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ENVIRONMENTAL PROTECTION

SITE REMEDIATION AND WASTE MANAGEMENT PROGRAM

Underground Storage Tank Rules; Industrial Site Recovery Act Rules; Department Oversight of the Remediation of Contaminated Sites

Fees

Proposed Amendments: N.J.A.C. 7:14B-3.1, 3.2, 3.3, 3.5, 3.7 and 3.10;
N.J.A.C. 7:26B-8.1 and 8.4; N.J.A.C. 7:26C-9.2

Authorized by: Lisa P. Jackson, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:1D et seq., 13:1E et seq., 131K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 20-06-10/520

Proposal Number: PRN 2006-

A public hearing concerning this proposal will be held on

Date: December 4, 2006

Time: 10:00 AM

New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, NJ 08625

Submit written comments by January 5, 2006 to:

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Leslie W. Ledogar, Esq.

Attn.: DEP Docket No. _____

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 CD or disk is not a requirement. 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.state.nj.us/dep>.

The agency proposal follows.

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Proposed increases of fees and fixed oversight costs

The Underground Storage Tank (UST) rules at N.J.A.C. 7:14B, the Industrial Site Recovery Act (ISRA) rules at N.J.A.C. 7:26B and the Oversight of the Remediation of Contaminated Sites rules (Oversight rules) at N.J.A.C. 7:26C together establish the regulatory core of the Department's site remediation program. Each set of rules contains mechanisms by

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which members of the regulated community to whom these rules apply help offset the cost to the Department of administering them. The three mechanisms are (1) payment of a fee that is codified in the rules; (2) reimbursement of oversight costs that are fixed by rule (fixed oversight costs); and (3) reimbursement of oversight costs that are calculated pursuant to the formula codified in the rules. For example, the UST rules at N.J.A.C. 7:14B-3.5 require the submittal of a fee for each activity at an underground storage tank system facility that requires a permit or Departmental approval, and the ISRA rules at N.J.A.C. 7:26B-8.1 require an owner or operator of an industrial facility to pay all applicable fees upon submittal of each request, application or submission listed at N.J.A.C. 7:26B-8.1(a). The Oversight rules provide for the payment of fixed oversight costs (see N.J.A.C. 7:26C-9.2, which requires that each request made to the Department or each submittal to the Department must be accompanied by the requisite fee), and oversight costs that are calculated pursuant to the oversight cost formula codified at N.J.A.C. 7:26C-9.3 (direct billing formula).

The Department has determined that specifying within the rules certain fees and fixed oversight costs for particular Departmental tasks is more efficient and cost-effective for both the Department and the regulated community than assessing actual costs using the direct billing formula. The use of specified fees and fixed oversight costs allows the Department to efficiently process certain types of submissions and increases the Department's ability to respond in a timely manner to workplans and reports submitted by persons conducting the remediation of a site. The Department uses direct billing and the oversight cost formula to recoup oversight costs for the remediation of more complex contaminated sites.

However, the fees and fixed oversight costs currently codified in the UST, ISRA and Oversight rules no longer reflect the actual cost to the Department of providing the services associated with them. The Department conducted an analysis of its costs to provide the services covered by the fees codified in the UST rules at N.J.A.C. 7:14B-3 and the ISRA rules at N.J.A.C. 7:26B-8 and the fixed oversight costs codified in the Oversight rules at N.J.A.C. 7:26C-9.2 and concluded that the costs to provide these services to the regulated community has risen by an average of 50 percent since 1998, the first year after the last adjustment of certain of these fees

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and fixed oversight costs. This increase reflects cost of living adjustments (COLAs) totaling 27.6 percent to the base salary of a typical Department position. For example, the salary of a Hazardous Site Mitigation Specialist 3 assigned to review environmental reports from the regulated community was \$34,368 in 1998 and as of January, 2006 has risen to \$44,107 as a result of negotiated COLA increases. In addition to COLA adjustments, a portion of the staff received incremental salary increases, which has added 11.3 percent to the salary average since 1998, and certain staff have received promotions. As a result, salary costs in the ISRA and UST units increased 39 percent from 1998 to 2004. Fringe benefits associated with these salaries for the same period have increased from 20.95 to 32.75 percent of gross salary, thereby increasing salary related costs 11.8 percent. As a result, salary costs in the ISRA and UST programs increased 50 percent from 1998 through 2006. The Department has provided a table that contains a comparison of the current fees with the proposed fee by citation for each of the rules being amended, below.

