

SUBCHAPTER 5. REMEDIAL ACTION SELECTION

7:26E-5.1 Remedial action selection

(a) The purpose of remedial action selection is to select, develop and implement the most appropriate remedial action for a particular contaminated site or area of concern being investigated pursuant to N.J.A.C. 7:26E-3 and 4.

(b) A person selecting a remedial action shall first establish the remedial action objectives/goals for the site or area of concern by:

1. Identifying all media of concern;
2. Selecting applicable remediation standards based on the current and future land use for the site;
3. For each media of concern, selecting between active treatment versus containment and exposure controls; and
4. For contaminated soil, selecting among an unrestricted use, limited restricted use or restricted use remedial action.

(c) A person responsible for conducting a remediation for a site shall select a remedial action that reduces or eliminates exposure to contaminants above the applicable remediation standard. 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 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. The technical performance and effectiveness of the remedial action in attaining compliance with the applicable remediation standards;
 - ii. The reliability of the remedial action in maintaining compliance with the applicable remediation standards;
 - iii. The degree to which the proposed remedial action reduces toxicity, mobility, or volume of contaminants through treatment, reuse or recycling;
 - iv. The degree to which the remedial action minimizes risks and short-term impacts associated with the implementation of the remedy and with any contamination left on-site, while still providing long-term protection; and
 - v. The degree to which the potential for off-site migration of contamination through erosion, subsurface migration or other migration pathways is mitigated or eliminated;

7:26E-5.1 Remedial action selection

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;

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 specified by the Department in an oversight document pursuant to N.J.A.C. 7:26C; and

iii. The property owner's written agreement to the implementation of the limited restricted use or restricted use remedial action including all requirements for engineering and institutional controls pursuant to N.J.A.C. 7:26E-8;

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. 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. The potential impacts to the community identified by the responses that the person responsible for conducting the remediation receives from the notice provided to the local government in accordance with N.J.A.C. 7:26E-1.4 (a); and

ii. The degree to which the proposed remedial action is consistent with the local land use Master Plan; and

5. The potential for the selected action to cause natural resource injury.

i. Examples of remedial actions that may cause natural resource injury include, without limitation:

(1) Pumping ground water that deprives a wetland of its primary water source;

(2) Capping a landfill which involves destroying adjacent wetland; and

(3) Pump and treat ground water remedial action with discharge to surface water.

7:26E-5.1 Remedial action selection

ii. Examples of information that would be evaluated when assessing a ground water remedial action include, without limitation:

(1) Whether the site is located in a water supply surplus or deficit area as defined in the State's Water Supply Master Plan (New Jersey Department of Environmental Protection, "Water for the 21st Century: The Vital Resource," August 1996) or the version most recent to the submission;

(2) Whether the remedial action will be active or passive; and

(3) If a pump and treat remedial action is proposed, the volume of water to be pumped over the life of the action, the estimated duration of pumping, and where the treated water would be discharged.

(d) A 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 of an innovative remedial action technology shall include:

1. Information demonstrating that the proposed technology has been verified by:

i. The U.S. Environmental Protection Agency;

ii. Another state regulatory agency that has a current reciprocity agreement with the Department for technology acceptance;

iii. An independent verification organization which maintains a current agreement with the Department for technology acceptance; or

iv. The Department; and

2. A report that includes detailed description of the following:

i. The technology, including, without limitation, a process flow diagram, and a detailed description of the operational and environmental data of the technology under a full range of conditions, including, without limitation, laboratory scale and pilot test scale operational results clearly demonstrating the effectiveness and efficiency of the technology under various conditions;

ii. The sampling and analytical methods including the quality assurance/quality control protocols to generate the data to verify or certify that the technology will operate as claimed and achieve acceptable and reproducible results;

7:26E-5.2 Remedial action selection report

iii. The resource requirements, natural resource impacts, discharges and by-products and co-products generated through implementation of the technology and description of the environmental controls to be utilized to address impacts; and

iv. The demonstrated performance range of the technology, including, without limitation, the anticipated reduction of contaminant concentrations achieved for each constituent and for each media of concern;

(e) A person responsible for conducting the remediation who selects a limited restricted use or restricted use remedial action for soil contamination shall comply with the Department's requirements for the use of engineering and institutional controls at N.J.A.C. 7:26E-8.

(f) Nothing in this subchapter shall be construed to limit the requirements to conduct a feasibility study pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) or a corrective measures study pursuant to the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.).

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) 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:

7:26E-5.2 Remedial action selection report

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.

(d) 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.

(e) 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.