

SUBCHAPTER 8. ALTERNATIVE REMEDIATION STANDARDS

7:26D-8.1 Purpose

(a) This subchapter sets forth the procedures for the development and **approval** of alternative remediation standards, pursuant to N.J.S.A. 58:10B.

(b) This subchapter establishes alternative remediation standards for:

1. Residential and non-residential ingestion-dermal exposure pathways;
2. Residential and non-residential inhalation exposure pathways;
3. Migration to ground water exposure pathway; and
4. Vapor intrusion exposure pathway.

7:26D-8.2 Applicability

(a) An alternative remediation standard developed pursuant to this chapter may only be used at the site or area of concern for which it is specifically approved, and it is not applicable at any other site or area of concern.

(b) The Department may, upon its own initiative, require an alternative remediation standard for a particular contaminant for a particular site or area of concern that is more stringent than the standards established by this chapter, in accordance with N.J.S.A. 58:10B-12f.(2).

(c) **Surface water quality standards, N.J.A.C. 7:9B,** and ground water quality standards, N.J.A.C. 7:9C, do not provide mechanisms comparable to the development of alternative remediation standards. As such, they are not included in this chapter.

7:26D-8.3 Development of an alternative remediation standard

For the pathways listed in 8.1(b) above, the procedures for the development of alternative remediation standards, **some of which may or may not require Department approval, -with and without prior approval from the Department** are described in this chapter at:

(a) Appendix 6, Development of Alternative Ingestion-Dermal Exposure Pathway Soil Remediation Standards;

(b) Appendix 7, Development of Alternative Inhalation Exposure Pathway Soil Remediation Standards;

Comment [TS1]: SD - please discuss the approval process (LSRP vs. Dept. approval).

TS - Brownfield Act gives Dept. the authority to proceed as intended with this language proposed.

BF - Brownfield Act clearly notes that the Dept. approves all ARSs.

JH - Issue of what gets done first; Dept. approval or submission of details to Dept. first. Sub 8 does not specify when the Dept. or LSRP acts first.

Under what circumstances does the Dept. develop the ARS first? Please distinguish what the scenarios are, or whether they are random (as they appear with this language). Please clarify rule language to reference the particular appendices applicable throughout Sub 8.

LV - JH, is your concern is who is going to develop the ARSs?

ACPedersen - ARSs are developed by the LSRP. This rule is intended to have the ARSs developed through the LSRP.

Comment [TS2]: JD - specific approval versus specific applicability? The wording is not clear.

GT - Everything in Sub 8 is site-specific? Please note throughout the subchapter.

TS - Yes.

Comment [TS3]: RL - the existing language in the rule today is preferred to what is being proposed. Please include the language that is proposed to be deleted from the existing version in order to provide clarity that the Dept. may initiate the process.

TS - To clarify - return to the original language of the 2008 rule.

Comment [TS4]: ND - Ground water use should be considered as a basis for an ARS.

Comment [TS5]: LV - Are we going to be reviewing sediment here, too?

TS - The eco numbers will be done site-specifically, separately from this effort.

Comment [TS6]: KL - (editorial comment) Modify language in the first sentence to clarify that this subchapter is not defining what will/will not require preapproval.

TT - (this may or may not be covered by the rule) An ARS is developed on a property, and another party dealing with the same property does not want to apply that same ARS.

(c) Appendix 8, Development of Alternative Migration to Ground Water Exposure Pathway Soil Remediation Standards; and

(d) Appendix 9, Development of Alternative Vapor Intrusion Exposure Pathway Indoor Air Remediation Standards.

7:26D-8.4 Application and approval process for alternative remediation standards requiring prior approval from the Department

(a) Except as provided in N.J.A.C. 7:26D-8.5 below, the person responsible for conducting the remediation shall obtain prior approval from the Department, in accordance with (b) and (c) below, for an alternative remediation standard developed pursuant to N.J.A.C. 7:26D-8.3 before implementation of the alternative remediation standard.

(b) The person responsible for conducting the remediation and the LSRP shall collect and submit the necessary information indicated for each applicable exposure pathway as described in this chapter Appendices 6 through 9 referenced in N.J.A.C. 7:26D-8.3 above.

(c) The Department shall review the information submitted in accordance with (b) above, and shall respond as follows:

1. If the Department determines that the submitted information is acceptable, then the Department shall provide the person responsible for conducting the remediation with a written approval for the implementation of the alternative remediation standard at the specific site or area of concern;

2. If the Department determines that the submitted information is deficient, then the Department shall provide comments to the person responsible for conducting the remediation describing the deficiencies, in which case:

i. The person may correct the deficiencies and shall resubmit the information to the Department for its review;

ii. The person may withdraw the proposed alternative remediation standard; or

iii. If the deficiencies are not corrected, the ARS shall not be implemented until the Department approves the ARS in writing, pursuant to 1 above.

7:26D-8.5 Procedures for the development of alternative soil remediation standards without prior approval from the Department

(a) When the person responsible for conducting the remediation is not required to obtain prior approval from the Department for the implementation of an alternative remediation standard developed pursuant to N.J.A.C. 7:26D-8.3.

Comment [TS7]: Why not just list what needs approval and what does not? It would be clearer.

TS - Need to refer to the appendices.

Comment [TS8]: SD - "LSRP" is not noted anywhere in this part. There should be a greater expansion of the ID of the involved parties in this section. (See proposed language in this sentence.)

ACPedersen - Why not put this into technical guidance?

TS - This language is a setup for what is being discussed in the appendices regarding prior approval.

NR - (deferring to GT) The responsibility to obtain the standard is that of the remediating party. I expect that the Dept. would enforce against the remediating party and not the LSRP.

ND - Would be very concerned about interjecting an LSRP into this rule to add responsibility for the LSRP.

Comment [TS9]: LV - There is no path to approval listed in (c), and is curious as to whether that can be added.

TS - See (c)1.

LV - Is there a standard for "acceptable" here?

TS - There is so much variation that all criteria cannot be added ...

Comment [TS10]: RL - This is the location in the rule that RL discussed earlier regarding timing.

TS - Do you have a timeframe in mind?

RL - Within 45 days?
LV - ASAP?

JD - With respect to timeframes, any time for the Dept. review ...

Comment [TS11]: GT - Day-for-day extension is a good idea, but there will be a statutory problem with it. Delegation to the LSRPs is also a good idea. The Dept. has discretion to delegate to LSRPs in order to move the process along.

Comment [TS12]: CM - In reading this paragraph with 8.3, it does not make sense.

TS - We're trying to split out preapproval and no preapproval. There flow of the rule was the focus.

LV & KL - Add additional language suggested. ...

(b) The person responsible for conducting the remediation shall collect the necessary information indicated for each applicable exposure pathway as described in this chapter Appendices 6 through 9 referenced in N.J.A.C. 7:26D-8.3 above.

(c) The person responsible for conducting the remediation shall submit the information described in (b) above with the applicable remedial phase report or workplan.

(d) The alternative remediation standards developed pursuant to this section shall be subject to inspection and review by the Department, pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-21.

Comment [TS13]: ND - We appreciate the flexibility and the communication that we are having with the Dept. on this rule.

RL - Please return to the original (2008) language to this part, as there have been no additional site-specific approval details added in this new draft.