E-6.2(a)	M	30	\$8,000
Failure to submit the Remedial Investigation Report, or a summary if previously submitted, as the first section of the Remedial Action Workplan.	7:26E-6.2(a)1	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to include in the Remedial Action Workplan a sampling summary table.	7:26E-6.2(a)2	M	30	\$4,000
Failure to include in the Remedial Action Workplan a proposal to complete all the requirements at N.J.A.C. 7:26E-6.	7:26E-6.2(a)3	M	30	\$4,000
Failure to include in the Remedial Action Workplan the identification of all applicable remediation standards.	7:26E-6.2(a)4	M	30	\$4,000
Failure to include in the Remedial Action Workplan a detailed description of the remedial action and the remedial technology to be conducted for each area of concern.	7:26E-6.2(a)5	M	30	\$4,000
Failure to include in the Remedial Action Workplan a map that identifies all areas where remedial action will be conducted, and provides information about the remedial action to be taken at each area, as specified.	7:26E-6.2(a)6	M	30	\$4,000
Failure to include in the Remedial Action Workplan a quality assurance project plan.	7:26E-6.2(a)7	M	30	\$4,000
Failure to include in the Remedial Action Workplan a list of all required permits.	7:26E-6.2(a)8	M	30	\$4,000
Failure to include in the Remedial Action Workplan required information regarding construction activity.	7:26E-6.2(a)9	M	30	\$4,000
Failure to include in the Remedial Action Workplan a description of soil and sediment erosion control and monitoring, and dust and odor control and monitoring procedures to be implemented during remedial activities.	7:26E-6.2(a)10	M	30	\$4,000
Failure to include in the Remedial Action Workplan a health and safety plan.	7:26E-6.2(a)11	M	30	\$4,000
Failure to include in the Remedial Action Workplan a detailed description of site restoration plans.	7:26E-6.2(a)12	M	30	\$4,000
Failure to include in the Remedial Action Workplan a description of procedures for dismantling and removal of remedial structures and equipment from the site.	7:26E-6.2(a)13	M	30	\$4,000
Failure to include in the Remedial Action Workplan a cost estimate for the remedial action.	7:26E-6.2(a)14	M	30	\$4,000
Failure to include in the Remedial Action Workplan a proposed completion date and a schedule of the remedial action.	7:26E-6.2(a)15	M	30	\$4,000
Failure to include in the Remedial Action Workplan the documentation required for the establishment of a deed notice.	7:26E-6.2(a)16	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the Remedial Action Workplan the documentation required for the establishment of a classification exception area.	7:26E-6.2(a)17	M	30	\$4,000
Failure to include in the Remedial Action Workplan a plan for maintenance and evaluation of all engineering and institutional controls.	7:26E-6.2(a)18	M	30	\$4,000
Failure to conduct an evaluation pursuant to N.J.A.C. 7:26E-6.4(d) and submit a soil reuse proposal.	7:26E-6.2(b)	M	60	\$4,000
Failure to propose engineering and institutional controls when historic fill material will not be treated or removed.	7:26E-6.2(c)	M	30	\$4,000
Failure to contain or stabilize contaminants in all media, as a first priority, to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.	7:26E-6.3(a)	NM		\$20,000
Failure to properly drain piping and pump out and clean tanks during tank closure.	7:26E-6.3(b)1	NM		\$8,000
Failure to plug openings of tank as required during tank closure.	7:26E-6.3(b)2	NM		\$8,000
Failure to excavate the soil around the tank and remove and secure the tank as required.	7:26E-6.3(b)3	M	30	\$5,000
Failure to inspect the tank for holes and report the findings to DEP as required.	7:26E-6.3(b)4	NM		\$8,000
Failure to properly label a tank for disposal.	7:26E-6.3(b)5	M	30	\$4,000
Failure to remove and dispose of a tank in accordance with all applicable laws and regulations.	7:26E-6.3(b)6	NM		\$8,000
Failure to remediate piping systems associated with an underground storage tank in accordance with N.J.A.C. 7:26E-3.9(a)5.	7:26E-6.3(b)6v	M	30	\$5,000
Failure to conduct the required investigation or take the required actions, and to provide all the information necessary, to support the proposal of a natural ground water remediation.	7:26E-6.3(d)	M	30	\$4,000
Failure to meet the monitoring and performance requirements for natural remediation.	7:26E-6.3(e)	M	30	\$4,000
Failure to document the effectiveness of the remedial action.	7:26E-6.4(a)	M	30	\$4,000
Failure to restore all areas subject to remediation to pre-remediation conditions.	7:26E-6.4(b)	M	30	\$4,000
Failure to decommission all monitoring and extraction wells after completion of remediation.	7:26E-6.4(c)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to conduct a soil reuse evaluation and submit a proposal for soil reuse to the Department prior to the reuse of any soils, and to satisfy the required sampling requirements related to soil reuse.	7:26E-6.4(d)	NM		\$8,000
Failure to remediate property not owned by the person conducting the remediation to the applicable unrestricted use standard if the property owner does not consent in writing to implement the institutional or engineering controls and to record a deed notice.	7:26E-6.4(e)	NM		\$8,000
Failure to prepare a schedule of the remedial action when required.	7:26E-6.5(a)	M	30	\$8,000
Failure to prepare a schedule of the remedial action that includes the information specified in this section.	7:26E-6.5(b)	M	30	\$4,000
Failure to revise the remedial action schedule and submit it to the Department.	7:26E-6.5(c)	M	30	\$4,000
Failure to submit remedial action progress reports as required.	7:26E-6.6(a)	M	30	\$8,000
Failure to include the required information in the remedial action progress report.	7:26E-6.6(b)	M	30	\$4,000
Failure to submit a Remedial Action Report that complies with the content and format requirements specified by this section.	7:26E-6.7(a)	M	30	\$8,000
Failure to include as the first section of the Remedial Action Report the Remedial Investigation Report, or a summary if previously submitted.	7:26E-6.7(b)1	M	30	\$4,000
Failure to include in the Remedial Action Report a summary of all remedial actions completed, by area of concern.	7:26E-6.7(b)2	M	30	\$4,000
Failure to include in the Remedial Action Report a list of the remediation standards achieved for each remedial action.	7:26E-6.7(b)3	M	30	\$4,000
Failure to include in the Remedial Action Report "as-built" diagrams for any permanent structures.	7:26E-6.7(b)4	M	30	\$4,000
Failure to include in the Remedial Action Report a detailed description of site restoration activities.	7:26E-6.7(b)5	M	30	\$4,000
Failure to include in the Remedial Action Report a report of remedial action costs, including an estimate to monitor and maintain and certify the protectiveness of each engineering and/or institutional control.	7:26E-6.7(b)6	M	30	\$4,000
Failure to include in the Remedial Action Report the required information concerning soils and sediments.	7:26E-6.7(c)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the Remedial Action Report graphs depicting changes in contaminant concentrations over time in all monitoring wells.	7:26E-6.7(d)	M	30	\$4,000
Failure to include in the Remedial Action Report the information required for natural remediation ground water remedial action.	7:26E-6.7(e)	M	30	\$4,000
7 Permit Identification and Application Schedule				
Failure to identify all relevant Federal, State and local permits of permit modifications or certifications needed to implement the selected remedial action.	7:26E-7.1(a)	M	30	\$4,000
Failure to apply for and obtain all required permits prior to initiating the remedial action.	7:26E-7.1(b)	M	30	\$5,000
Failure to develop a permit application schedule when required.	7:26E-7.1(c)	M	30	\$4,000
8 Engineering and Institutional Controls				
Failure to propose a deed notice, pursuant to N.J.A.C. 7:26E-8.2.	7:26E-8.1(b)1	M	30	\$4,000
Failure to demonstrate in the Remedial Action Workplan that the selected remedial action will remain protective, that contamination exposure can be controlled, and all current and future uses of the site will be consistent with the remedial action.	7:26E-8.1(b)2	M	30	\$4,000
Failure to monitor each engineering and institutional control.	7:26E-8.1(b)3	NM		\$8,000
Failure to record a deed notice for the site pursuant to N.J.A.C. 7:26E-8.2(c) and (d).	7:26E-8.2(a)1	NM		\$8,000
Failure to provide the Department documentation of the owner's consent to record the necessary deed notice pursuant to N.J.A.C. 7:26E-8.2(b).	7:26E-8.2(a)2	NM		\$8,000
Failure to provide the Department with a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16.	7:26E-8.2(b)	M	60	\$4,000
For a property that is owned by a local, county, state or federal government agency, failure to submit a draft notice worded pursuant to N.J.A.C. 7:26E-8.2(d).	7:26E-8.2(c)1	M	30	\$4,000
For a property that is owned by the U.S. Department of Defense, failure to draft an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to N.J.A.C. 7:26E-8.2(d).	7:26E-8.2(c)2	M	30	\$4,000
Failure to provide the Department with a draft deed notice pursuant to N.J.A.C. 7:26E-8.2(d).	7:26E-8.2(c)3	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit a draft deed notice to the Department, as part of the remedial action work plan, that is worded exactly as the model document in N.J.A.C. 7:26E, Appendix E, and includes copies of all required maps.	7:26E-8.2(d)	M	30	\$4,000
Failure to submit a final draft of the deed notice to the Department as part of the remedial action report.	7:26E-8.2(e)	M	30	\$8,000
Failure to have the owner of the property record the deed notice at the proper county office within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(f)1	NM		\$8,000
Failure to provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the road department of each municipality and county in which the site is located, the NJ Department of Transportation, and utility companies with easements on the roadway.	7:26E-8.2(f)2	NM		\$5,000
Failure to provide a copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1 to the necessary recipients within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(g)	M	30	\$4,000
Failure to submit a MOA, remedial action workplan, and request to modify the DER or deed notice prior to redeveloping or changing the use of a site in a manner inconsistent with a remedial action, or conducting additional remediation or other activities.	7:26E-8.2(h)	NM		\$8,000
Failure to submit a list of all contaminants and their concentrations that do not meet the GWQS from the most recent 24 months of ground water sampling for each ground water sampling point with the remedial action workplan.	7:26E-8.3(b)1	M	30	\$4,000
Failure to submit with the remedial action workplan, a description of the fate and transport of the contaminant plume.	7:26E-8.3(b)2	M	30	\$4,000
Failure to submit the required ground water classification exception area maps with the remedial action workplan.	7:26E-8.3(b)3	M	30	\$4,000
Failure to submit, with the remedial action workplan, information regarding current and projected use of the ground water in the aquifer(s) in which the ground water classification exception area is located.	7:26E-8.3(b)4	M	30	\$4,000
Failure to submit copies of notification letters sent to the required recipients, with the remedial action workplan.	7:26E-8.3(b)5	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit to the Department a monitoring/maintenance certification, for a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded.	7:26E-8.4(c)1	NM		\$8,000
Failure to submit to the Department a monitoring/maintenance certification, for a ground water classification exception area, every two years on the anniversary of the date that the Department established the ground water classification exception area.	7:26E-8.4(c)2	NM		\$8,000
Failure to submit to the Department a monitoring/maintenance certification, for all other engineering and institutional controls (besides a deed notice or ground water classification exception area), every two years on the anniversary of when the engineering or institutional control was in place.	7:26E-8.4(c)3	NM		\$8,000
Failure to submit a biennial certification for all remedial actions and all engineering and institutional controls for the site to the Department in accordance with N.J.A.C. 7:26E-8.4(c) and biennially thereafter on that same date.	7:26E-8.4(d)	NM		\$8,000
Failure to determine whether any actual or pending zoning or land use change is consistent with the deed notice or declaration of environmental restriction, or could undermine the protectiveness of the remedial action.	7:26E-8.5(a)1	NM		\$8,000
Failure to conduct periodic site inspections to determine whether any disturbances of the soil have resulted in unacceptable exposure.	7:26E-8.5(a)2	NM		\$8,000
Failure to compare laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations or standards to determine whether changes have occurred and whether each control complies with changes.	7:26E-8.5(a)3	NM		\$8,000
Failure to develop a detailed log of how the RP has maintained and evaluated the engineering control in compliance with this section.	7:26E-8.5(a)4	NM		\$8,000
Failure to prepare a monitoring report that includes the information listed at N.J.A.C. 7:26E-8.5(b)1 through 10.	7:26E-8.5(b)	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to certify to the Department that the deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained, and the remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of public health and the environment.	7:26E-8.5(c)1	M	30	\$3,000
Failure to submit a written and electronic version of the monitoring report along with the certification.	7:26E-8.5(c)2	NM		\$8,000
Failure to submit the monitoring report and the certification in accordance with the schedule in N.J.A.C. 7:26E-8.4(c), to the municipal and county clerks; the local, county and regional health department; each owner of the property; or the Department.	7:26E-8.5(c)3	NM		\$8,000
Failure to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)1	NM		\$8,000
Failure to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)2	NM		\$8,000
Failure to compare the laws, Ground Water Quality Standards, and other regulations, applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws or regulation.	7:26E-8.6(a)1	NM		\$8,000
Failure to determine whether there are any planned changes within the 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located.	7:26E-8.6(a)2	NM		\$8,000
Failure to identify whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed biennial review.	7:26E-8.6(a)3	NM		\$8,000
Failure to inspect all ground water monitoring wells associated with the ground water classification exception area, maintain a log for each monitoring well, repair or replace damaged wells as needed, and decommission wells as required by this section.	7:26E-8.6(a)4	NM		\$8,000
Failure to identify any land use disturbance that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water.	7:26E-8.6(a)5	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to determine whether any of the actual or proposed changes in the ground water use identified pursuant to N.J.A.C. 7:26E-8.6(a)2 and 3, have influenced or may influence the protectiveness of the remedial action that includes the ground water classification area.	7:26E-8.6(a)6i	NM		\$8,000
Failure to determine whether there is a need to reevaluate the fate and transport of the ground water contamination plume and to revise the ground water classification exception area to ensure that the remedial action remains protective of the public health, safety and the environment.	7:26E-8.6(a)6ii	NM		\$8,000
Failure to assess ground water quality within 120 calendar days after the projected expiration of the ground water classification exception area.	7:26E-8.6(a)7	M	90	\$5,000
Failure to submit a monitoring report that includes all of the criteria outlined in N.J.A.C. 7:26C-8.6(b)1 through 13.	7:26E-8.6(b)	NM		\$8,000
Failure to certify that the ground water classification exception area continues to provide notice of the ground water contamination and the remedial action continues to be protective of the public health and safety and the environment.	7:26E-8.6(c)1	M	30	\$3,000
Failure to submit a report pursuant to N.J.A.C. 7:26E-8.6(b), in both paper copy and in electronic format acceptable to the Department.	7:26E-8.6(c)2	NM		\$8,000
Failure to submit a ground water classification exception area certification in accordance with the schedule in N.J.A.C. 7:26E-8.4 to the Department, property owner, and each external agency.	7:26E-8.6(c)3	NM		\$8,000
Failure to conduct a periodic inspection of a site with an institutional control.	7:26E-8.7(a)1i	NM		\$8,000
Failure to evaluate any actual or pending zoning or land use changes that could undermine the remedial action.	7:26E-8.7(a)1ii	NM		\$8,000
Failure to monitor each engineering control by periodically reviewing O&M records.	7:26E-8.7(a)2i	NM		\$8,000
Failure to monitor each engineering control by conducting periodical inspections of each engineering control.	7:26E-8.7(a)2ii	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to compare the compare the laws, remediation standards and other regulations applicable at the time the engineering or institutional control was established, with any relevant subsequently promulgated or modified laws or regulations to determine whether any subsequently promulgated or modified laws or regulations apply to the site, and whether each engineering and/or institutional control meet those new laws and regulations.	7:26E-8.7(a)3	NM		\$8,000
Failure to develop a detailed log of how the RP has maintained and evaluated the engineering control in compliance with this section.	7:26E-8.7(a)4	NM		\$8,000
Failure to prepare a monitoring report that includes all the information listed at N.J.A.C. 7:26E-8.7(b)1 through 9.	7:26E-8.7(b)	NM		\$8,000
Failure to certify to the Department that each engineering or institutional control is being properly maintained.	7:26E-8.7(c)1	M	30	\$3,000
Failure to include a monitoring report required by N.J.A.C. 7:26E-8.7(b) with the certification.	7:26E-8.7(c)2	NM		\$8,000
Failure to submit the certification to the Department pursuant to the schedule and address in N.J.A.C. 7:26E-8.4(e)1.	7:26E-8.7(c)3	NM		\$8,000