In addition, staff time associated with other Departmental services has also increased. For example, since 1999, the Department has instituted a number of computer databases that have vastly improved the Department's ability to manage information about the remediation of contaminated sites in New Jersey. Some of these databases are the New Jersey Environmental Management System (NJEMS), which supports the collection and review of permits, monitoring reports and enforcement actions; Data Miner, which provides the regulated community with information about obtaining inspection results, status of permit applications/registrations, and other environmental data; and iMapNJ, which is an environmental mapping tool that can provide users with information about neighborhoods, watersheds, and counties. Personnel support for these databases requires staff time for data entry that was not a factor when the current fees were established.

Finally, the Department looked at data based on time coded by Department staff to various activities related to the remediation of contaminated sites, and applied the oversight cost formula (see N.J.A.C. 7:26C-9.3) to calculate the Department's average cost to provide certain services. Regardless of whether the site is being remediated under the UST rules, the ISRA rules

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or the Oversight rules, the oversight costs are the same. For example, the average review of a site investigation report is 16 hours including staff and managers' time. The average salary of Department personnel reviewing the report is \$27.56 per hour. Multiplying the hours to review the report by the average salary of the reviewers shows that the salary cost to review a site investigation report is \$441. Using the oversight cost formula, this rate is multiplied by the salary additive factor of 0.23, which represents the prorated percentage of charges attributable to Department employees' reimbursable down time such as sick leave and holiday time. The resulting direct program cost is \$542. The Department then added the amounts attributable to the fringe benefit rate of 0.3275 and the indirect program cost rate of 0.9529. The resulting cost for Department review of a site investigation report is \$1,120. The Department is currently charging \$500 to provide this service, which is less than half of its actual cost.

Summary of proposed fee amendments

Generally, the Department proposes to increase fees and fixed oversight costs by 50 percent. For ease of administration, the Department determined to establish fee levels at standard increments. Thus, where the 50 percent increase of the \$25 fee for a duplicate Registration Certification would result in a \$37.50 fee, and the \$35 fee for an examination application fee would be increased to \$52.50, the Department determined to round the fee down to \$35 and \$50 respectively.

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The specific fees that the Department proposes to amend are as follows:

Underground Storage Tank Rules

Citation	Current fee	Proposed fee
7:14B-3.1	\$ 100	\$ 150
7:14B-3.2(b)	\$ 100	\$ 150
7:14B-3.3	\$ 25	\$ 35
7:14B-3.5(c)1	\$ 300	\$ 450
7:14B-3.5(c)2	\$ 300	\$ 450
7:14B-3.5(c)3	\$ 500	\$750
7:14B-3.5(c)4	\$ 1000	\$ 1500
7:14B-3.7	\$ 350	\$ 500
7:14B-3.10(a)1	\$ 35	\$ 50
7:14B-3.10(a)2	\$ 250	\$ 375
7:14B-3.10(a)3	\$ 35	\$ 50
7:14B-3.10(a)4	\$ 250	\$ 375
7:14B-3.10(a)5	\$ 35	\$ 50
7:14B-3.10(a)6	\$ 20	\$ 30
7:14B-3.10(a)7	\$ 20	\$ 30
7:14B-3.10(a)8	\$ 10	\$ 15
7:14B-3.10(c)	\$ 35	\$ 50
7:14B-3.10(d)	\$ 35	\$ 50
7:14B-3.10(e)	\$ 35	\$ 50
7:14B-3.10(f)	\$ 250	\$ 375
7:14B-3.10(g)	\$ 20	\$ 30
7:14B-3.10(h)	\$ 20	\$ 30

