

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule Modification adopted by Catherine R. McCabe, Commissioner, Department of Environmental Protection

Date: August 17, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) (EO 103)

Effective Date: August 17, 2020

Expiration Date: Concurrent with expiration of EO 103

This is an emergency adoption of a temporary modification to allow for waiver of certain provisions of the Department of Environmental Protection's (Department) Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E, subject to the criteria set forth herein.

By way of Executive Order No. 103, dated March 9, 2020 (EO 103), Governor Phil Murphy declared that a Public Health Emergency and State of Emergency exists in the State of New Jersey as a result of Coronavirus disease 2019 (COVID-19) pandemic, which has subsequently been extended and remains in effect. By virtue of Section 6 of EO 103, authorized agency heads to waive, suspend or modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the COVID-19 pandemic, notwithstanding the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Environmental Protection is authorizing necessary modifications of its rules as follows:

The circumstances surrounding the ongoing COVID-19 pandemic and the Governor's prior direction to strictly observe the practice of social distancing, including suspending all non-essential retail business and construction, restricting travel and directing most employees to work remotely, and the continued impacts of the pandemic the ability of public and private entities to return to full functionality, has and will continue to impact their ability to perform important remediation activities regulated by the Department. In light of these unprecedented circumstances and recognizing that the continued, uninterrupted management of remediation activities is essential to the protection and preservation of public health and the environment, the Department, by Notice of Rule Waiver/Modification/Suspension, dated April 24, 2020, previously extended certain

timeframes for completion of remediation activities set forth in the ARRCs, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E for ninety (90) days. Due to the continuation of the Public Health Emergency and State of Emergency resulting from the COVID-19 pandemic and the ongoing operational limitations related thereto, the Department is further extending certain timeframes for remediation activities, as described below, for a total of two hundred seventy (270) days, inclusive of the prior 90-day extension.

Therefore, by operation of this adoption, I find that strict adherence to the above-referenced rules may, in certain circumstances, be detrimental to the public welfare during this emergency and modify as follows:

- a. The following timeframes for completion of remediation activities set forth in the ARRCs, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E, including where the timeframes identified herein are set forth in an administrative consent order (ACO), are hereby extended for a total of two hundred seventy (270) days, inclusive of the prior ninety (90) day extension. This extension applies only to those timeframes that have been and will be reached during the period which EO 103 is in effect.

The timeframes extended by this temporary rule modification are specific to reporting requirements. The timeframes for the mitigation of immediate impacts to human receptors are not being extended. Remedial activities are continuing during the Public Health Emergency and State of Emergency and protections for public health and safety and the environment remain in place.

1. Mandatory Remediation Timeframe:

Citation	Summary
N.J.A.C. 7:26C-3.3(b)1	For sites not subject to N.J.S.A. 58:10C-27.a(3) or N.J.S.A. 58:10C-27.1, if the person responsible for conducting the remediation (PRCR) is 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 Act, N.J.S.A. 58:10A-21 et seq., then the PRCR shall submit the preliminary assessment and/or site investigation report, as applicable, within two years from the later of the specific dates noted at 3.3(b)1.
N.J.A.C. 7:26C-3.3(b)2	For sites not subject to N.J.S.A. 58:10C-27.a(3) or N.J.S.A. 58:10C-27.1, the PRCR shall submit the initial receptor evaluation report containing the information required by N.J.A.C. 7:26E-1.12 through 1.16 known at the time the report is submitted within two years from the later of the specific dates noted at 3.3(b)2.

N.J.A.C. 7:26C-3.3(b)3	For sites not subject to N.J.S.A. 58:10C-27.a(3) or N.J.S.A. 58:10C-27.1, the PRCR shall initiate immediate environmental concern contaminant source control and then submit an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements, at N.J.A.C. 7:26E-1.11, no later than two years from the later of the specific dates noted at 3.3(b)3.
N.J.A.C. 7:26C-3.3(b)4	For sites not subject to N.J.S.A. 58:10C-27.a(3) or N.J.S.A. 58:10C-27.1, the PRCR shall complete a remedial investigation for the delineation of light non-aqueous phase liquid (LNAPL), initiate implementation of an LNAPL interim remedial measure, initiate monitoring, and submit an LNAPL interim remedial measure report with a form available from the Department's website, pursuant to the Technical Requirements, at N.J.A.C. 7:26E-1.10, within two years from the later of the specific dates noted at 3.3(b)4.
N.J.A.C. 7:26C-3.3(b)5	For sites not subject to N.J.S.A. 58:10C-27.a(3) or N.J.S.A. 58:10C-27.1, the PRCR shall complete the remedial investigation of the contaminated site and submit the remedial investigation report, with a form found on the Department's website, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements at N.J.A.C. 7:26E-4.10.
N.J.A.C. 7:26C-3.3(b)6	For sites not subject to N.J.S.A. 58:10C-27.a(3), the PRCR who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 7 shall complete the remedial action of the contaminated site and submit the remedial action report, with a form found on the Department's website, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements at N.J.A.C. 7:26E-5.8.

2. Expedited Site-Specific Remediation Timeframe:

Citation	Summary
N.J.A.C. 7:26C-3.4	The Department may establish an expedited site-specific remediation timeframe that shall apply to a particular site, and the PRCR shall comply. If the PRCR fails to meet the timeframe, the site shall become subject to direct oversight by the Department.