3. The Industrial Site Recovery Act Regulations N.J.A.C. 7:26B

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to submit certifications and signatories.	7:26B-1.6(a)	M	30	\$3,000
Failure to submit certifications and signatories for a Remediation Agreement of Remediation Agreement Amendment.	7:26B-1.6(b)	M	30	\$3,000
Failure to have all certifications notarized.	7:26B-1.6(f)	M	30	\$3,000
Failure to complete additional remediation and address deficiencies in submittals.	7:26B-1.7(b)	M	30	\$5,000
Failure of owner or operator to give consent to right of entry and inspection by the Department.	7:26B-1.9(a)	NM		\$12,000
Failure of buyer or transferee to give consent to right of entry and inspection by the Department.	7:26B-1.9(b)1	NM		\$12,000
Failure of buyer or transferee to give consent to right of entry for implementation of a remedial action workplan or compliance with the conditions of a remediation agreement.	7:26B-1.9(b)2	M	30	\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to provide assistance to the Department during any site inspection.	7:26B-1.9(c)	M	30	\$5,000
Failure to obtain a no further action letter, remedial action workplan approval, remediation agreement or Departmentally issued authorization letter prior to the transfer of an industrial establishment.	7:26B-1.10(c)	NM		\$5,000
Failure to amend a General Information Notice for any subsequent transfers of ownership or operations.	7:26B-1.10(d)	M	30	\$4,000
3 General Information Notice				
Failure to submit a General Information Notice within five calendar days after the occurrence of a transaction event.	7:26B-3.2(a)	NM		\$5,000
Failure to remediate a site in accordance with ISRA when a written notice is required to be submitted.	7:26B-3.2(b)	NM		\$8,000
Failure to submit a complete and accurate General Information Notice.	7:26B-3.3(a)	M	30	\$4,000
Failure to submit revisions to the General Information Notice within 30 calendar days of discovery that the original General Information Notice is incorrect, inaccurate, or incomplete.	7:26B-3.4(b)	M	30	\$4,000
4 Remediation Agreement				
Failure to submit a Remediation Agreement application prior to the transfer of the industrial establishment without the Department's approval of a negative declaration or remedial action workplan.	7:26B-4.1(a)	NM		\$5,000
6 Remediation Procedures				
Failure to submit a Preliminary Assessment Report within the required timeframe.	7:26B-6.1(b)	M	30	\$8,000
Failure to submit a Site Investigation Report within 120 calendar days after the date the submission of written notice is required.	7:26B-6.1(c)	M	30	\$8,000
Failure to submit a Remedial Investigation Workplan within 180 calendar days after the date the submission of written notice.	7:26B-6.1(d)	M	30	\$8,000
Failure to submit a Remedial Investigation Report within 300 calendar days after the date the submission of written notice, or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan.	7:26B-6.1(e)	M	30	\$8,000
Commenced a remedial action, which does not meet the criteria in N.J.A.C. 7:26B-6.2(b), without the Department's approval of a remedial action workplan.	7:26B-6.2(a)	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit, within 420 days after the date of submission of written notice, a certification that there are no areas of concern at the industrial establishment where hazardous substances have migrated or are migrating from, involving remediation of groundwater or surface water, and a summary and schedule of completed and proposed soil remedial actions.	7:26B-6.2(c)	M	30	\$8,000
Failure to certify the notification referenced in N.J.A.C. 7:26B-6.2(c).	7:26B-6.2(d)	M	30	\$3,000
Failure to submit a notification in accordance with N.J.A.C. 7:26E-1.4.	7:26B-6.2(e)	NM		\$8,000
Failure to submit progress reports when required.	7:26B-6.2(f)	M	30	\$8,000
Failure to submit a Remedial Action Workplan within 420 days after the date of the submission of the written notice, or within 120 days after approval of the Remedial Investigation Report.	7:26B-6.2(g)	M	30	\$8,000
Failure to submit a Ground water or Surface Water Remedial Action Workplan within 420 days after the date of the submission of the written notice, or within 120 days after approval of the Remedial Investigation Report.	7:26B-6.3	M	30	\$8,000
Failure to submit a Remediation Funding Source upon the Department's approval of a remedial action workplan.	7:26B-6.4	NM		\$5,000
Failure to remediate a site in accordance with a schedule.	7:26B-6.5(a)	M	30	\$4,000
Failure to submit all workplans and reports documenting the completion of remediation.	7:26B-6.6	M	30	\$8,000
Failure to submit a negative declaration subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment.	7:26B-6.7(a)	NM		\$5,000
Failure to submit a negative declaration.	7:26B-6.7(b)	M	30	\$4,000
Failure to include all required information in the submission for a negative declaration.	7:26B-6.7(c)	M	30	\$4,000
Failure to certify a Negative Declaration in accordance with N.J.A.C. 7:26B-1.6.	7:26B-6.7(d)	M	30	\$3,000
8 Fee Schedule and Direct Billing Fees				
Failure to pay fees in accordance with Fee Schedule.	7:26B-8.1(a)	M	30	20% of outstanding fee
Failure to pay oversight costs.	7:26B-8.2	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation 7:26B-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
A Appendix A: Standard ISRA Remediation Agreement				
Failure to submit a Remedial Investigation Work Plan including a baseline ecological evaluation and all other required work that the Department has not already approved.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Investigation Work Plan to conform to the Department's comments and re-submit.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct the remedial investigation in accordance with the approved Remedial Investigation Work Plan and schedule.	7:26B, Appendix A	NM		\$8,000
Failure to submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E and the Remedial Investigation Work Plan and schedule.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct additional remedial investigation as required, including submission of another Remedial Investigation Work Plan and schedule, and another Remedial Investigation Report.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Investigation Report to conform to the Department's comments re-submit.	7:26B, Appendix A	M	30	\$8,000
Failure to submit a Remedial Action Work Plan.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Work Plan to conform to the Department's comments and re-submit.	7:26B, Appendix A	M	30	\$8,000
Failure to implement the approved Remedial Action Work Plan in accordance with the schedule.	7:26B, Appendix A	NM		\$8,000
Failure to submit to the Department a Remedial Action Report in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan and schedule.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as directed and submit subsequent Remedial Investigation Report and Remedial Action Report as applicable.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Report to conform the Department's comments and agrees to submit the modified Remedial Action Report to the Department.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as required.	7:26B, Appendix A	NM		\$8,000
Failure to submit a negative declaration as required.	7:26B, Appendix A	M	30	\$4,000
Failure to submit quarterly progress reports.	7:26B, Appendix A	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit all documents required by the Remediation Agreement, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department.	7:26B, Appendix A	M	30	\$4,000
Failure to submit the name, title, address and telephone number of the technical contact.	7:26B, Appendix A	M	30	\$4,000
Failure to submit all required payments and required number of copies of all documents.	7:26B, Appendix A	M	30	\$4,000
Failure to notify the Department's contact person at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.	7:26B, Appendix A	M	30	\$3,000
Failure to submit an extension request two weeks prior to any applicable deadline to which the extension request refers.	7:26B, Appendix A	M	30	\$4,000
Failure to establish and maintain a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs, including all operation, maintenance and monitoring costs of all engineering and institutional controls.	7:26B, Appendix A	NM		\$5,000
Failure to pay an annual remediation funding source surcharge when required.	7:26B, Appendix A	M	30	\$4,000
Failure to annually submit a detailed review of all remediation costs as required.	7:26B, Appendix A	M	30	\$4,000
Failure to increase the amount of the remediation funding source within thirty (30) calendar days after receipt of written notice from the Department.	7:26B, Appendix A	NM		\$5,000
Failure to maintain the remediation funding source in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.	7:26B, Appendix A	NM		\$5,000
Failure to submit appropriate fees.	7:26B, Appendix A	M	30	20% of outstanding fee
Failure to submit a check for the full amount of the Department's oversight costs, for the period invoiced.	7:26B, Appendix A	M	30	\$4,000
Failure to pay oversight costs accrued prior to termination	7:26B, Appendix A	M	30	\$4,000
Failure to pay interest on the unpaid balance of oversight costs.	7:26B, Appendix A	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to notify the Department as required in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay and to take all necessary action to prevent or minimize any such delay.	7:26B, Appendix A	M	30	\$3,000
Failure to submit a certified check made payable to the "Treasurer, State of New Jersey" for \$[penalty amount].00, upon submittal of signed Remediation Agreement.	7:26B, Appendix A	M	30	\$4,000
Failure to pay penalties for violations of the Remediation Agreement, or for failure to implement and maintain institutional controls that are part of a remedial action implemented pursuant to the Remediation Agreement.	7:26B, Appendix A	M	30	\$4,000
Failure to allow the Department and its authorized representatives access to all areas of the Site as required.	7:26B, Appendix A	NM		\$12,000
Failure to provide a copy of the Remediation Agreement to each contractor and subcontractor retained to perform the work required by the Remediation Agreement, to condition all contracts and subcontracts entered for the performance of such work upon compliance with its terms and conditions, and to be responsible to the Department for ensuring that contractors and subcontractors perform the work in accordance with the Remediation Agreement.	7:26B, Appendix A	M	30	\$4,000
Failure to submit all data and information developed pursuant to the Remediation Agreement as required.	7:26B, Appendix A	M	30	\$4,000
Failure to comply with the Remediation Agreement.	7:26B, Appendix A	NM		\$8,000
Failure to record a copy of the Remediation Agreement with the County Clerk and to provide the Department with written verification of filing as required.	7:26B, Appendix A	M	30	\$4,000
Failure to preserve and submit all data and information, as required.	7:26B, Appendix A	NM		\$5,000
Failure to provide written notice of dissolution of identity, liquidation of assets or the closure, termination or transfer of operations prior to such action; submit a cost review; provide written notice of a filing of a petition for bankruptcy, and when requested, within fourteen (14) days increase the remediation funding source.	7:26B, Appendix A	NM		\$5,000
Failure to submit two original copies of the signed Remediation Agreement, documentary evidence that the signatory has the authority to commit to the terms of the Remediation Agreement, and proof that the remediation funding source has been established.	7:26B, Appendix A	M	30	\$4,000