Industrial Site Recovery Act Rules

Citation	Current fee	Proposed fee
7:26B-8.1(a)1	\$ 200	\$ 300
7:26B-8.1(a)2	\$ 200	\$ 150
7:26B-8.1(a)3	\$ 250	\$ 375
7:26B-8.1(a)4	\$ 200	\$ 300
7:26B-8.1(a)5	\$ 250	\$ 225
7:26B-8.1(a)6	\$ 100	\$ 150
7:26B-8.1(a)7	\$ 450	\$ 525
7:26B-8.1(a)8	\$ 500	\$ 600
7:26B-8.1(a)9	\$ 100	\$ 150
7:26B-8.1(a)10	\$ 500	\$750
7:26B-8.1(a)11	\$500	\$600
7:26B-8.1(a)12	\$ 750	\$975
7:26B-8.1(a)13	\$1,000	\$1,500
7:26B-8.1(a)14	\$ 500	\$ 750
7:26B-8.1(a)15	\$ 250	\$ 225
7:26B-8.1(a)16	\$ 500	\$750

Oversight Rules

Citation	Current fee	Proposed fee
7:26C-9.2(a)1	\$ 250	\$ 375
7:26C-9.2(a)2	\$ 500	\$ 750
7:26C-9.2(a)3	\$ 500	\$ 400
7:26C-9.2(a)4	\$ 250	\$ 375

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Other proposed amendments

The Department proposes to add a new subsection at N.J.A.C. 7:14B-3.5(d) which states that the Department's cost to review any remediation document not listed in N.J.A.C. 7:14B-3.5(c) must be assessed in accordance with the Department's Oversight rules, N.J.A.C. 7:26C-9. The Department also proposes to add a new subsection at N.J.A.C. 7:26B-8.1(b) to provide that the Department's cost to review any remediation document not listed in N.J.A.C. 7:26B-8.1(a) will be assessed in accordance with N.J.A.C. 7:26C-9. This clarifies that subchapter 9 of the Oversight rules governs the oversight costs for all services provided by the Department that are not specified in the UST or ISRA rules.

In proposing revised fees for certain ISRA review fees, the Department determined to first subtract the currently included \$100 general information notice (GIN) fee. The inclusion of the GIN fee is indicated by a footnote at existing N.J.A.C. 7:26B-8.1(a), which states that a separate GIN review fee should not be submitted with the identified documents because the GIN fee is already included. In spite of this footnote, the regulated community often submits both the review fees for the listed documents and the \$100 GIN fee. In these cases, the Department must refund the \$100 that was overpaid. The Department finds that the process of refunding money is an unnecessary cost. After subtraction of the \$100 GIN fee, the remainder amount was increased by 50 percent consistent with the other proposed fee increases. The fees so calculated are:

N.J.A.C. 7:26B-8.1(a)2 Area of concern waiver application

N.J.A.C. 7:26B-8.1(a)5 Expedited review application

N.J.A.C. 7:26B-8.1(a)7 Limited site review application

N.J.A.C. 7:26B-8.1(a)8 Limited conveyance application

N.J.A.C. 7:26B-8.1(a)11 Regulated underground storage tank waiver application

N.J.A.C. 7:26B-8.1(a)12 Remedial action workplan deferral application

N.J.A.C. 7:26B-8.1(a)15 Remediation in progress waiver application

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The Department proposes to delete the footnote at N.J.A.C. 7:26B-8.1(a), as it is no longer relevant.

The Department proposes to amend the definition of the term “oversight costs,” N.J.A.C. 7:26C-1.3 Definitions, to delete the phrase “or in overseeing the remediation conducted by a contractor on behalf of the Department.” Oversight costs, calculated pursuant to N.J.A.C. 7:26C-9.3, are applicable to the Department’s oversight of remediation being conducted pursuant to an oversight document. Publicly funded remediations are not conducted pursuant to an oversight document. Therefore, the definition of oversight costs should not include the cost of the Department’s work associated with publicly funded sites.

