

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: April 24, 2020

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

Effective Date: March 9, 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 and, 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 emergency, notwithstanding the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B1 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 emergency and the Governor's 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, may impact the ability of private and public entities 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 is extending certain timeframes for remediation activities, as described below, by ninety (90) days.

Additionally, to most effectively address emergent situations under potentially rapidly changing circumstances, the Department must have the ability to respond on a site- and situation-specific basis for the duration of EO 103, and extend the timeframes beyond the extensions set forth herein in order to ensure the continued appropriate management of remediation activities. To most effectively address these emergent situations, the Department is further modifying the subject rules to provide the flexibility required to respond, on a site and situation-specific basis, for the duration of EO 103.

Accordingly, I find that strict adherence to the above-referenced rules may, in certain circumstances, be detrimental to the public welfare during this emergency. Therefore, by operation of this adoption, I modify the above-referenced rules 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 by ninety (90) days. This extension applies only to those timeframes that have been and will be reached during the period which EO 103 is in effect.

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.

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
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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. 7:26E-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.

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.
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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. Except as provided in 5.8(b)2, the PRCR shall complete the remedial investigation on or before May 7, 2014, by specific dates noted at 5.8(b)1 for sites subject to the statutory requirement at N.J.S.A. 58:10C27.a(3).
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.

- b. The Department may waive, suspend, modify or relax any provision of ARRCs, N.J.A.C. 7:26C, or the Technical Requirements, N.J.A.C. 7:26E, with the exception of timeframe extensions under paragraph (a) above, including where any applicable conditions are set forth in permits or other approvals issued thereunder, on a case-by-case and site-specific basis. In order to apply the case-by-case, site-specific waiver, suspension, modification, or relaxation, the Department must find that such action is:
 - 1. Necessary to ensure the continued management of remediation activities and the services that support the same;
 - 2. Narrowly tailored to include only those regulatory modifications necessary to address circumstances created by or directly related to the COVID-19 pandemic; 3. Applied consistently to similar situated entities and individuals; and
 - 4. Limited to the period which EO 103 is in effect.
- c. Notice of any regulatory modifications under paragraph (a) above shall be provided on the Department's website.

This emergency adoption and temporary modification is retroactive to March 9, 2020, the effective date of EO 103, and shall remain in effect until the expiration or revocation of EO 103, unless otherwise revoked or modified by me.

Date: April 24, 2020

Catherine R. McCabe, Commissioner
Department of Environmental Protection