

New Jersey Department of Environmental Protection

Guidance for the Preparation of a BIENNIAL CERTIFICATION MONITORING REPORT FOR A DEED NOTICE & ENGINEERING CONTROL

The purpose of this guidance is to facilitate compliance with the continuing obligations that certain persons have (i.e., “persons responsible”, see below) concerning engineering and institutional controls that are part of a cleanup of a contaminated site. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E, require the persons responsible to maintain the engineering and institutional controls that are part of a remedial action for a contaminated site to: **(1) maintain those controls, (2) perform periodic monitoring for compliance, and (3) submit biennial certification monitoring reports to the Department that the engineering and institutional controls are being properly maintained and continue to be protective of public health and safety and of the environment.** The benefits of the Department’s Covenant Not to Sue, for a site, may not be maintained if these biennial certification monitoring reports are not made. These biennial certification monitoring reports must also state the underlying facts and include the results of any tests or procedures performed to support the certification.

Biennial Certification Monitoring Report

Pursuant to N.J.A.C. 7:26E-8.4, the first biennial certification monitoring report is due **every two years** on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded. For sites with multiple engineering and/or institutional controls the biennial certification monitoring report shall be submitted when the first (earliest) biennial certification monitoring report is due.

Include with the written biennial certification monitoring report an **electronic copy** of the report and certification in a read only format acceptable to the Department.

Review Fee

Each biennial certification monitoring report shall be submitted with a **\$375** review fee pursuant to N.J.A.C. 7:26C-9.2(a) 4. The check or money order shall be made out to “Treasurer- State of New Jersey”.

Submission of Sampling Data

Please note that a Memorandum of Agreement (MOA) shall accompany any sampling data associated with a previously closed case pursuant to NJAC 7:26C. The data shall be submitted in an electronic format pursuant to N.J.A.C. 7:26E.

Person Responsible

The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control and for submitting the biennial certifications pursuant to this subchapter include, without limitation, each of the following:

1. Any person with a legal obligation to conduct the remediation, including, without limitation, each of the following:

i. A person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substance that was the subject of the remedial action that includes the engineering and/or institutional control;

ii. The owner of the site of the discharge at the time of the remedial action that includes the engineering and/or institutional control;

iii. An owner or operator that triggered the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., for the industrial establishment that was the subject of the remedial action that includes the engineering and/or institutional control;

iv. An owner or operator of an underground storage tank that was the subject of the remedial action that includes the engineering and/or institutional control;

v. A holder of a security interest in the site, who actively participated in the management of the site or underground storage tank facility, that was the subject of the remedial action that includes the engineering and/or institutional control; or

vi. A holder of a security interest in the site, who negligently caused a new discharge at the site after the date of foreclosure on a security interest in the site or the underground storage tank facility, that was the subject of the remedial action that includes the engineering and/or institutional control.

The Monitoring Report for the Biennial Certification Monitoring Report shall be submitted every two years to:

Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Operation, Maintenance, and Monitoring
Deed Notice Inspection Program
P.O. Box 413
401 E. State Street
Trenton, NJ 08625-0413

**Instructions for the Preparation of a
BIENNIAL CERTIFICATION MONITORING REPORT FOR A
DEED NOTICE & ENGINEERING CONTROL**

Note: Please review the sample document thoroughly in order to assist you in completing the biennial certification monitoring report correctly. Guidance and examples are identified in *bold and italics*. Please be advised a biennial certification monitoring report must be completed for each individual property as it appears within the original Deed Notice.

I. Background Site Information

A. Facility Name and Location:

Business Name as it appears on the Deed Notice/DER: *ABC Company*

Name of the current operator at the site (if different than above):

Property Street Address: *126 Copper Street*

Municipality (-ies): *List City* County (-ies): *List County*

Blocks: *1B*

Lots: *11 and 12*

For Multiple Blocks/Lots: Block 20, Lot 1,2,3 and Block 21, Lot 1,4,6 should read as Blocks: 20;21, Lots: 1,2,3; 1,4,6

Year of Tax map from which this information is obtained: *1999*

B. Person responsible for submitting the biennial certification monitoring report for a Deed Notice & Engineering Control (Self Explanatory)

Person's Name: *John Doe*

Person's Title: *Property Owner*

Business Name:

Relationship to the Site (check as appropriate): Owner Operator

Lessee Person Who Conducted the Cleanup

Other (describe)

Street Address: *111 Any Street*

City: *List City* State: *List State*

Telephone Number: *(555) 555-5555*

FAX Number: *(555) 123-4567*

E-mail Address: *Indicate e-mail address*

C. All Current Owner, Lessee(s) and Operator(s)

Name of Person: *Jane Doe*
Business Name: *President of ABC Company*
Relationship to the Site: *Owner* _____ Operator *X* Lessee _____
Street Address: *123 Any Street*
City: *List City* State: *List State*
Telephone Number: *(555) 999-9999*
FAX Number: *(555) 888-8888*
E-mail Address: *Indicate e-mail address*