The Department proposes to reorganize N.J.A.C. 7:26C-9.2(b) into (b)i through iii and add a new provision at (b)iv to clarify that the fixed oversight costs listed in N.J.A.C. 7:26C-9.2(a) are the minimum oversight costs that the Department may assess for the service of reviewing the listed documents. The Department proposes to add a new N.J.A.C. 7:26C-9.2(c) which clarifies that the person responsible for conducting the remediation must pay the Department’s oversight cost pursuant to the formula in N.J.A.C. 7:26C-9.3(d) in lieu of the fixed oversight costs if the Department’s actual cost to review the documents listed in N.J.A.C. 7:26C-9.2(a) is three or more times greater than the fixed oversight cost listed in N.J.A.C. 7:26C-9.2(a).

The fixed oversight costs at N.J.A.C. 7:26C-9.2(a) were calculated based on an average cost to review the listed documents. However, it may take significantly longer to review a site investigation report, for example, at a contaminated site at which remediation is more complicated than at other contaminated sites. Thus, the Department’s cost to review these reports would be significantly more. The intent of N.J.A.C. 7:26C-9 is that the Department may recover its costs either through the fixed oversight costs at N.J.A.C. 7:26C-9.2 or the oversight cost formula at N.J.A.C. 7:26C-9.3(d), depending on which would more accurately reimburse the Department for the service it is providing. The Department is proposing N.J.A.C. 7:26C-9.2(b)iv to clarify this intent. In addition, the Department believes that requiring its oversight cost to be at least three times the fixed oversight cost in order to use the oversight cost formula in lieu of

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the fixed cost as proposed in N.J.A.C. 7:26C-9.2(c) is reasonable as it indicates that the actual cost is well beyond the range of costs contemplated by the fixed oversight cost.

The Department proposes to add a new subsection at N.J.A.C. 7:26C-9.2(d) to clarify that for review of all documents pertaining to a remedial investigation and remedial action the Department will assess oversight costs using the oversight cost formula at N.J.A.C. 7:26C-9.3(d). Subsection (d) also provides that fees for the review of remedial documents for sites that involve only the remediation of underground storage tanks not regulated by N.J.A.C. 7:14B are excepted from direct billing determined by the oversight cost formula. A fixed oversight cost for the remediation of tanks not regulated by N.J.A.C. 7:14B is set forth at N.J.A.C. 7:26C-9.2(a)3. Tanks not regulated by N.J.A.C. 7:14B include those used to store heating oil for onsite consumption in a residential building (i.e., homeowner tanks). While these tanks are not regulated under the underground storage tank program, remediation of contamination from the discharge of hazardous materials from these tanks is regulated by the Department pursuant to the Oversight rules. The Department charges a fixed oversight cost for the review of documents related to the remediation of discharges from these tanks.

The Department proposes to clarify existing N.J.A.C. 7:26C-9.2(c), recodified as N.J.A.C. 7:26C-9.2(e), by adding that the applicable fixed cost must be submitted along with submitted remediation reports. In the Department's experience, the owners of unregulated underground storage tanks do not consistently submit fees with their remediation reports. This necessitates that the Department generate bills and spend time on the collection of unpaid bills. As an added incentive, the Department proposes to decrease the fixed cost at N.J.A.C. 7:26C-9.2(a)3 for the review of remedial action reports for tanks that are not regulated by N.J.A.C. 7:14B (primarily home heating oil tanks) from \$500 to \$400. The Department hopes that clarification of this subsection, and the proposed reduction of the fee, will encourage owners of unregulated tanks to pay the Department's fee in a timely manner.

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Social Impact

The remediation of contaminated sites improves the overall quality of the environment for the use and enjoyment of the citizens of New Jersey. The proposed amendments to the UST rules, the ISRA rules, and the Oversight rules will have a positive social impact by ensuring that the costs of the services provided by the Department to ensure that sites do not pose a risk to human health and the environment are paid by the parties who are the direct recipients of the services. This is consistent with the “polluter pays” strategy adopted by the Department whenever possible. The purpose of this strategy is to reduce the economic burden on the general public of running the Site Remediation Program.

Economic Impact

The proposed amendments will potentially have an adverse economic effect on the recipients of the Department’s services in that it will cost more to receive the services. However, the Department anticipates that the adverse impact of the increase will be minimal because the cost of Department review and oversight is minor compared with the other costs associated with remediating a contaminated site.