4. Department Oversight of the Remediation of Contaminated Sites N.J.A.C. 7:26C

<u>Subchapter and Violation</u>	<u>Citation 7:26C-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to submit the signatures and certifications specified in N.J.A.C. 7:26C-1.2(a) through (c)1.	7:26C-1.2	M	30	\$3,000
Failure to submit payment of the applicable oversight costs to the Department.	7:26C-1.5(b)	M	30	\$4,000
Failure to notify the Department immediately upon knowledge of a condition that posed an immediate environmental concern to the public health and safety and to the environment.	7:26C-1.5(c)	NM		\$8,000
2 Oversight Documents and No Further Action Letters				
Failure to employ an individual working for a business firm certified by the Department in the category of underground storage tank subsurface evaluation to conduct the remediation of an unregulated heating oil tank system.	7:26C-2.5(a)	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that is required by an Administrative Consent Order, an Administrative Order or a Judicial Order.	7:26C-2.5(d)1	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that is impacting any surface water body or wetlands.	7:26C-2.5(d)2	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that results in an Immediate Environmental Concern condition.	7:26C-2.5(d)3	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that results in conditions which require a vapor intrusion investigation.	7:26C-2.5(d)4	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system which causes ground water contamination that has migrated beyond the property boundaries of the property on which the discharge has occurred.	7:26C-2.5(d)5	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that requires any variance from the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.6(c) or (d).	7:26C-2.5(d)6	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that implements a restricted or limited restricted use remedial action.	7:26C-2.5(d)7	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system for which a NJPDES permit-by-rule is required for the remediation pursuant to N.J.A.C. 7:26E-6.3(c).	7:26C-2.5(d)8	NM		\$5,000
7 Remediation Funding Sources				
Failure to establish and maintain a remediation funding source.	7:26C-7.2(a)	NM		\$5,000
Failure to establish and maintain a remediation-funding source in an amount equal to the estimated cost of the remediation.	7:26C-7.2(c)1	NM		\$5,000
Failure to establish and maintain a remediation-funding source for a period of not less than the actual time necessary to complete the remediation.	7:26C-7.2(c)2	NM		\$5,000
Failure to submit information regarding areas of concern and cost estimate.	7:26C-7.3(a)	M	30	\$3,000
Failure to submit information required by the Department pursuant to N.J.A.C. 7:26C-7.3(b).	7:26C-7.3(b)	M	30	\$4,000
Failure to submit the required remediation trust fund agreement along with signed copies of the ACO, directive, court order or other judicial settlement.	7:26C-7.4(a)	M	30	\$4,000
Failure to submit the required remediation trust fund information pursuant to N.J.A.C. 7:26C-7.4(b).	7:26C-7.4(b)	M	30	\$4,000
Failure to submit to the Department, 30 days prior to the anniversary date of remediation trust fund, a written statement from the trustee confirming the value of the trust in an amount the Department approved.	7:26C-7.4(c)	M	30	\$4,000
Failure to submit an environmental insurance policy.	7:26C-7.5(a)	M	30	\$4,000
Failure to obtain an environmental insurance policy issued by an entity licensed by the State of New Jersey Dept. of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.5(b)1 through 5.	7:26C-7.5(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit to the Department, 30 days prior to the anniversary date of the environmental insurance policy, a written statement from the insurance company confirming the value of the environmental insurance policy in an amount the Department approved and renewal of the policy for the next 12-month period.	7:26C-7.5(c)	M	30	\$4,000
Failure to submit the line of credit agreement pursuant to N.J.A.C. 7:26C-7.6(b).	7:26C-7.6(a)	M	30	\$4,000
Failure to obtain a line of credit issued by an entity licensed by the State of New Jersey Dept. of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.6(b)1 through 5.	7:26C-7.6(b)	M	30	\$4,000
Failure to submit to the Department, 30 days prior to the anniversary date of the establishment of the line of credit, a written statement from the lender confirming the value of the line of credit in an amount the Department approved and renewal of the line of credit for the next 12-month period.	7:26C-7.6(c)	M	30	\$4,000
Failure to submit the required remediation funding source surcharge.	7:26C-7.8(a)	M	30	\$4,000
Failure to increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation pursuant to N.J.A.C. 7:26C-7.	7:26C-7.9(d)	NM		\$5,000
8 Site Access				
Failure to send a written request for access as required to each property owner.	7:26C-8.2(b)	M	30	\$4,000
Failure to send a second written request for access as required to each property owner.	7:26C-8.2(c)	M	30	\$4,000
Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.	7:26C-8.2(e)	M	30	\$4,000
9 Oversight Costs				
Failure to submit the payment of applicable fixed cost fees.	7:26C-9.2(a)	M	30	20 percent of outstanding fee
Failure to submit the payment of the Department's oversight costs.	7:26C-9.3(a)	M	30	\$4,000
A Appendix A: Standard Administrative Consent Order				
Failure to submit a Remedial Investigation Work Plan including a baseline ecological evaluation and all other required work that the Department has not already approved.	7:26C, Appendix A	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to modify the Remedial Investigation Work Plan to conform to the Department's comments and re-submit.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct the remedial investigation in accordance with the approved RI Work Plan and schedule.	7:26C, Appendix A	NM		\$8,000
Failure to submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E and the RI Work Plan and schedule.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct additional remedial investigation as required, including submission of another RI Workplan and schedule, and another RI Report.	7:26C, Appendix A	M	30	\$8,000
Failure to modify the RI Report to conform to the Department's comments re-submit.	7:26C, Appendix A	M	30	\$8,000
Failure to submit a Remedial Action Work Plan.	7:26C, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Work Plan to conform to the Department's comments and re-submit.	7:26C, Appendix A	M	30	\$8,000
Failure to implement the approved Remedial Action Work Plan in accordance with the schedule.	7:26C, Appendix A	NM		\$8,000
Failure to submit to the Department a Remedial Action Report in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan and schedule.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as directed and submit subsequent Remedial Investigation Report and Remedial Action Report as applicable.	7:26C, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Report to conform the Department's comments and agrees to submit the modified Remedial Action Report to the Department.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as required.	7:26C, Appendix A	NM		\$8,000
Failure to submit quarterly progress reports.	7:26C, Appendix A	M	30	\$8,000
Failure to submit all documents required by the Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department.	7:26C, Appendix A	M	30	\$4,000
Failure to submit the name, title, address and telephone number of the technical contact.	7:26C, Appendix A	M	30	\$4,000
Failure to submit all required payments and required number of copies of all documents.	7:26C, Appendix A	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to notify the Department's contact person at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.	7:26C, Appendix A	M	30	\$3,000
Failure to submit an extension request two weeks prior to any applicable deadline to which the extension request refers.	7:26C, Appendix A	M	30	\$4,000
Failure to establish and maintain a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs, including all operation, maintenance and monitoring costs of all engineering and institutional controls.	7:26C, Appendix A	NM		\$5,000
Failure to pay an annual remediation funding source surcharge when required.	7:26C, Appendix A	M	30	\$4,000
Failure to annually submit a detailed review of all remediation costs as required.	7:26C, Appendix A	M	30	\$4,000
Failure to increase the amount of the remediation funding source within thirty (30) calendar days after receipt of written notice from the Department.	7:26C, Appendix A	NM		\$5,000
Failure to maintain the remediation funding source in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.	7:26C, Appendix A	NM		\$5,000
Failure to submit a check for the full amount of the Department's oversight costs, for the period invoiced.	7:26C, Appendix A	M	30	\$4,000
Failure to pay oversight costs accrued prior to termination.	7:26C, Appendix A	M	30	\$4,000
Failure to pay interest on the unpaid balance of oversight costs.	7:26C, Appendix A	M	30	\$4,000
Failure to notify the Department as required in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay and to take all necessary action to prevent or minimize any such delay.	7:26C, Appendix A	M	30	\$3,000
Failure to submit a certified check made payable to the "Treasurer, State of New Jersey" for \$[penalty amount].00, upon submittal of executed Administrative Consent Order.	7:26C, Appendix A	M	30	\$4,000
Failure to pay penalties for violations of the Administrative Consent Order, or for failure to implement and maintain institutional controls that are part of a remedial action implemented pursuant to the Administrative Consent Order.	7:26C, Appendix A	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to allow the Department and its authorized representatives access to all areas of the Site as required.	7:26C, Appendix A	NM		\$12,000
Failure to provide a copy of the Administrative Consent Order to contractors and subcontractors as required, to condition all contracts and subcontracts as required, and to ensure that contractors and subcontractors perform the work in accordance with the Administrative Consent Order.	7:26C, Appendix A	M	30	\$4,000
Failure to submit all data and information developed pursuant to the Administrative Consent Order as required.	7:26C, Appendix A	M	30	\$8,000
Failure to comply with the Administrative Consent Order.	7:26C, Appendix A	NM		\$8,000
Failure to record a copy of the Administrative Consent Order with the County Clerk and to provide the Department with written verification of filing as required.	7:26C, Appendix A	M	30	\$3,000
Failure to preserve and submit all data and information, as required.	7:26C, Appendix A	NM		\$3,000
Failure to provide written notice of dissolution of identity, liquidation of assets or the closure, termination or transfer of operations prior to such action; submit a cost review; provide written notice of a filing of a petition for bankruptcy, and when requested, within fourteen (14) days increase the remediation funding source.	7:26C, Appendix A	NM		\$5,000
Failure to submit two original copies of the signed Administrative Consent Order, documentary evidence that the signatory has the authority to commit to the terms of the Administrative Consent Order, and proof that the remediation funding source has been established.	7:26C, Appendix A	M	30	\$4,000