D. Case Specific Information (Complete all that apply)

- Program Interest Name: *ABC Company*
- Program Interest Number (Preferred ID): *126555*
- KCSL # *NJD123456789 (12 digits)*
- Incident Report Number (10 or 12 Digit Case Number) *99-10-10-1000-10*
- Industrial Site Recovery Act Number *E94555, E20022564 (6 or 9 digits)*
- UST Registration Number (7 digits) *0012345 (7 digits)*
- Date of each No Further Action/Covenant Not to Sue letter for the site *12/03/99*
- Name and Bureau of assigned Case Manager at the time the Deed Notice/DER was issued: *John Case Manager, Bureau of Northern Case Management*

E. Existing Site Conditions (Complete below or include as Attachment 1: Existing Site Conditions)

- Describe the physical characteristics of the Site: *The site is 2 acres in size and is capped with asphalt and the existing building.*
- Describe the current site operations: *ABC Company is operating at the site and is manufacturing desks.*
- Describe each engineering control that applies to the Restricted Areas: *Historic fill material is capped with asphalt and the existing building.*

II. Protectiveness Evaluation

A. Deed Notice & Engineering Control Information (Complete below or include as Attachment 2: Deed Notice/DER Amendment)

- Provide the following information for the recorded Deed Notice/DER:

Book Number: *1256*
Page Number: *22-76*
Date stamped on the Deed Notice/DER was filed in the office of the county recording officer: *5/25/99*

- Have any amendments and/or additional filings been recorded that may modify or supersede the Deed Notice/DER and Exhibits? ***If you answered “no” to this question then you are declaring that the intent of the Deed Notice has not been altered in any fashion. However, if you checked “yes” you must correct the problem and explain how this was accomplished within the referenced biennial certification monitoring report.***

Yes ____ No ____

(Internal Use ____)

If you answered “Yes”, provide an explanation. Also provide the Book and Page Number of the amendment and/or additional filing and the date it was filed in the office of the county recording officer. Attach a copy of the amendment and/or additional filing in Attachment 2: Deed Notice/DER Amendment.

Example: The Deed Notice was missing from the County recording office. The property owner was notified. The property owner re-filed the Deed Notice prior to the submission of this biennial certification monitoring report.

B. Evaluation of Institutional and Engineering Controls

(The appropriate box on the left must be checked for each of the following items.)

1. Zoning or Land Use Change (Complete below or include as Attachment 3: Zoning or Land-Use Changes)

- a. Land use at the time the Deed Notice/DER was filed (check all that apply):
 Non-Residential X Residential _____ Agricultural _____ Other _____

(Internal Use ____)

- b. Current land use (check all that apply):
 Non-Residential _____ Residential X Agricultural _____ Other _____

If the current land use is different than the land use at the time the Deed Notice/DER was filed, explain how the remedial action, which included the Deed Notice/DER, remains protective of public health and safety. Include the Case Manager’s name and Bureau that approved this change, if applicable.

Example: The land use changed from non-residential to residential use. The contaminated soil in the front portion of the property remains under an asphalt cap. A house was constructed on the back of the property away from the contaminated area. The Deed Notice was modified under the approval of John Case Manager, Bureau of Case Management.

- c. Has there been an actual or pending zoning or land-use change for the Restricted Area on which the Deed Notice/DER is filed?

Yes ____ No ____ (If No, proceed to #2, below) (Internal Use ____)

There is an actual or pending zoning or land-use change on the Restricted Area which is consistent with the use restrictions. That change will not undermine the protectiveness of the remedial action that includes a Deed Notice/DER in a manner such that could prevent the remedial action from meeting the applicable health risk standard, (N.J.S.A. 58:10B-12g(3)(b) and protection of public health, safety, and of the environment (N.J.S.A. 58:10B-12g).

The result of the evaluation was either (1) the control remains protective, (2) an actual change occurred, the control was no longer protective and a description of what was done to make the control protective, or (3) a pending change will occur which will result in the control no longer being protective and a description of what was/will be done to make the control protective.

The details of the actual or pending zoning or land-use changes and any potential impact are provided below:

2. Inspections (Complete below or include as Attachment 4: Inspections: Excavations and Disturbances)

Have periodic inspections of the site identified any excavation or other disturbance activities that have taken place within the restricted areas?

Yes ____ No ____ (If No, proceed to “3”) (Internal Use ____)

An excavation or other disturbance activity has taken place within the restricted areas and any disturbances of the soil at the site have not resulted in unacceptable exposure to the soil contamination. A full description of the disturbance and the method to restore all controls, compliance with all applicable health and safety laws and regulations and methods to ensure that exposure to contamination in excess of the applicable remediation standard did not occur are provided below. If the disturbance resulted in an unacceptable exposure to the soil contamination explain how this was remedied.