The Department anticipates the following annual revenues to be generated by the proposed increases in fees and fixed oversight costs, based on the expected submissions and applications for FY’ 07:

Citation	Name of fee	Proposed fee	#of activities	Total fee assessed
Underground Storage Tank Rules, N.J.A.C. 7:14B				
7:14B-3.1	Registration Fee	\$150	200	\$30,000.00
7:14B-3.2(b)	Facility Certification Fee	\$150	2500	\$375,000.00
7:14B-3.3	Duplicate Registration Fee	\$35	40	\$1,400.00

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7:14B-3.5(c)1	Permit for the installation or substantial modification of an underground storage tank system	\$450	20	\$9,000.00
7:14B-3.5(c)2	Review of the closure plan for an underground storage tank system	\$450	60	\$27,000.00
7:14B-3.5(c)3	Review of the site investigation report	\$750	250	\$187,500.00
7:14B-3.5(c)4	Review of the initial remedial investigation report	\$1,500	300	\$450,000.00
7:14B-3.7	Confidentiality Claims	\$500	0	\$0.00
7:14B-3.10(a)1	Nonrefundable examination application fee	\$50	349	\$17,450.00
7:14B-3.10(a)2	Certification for an individual	\$375	188	\$70,500.00
7:14B-3.10(a)3	Business firm certification	\$50	37	\$1,850.00
7:14B-3.10(a)4	Renewal of individual certification	\$375	1531	\$574,125.00
7:14B-3.10(a)5	Renewal of business firm certification	\$50	186	\$9,300.00
7:14B-3.10(a)6	Amendment to individual certification	\$30	25	\$750.00
7:14B-3.10(a)7	Replacement of certification card or certification	\$30	10	\$300.00
7:14B-3.10(a)8	Duplicate certification Fee	\$15	10	\$150.00
7:14B-3.10(c)	Certification Examination Application Fee	\$50	329	\$16,450.00
7:14B-3.10(d)	Failing examination Fee	\$50	20	\$1,000.00
7:14B-3.10(e)	Business firm applying for certification fee	\$50	52	\$2,600.00
7:14B-3.10(f)	Certification or renewal of the certification	\$375	186	\$69,750.00
7:14B-3.10(g)	Issuance of a new certification card or certificate	\$30	0	\$0.00
7:14B-3.10(h)	Issuance of a replacement certification card or certificate	\$30	0	\$0.00

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7:26B-8.1(a)1	Applicability determination application	\$300	0	\$0.00
Industrial Site Recovery Act Rules, N.J.A.C. 7:26B				
7:26B-8.1(a)2	Area of concern waiver application	\$150	2	\$300.00
7:26B-8.1(a)3	Confidentiality Claims	\$375	8	\$3,000.00
7:26B-8.1(a)4	De minimis quantity exemption application and Applicability	\$300	2800	\$840,000.00
7:26B-8.1(a)5	Expedited review application	\$225	90	\$20,250.00
7:26B-8.1(a)6	General Information Notice	\$150	520-550	\$82,500.00
7:26B-8.1(a)7	Limited site review application	\$525	10	\$5,250.00
7:26B-8.1(a)8	Limited conveyance application	\$600	10	\$6,000.00
7:26B-8.1(a)9	Negative declaration review	\$150	160	\$24,000.00
7:26B-8.1(a)10	Preliminary assessment report	\$750	450-500	\$375,000.00
7:26B-8.1(a)11	Regulated underground storage tank waiver application	\$600	5	\$3,000.00
7:26B-8.1(a)12	Remedial actionworkplan deferral application	\$975	1	\$975.00
7:26B-8.1(a)13	Remediation agreement application	\$1,500	270	\$405,000.00
7:26B-8.1(a)14	Remediation agreement amendment application	\$750	65	\$48,750.00
7:26B-8.1(a)15	Remediation in progress waiver application	\$225	27	\$5,400.00
7:26B-8.1(a)16	Site investigation report	\$750	160	\$120,000.00
Oversight Rules, N.J.A.C. 7:26C				
7:26C-9.2(a)1	Preliminary assessment report	\$375	58	\$21,750.00
7:26C-9.2(a)2	Site investigation report	\$750	52	\$39,000.00
7:26C-9.2(a)3	Remedial action report	\$400	2537	\$1,014,800.00
7:26C-9.2(a)4	Biennial Certification	\$375	1050	\$393,750.00
Total Projected Revenues				\$5,252,850.00