3. Regulatory Timeframe:

Citation	Summary
N.J.A.C. 7:26E-1.10(c)	Within one year after LNAPL is discovered pursuant to N.J.A.C. 7:26E-1.10(b), the PRCR shall complete the

	delineation of the LNAPL, initiate implementation of an LNAPL interim remedial measure to prevent LNAPL migration, reduce LNAPL contaminant mass to the extent practicable and initiate monitoring of the interim remedial measure, and document the actions taken pursuant to this section and submit to the Department an LNAPL interim remedial measure report with a form available on the Department's website.
N.J.A.C. 7:26E-1.12(b)	The PRCR who completes an unrestricted use remedial action is not required to conduct a receptor evaluation, except as pursuant to N.J.A.C. 7:26E-1.16, when a final remediation document is filed with the Department within one year after the earliest applicable requirement to remediate, listed at N.J.A.C. 7:26C-2.2.
N.J.A.C. 7:26E-1.12(c)	The PRCR shall submit an initial receptor evaluation for a contaminated site, on a form found on the Department's website, one year after the earliest applicable requirement to remediate listed at N.J.A.C. 7:26C-2.2. The PRCR shall include in the initial receptor evaluation the information that is known by that person at the time the report is submitted.
N.J.A.C. 7:26E-3.14(a)1	If no contaminated areas of concern are identified during the site investigation, no further remediation is required at the site, except that the PRCR shall submit to the Department a preliminary assessment report and a site investigation report, prepared pursuant to this subchapter, and a form found on the Department's website no later than one year after the applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 for sites being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B.
N.J.A.C. 7:26E-3.14(b)1	If a contaminated area of concern is identified during the site investigation, the PRCR shall conduct a remedial investigation pursuant to N.J.A.C. 7:26E-4, and shall submit to the Department a preliminary assessment report and a site investigation report, prepared pursuant to this subchapter, and forms found on the Department's website no later than one year after the applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 for sites being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B.
N.J.A.C. 7:26E-4.10(a)1	Except as provided in 4.10(d) and 4.10(f), or as lengthened under 4.10(b) and 4.10(c), the PRCR shall complete the remedial investigation and submit to the Department a remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9 by the earliest applicable regulatory timeframe. The PRCR who is remediating the industrial establishment pursuant to the

	Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, shall complete the remedial investigation and submit a remedial investigation report by specific dates noted at 4.10(a)1.
N.J.A.C. 7:26E-4.10(a)2	Except as provided in 4.10(d) and 4.10(f), or as lengthened under 4.10(b) and 4.10(c), the PRCR shall complete the remedial investigation and submit to the Department a remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9 by the earliest applicable regulatory timeframe. The PRCR who is remediating a discharge from the underground storage tank pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and Underground Storage Tank rules, N.J.A.C. 7:14B, shall complete the remedial investigation and submit a remedial investigation report by specific dates noted at 4.10(a)2.
N.J.A.C. 7:26E-4.10(a)3	Except as provided in 4.10(d) and 4.10(f), or as lengthened under 4.10(b) and 4.10(c), the PRCR shall complete the remedial investigation and submit to the Department a remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9 by the earliest applicable regulatory timeframe. For all other contaminated sites not included in (a)1 and 2 above, the PRCR shall complete the remedial investigation and submit a remedial investigation report by specific dates noted at 4.10(a)3.
N.J.A.C. 7:26F-3.2	The owner shall, within 60 days after identifying the presence of free product, initiate the removal of free product and treat or remove all free product saturated soil to the extent practicable, or contain free product when treatment or removal is not practicable. The owner shall delineate the horizontal and vertical extent of free product, determine the thickness of the free product, remediate free product until either there is no observable sheen, or there is only a discontinuous sheen, complete the remediation of free product within one year after its discovery, and after the removal of free product, remediate contaminated ground water pursuant to N.J.A.C. 7:26F-4.

4. Regulatory Remedial Action Timeframe:

Citation	Summary
N.J.A.C. 7:26E-5.8(b)1	The PRCR shall complete the implementation of the remedial action and submit a remedial action report for a contaminated site within specific regulatory timeframes, for sites subject to the statutory requirement at N.J.S.A. 58:10C-27.a(3) to complete the remedial investigation on or before May 7, 2014 and that did not obtain or maintain an extension to complete the remedial investigation on or before May 7, 2016, pursuant to N.J.S.A. 58:10C-27.1.

N.J.A.C. 7:26E-5.8(b)2	The PRCR shall complete the implementation of the remedial action and submit a remedial action report for a contaminated site by specific dates noted at 5.8(b)2 for sites subject to the statutory requirement at N.J.S.A. 58:10C-27.a(3) to complete the remedial investigation on or before May 7, 2014, and that obtained and maintained an extension to complete the remedial investigation on or before May 7, 2016, pursuant to N.J.S.A. 58:10C-27.1.
N.J.A.C. 7:26E-5.8(b)3	The PRCR shall complete the implementation of the remedial action and submit a remedial action report for a contaminated site within specific regulatory timeframes. For every other site not subject to 5.8(b)1 or 5.8(b)2, by specific dates noted at 5.8(b)3.

Any party responsible for conducting remediation may request a further extension of the above-referenced timeframes or other applicable remediation timeframes, which the Department shall consider on a site-specific basis in accordance with the provisions of ARRCS, N.J.A.C. 7:26C or the Technical Requirements, N.J.A.C. 7:26E.

This emergency adoption and temporary modification shall remain in effect until the expiration or revocation of EO 103, unless otherwise revoked or modified by me.

Date: August 17, 2020



Catherine R. McCabe, Commissioner
Department of Environmental Protection