5. The Underground Storage Tank Regulations N.J.A.C. 7:14B

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to include signatures and certifications when making a submission to the Department pursuant to N.J.A.C. 7:14B.	7:14B-1.7(a)	M	30	\$3,000
Failure to sign requisite certification by the appropriate party.	7:14B-1.7(b)2	M	30	\$3,000
Failure of a New Jersey professional engineer to sign and submit the requisite certification when submitting plans in accordance with N.J.A.C. 7:14B-10.3(b)1.	7:14B-1.7(c)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure of an individual certified in the classification of subsurface evaluator to sign and submit the requisite certification when submitting documents in accordance with N.J.A.C. 7:14B-10.3(b)9.	7:14B-1.7(d)	M	30	\$3,000
Failure of an individual to sign and submit the requisite certification when submitting documents in accordance with N.J.A.C. 7:14B-13.3(c).	7:14B-1.7(e)	M	30	\$3,000
Failure of an individual certified as a subsurface evaluator to sign, date and submit the requisite certification when submitting a cathodic protection permit application in accordance with N.J.A.C. 7:14B-10.3(b)5.	7:14B-1.7(f)	M	30	\$3,000
Failure of an individual certified as a subsurface evaluator who conducts or directs activities and prepares documents in accordance N.J.A.C. 7:14B-8.5 or 9.5 to sign, date and submit the requisite certification.	7:14B-1.7(g)	M	30	\$3,000
Failure of an individual certified as a subsurface evaluator who prepares documents in accordance with N.J.A.C. 7:14B-8.5 or 9.5 for another certified subsurface evaluator who conducted or directed on-site activities, to sign, date and submit the requisite certification.	7:14B-1.7(h)	M	30	\$3,000
3 Fees				
Failure to pay fees for tank registration, renewal & permit activity as required.	7:14B-3	M	30	20% of outstanding fee
Failure to submit oversight costs as required by N.J.A.C. 7:26C-9.3 and 9.5.	7:14B-3.5(d)	M	30	\$4,000
7 Release Reporting and Investigation				
Failure of an owner/operator to perform an investigation of a suspected release within seven days of the discovery of the suspected release.	7:14B-7.1(a)	NM		\$8,000
Failure to perform an investigation of a suspected release in accordance with all required procedures.	7:14B-7.2(a)	M	30	\$4,000
Failure to perform a Site Investigation within 60 calendar days of discovery of a suspected release, in accordance with N.J.A.C. 7:26E-3.3, when the seven-day investigation was inconclusive in confirming or disproving a suspected release.	7:14B-7.2(b)	NM		\$8,000
Failure to immediately report a confirmed discharge to the appropriate local health agency and the Department's Environmental Action Hotline.	7:14B-7.3(a)	NM		\$8,000
Failure to perform the remedial actions set forth in N.J.A.C. 7:14B-8.	7:14B-7.3(c)	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to implement the release response plan when a discharge was identified.	7:14B-7.3(d)	NM		\$8,000
Failure to report a discharge of a reportable quantity of hazardous substances other than petroleum or waste oil to the National Response Center per 40 CFR Part 302.	7:14B-7.3(e)	M	30	\$3,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3.3 and/or submit a site investigation report in accordance with N.J.A.C. 7:26E-3.13 when required by the Department due to a suspected discharge.	7:14B-7.4	NM		\$8,000
8 Remediation Activities				
Failure to take immediate action upon confirming a release.	7:14B-8.1(a)	NM		\$8,000
Failure to take immediate action to determine the source of the discharge upon confirming a release.	7:14B-8.1(a)1	NM		\$8,000
Failure to take immediate action to cease use of the underground storage tank system upon confirming a release.	7:14B-8.1(a)2	NM		\$8,000
Failure to take immediate action to mitigate any fire, safety or health hazard upon confirming a release.	7:14B-8.1(a)3	NM		\$20,000
Failure to take immediate action to conduct a visual inspection to detect and mitigate the effects of evident discharges upon confirming a release.	7:14B-8.1(a)4	NM		\$8,000
Failure to take immediate action to properly remove all hazardous substances from the underground storage tank system upon confirming a release.	7:14B-8.1(a)5	NM		\$20,000
Failure to take immediate action to repair, replace or close the underground storage tank system upon confirming a release.	7:14B-8.1(a)6	NM		\$8,000
Failure to take immediate action to comply with the reporting requirements at N.J.A.C. 7:14B-7.3 upon confirming a release.	7:14B-8.1(a)7	NM		\$8,000
Failure to perform a remedial investigation in accordance with N.J.A.C. 7:26E-4.	7:14B-8.2(a)1	Defer to specific 7:26E-4 violations		Defer to specific 7:26E-4 penalties
Failure to perform a remedial action in accordance with the requirements of N.J.A.C. 7:26E-6.	7:14B-8.2(a)2	Defer to specific 7:26E-6 violations		Defer to specific 7:26E-6 penalties
Failure to determine the classification of any wastes that are generated during the remedial investigation or remedial action.	7:14B-8.2(a)3	M	60	\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to remove all non-hazardous wastes from the site or treat soils on site in accordance with N.J.A.C. 7:26E-5 and 6, or reuse soils in accordance with N.J.A.C. 7:26E-6.2(b) upon Department approval, within six months after generation.	7:14B-8.2(a)4	M	90	\$5,000
Failure to remove all hazardous wastes from the site within 90 days of generation.	7:14B-8.2(a)5	M	30	\$5,000
Failure to submit the Remedial Investigation Report to the Department and local health agencies within 120 days after notification to the Department of the discharge.	7:14B-8.3(a)	M	30	\$8,000
Failure to submit a Remedial Action Selection report prepared in accordance with N.J.A.C. 7:26E within 120 days after notification to the Department of the discharge.	7:14B-8.3(a)1	M	30	\$8,000
Failure to have a remedial investigation report prepared by a Department Certified Subsurface Evaluator.	7:14B-8.3(b)	M	30	\$3,000
Failure to submit a request for No Further Action, a remedial investigation workplan, or a remedial action workplan with the remedial investigation report.	7:14B-8.3(c)	M	30	\$8,000
Failure to submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8, within 90 days of the approval of the remedial investigation workplan.	7:14B-8.3(d)	M	30	\$8,000
Failure to conduct additional sampling and analysis as required by the Department and/or submit a remedial investigation workplan in the timeframe required by the Department.	7:14B-8.3(e)	M	60	\$8,000
Failure to revise inadequate or incomplete submittals and resubmit the required information to the Department within 30 days or in the timeframe specified.	7:14B-8.3(f)	M	30	\$8,000
Failure to accept or reject in writing the Department's conditions for approved remedial investigation or remedial action workplans. Failure to submit a revision to said remedial investigation or remedial action workplan within 30 calendar days or in the timeframe specified.	7:14B-8.3(g)	M	30	\$8,000
Failure to provide the Department with 14 calendar days notice prior to initiation of remedial activities.	7:14B-8.3(i)	M	30	\$3,000
Failure to allow the Department site access to observe remedial activities.	7:14B-8.3(i)	NM		\$12,000

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit a remedial action workplan, for a portion of the facility that is determined to present an immediate threat to health and the environment, to the Department within 45 days of the Department's request.	7:14B-8.3(k)	NM		\$20,000
Failure to implement the remedial action workplan within the timeframes approved by the Department and/or obtain all necessary permits to perform the remedial action workplan.	7:14B-8.4(a)	M	30	\$5,000
Failure to submit a revised remedial action workplan upon discovery of new information available which was not adequately addressed in the original workplan.	7:14B-8.4(c)	M	30	\$8,000
Failure to submit progress reports, prepared in accordance with N.J.A.C. 7:26E-6.5, within the time schedule approved in the remedial action workplan.	7:14B-8.4(d)	M	30	\$8,000
Failure to submit a complete remedial action report, prepared in accordance with N.J.A.C. 7:26E-6.6, upon full implementation of the remedial action workplan.	7:14B-8.5(a)	M	30	\$8,000
Failure to submit an amended Remedial Action Report, in the time frame specified by the Department, that addresses the deficiencies of the initial Remedial Action Report.	7:14B-8.5(b)	M	30	\$8,000
Failure to remediate a discharge of hazardous substances in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E.	7:14B-8.6	M	30	\$5,000
Failure to conduct all remedial investigation and remedial action activities in accordance with N.J.A.C. 7:26E-1.9.	7:14B-8.7	NM		\$8,000
Failure to empty and repair or close a tank system which has leaked a hazardous substance into the annular space created by the secondary containment system.	7:14B-8.8(a)	M	30	\$5,000
Failure to submit to the Department a report which documents the investigation of the tank leak and its repair.	7:14B-8.8(b)	M	30	\$8,000
9 Out-of-Service UST Systems and Closure of UST Systems				
Failure to notify the Department within 30 days that a tank system is out of service.	7:14B-9.1(a)	M	30	\$3,000
Failure to follow the requirements of API Bulletin No. 1604 when a tank system is out of service for greater than three months.	7:14B-9.1(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to properly submit documentation to the Department for the extension of the 12-month out of service period.	7:14B-9.1(c)	M	30	\$4,000
Failure to close a tank system after it has been out of service for more than 12 months without the approval of the Department.	7:14B-9.1(d)	NM		\$8,000
Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities.	7:14B-9.1(e)	NM		\$12,000
Failure to notify the Department and all applicable local and county health departments in writing at least 30 days prior to closing an underground storage tank system.	7:14B-9.2(a)1	M	30	\$3,000
Failure to comply with all applicable requirements of the New Jersey Uniform Constriction Code regarding closing an underground storage tank system.	7:14B-9.2(a)2	M	30	\$4,000
Failure to include a copy of the Department notification with the application for a local demolition permit prior to closing an underground storage tank system.	7:14B-9.2(a)3	M	30	\$4,000
Failure to submit a completed New Jersey Underground Storage Tank Registration Questionnaire and fees, if the tank is not already registered, at least 60 days prior to closing an underground storage tank system.	7:14B-9.2(a)4	M	30	\$4,000
Failure to develop and implement a closure plan pursuant to the procedures set forth in N.J.A.C. 7:26E-6.3(b).	7:14B-9.2(b)	Defer to specific 7:26E-6 violations		Defer to specific 7:26E-6 penalties
Failure to submit a closure plan to the Department when a variance from N.J.A.C. 7:26E is necessary.	7:14B-9.2(c)	M	30	\$8,000
Failure to follow the closure requirements set forth in N.J.A.C. 7:26-9 for underground storage tank systems regulated by the New Jersey Hazardous Waste Regulations.	7:14B-9.3(a)	Defer to specific N.J.A.C. 7:26-9 violations		Defer to specific N.J.A.C. 7:26-9 penalties
Failure to follow the closure requirements set forth in N.J.A.C. 7:14B-9.2 for underground storage tank systems containing hazardous wastes which are not subject to the New Jersey Hazardous Waste Regulations.	7:14B-9.3(b)	Defer to specific N.J.A.C. 7:14B-9.2 violations		Defer to specific N.J.A.C. 7:14B-9.2 penalties

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to insure the underground storage tank system is closed by an individual certified for closure per N.J.A.C. 7:14B-13.	7:14B-9.3(c)	NM		\$12,000
Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities.	7:14B-9.3(d)	NM		\$12,000
Failure to empty and clean a tank prior to storing a non-hazardous substance.	7:14B-9.4(a)1	NM		\$8,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3, before the substance being stored was changed to a non-hazardous substance.	7:14B-9.4(a)2	NM		\$8,000
Failure to submit a site investigation report, prepared and presented in accordance with N.J.A.C. 7:26E-3.13, within 120 calendar days after the tank cleaning.	7:14B-9.4(a)3	M	30	\$8,000
Failure to immediately notify the Department upon identification of a discharge during activities associated with N.J.A.C. 7:14B-9.4(a), and to conduct a remedial investigation.	7:14B-9.4(b)	NM		\$8,000
Failure to submit to the Department a site investigation report within 120 days of the initiation of breaking ground for closure activities.	7:14B-9.5(a)	M	30	\$8,000
Failure to have an individual certified in subsurface evaluation prepare the site investigation report required at N.J.A.C. 7:14B-9.5(a).	7:14B-9.5(b)	M	30	\$3,000
Failure to maintain and make available to the Department upon request all records generated per N.J.A.C. 7:14B-9.	7:14B-9.5(c)	M	30	\$3,000
10 Permitting Requirements for UST Systems				
Failure to obtain a permit from the Department prior to the repair, installation, substantial modification or upgrade of an underground storage tank system.	7:14B-10.1(a)1	NM		\$8,000
Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.	7:14B-10.1(a)2	M	30	\$5,000
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$3,000
Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.	7:14B-10.2(a)	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.	7:14B-10.2(b)	M	60	\$4,000
Failure to submit a permit application on forms provided by the Department.	7:14B-10.3(a)	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or upgrade which are signed and sealed by a New Jersey profession engineer.	7:14B-10.3(b)1	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system indicating the size and location of the tank systems, existing structures on the site, and distances from lot lines.	7:14B-10.3(b)2	M	30	\$4,000
Failure to submit information documenting soil permeability.	7:14B-10.3(b)3	M	30	\$4,000
Failure to submit required documentation of the depth to ground water.	7:14B-10.3(b)4	M	30	\$4,000
Failure to submit corrosion system designs which are properly certified.	7:14B-10.3(b)5	M	30	\$4,000
Failure to submit a detailed description of the upgrade, installation, or repair that is to be performed.	7:14B-10.3(b)6	M	30	\$4,000
Failure to submit documentation of the precision of the performance of the release detection monitoring method chosen pursuant to N.J.A.C. 7:14B-6.1, 6.2 and 6.3.	7:14B-10.3(b)7	M	30	\$4,000
Failure to submit a scaled site diagram accurately indicating the locations of all sampling and monitoring points in relation to all underground storage tank systems at the facility.	7:14B-10.3(b)8	M	30	\$4,000
Failure to submit the required certification, signed by a Department certified subsurface evaluator, that the number and locations of all vapor or product monitoring points is sufficient to monitor the tank system.	7:14B-10.3(b)9	M	30	\$3,000
Failure to make the Department issued permit available for inspection by an authorized local, State or Federal representative and prominently display the permit at the facility site during the course of the permitted activity.	7:14B-10.5(a)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection by an authorized local, State or Federal representative.	7:14B-10.5(b)	M	30	\$3,000
Failure to contact the Department as required to obtain an emergency permit, and to submit a permit application within 14 calendar days of receipt of the emergency permit.	7:14B-10.6(b)	NM		\$8,000
Failure to provide required information when requesting an emergency permit.	7:14B-10.6(c)	M	30	\$4,000
Failure to make the Department issued emergency permit number available for inspection by an authorized local, State or Federal representative and prominently display the emergency permit number at the facility site during the course of the permitted activity.	7:14B-10.6(d)	M	30	\$3,000
Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.	7:14B-10.8(e)	NM		\$8,000
11 Municipal Ordinances				
Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.	7:14B-11.1(b)	M	30	\$4,000
Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.	7:14B-11.2(a)	M	30	\$4,000
Failure to submit to the Department a copy of the final ordinance.	7:14B-11.3(d)	M	30	\$4,000
13 Certification of Individuals and Business Firms				
Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.	7:14B-13.1(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-13.1(b)	M	30	\$3,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-13.1(c)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation 7:14B-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-13.1(d)	NM		\$5,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-13.1(e)1	NM		\$5,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)2	NM		\$5,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-13.1(h)	M	30	\$3,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-13.1(j)	M	30	\$3,000
Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.	7:14B-13.1(k)	M	30	\$3,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-13.1(l)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to comply with the professional business practices described in N.J.A.C. 7:14B-13.9.	7:14B-13.1(m)	NM		\$5,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).	7:14B-13.6(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-13.6(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-13.6.	7:14B-13.7(f)	M	30	\$3,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-13.9(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-13.9(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-13.9(a)3	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to enter into a written contract with a client that contains all of the provisions of N.J.A.C. 7:14B-13.9(b).	7:14B-13.9(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide a standard price list of the services that it provides upon request of the client.	7:14B-13.9(c)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-13.9(d)1	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-13.9(d)2	NM		\$5,000