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The proposed amendments will result in additional costs to UST and ISRA-subject facilities and other facilities conducting remediation. However, these fees have not been increased since 1998 and represent only a small portion of the overall cost to responsible parties of site remediation.

Environmental Impact

The proposed amendments to the UST rules, the ISRA rules, and the Oversight rules will result in a positive environmental impact. The proposed amendments will ensure that the Department will have sufficient funding to provide such vital services as reviewing remediation documents submitted by persons conducting the remediation of contaminated sites. The Department conducts reviews of remediation documents to ensure that the remediation of contaminated sites meets the Department's technical requirements and is thus protective of public health and the environment.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (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.

The proposed amendments to the UST Rule, ISRA Rule and Oversight Rule concerning fees that the Department charges for services that it provides to the regulated community do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. The proposed amendments do not contain any standards or requirements that exceed those imposed by Federal law. Therefore, no further analysis under Executive Order 27 or N.J.S.A. 52:14B-1 et seq. is required.

Jobs Impact

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The proposed amendments will not impact jobs in New Jersey. As explained in the summary above, the proposed increase in fees reflect the cost of living adjustments since the last time the fees were adopted. The Department does not anticipate that the proposed amendments will impact businesses and employment in New Jersey because the cost of Departmental review fees, even with the increases, are minor compared with the cost of the conducting remediation and report preparation.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the proposed amendments and determined that agricultural operations may be impacted by the proposed rule amendments. While the Department does not require a site investigation when a farm is being developed for another use, farm owners often elect to hire environmental consultants to conduct an evaluation of residual soil contamination from historic pesticide use and from other potential areas of concern common to farms, such as underground storage tanks containing heating oil and gasoline for farming equipment. Although the underground storage tanks at farms are exempt from the registration and construction requirements of the Underground Storage Tank regulations, N.J.A.C. 7:14B, and the occurrence of discharges from underground storage tank systems are not uncommon and must be remediated in accordance with the Department's rules. Other areas of concern include pesticide and fertilizer storage and loading areas.

Environmental assessments are usually conducted as part of real estate transactions. Agricultural operations will be impacted by these amendments when the Department's review of an environmental assessment is requested. The cost of Department review fees are minor compared with the cost of the conducting remediation activities.

Regulatory Flexibility Statement

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In accordance with the New Jersey Flexibility Act, (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. Small businesses to which the proposed rule amendments will apply include any small business that owns a regulated underground storage tank, and any small business that is required to submit remediation documents pursuant to UST, N.J.A.C. 7:14B, ISRA, N.J.A.C. 7:26B or the Oversight rules, N.J.A.C. 7:26C. The Department is unable to estimate the number of small businesses to which the amendments will apply. The proposed rule amendments do not contain different or additional reporting requirements. Small businesses often require the help of various professional services such as environmental consulting, environmental engineering and laboratory analytical services to comply with the Department's remediation regulations. However, the proposed increases to the Department's review fees and fixed oversight costs will not require a small business to obtain any additional professional services.

An estimate of the cost of compliance for a small business is as follows: for a small business with an underground storage tank, the one time underground storage tank registration fee is \$150 and a facility certification fee is \$150 every three years for the life of the tank. The cost for the review of other activities listed at N.J.A.C. 7:14B-3.5 such as review of a tank closure plan or a remedial investigation report ranges from \$450 to \$1500 depending on the specific document needed. However, the requirement to submit such documents should generally be limited to one submittal per facility.