Date(s) of Disturbance: *1/20/2001*

Duration of Disturbance: Years ____ Months *1* Days *2*

Date the NJDEP Hotline was called: *1/12/2001*

Hotline Number Incident Number received: *01-12-20-1000-10*

Description of the disturbance and methods to address the disturbance:

Eleven tons of contaminated soil were excavated and properly disposed of off-site at Your Landfill. Eleven tons of clean fill were brought in to backfill the excavation. (See attached waste manifest and a certification as to the origin of the clean fill material).

Name of Contact Person Relative to the Disturbance: *A. Contractor*
Title: *President of ABC Contracting*
Street Address: *126 Construction Road*
City: *List City* State: *List State* Zip Code: *List Zip Code*
Telephone Number: *(555) 123-1245*
Email Address: *Indicate E-mail address*

Was all soil excavated and returned to the Restricted Area?

Yes X No (If No, provide an explanation)

See Above.

Quantity of soil generated for disposal (if applicable): *11 tons*
Attach Transportation/disposal documentation.

State precautions taken during the above activities to prevent contaminant exposure:

Dust was controlled by wetting area during soil removal in order to prevent air borne contamination.

Provide an explanation of how the engineering control was replaced following the disturbance?

Asphalt cap was replaced once the soil was excavated and replaced with clean fill.

3. Changes to Laws and Regulations (Complete below or include as Attachment 5: Changes to Laws and Regulations)

- a. Are there any subsequently promulgated or modified environmental laws or regulations (see Table 1), which apply to the site?

Yes No (If No, proceed to #4 below)

- b. If Yes, has the evaluation also determined that each Deed Notice/DER and engineering control, as applicable, meets the requirements of the new laws and regulations?

Yes _____ No _____ (If Yes, proceed to #4 below)

- c. Each Deed Notice/DER and engineering control, as applicable that did not meet the requirements of the new laws and regulations has been addressed in the following manner to bring them into compliance:

Example: The cleanup criteria for the contaminant levels remaining on site decreased more than an order of magnitude. The existing engineering control was evaluated and determined to be protective of human health and the environment.

4. Detailed Maintenance Logs (Complete below or include as Attachment 6: Detailed Inspection and Maintenance Logs)

Attach a copy of the detailed maintenance log (in Attachment 6: Detailed Inspection and Maintenance Logs) of how the persons responsible for monitoring and ensuring the protectiveness of the remedial action have maintained and evaluated the engineering control in compliance with N.J.A.C. 7:26E-8.5(a) 4.

The detailed maintenance log must be:

- i. completed for the first time since the date the Deed notice/DER has been filed or last biennial certification monitoring report, whichever is more recent and
- ii. a copy of the detailed maintenance log attached to this certification in addition to the following information:

Date(s) of all Inspections: _____

Name(s) of Inspectors: _____

Example: Please see the attached inspection reports for maintenance and inspection records. Full time security guard has completed the fence inspections and has signed off on the report. Property owner has inspected the condition of the asphalt paving. Patching has been completed as per the report. Fence and cap integrity is maintained per the referenced Deed Notice.

III. Certifications

A. Certification, Copying and Reporting Requirement pursuant to 7:26E-8.5(c) 3.

Provide electronic and hard copies of this Biennial Certification Monitoring Report to the following people:

1. The municipal and county clerks for each municipality and county in which any property included in the Deed Notice/DER is located;
2. The local, county and regional health department for each municipality and county in which any property included in the Deed Notice/DER is located;
3. Each owner of the property which is included in the Deed Notice/DER; and
4. Each current operator at the property which is included in the Deed Notice/DER.

Attach documentation in Attachment 7: Name and Address Copy List that each of the groups of people above received a copy of this Biennial Certification Monitoring Report.

B. Person Responsible for the Biennial Certification Monitoring Report: (The following certification shall be signed according to N.J.A.C. 7:26E-1.5, N.J.A.C. 7:26C-1.2 and the covenant not to sue (if issued) as follows:

1. For a Limited Liability Company a member of the Limited Liability Company; or
2. For a Corporation by a person authorized by a resolution of the board of directors to sign the document. A copy of the resolution, certified as a true copy by the secretary of the corporation, shall be submitted along with the certification; or
3. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
4. For a municipality, State, federal or other public agency by either a principal executive officer or ranking elected Official).

“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 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.”

I also understand that in order to maintain the benefits of the Covenant Not to Sue, the engineering and institutional controls (as applicable) must be evaluated and maintained to remain protective of public health and safety and of the environment.

Based upon all of the information that I have provided above, I hereby certify that the remedial action(s) for which this Deed Notice/DER was established remain protective of public health and safety and of the environment.

Name (print or Type): ***Ms. I. M. Responsible***

Title: ***Property Owner***

Signature: _____

Name of Limited Liability Company, Corporation or General or Limited Partnership: _____

Date: ***2/23/2002***

Sworn to & Subscribed Before me

On this _____ day of _____ 20_____

Notary