Subchapter and Violation	Citation 7:14B-	Type of Violation	Grace Period (Days)	Base Penalty
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-13.9(e)	NM		\$5,000
16 Certification Of Individuals And Business Firms For Unregulated Underground Storage Tank Systems				
Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tank systems.	7:14B-16.2(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-16.2(b)	M	30	\$3,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-16.2(c)	M	30	\$3,000
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tank systems are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-16.2(d)	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tank systems to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-16.2(e)1	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tank systems to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-16.2(e)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.	7:14B-16.2(f)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to comply with the professional business practices described in N.J.A.C. 7:14B-16.10.	7:14B-16.2(g)	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit a list of the maximum price that they will charge to perform those services for which he or she or it is certified.	7:14B-16.2(g)1	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to cooperate in any audit of their pricing and business practices.	7:14B-16.2(g)2	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit documentation of the cost to provide the services for which the Petroleum Underground Storage Tank Remediation and Upgrade Closure Fund is providing financial assistance.	7:14B-16.2(g)3	M	30	\$3,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification other than those created by passing an examination.	7:14B-16.2(i)	M	30	\$3,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-16.2(j)	M	30	\$3,000
Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.	7:14B-16.2(k)	M	30	\$3,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-16.2(l)	M	30	\$3,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 CFR 1910.120(e)(8).	7:14B-16.7(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-16.7(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$5,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7.	7:14B-16.8(f)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-16.9(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-16.9(b)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-16.10(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-16.10(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-16.10(a)3	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to enter into a written contract with a client that contains all of the provisions of N.J.A.C. 7:14B-16.10(b).	7:14B-16.10(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide a standard price list of services to the client.	7:14B-16.10(c)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-16.10(d)1	M		\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-16.10(d)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-16.10(e)	NM		\$5,000

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Former N.J.A.C. 7:26C-10.4, Procedures for requesting and conducting adjudicatory hearings, recodified to N.J.A.C. 7:26C-10.6.
Repeal and New Rule, R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Section was "Amount of a civil administrative penalty".
Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).

See: 38 N.J.R. 4748(a).

In (c)5 table, added subchapter 16 references.

Amended by R.2008 d.262, effective September 2, 2008.

See: 39 N.J.R. 2687(a), 40 N.J.R. 5010(a).

In (c)2, rewrote the table.

Provisions of R.2006 d.383 were readopted without change by R.2008 d.322, effective September 30, 2008; and rewrote the tables in (c)4 and (c)5, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

7:26C-10.5 Penalty adjustment factors

(a) For violations that meet the criteria set forth at N.J.A.C. 7:26C-10.4(a)4, the Department may adjust the base penalty listed in the table at N.J.A.C. 7:26C-10.4(c) based on the following factors:

1. The Department may increase the amount of the penalty based on the compliance history of the violator as follows:

i. The second time that the same violation occurs, the Department may increase the amount of the penalty by a factor of two; and

ii. The third time the violation occurs and for each subsequent occurrence, the Department may increase the penalty by a factor of five.

2. The Department may increase the penalty by up to 100 percent if the violation is the result of any intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

New Rule, R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Former N.J.A.C. 7:26C-10.5, Civil administrative penalty for economic benefit, recodified to N.J.A.C. 7:26C-10.7.

7:26C-10.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to this chapter.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be up to \$20,000 for the first offense, up to \$40,000 for the second offense and up to \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of up to \$1,000 for the first offense, up to \$2,000 for the second offense and up to \$5,000 for the third and each subsequent offense.

(d) A violation under this section is non-minor and therefore is not subject to a grace period.

New Rule, R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Former N.J.A.C. 7:26C-10.6, Procedures for requesting and conducting adjudicatory hearings, recodified to N.J.A.C. 7:26C-10.9.

7:26C-10.7 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with any applicable requirements.

(b) The Department shall include the following dollar amounts in its calculation of economic benefit:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

2. The return earned or that may be earned on the amount of the avoided costs;

3. All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

4. All other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;

2. The amount of one-time nondepreciable expenditures;

3. The amount of annual expenses;

4. The useful life of capital;

5. Applicable tax, inflation and discount rates;

6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it

was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Recodified from N.J.A.C. 7:26C-10.5 by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

7:26C-10.8 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations of an administrative order, an administrative consent order, a remediation agreement, a requirement of the Industrial Site Recovery Act Rules, a requirement of the Underground Storage Tanks rules, a requirement of the Discharges of Petroleum and Other Hazardous Substances rules, a declaration of environmental restrictions, or a deed notice, the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. In each notice of civil administrative penalty assessment, the Department shall:

1. Identify the provisions violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty assessed pursuant to N.J.A.C. 7:26C-10.4; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-10.6.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a notice of civil administrative penalty becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:26C-10.6, a notice of civil administrative penalty assessment becomes a Final Order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a notice of civil administrative penalty assessment becomes a Final Order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a Final

Order upon receipt by the violator of a Final Order in a contested case.

(c) If the violator does not pay a civil administrative penalty within 30 calendar days after the date of a Final Order, and the penalty is not contested pursuant to N.J.A.C. 7:26C-10.6, or if the violator does not make a required payment pursuant to a payment schedule entered into with the Department, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing and continue until the violator pays the penalty in full.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-10.6, and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.

(e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The Department may assess and recover, by civil administrative order, the reasonable cost of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, in addition to the penalty assessment.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.
Recodified from N.J.A.C. 7:26C-10.3 by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

7:26C-10.9 Procedures for requesting and conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest a notice of civil administrative penalty assessment or an administrative order assessed or issued pursuant to this chapter, the violator shall submit an original request in writing to the Department at the address in (d) below, within 20 calendar days after the violator's receipt of the notice of civil administrative penalty assessment or an administrative order. The violator shall include the following information in each hearing request:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;
3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;

4. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order, stated in short and plain terms;

5. An admission or denial of each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours); and

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) The Department shall deny the hearing request if:

1. The violator fails to include all the information required by (a) above; or

2. The Department does not receive the request within 20 calendar days after the violator received the enforcement document being contested.

(c) The Department shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The violator shall send the request for an adjudicatory hearing to:

1. The Office of Legal Affairs

New Jersey Department of Environmental
Protection
PO Box 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request; and

2. New Jersey Department of Environmental Protection

Division of Remediation Support
PO Box 028
Trenton, New Jersey 08625-0028
Attention: Hearing Request.

Recodified from N.J.A.C. 7:26C-10.4 by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Recodified from N.J.A.C. 7:26C-10.6 by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

7:26C-11.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, to fund projects eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

7:26C-11.2 Application for loans and grants

(a) An applicant for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund shall submit an application on forms available from the Department and a written request, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, to the Department which includes the following information:

1. If the application is for a loan and/or grant that concerns the upgrade or closure of an underground storage tank regulated pursuant to N.J.A.C. 7:14B, a statement that the upgrade or closure is being conducted pursuant to N.J.A.C. 7:14B. The statement shall include, as applicable, the name of the Department bureau overseeing the remediation, the program interest name and program interest number (preferred ID), if known, and the name of the assigned Department case manager;

2. For tanks regulated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-23, a statement by the applicant that the underground storage tank has been properly registered pursuant to N.J.A.C. 7:14B-2;

3. For underground storage tanks regulated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-23, the registration number;

4. A statement by the applicant as to whether the application is for a loan, a grant, or both;

5. A statement by the applicant as to which of the following provisions of the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 et seq., apply to the applicant's request:

- i. A discharge of petroleum has occurred which poses an imminent and significant threat to drinking water sources, human health or to environmentally sensitive areas as defined pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 - ii. The regulated tank is required to be upgraded pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 et seq., including necessary remediation;
 - iii. The regulated tank is required to be closed pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 et seq., including necessary remediation;
 - iv. The regulated tank is required to be upgraded pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., but not pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991, including necessary remediation;
 - v. The regulated tank requires the remediation of a discharge other than those given priority above;
 - vi. The regulated tank is required to be closed pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., but not pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991, including necessary remediation; or
 - vii. The underground storage tank requires the remediation of a discharge of heating oil from an underground storage tank used to store oil for on-site consumption in a residential building;
6. A statement by the applicant whether an application has been made to any other funding source for a loan or grant, such as the Hazardous Discharge Site Remediation Fund or the New Jersey Spill Compensation Fund;
 7. A statement as to whether the applicant has previously received monies from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund for the remediation, or the closure or upgrade of an underground storage tank;
 8. A detailed description of the work to be completed under the loan and/or grant in accordance with the requirements of the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 9. A detailed cost estimate for the completion of work listed at (a)8 above. For an underground storage tank regulated pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B, a contractor certified pursuant to Underground Storage Tanks rules, at N.J.A.C. 7:14B-13, shall provide the cost estimate;
 10. The total amount of loan or grant requested;
 11. A statement as to whether the applicant is in violation of any Department requirements, or owes the Department any outstanding fees or penalties.
 - i. Any applicant not in compliance with all applicable Department rules and regulations shall submit a written description of, and explanation for such non-compliance, including a list of violations and outstanding fees, or penalties. The applicant shall specifically state whether the violations, fees, or penalties are currently being contested in a manner prescribed by law and whether the violations, fees or penalties resulted from a lack of financial resources to perform the required remediation;
 12. For applicants other than public entities or owners or operators of an underground storage tank used to store heating oil for on-site consumption in a residential building, a statement that the applicant has applied to a bank, insurance company or other financial institution and has been rejected for a loan, grant or coverage. The applicant shall supply a copy of the rejection letter to the Department.
 13. The last three annual financial statements of the applicant. An applicant who is a homeowner applying to remediate discharges at the applicant's domicile shall submit the applicant's last three Federal income tax returns; and
 14. A certification by an applicant who is requesting a conditional hardship grant which states the following:
 - i. "I certify that I owned or operated the subject petroleum underground storage tank system(s) as of December 1, 1996 and continually thereafter or inherited the property from a person who owned the petroleum underground storage tank system(s) as of that date; and
 - (1) I have a taxable income less than \$100,000 per year;
 - (2) My net worth, exclusive of my primary residence, is less than \$100,000; or
 - (3) The net worth of my business that owns or operates less than 10 underground storage tank systems is less than \$2,000,000.
 - (b) A person seeking to amend their approved loan or grant award shall submit to the Department the information required in (a) above with respect to the amendment.
 - (c) The Department shall review the applicant's request for a loan and/or a grant, or amendment thereto, based on the information provided by the applicant in accordance with (a) above and shall notify the applicant in writing within 30 calendar days after receipt of the application as follows:
 1. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively and technically complete and the Department has referred the request to

the Authority for financial review in accordance with N.J.A.C. 19:31-11.

2. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively or technically incomplete and the Department cannot take further action on the application until the deficiencies listed in the Department's notification are corrected; or

3. The applicant is not eligible for a loan or grant, or amendment thereto, from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund and a statement of the reason(s) therefor.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2008 d.322, effective November 3, 2008.
See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (a)1, substituted "If the application is for a loan and/or grant that concerns" for "A statement by the applicant that the remediation is being conducted in accordance with an oversight document executed pursuant to N.J.A.C. 7:26C or that" and inserted "regulated pursuant to N.J.A.C. 7:14B, a statement that the upgrade or closure".

7:26C-11.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

1. The remediation costs were incurred after August 30, 1997; and
2. The remediation associated with the remediation costs was conducted with Department oversight.

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-7.10 for the disbursement of funds.

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

APPENDIX A

STANDARD ADMINISTRATIVE CONSENT ORDER

The standard administrative consent order contains references to [Person], [amount], and other blank brackets [].

Upon the Department's issuance or entry of an Administrative Consent Order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document. The matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF THE:

[Site name] : ADMINISTRATIVE
CONSENT ORDER

AND :
[Name of Person] :
PROGRAM INTEREST :
NUMBER :

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through 19, the Solid Waste Management Act, N.J.S.A. 13:1E-1 through 91, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [], Lot [] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter "Property"), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").

2. [The full name and mailing address of each party executing the Administrative Consent Order.]

3. [The regulatory and enforcement history of the site.]

4. By entering this Administrative Consent Order, [Person] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order.

5. The scope of the investigation and remediation required by this Administrative Consent Order will include all

contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

6. [Additional findings to be added at the Department's discretion].

ORDER

I. Remedial Investigation Requirements

7. Within [] calendar days after the effective date of this Administrative Consent Order as set forth in paragraph 70 below (hereinafter, "the effective date of the Administrative Consent Order"), or as otherwise approved in writing by the Department, [Person] agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E, including a schedule pursuant to N.J.A.C. 7:26E-4.2(b). [Person] agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

8. Within [] calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the RI Work Plan to conform to the Department's comments and agrees to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Work Plan.

9. Upon receipt of the Department's written final approval of the RI Work Plan, [Person] agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

10. [Person] agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

11. If upon review of the RI Report the Department determines that additional remedial investigation is required, the Department shall notify [Person] of the additional work that is required. [Person] agrees to submit to the Department another RI Workplan and schedule for the additional work. Upon approval of the RI Workplan for the additional required work, [Person] agrees to conduct additional remedial investigation and submit another RI Report pursuant to the approved schedule.

12. Within [] calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, [Person] agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Report.

II. Remedial Action Requirements

13. Within [] calendar days after receipt of the Department's written approval of the RI Report, [Person] agrees to submit to the Department a Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

14. Within [] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the Department's comments and agrees to submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Work Plan.

15. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, [Person] agrees to implement the approved Remedial Action Work Plan in accordance with the schedule therein.

16. [Person] agrees to submit to the Department a Remedial Action Report (hereinafter "RA Report") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the RA Work Plan and the schedule therein.

17. If upon review of the RA Report, the Department determines that additional remediation is required, [Person] agrees to conduct additional remediation as required by the Department including submission of additional workplans and reports, and schedules as applicable.

18. Within [] calendar days after receipt of the Department's written comments on the RA Report, or longer as authorized by the Department, [Person] agrees to modify the RA Report to conform to the Department's comments, and agrees to submit the modified RA Report to the Department.

The determination as to whether or not the modified RA Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments, and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Report.

III. Additional Remedial Investigation and Remedial Action Requirements

19. If at any time that this Administrative Consent Order is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety and the environment, [Person] agrees to conduct such additional remediation as the Department directs.

IV. Progress Reports

20. [Person] agrees to submit quarterly progress reports which detail the status of [Person's] compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). [Person] agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. [Person] agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. [Person] may request that the Department allow progress reports be submitted semi-annually or annually.

V. Project Coordination

21. [Person] agrees to submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues pursuant to Section X. of this Administrative Consent Order, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine [Person's] compliance with the requirements of this Administrative Consent Order for purposes of assessing penalties and availing itself of any other applicable remedies.

22. Within seven (7) calendar days after the effective date of this Administrative Consent Order, [Person] agrees to submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to [Person's] agent, identified in paragraph 49. below, of the date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

23. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, [Person] agrees to submit all payments and [number of copies] copies of all documents required by this Administrative Consent Order to the Department's contact.

24. [Person] agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to paragraph 23. above at least fourteen (14) calendar days prior to the initiation of any field activities at the site which are related to remediation, development or redevelopment.

25. The Department will consider a written request for an extension of time to perform any requirement in this Administrative Consent Order, provided that [Person] submits any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

VI. Remediation Funding Source and Remediation Funding Source Surcharge

26. [Person] agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. [Person] agrees that the initial remediation funding source amount is \$[].

27. [Person] agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

VII. Project Cost Review

28. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, and annually thereafter on the same calendar day, [Person] agrees to submit to the Department a detailed review of all remediation costs expended by [Person] to comply with this Administrative Consent Order, including:

- (a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
- (b) The detailed estimated remediation costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
- (c) The reason for any changes from the previously submitted cost review.

29. At any time after [Person] submits the first cost review pursuant to the preceding paragraph, [Person] may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

30. If the estimated costs of meeting [Person's] obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, [Person] agrees to within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

31. If [Person] remediates the site to a restricted use remediation standard and [Person] implements institutional and engineering controls, [Person] shall maintain the remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.

VIII. Oversight Cost Reimbursement

32. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 34., determined pursuant to N.J.A.C. 7:26C-9.3, [Person] agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period invoiced in the Department's summary.

33. [Person] agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.

34. [Person] also agrees to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

IX. Reservation of Rights

35. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that [Person] has violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, the Department shall notify [Person] in writing of

the obligation(s) which it has not performed, and [Person] shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

36. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order, except as provided in paragraph 48. of this Administrative Consent Order. Under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

37. This Administrative Consent Order shall not be construed to affect or waive the claims of federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

38. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, [Person] reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

39. Except as otherwise set forth herein, by the execution of this Administrative Consent Order the Department does not release [Person] from any liabilities or obligations [Person] may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

X. Force Majeure

40. If any event specified in the following paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Administrative Consent Order, [Person]

agrees to notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] agrees to take all necessary action to prevent or minimize any such delay.

41. The Department will extend in writing the time for compliance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

(a) [Person] has complied with the notice requirements of the preceding paragraph;

(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Person]; and

(c) [Person] has taken all necessary action to prevent or minimize any such delay.

42. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

43. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this Administrative Consent Order;

(c) Contractor's breach, unless [Person] demonstrates that such breach falls within the above paragraphs; and

(d) Failure to obtain access required to implement this Administrative Consent Order, unless denied by a court of competent jurisdiction.

XI. Penalties

44. [OPTIONAL--[Person(s)] shall submit to the Department a certified check made payable to the "Treasurer, State of New Jersey" for \$[]00, no later than [Person(s)] execution and submittal to the Department of this Administrative Consent Order. The Department's acceptance of the penalty shall not be construed as a waiver of the Department's right to compel [Person(s)] to specifically perform their obligations under this Administrative Consent Order.]

45. [Person] agrees to pay penalties for its violations of this Administrative Consent Order, or for its failure to implement and maintain institutional controls including by way of example, a deed notice or declaration of environmental restriction that are part of a remedial action

implemented pursuant to the order, according to the amounts and conditions in N.J.A.C. 7:26C-10.

46. [Person] agrees that its payment of a penalty pursuant to N.J.A.C. 7:26C-10 does not alter [person's] responsibility to complete any requirement of this Administrative Consent Order.

47. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement] [List each non-DEP party to this Administrative Consent Order] are jointly and severally liable for penalties for violations of this Administrative Consent Order.

XII. Dispute Resolution

48. In the event a conflict arises between [Person] and the Department, [Person] may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

XIII. General Provisions

49. [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Administrative Consent Order. Unless and until [Person] provides the Department with the name, title address and telephone number of [Person's] new agent.

[Name, title, address and telephone number of [Person's] agent]

50. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site [Person] has access to, at all times, for the purpose of monitoring [Person's] compliance with this Administrative Consent Order and/or to perform any remedial activities [Person] fails to perform as required by this Administrative Consent Order. [Person] agrees that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph 35, above.

51. [Person] agrees to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

52. [Person] agrees to provide a copy of this Administrative Consent Order to each contractor and subcontractor retained to perform the work required by this Administrative Consent Order and agrees to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Administrative Consent Order. [Person] agrees to be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this Administrative Consent Order.

53. Nothing in this Administrative Consent Order relieves [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent Order shall not excuse [Person] from obtaining and complying with any applicable Federal, State or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Administrative Consent Order. This Administrative Consent Order shall not preclude the Department from requiring that [Person] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by [Person] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then [Person] agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

54. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

55. Upon the receipt of a written request from the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, [was] were developed pursuant to this Administrative Consent Order. [Person] reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

56. [Person] agrees to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

57. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by [Person] and the Department. Any amendment to this Administrative Consent Order shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the applicable regulations or this Administrative Consent Order prior to executing any such amendment.

58. [Person] waives its rights to an administrative hearing concerning the entry of this Administrative Consent Order.

59. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

60. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

61. This Administrative Consent Order represents the entire integrated agreement between the Department and [Person] concerning the site subject to this Administrative Consent Order and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

62. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, [Person] agrees to record a copy of this Administrative Consent Order with the County Clerk, [] County, State of New Jersey and agrees to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Administrative Consent Order stamped "Filed" by the County Clerk.

63. This Administrative Consent Order shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this Administrative Consent Order.

64. [Person's] document retention policy notwithstanding, [Person] agrees to preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of [Person's] divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] agrees to submit to the Department all data and information, including technical

records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to data related to site conditions, sampling, or monitoring.

65. [Person] agrees to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets, or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] agrees to submit a cost review pursuant to this Administrative Consent Order to the Department. [Person] agrees to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] agrees to obtain and submit to the Department additional financial assurance pursuant to this Administrative Consent Order.

66. If [Person] remediates the Site to a restricted use standard and [Person] implements institutional and engineering controls, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source until the Department determines that the site is remediated to the applicable unrestricted use standard.

67. If [Person] remediates contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department stating that [Person] has completed the remediation required by this Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent Order and therefore [Person] does not need to continue to maintain a remediation funding source nor pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Administrative Consent Order is thereby terminated. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Administrative Consent Order.

68. Except as provided in paragraph 55 above, [Person] may assert a claim of confidentiality for any information

submitted by [Person] pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

69. [Person] agrees to submit to the Department, two copies of the executed original Administrative Consent Order, each with the original signature of [Person] or its authorized representative, and documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind [Person] to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

70. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and [Person].

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____ BY: _____
Signature

Print Full Name Signed Above

Title
[Print Name of Company executing Order]

Date: _____ BY: _____
Signature

Print Full Name Signed Above

Title

Recodified from N.J.A.C. 7:26C App. C and amended by R.1997 d.499, effective November 17, 1997.
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).
Former N.J.A.C. 7:26C App. A, "Standard Memorandum of Agreement", repealed.
Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).
Under ORDER, deleted former II2, and recodified former II3 through II10 as II2 through II9, inserted VIII6, substituted references to deed notices for references to declarations of environmental restrictions in XIII19 and XIII20, and substituted "the Department approved deed notice with the county in which the property is located" for "a declaration of environmental restrictions" at the end of the first sentence in XIII19.
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.
Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).
Rewrote the appendix.