Small businesses that become subject to ISRA may need to submit different applications and reports depending on the transaction occurring at a site and the specific type of service requested; the request for an applicability determination has a fee of \$300 and a remediation agreement application has a fee of \$1500. The review of remediation documents pursuant to the Oversight rules range from \$375 for a preliminary assessment report to \$750 for a site investigation report. If these reports are prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, then the submittal of the reports and the associated review fee should only need to be done once.

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A small business that has chosen to use an engineering or institutional control as part of the remediation is committed to monitoring the protectiveness of the remedy and submitting a biennial certification to the Department every two years. The Department is proposing to increase the fixed oversight cost for the Department's review of a biennial certification from \$250 to \$375. The process of monitoring the remedy and submitting a biennial certification continues until the person responsible for the remediation documents that the site has been remediated to levels that do not exceed any applicable remediation standard and the engineering or institutional control is no longer needed.

As discussed above, the proposed amendments will result in increased costs for the Department's review of environmental reports for all businesses. However, the Department has determined that small businesses will not be disproportionately impacted.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). A significant number of remediations that are overseen by the Department are Brownfield sites that are located within smart growth areas that are identified in the State Plan. The remediation of Brownfield sites encourages the development or redevelopment of contaminated sites in New Jersey in a manner that is consistent with the guiding principles of the State Plan. The increase of fees will allow the Department to continue administering this important program. As a result, the Department expects this rulemaking to have a positive impact on the State's achievement of smart growth or implementation of the State Plan.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

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CHAPTER 14B
UNDERGROUND STORAGE TANKS

SUBCHAPTER 3. FEES

7:14B-3.1 Registration fee

The owner or operator of an underground storage tank system shall submit a [~~\$100.00~~] \$150.00 Registration Fee for each facility upon registration of the facility with the Department. The Department shall only issue a Registration Certificate following the submission of the Registration Fee.

7:14B-3.2 Facility certification fee

(a) (No change.)

(b) The owner or operator shall pay the Facility Certification fee of [~~\$100.00~~] \$150.00 per facility for the three year facility certification cycle and after receiving an invoice from the Department within the time frame set forth in the invoice. The Department may renew the Registration Certificate following the submission of the Facility Certification Fee.

(c) (No change.)

7:14B-3.3 Duplicate Registration Certificate charges

The Fee for duplicate Registration Certificates will be [~~\$25.00~~] \$35.00 per document.

7:14B-3.5 Program oversight cost fees

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

(c) The fee schedule is as follows:

Activity

Fee

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- | | |
|--|---|
| 1. Permit for the installation or substantial modification of an underground storage tank system | [\$300.00] <u>\$450.00</u> |
| 2. Review of the closure plan for an underground storage tank system | [\$300.00] <u>\$450.00</u> |
| 3. Review of the site investigation report | [\$500.00] <u>\$750.00</u> |
| 4. Review of the initial remedial investigation report | [\$1,000.00] <u>\$1,500.00</u> |

(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.

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

7:14B-3.7 Confidentiality claims

Any confidentiality claim submitted in accordance with N.J.A.C. 7:14B-15 shall be accompanied by a fee of [~~\$350.00~~] \$500.00.

7:14B-3.10 Fees for individual and business firm certification in underground storage tank management services

(a) The fee schedule for the certification of individuals and business firms pursuant to N.J.A.C. 7:14B-13 is as follows:

- | | |
|---|---|
| 1. Nonrefundable examination application fee (see (c) and (d) below) | [\$35.00] <u>\$50.00</u> |
| 2. Certification for an individual (see (f) below) | [\$250.00] <u>\$375.00</u> |
| 3. Business firm certification (see (e) below) | [\$35.00] <u>\$50.00</u> |
| 4. Renewal of individual certification | [\$250.00] <u>\$375.00</u> |
| 5. Renewal of business firm certification | [\$35.00] <u>\$50.00</u> |
| 6. Amendment to individual certification card and certificate (see (g) below) | [\$20.00] <u>\$30.00</u> |
| 7. Replacement of certification card or certificate (see | [\$20.00] <u>\$30.00</u> |

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(h) below)

8. Duplicate certificate, as required by N.J.A.C. [\$10.00] \$15.00

7:14B-13.1(c).

(b) (No change.)

