

THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MARCH 1, 2021 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE NOTICE, THE OFFICIAL VERSION WILL GOVERN.

**EXECUTIVE ORDER NO. 103 NOTICES**

**ENVIRONMENTAL PROTECTION**

**THE COMMISSIONER**

**Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103**

**(2020)**

**Administrative Requirements for the Remediation of Contaminated Sites**

**Technical Requirements for Site Remediation**

**Heating Oil Tank System Remediation Rules**

**N.J.A.C. 7:26C, 7:26E, and 7:26F**

Authorized: February 1, 2021, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. App.A:9-45 and App.A:9-47; and Executive Order No. 103 (2020).

Effective Date: February 1, 2021.

Expiration Date: Upon the Termination of the Emergency Declaration Made Pursuant to Executive Order No. 103 (2020).

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, the Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E, and the Heating Oil Tank System Remediation Rules (HOTSR), N.J.A.C. 7:26F, subject to the criteria set forth herein.

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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. Under EO 103, agency heads are authorized 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 including the Governor's direction to strictly observe the practice of social distancing and directing most employees to work remotely and the continued inability of public and private entities to return to full functionality, has and will continue to impact their ability to meet certain timeframes to complete remediation activities regulated by the Department, with entities facing difficulties in hiring subcontractors and obtaining other necessary permits and approvals. 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 two Notices of Rule Waiver/Modification/Suspension, dated April 24, 2020 and August 17, 2020, respectively, previously extended certain timeframes for completion of remediation activities set forth in the ARRCs, N.J.A.C. 7:26C, the Technical Requirements, N.J.A.C. 7:26E, and the

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HOTSR, N.J.A.C. 7:26F, for a total of two hundred seventy (270) days. By operation of this notice and as more fully described below, the Department is: (1) further extending certain timeframes that have been and will be reached during the period which EO 103 is in effect for a total of four hundred and fifty-five (455) days; (2) extending certain regulatory remedial action timeframes calculated from those set forth in the Site Remediation Reform Act at N.J.S.A. 58:10C-27 and 27.1, and related to those extended under (1) above, to from May 6, 2021 to May 6, 2022. The timeframes extended by this temporary rule modification are limited to reporting requirements only and shall not be construed to extend any timeframes for the mitigation of immediate impacts to human receptors. 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.

In order to qualify for the following extensions, the person responsible for conducting the remediation must have retained a licensed site remediation professional pursuant to N.J.A.C. 7:26C-2.3.

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 make the following modifications as follows:

- a. The following timeframes for completion of remediation activities set forth in the ARRCs, N.J.A.C. 7:26C, the Technical Requirements, N.J.A.C. 7:26E, and the HOTSR, N.J.A.C. 7:26F, including where the timeframes identified herein are set forth in an administrative consent order (ACO), and all subsequent timeframes related to the specific case that follow are hereby extended for a total of four hundred and fifty-five (455) days, inclusive of the

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prior 270-day extension. This extension applies to those timeframes that have been and will be reached during the period which EO 103 is in effect and all those subsequent timeframes that are hereby extended.

1. Regulatory Timeframe (other than Remedial Action):

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 person responsible for conducting the remediation (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

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	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

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	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.

2. Regulatory Remedial Action Timeframe:

Citation	Summary
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.

3. 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 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.

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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.

b. The following timeframes for completion of remediation activities set forth in 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 from May 6, 2021 to May 6, 2022.

1. Regulatory Remedial Action Timeframe:

Citation	Summary
N.J.A.C. 7:26E-5.8(b)1ii	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 for ground water on or

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	before May 7, 2014 and that did not obtain or maintain an extension to complete the remedial investigation for ground water on or before May 7, 2016, pursuant to N.J.S.A. 58:10C-27.1 and obtained a regulatory timeframe extension to submit a remedial action report for ground water by May 6, 2021.
N.J.A.C. 7:26E-5.8(b)2i	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 for soils on or before May 7, 2014, and that obtained and maintained an extension to complete the remedial investigation for soils on or before May 7, 2016, pursuant to N.J.S.A. 58:10C-27.1 and obtained a regulatory timeframe extension to submit a remedial action report for soils by May 6, 2021.
N.J.A.C. 7:26E-5.8(b)2ii	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 for ground water on or before May 7, 2014, and that obtained and maintained an extension to complete the remedial investigation for ground water on or before May 7, 2016, pursuant to N.J.S.A. 58:10C-27.1 and submit a remedial action report for ground water by May 6, 2021.

- c. 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.

Date: February 1, 2021



Shawn M. LaTourette, Acting Commissioner  
Department of Environmental Protection