APPENDIX B

STANDARD PUBLICLY CONDUCTED ADMINISTRATIVE CONSENT ORDER

The standard publicly conducted Administrative Consent Order contains references to [Person] [amount], and other blank brackets []. Upon the Department's issuance or entry

of an Administrative Consent Order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF THE :
 [Site name] SITE : ADMINISTRATIVE
 : CONSENT ORDER
 AND :
 [Name of Person] :
 :
 [Program Interest Number] :

The Administrative Consent Order is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and N.J.S.A. 58:10B 1 et seq., and duly delegated to the Assistant Director for the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the administrative consent order.]
2. [The full name and mailing address of each party executing the administrative consent order.]
3. [The regulatory and enforcement history of the site.]
4. By entering this administrative consent order, [Person] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this administrative consent order.

ORDER

I. Reimbursement of Prior Costs [Optional]

1. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, [Person] shall pay to the Department the sum of \$[amount] as reimbursement of costs incurred by the Department to date, in connection with the investigation of, and response to, the matters described in the Findings hereinabove. [Person] shall make payment of the above amount by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submit it with the Department's Form 062A to:

New Jersey Department of Environmental
 Protection
 Bureau of Revenue
 PO Box 402
 440 East State Street
 Trenton, New Jersey 08625-0402

II. Payment

1. The Department will conduct a [remedial phase] of hazardous substances, as defined by the Spill Compensation and Control Act, and all pollutants, as defined by the Water Pollution Control Act, discharged at, emanating from, or which have emanated from the Site. The [remedial phase] will be performed in accordance with N.J.A.C. 7:26E.

2. [Person] shall pay for all of the Department's costs in its preparation and performance of the [remedial phase] described above, including contracting costs and the cost of the Department's administration and supervision of the performance of the [remedial phase] as follows (hereinafter collectively "cost of the [remedial phase]"):

(a) Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay the sum of \$[amount] to the Department to pay the costs of the [remedial phase]. The Department shall deposit this payment in a separate interest bearing account (hereinafter "Account"). The Department will draw on the Account to pay the costs of the [remedial phase]. All interest earned upon the Account shall be credited to the Account.

(b) Within thirty (30) calendar days after payment of the invoices by the Department, the Department to its contractors, the Department will provide [Person] with copies of all invoices submitted to the Department by its contractors. Within thirty (30) calendar days after the Department draws down on the Account the Department will provide [Person] with a statement showing that the Department has paid the invoices from the Account.

(c) Funds remaining in the Account upon the Department's completion of the remedial phases described in this administrative consent order shall be promptly returned to [Person] by the Department.

III. Exchange of Information

1. The Department will provide [Person] with final copies of [remedial phase] documents defined as Deliverables in the approved contract between the Department and its contractor(s), which include: Work Plan and Sampling Plans; Quality Assurance/Quality Control ("QA/QC") Protocols; [remedial phase] Reports; Endangerment or Risk Assessment Reports; and Data Reports that include all data that have passed or failed QA/QC. For any data that fails QA/QC, the reasons for such failure will be explained in the data report.

2. [Person] may submit written comments to the Department on the Deliverables. The Department will review all such comments submitted by [Person], but is under no obligation to incorporate [Person's] comments in the Deliverables.

3. The Department will schedule meetings concerning the [remedial phase] with [Person] as necessary.

4. The Department will allow [Person] to take split-samples of all samples collected during a sampling event as part of the [remedial phase] provided however, that [Person's] representatives do not in any way impede the progress of the [remedial phase].

IV. General Provisions

1. [Person] hereby consents to and agrees to comply with this administrative consent order which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

2. No modification or waiver of this administrative consent order shall be valid except by written amendment to this

administrative consent order duly executed by [Person] and the Department. Any amendment to this administrative consent order shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules or this administrative consent order prior to executing any such amendment.

3. [Person] waives its rights to an administrative hearing concerning the entry of this administrative consent order.

4. This administrative consent order shall be governed and interpreted under the laws of the State of New Jersey.

5. This administrative consent order shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the facility or site shall alter signatory's responsibilities under this administrative consent order.

6. Except as otherwise provided, the requirements of this administrative consent order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this administrative consent order. Such written notice shall not relieve [Person] from the obligation to conduct future remediation pursuant to Federal, State or local laws for matters not addressed by this administrative consent order.

7. By entering into this Administrative Consent Order, the Department does not waive its right to assess or collect civil or civil administrative penalties for past, present and future violations by [Person] of any New Jersey environmental statutes or regulations.

8. Except as otherwise stated in this Administrative Consent Order, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Administrative Consent Order, [Person] reserves any defenses which the Spill Compensation and Control Act, (Matter of Kimber Petroleum Corp., 110 N.J. 69 (1988)) or their amendments, supplements and progeny allow.

9. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and [Person]. [Person] shall return the executed Administrative Consent Order to the Department for Department signature within five (5) calendar days from the effective date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____ BY: _____
Signature

Print Full Name Signed Above

Title

[Print Name of Company executing Order]

Date: _____ BY: _____
Signature

Print Full Name Signed Above

Title

Recodified from N.J.A.C. 7:26C App. D and amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In I1, substituted "the Department's" for 'NJDEPE"; in II1, substituted "remedial" for "remediation" in the last sentence; in IV8, substituted "Administrative Consent Order" for "[Order]" throughout; in IV9, substituted "[Person] shall return the executed Administrative Consent Order to the Department" for "[Person] shall return executed [Order] to the Department".

APPENDIX C

COVENANT NOT TO SUE

The standard covenant not to sue contains matter in brackets []. Upon the Department's issuance of a covenant not to sue, the Department will choose the matter in brackets which is applicable to the specific circumstances of the particular site. The Department may elect to issue a covenant not to sue in one or more parts. The Department may modify this document to address the unique circumstances of a publicly conducted remediation.

COVENANT NOT TO SUE

The Department issues this Covenant Not to Sue (Covenant) pursuant to N.J.S.A. 58:10B-13.1. That statute requires a Covenant with each no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and the Department makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

The Department covenants, except as provided in the preceding paragraph, that it will not bring any civil action against:

- (a) the person who undertook the remediation;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property;

for the purposes of requiring remediation to address contamination which existed prior to the date of the [Select one: final certified report (including the report date and title), or affidavit (including the date and the name of the person who signed the affidavit)] for the real property) at [Select one: industrial establishment, site or area(s) of concern] identified above, or payment of cleanup and removal costs for such additional remediation.

[Include the following paragraph if either engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern:

The person who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain all applicable engineering and institutional controls and conduct periodic compliance monitoring in the manner the Department requires.]

[Include the following paragraph if a restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, pursuant to N.J.A.C. 7:11-2.6 and N.J.A.C. 7:1J-2.7 respectively for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

[Include the following paragraph if a limited restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, pursuant to N.J.A.C. 7:11-2.6 and N.J.A.C. 7:1J-2.7 for any costs or damages relating to the remediation covered by this Covenant if the Department requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

Pursuant to N.J.S.A. 58:10B-13.1d, this Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. The Department reserves its right to take all appropriate enforcement for any failure to do so.

The Department may revoke this Covenant at any time after providing notice upon its determination that:

(a) any person with the legal obligation to comply with any condition in this No Further Action Determination has failed to do so;

(b) [Include the following language, if engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern:

i. any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so; or

ii. any person with the legal obligation to submit, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and continue to be protective of the public health and safety and of the environment has failed to do so.]

This Covenant, which the Department has executed in duplicate, shall take effect immediately once the person who undertook the remediation has signed and dated the Covenant on the lines supplied below and the Department has received one copy of this document bearing original signatures of the Department and the person who undertook the remediation.

[Insert Name of Person who undertook the remediation]

By: _____

Title: _____

Dated: _____

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Title: _____

Dated: _____

Recodified to N.J.A.C. 7:26C App. A by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Standard Responsible Party Oversight Document". New Rule, R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Amended by R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

In (d), inserted "payment for compensation for damages to, or loss of, natural resources," following "identified above".

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Under the second Covenant not to Sue heading, rewrote the second (b).

APPENDIX D

DEVELOPER CERTIFICATION

IN THE MATTER OF THE :

[Insert Site Name, : DEVELOPER

KCSL#, and :

NJDEP Case Number] : CERTIFICATION

AND :

[Insert Name of Person] :

Name of Authorized Individual

Authorized Individual's Title

Name of Person

Address of Person

hereby certifies, on behalf of [insert name of person], that he or she is authorized to make this binding Certification for the [describe here the real property that [insert name of person] is remediating, including any name by which the Site is known, the street address, all blocks and lots, the municipality, county and the DEP Known Contaminated Site List Number] [(the Site)], and, with regard to that Site, [insert name of person] further certifies as follows:

1. If person is an owner of the site, or a prospective purchaser of the site: [Insert name of person] insert one of the following:

- purchased the Site on [insert date];
- acquired title to the Site by devise or succession on [insert date];
- intends to acquire the Site after the date of this Certification.

2. If person is an owner of the site, or a prospective purchaser of the site insert one of the following unless the person acquired the site on or after January 6, 1998 and entered into an oversight document with the Department prior to acquiring ownership of the Site:

If person acquired title to the Site on or after September 14, 1993, insert the following:

[Insert name of person] has undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the Site, including the performance of a preliminary assessment and a site investigation, if necessary pursuant to N.J.A.C. 7:26E. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(2).

If person acquired title to the Site prior to September 14, 1993, insert the following:

At the time of acquisition, [Insert name of person] undertook all appropriate inquiry on the previous ownership and uses of the Site based upon generally accepted good and customary standards, and, as result of that inquiry, did not know and had no reason to know that any hazardous substances had been discharged at the Site. After acquiring title to the Site, [Insert name of person] submitted to the Department, on [insert date], a prelimi-

nary assessment report prepared pursuant to N.J.A.C. 7:26E-3.2, and, if necessary pursuant to N.J.A.C. 7:26E-3, a site investigation report prepared pursuant to N.J.A.C. 7:26E-3.13. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(5).]

3. If the person acquired title to the Site on or after January 6, 1998 and entered into an oversight document with the Department prior to acquiring ownership of the Site, insert the following:

[Insert name of person] has:

- a. Within 10 days after acquiring title to the Site, agreed in writing (a copy of which is attached hereto) to give the Department access to the Site to oversee the remediation and to perform any remediation that [insert name of person] does not perform; and
- b. Within 30 days after acquiring title to the Site, commenced remediation of the Site, including any migration, pursuant to a Department oversight document executed on [insert date, which must be prior to date of acquisition] and is presently in compliance with all of the Department's remediation requirements.

4. [Insert the following if person executing this Certification is an owner of the Site and has discovered a discharge at the Site.] Concerning discharges at the site which occurred prior to [insert name of person]'s acquiring title, where applicable, to the Site:

- a. [Insert name of person] discovered the discharges at the Site on [insert date]; and
- b. [Insert name of person] reported these discharges to the Department on [insert date] via [insert one of the following:
 - telephone call to the DEP Hotline,
 - written documentation, or
 - describe other means of providing the Department notice of the discharges].

5. [Insert name of person], at any time up to the date of this Certification:

- a. Has not discharged, at the Site, any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;
- b. Has not been in any way responsible, pursuant to any law, for any contaminant at or emanating from the Site, or contamination that has emanated from the Site, other than by acquiring ownership of the Site, if applicable, after all of the discharges occurred at the Site;
- c. Has not aggravated or contributed to contamination at or emanating from the Site, or contamination that has emanated from the Site;

d. Has not, as a holder of a security interest in a facility or underground storage tank facility, actively participated in the management of a facility or underground storage tank facility at the Site, as those terms are defined in N.J.S.A. 58:10-23.11a et seq.;

e. Has not negligently caused a new discharge at the Site, after the date of *[insert name of person]*'s foreclosure on a security interest in the Site, pursuant to N.J.S.A. 58:10-23.11g.6.e(1); and

f. Is not at the time of this certification, and has never been, an owner or operator of an industrial establishment at the Site pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

6. *[Insert name of person]* is not a corporate successor to, affiliated with, or otherwise related to any person described below such that *[insert name of person]* would be liable for the contamination other than by acquiring title to the site:

a. Any entity that the *[Insert name of person]* has reason to believe has discharged at the Site any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Any entity that *[Insert name of person]* has reason to believe is in any way responsible, pursuant to any law, for contamination at or emanating from the Site, or contamination that has emanated from that Site, other than by acquiring ownership, if applicable, of the Site after all of the discharges occurred at the Site; or

c. Any person that *[Insert name of person]* has reason to believe is liable, pursuant to N.J.S.A. 58:10-23.11g, for cleanup and removal costs, as that phrase is defined at N.J.S.A. 58:10-23.11b, for the Site.