(c) Individuals applying for the certification examination shall pay the nonrefundable [\$35.00] \$50.00 application fee per classification for which they apply. Each examination classification applied for after the initial certification shall require an additional nonrefundable [\$35.00] \$50.00 fee to accompany the examination application.

(d) Individuals failing examinations shall pay an additional nonrefundable [\$35.00] \$50.00 fee for each subsequent application for each classification.

(e) Business firms applying for certification shall pay a single [\$35.00] \$50.00 filing fee per application, regardless of the number of classifications for which application is being made. Business firms applying for additional classifications after the original certification is issued shall pay an additional [\$35.00] \$50.00 application fee. The Department shall issue one certification per business firm regardless of the number of classifications.

(f) Individual applicants satisfying the certification requirements shall pay [\$250.00] \$375.00 for the certification or the renewal of the certification. The Department shall issue one certification per individual, including to those individuals being certified in multiple classifications. Individuals adding additional classifications after the original certification card is issued do not need to pay an additional [\$250.00] \$375.00 certification fee.

(g) Issuance of a new certification card or certificate required as a result of amendment to certification, shall result in a [\$20.00] \$30.00 fee to the individual.

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(h) Issuance of a replacement certification card or certificate required as a result of loss shall result in a [~~\$20.00~~] \$30.00 fee to the individual or business firm.

CHAPTER 26B
INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 8. FEE SCHEDULE AND DIRECT BILLING FEES

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	[\$200.00] <u>\$300.00</u>
2. Area of concern waiver application[*]	[\$200.00] <u>\$150.00</u>
3. Confidentiality claim	[\$250.00] <u>\$375.00</u>
4. De minimis quantity exemption application	[\$200.00] <u>\$300.00</u>
5. Expedited review application[*]	[\$250.00] <u>\$225.00</u>
6. General Information Notice	[\$100.00] <u>\$150.00</u>
7. Limited site review application[*]	[\$450.00] <u>\$525.00</u>
8. Limited conveyance application[*]	[\$500.00] <u>\$600.00</u>
9. Negative declaration review	[\$100.00] <u>\$150.00</u>
10. Preliminary assessment report	[\$250.00] <u>\$375.00</u>
11. Regulated underground storage tank waiver application[*]	[\$500.00] <u>\$600.00</u>
12. Remedial action workplan deferral application[*]	[\$750.00] <u>\$975.00</u>
13. Remediation agreement application	[\$1,000.00] <u>\$1,500.00</u>
14. Remediation agreement amendment application	[\$500.00] <u>\$750.00</u>
15. Remediation in progress waiver application[*]	[\$250.00] <u>\$225.00</u>
16. Site investigation report	[\$500.00] <u>\$750.00</u>

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[* This fee includes the costs of the Department's review of the General Information Notice required pursuant to N.J.A.C. 7:26B-3.2(a). Any person submitting this fee shall not be required to submit a separate General Information Notice fee.]

(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.

(b) through (d) Recodify as (c) through (e). (No change in text.)

CHAPTER 26C

DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.3 Definitions

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

...

“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], calculated in accordance with the formula included at N.J.A.C. 7:26C-9.3.

...

SUBCHAPTER 9. OVERSIGHT COSTS

7:26C-9.2 Fixed oversight costs

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(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	[\$250.00] <u>\$375.00</u>
2. Site investigation report	[\$500.00] <u>\$750.00</u>
3. Remedial action report[*] for tanks not regulated by N.J.A.C. 7:14B	[\$500.00] <u>\$400.00</u>
4. Biennial Certification	[\$250.00] <u>\$375.00</u>

[* This is limited to underground storage tanks not regulated by N.J.A.C. 7:14B.]

(b) The fixed costs required by (a) above are:

i. Nonrefundable[.];

ii.[are not]Not one time costs[, and];

iii.[are required]Required with each and every applicable submittal made to the Department[.]; and

iv. 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.

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(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.

[c](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 [appropriate] fixed cost as listed in (a) above.

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement addressing the requirements of Executive Order No. 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

Date: _____

Lisa P. Jackson, Commissioner

Department of Environmental Protection