7. *[Insert name of person]* agrees that until the remediation is complete, *[insert name of person]* is under a continuing obligation to inform in writing the applicable Case Manager at the New Jersey Department of Environmental Protection, within thirty (30) calendar days after any of the above facts or circumstances change and the date of such change.

8. *[Insert name of person]* is familiar with the Site and with all matters addressed in this Certification.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment, and that I will also forfeit developer status, for the purposes of the Department's oversight cost formula, in that event.

[Type or Print Full Name of Person]

Date: _____ BY: _____

Signature of Authorized Individual
*[Type or Print Name and Title of
Authorized Individual]*

Dated: _____ Witness: _____

Signature of Witness
[Type or Print Name of Witness]

Recodified to N.J.A.C. 7:26C App. B by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Standard Publicly Conducted Administrative Consent Order".

New Rule, R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

APPENDIX E

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Standard Letter of Credit".

APPENDIX F

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Standard Standby Trust Agreement".

APPENDIX G

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Standard Fully Funded Trust Agreement".

APPENDIX H

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Standard Surety Bond".

APPENDIX I

(RESERVED)

Repealed by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Appendix was, "Oversight Cost Formula".

APPENDIX 6

Alternative Soil Remediation Standard Application

A. SITE INFORMATION

1. Program Interest Name: _____
2. Program Interest Number (Preferred ID): _____
3. EPA site ID number, if applicable: _____
4. Street address: _____
5. City: _____
6. County: _____
7. Block and Lots of the site (duplicate if the site is located in more than one municipality):
 - a. Name of the municipality in which the site is located: _____
 - b. Block and Lots: _____
 - c. Year of tax map: _____
8. The location of the site in a GIS-compatible format (State Plane Coordinates): _____

B. APPLICANT INFORMATION:

- a. Name of applicant: _____
- b. Company name: _____
- c. Mailing address: _____
- d. Phone number: (_ _ _) _ _ _ - _ _ _ _

C. PROPOSED ALTERNATIVE SOIL REMEDIATION STANDARD INFORMATION

(Add additional pages as necessary)

1. Name and chemical abstract number of contaminant for which ARS is being sought:
2. A summary of contaminant concentrations at the site for which the ARS is being sought.
3. Description of the exposure pathway for which the ARS is being sought:
4. Proposed numeric ARS:
5. Documentation to support proposed ARS, including but not limited to the following:
 - a. New chemical toxicity.
 - b. New risk assessment methodology or models.
 - c. Alternative land use planned for the site.
- d. Site specific conditions that support modification of input parameters for models used to develop ARS pursuant to Appendices 4 through 6.

D. Oversight Document Information

1. Is the site for which the ARS is being sought being remediated pursuant to Department oversight: Yes ___ No ___
2. If yes, the type of Department oversight pursuant to which the Department is reviewing the application:
Memorandum of Agreement
 - a. Effective date of Memorandum of Agreement _____
 - b. Name of Department contact person _____

Administrative Consent Order

- a. Effective date of Administrative Consent Order _____
- b. Name of Department contact person _____

Industrial Site Recovery Act Program

- a. Name of Department contact person _____

Underground Storage Tank Program

- a. Name of Department contact person _____

3. If no, the applicant shall enter into a Memorandum of Agreement with the Department pursuant to N.J.A.C. 7:26C-3 prior to the Department reviewing the application. Upon the applicant entering into the Memorandum of Agreement, the applicant shall contact the Department with the following information.

- a. Effective date of Memorandum of Agreement _____
- b. Name of Department contact person _____

7:26E-1.5 Certifications

(a) If a document prepared pursuant to this chapter is to be submitted to the Department, it shall be signed and certified pursuant to N.J.A.C. 7:26C, 7:26B or 7:14B.

7:26E-1.7 Criteria for going beyond the minimum technical requirements

(a) The Department may require additional work beyond the minimum technical requirements set forth in this chapter for whenever necessary for the Department to ensure adequate protection of human health and the environment based upon a review of the following areas:

1. The number or magnitude of the discharge(s) being investigated;
2. The nature of the substances discharged;
3. A change in the certification or other authorization of the laboratory performing analyses previously submitted for the site in question or any other site;
4. The identification of additional exposure pathways not otherwise fully investigated pursuant to the minimum requirements;
5. The identification of additional receptors not otherwise fully investigated pursuant to the minimum requirements;
6. Distance to and sensitivity of receptors;
7. When the Department determines that additional data or information is needed to fully evaluate the site; and
8. Any other site-specific conditions the Department identifies which necessitate the need for additional work.

7:26E-3.12 Site investigation—historic fill material

(a) If historic fill material is present at the site, it may be assumed that the fill material is contaminated above an applicable residential soil remediation standard and a remedial investigation of the historic fill material may be conducted pursuant to N.J.A.C. 7:26E-4.6(b).

(b) As an alternative to (a) above, if historic fill material is present at the site, it may be demonstrated that the historic fill is not contaminated above the applicable residential soil remediation standards on a case by case basis.

(c) An appropriate number of ground water samples (minimum of one sample) are required when a high degree of certainty is needed to document that ground water is not contaminated, including, without limitation, if the historic fill site is in an area where ground water is used for potable water. All ground water sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.7(c).

New Rule, R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (a) and (b), substituted references to residential soil remediation standards for references to unrestricted use remediation standards.

7:26E-5.2 Remedial action selection report

(a) The person responsible for conducting the remediation shall demonstrate to the Department that the proposed remedial action is appropriate by submitting a remedial action selection report to the Department for approval, prior to implementation of the remedial action, when:

1. The selected remedial action is a restricted use remedial action, except for interim response actions immediately necessary to contain or stabilize a discharge in order to prevent damage to public health, safety or the environment.

2. The selected remedial action utilizes an innovative remedial action technology;

3. The selected remedial action will take longer than five years to complete from the time the remedial action is implemented, or the remedial action workplan is approved by the Department; or

4. The selected remedial action is being implemented to address ground water, surface water or sediment contamination or ecological impact.

(b) A remedial action selection report is not required if the site being remediated is subject to the requirements for preparing a feasibility study pursuant to CERCLA or a corrective measures study pursuant to RCRA.

(c) A remedial action selection report is not required if the site or area of concern being remediated is an unregulated heating oil tank system, unless the person responsible for conducting the remediation is required to enter into a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order in order to obtain a No Further Action letter pursuant to the Department Oversight of the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.5(d).

(d) The remedial action selection report shall be presented in a format that corresponds to the outline of this section, except that for innovative remedial action technologies the format shall include the information required at N.J.A.C. 7:26E-5.1(d), and shall include:

1. A detailed description of the selected remedial action including, without limitation, specifications for engineering and institutional controls and a plan for monitoring of such controls pursuant to N.J.A.C. 7:26E-8;

2. A list of the remediation standards that the proposed remedial action will comply with for each media of concern at each area(s) of concern;

3. A discussion of how the proposed remedial action satisfies all of the criteria pursuant to N.J.A.C. 7:26E-5.1(c), (d), if applicable, and (e); and

4. The Department may require the submittal of any additional information regarding remedial action selection which is necessary for the Department to determine if the remedy is appropriate.

(e) Where Department pre-approval of a remedial action workplan is required pursuant to N.J.A.C. 7:26E-6.1(b), or sought, the remedial action selection report should be submitted in conjunction with the final remedial investigation report, N.J.A.C. 7:26E-4.8. If the remedial action selection report is not submitted with the final remedial investigation report, the remedial action selection report shall be submitted with the remedial action workplan, N.J.A.C. 7:26E-6.2.

(f) Where Department pre-approval of a remedial action workplan is not required or sought, the remedial action selection report shall be submitted with the remedial action report, N.J.A.C. 7:26E-6.7.

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Rewrote (a) and (c).

Amended by R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

In (c)1 and (e), amended the N.J.A.C. references.

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Added new (c); and recodified former (c) through (e) as (d) through (f).

APPENDIX B

Well Search Format

Preparer

Name of Site

Program Interest Number (Preferred ID)

Street Address

Township

County

USGS Quadrangle

Latitude

Longitude

Instructions:

1. All sources of well records/information shall be clearly documented.

2. List all wells and State well permit numbers, including active, inactive and decommissioned, within ½ mile of the site boundary. Include all wells, active, inactive and decommissioned at the site.

3. Locate all listed wells on a site locus map.

4. Sources that shall be used:

a. Well records search of the Bureau of Water Allocation. There is no cost if this search is performed by the individual. Appointments shall be made to examine well records by contacting the Bureau of Water Allocation at (609) 292-2957. Upon written request, the Bureau will provide the well search for a fee.

b. Contact local or county Health Department or equivalent.

5. Complete chart on back.

Well Owner	Address	Total Depth	Length of Casing	Static Water Elev.	Use Code	Source of Information
1.						
2.						
3.						
4.						
5.						
6.						

USE CODES

- A =
- B = Boring
- C =
- D = Domestic
- E = Recovery/Decontamination Pollution Control/Leachate with Pump Capacity
- F = Fire
- G = Irrigation
- H = Heat Pump/Geothermal
- I = Industrial
- J = Injection/Waste Discharge
- K =
- L = Livestock
- M = Monitoring
- N = Public Non-community
- O = Oil/Gas Exploration
- P = Public Supply
- Q = Recharge
- S = Sealed
- T = Test
- U = Non-public
- V = Gas Vent
- W = Dewatering
- X = Cancelled
- Y = Cathodic Protection
- Z = Piezometer

NEW REPLACEMENT WELL CODES

- 1 = Domestic
- 2 = Public Community
- 3 = Public Non-Community
- 4 = Industrial
- 5 = Irrigation
- 6 = Monitoring
- 7 = Piezometer
- 8 = Heat Pump/Geothermal
- 9 = Recovery
- 0 = Gas Vent

Amended by R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

In 2, substituted "decommissioned" for "abandoned"; deleted 5 and recodified former 6 as 5.

Administrative correction.

See: 35 N.J.R. 1928(a).

APPENDIX F

GROUNDWATER CLASSIFICATION EXCEPTION AREA FACT SHEET

A. SITE INFORMATION

- 1. Program's Site Identification Number: _____
- 2. Program Interest Number (Preferred ID): _____
- 3. Program Interest Name: _____
- 4. Street address: _____
- 5. City: _____
- 6. County: _____
- 7. Block and Lots of the site (duplicate if the site is located in more than one municipality):
 - a. Name of the municipality in which the site is located: _____
 - b. Block and Lots: _____
 - c. Year of tax map: _____
- 8. United States Geological Survey Quadrangle map, indicating the location of the site, presented as Exhibit A.
- 9. Site Contact:
 - a. Name of contact person: _____
 - b. Company name: _____
 - c. Mailing address: _____
 - d. Phone number: (____) _____

B. PROPOSED CLASSIFICATION EXCEPTION AREA INFORMATION

- 1. Narrative description of proposed classification exception area: _____
- 2. Location of proposed classification exception area (duplicate if the site is located in more than one municipality):
 - a. Name of the municipality in which the site is located: _____
 - b. Block and Lots: _____
 - c. Year of tax map: _____
- 3. Affected aquifer(s):

<u>Aquifer Name</u>	<u>Vertical Depth</u>	<u>Groundwater Classification</u>
- 4. Contaminant concentrations:

<u>Contaminant</u>	<u>Concentration¹</u>	<u>GWQS²</u>	<u>SWQS³</u>
- 5. Proposed classification exception area boundaries:

Horizontal: Scaled map indicating projected areal extent of proposed classification exception area, as well as location of site, presented as Exhibit B.

Vertical: As stated in B.3., above.

Locational coordinates of boundary of proposed classification exception area as New Jersey State Plane Coordinates. A minimum of four coordinates shall be submitted, in a format compatible with Department's geographic information system:

<u>Northing</u>	<u>Easting</u>	(New Jersey State <u>Plane Coordinates</u>)
<u>Latitude</u>	<u>Longitude</u>	
- 6. Estimated size of the proposed groundwater classification exception area: _____
- 7. Projected duration and expiration date of the proposed classification exception area:
 - a. Duration (in years and or days): _____
 - b. Expiration date (as calendar date): _____

¹ Maximum concentration detected at the time Classification Exception Area information submitted to the Department

² New Jersey Ground Water Quality Standards, N.J.A.C. 7:9C.

³ New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B.

New Rule, R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

Administrative correction.

See: 35 N.J.R. 1928(a).

Administrative correction.

See: 37 N.J.R. 4245(a).