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**ENVIRONMENTAL PROTECTION
SITE REMEDIATION PROFESSIONAL LICENSING BOARD**

Adopted New Rules: N.J.A.C. 7:26I

Regulations of the New Jersey Site Remediation Professional Licensing Board

Proposed: January 5, 2015, at 47 N.J.R. 45(a).

Adopted: December 8, 2015, by Mark Pedersen, Chairman, Site Remediation Professional Licensing Board.

Filed: December 9, 2015, as R.2016 d.005, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 58:10C-1 et seq.

DEP Docket Number: 10-14-12.

Effective Date: January 4, 2016.

Expiration Date: January 4, 2023.

The Site Remediation Professional Licensing Board (Board) is adopting new rules to implement, in part, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. (SRRA). The SRRA established a new process for remediating contaminated sites, to be overseen by a newly created licensed professional, the licensed site remediation professional (LSRP). The SRRA established the Board in, but not of, the New Jersey Department of Environmental Protection (Department) to implement licensing requirements for site remediation professionals and to oversee the licensing and performance of LSRPs. (N.J.S.A. 58:10C-3.a). The Board is authorized to evaluate the qualifications of applicants, administer examinations, issue licenses, establish standards and requirements for continuing education of LSRPs, approve or offer continuing education courses, adopt and administer standards for professional conduct of LSRPs, investigate complaints against LSRPs, and impose discipline against persons found to have violated the SRRA. (N.J.S.A. 58:10C-5). The Board is also required to audit annually the submissions and conduct of at least 10 percent of the total number of that year's LSRPs. (N.J.S.A. 58:10C-24). The Board adopts the new rules to carry out these mandates.

Summary of Hearing Officer's Recommendations and Board's Response:

The Board published its notice of proposal in the New Jersey Register at 47 N.J.R. 45(a) on January 5, 2015. The comment period for the proposed new rules closed on March 6, 2015. The Board held a public hearing concerning this notice of proposal on February 17, 2015, at 4:00 P.M. in the public hearing room at the New Jersey Department of Environmental Protection, 401 East State Street, Trenton. Joann Held, Chairman of the Rules Committee of the Site Remediation Professional Licensing Board, served as the hearing officer. Twelve people attended the public hearing and six people offered comments. A transcript of the public hearing is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs
Attn: DEP Docket Number 10-14-12
Department of Environmental Protection
401 East State Street
Mail Code 401-041, PO Box 402

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Trenton, New Jersey 08625-0402

Including the commenters at the hearing, a total of 18 persons offered comments on the Board's notice of proposal. The Hearing Officer recommended that the Board adopt the rules as proposed, with the changes described below in the summary of public comments and Board responses. The Board has accepted the Hearing Officer's recommendation.

This adoption document may be viewed on the Board's website at <http://www.nj.gov/lsrpboard>.

Summary of Public Comments and Board Responses:

The following persons timely submitted written and/or oral comments:

Number	Last Name	First Name	Affiliation
1	Bee	John	Tapash
2	Beneduce	William	Norris, McLaughlin & Marcus, PA
3	Brinkerhoff	Laura	Brinkerhoff Environmental Services, Inc.
4	D'Argenio	Rinaldo	Arturi, D'Argenio, Guaglardi & Metliti, LLP
5	Ferguson	Roger	Penn-Jersey Environmental Consulting
6	Fisher	Ian	NJDEP-SRP-BIS
7	George-Cheniara	Elizabeth	New Jersey Builders Association
8	Goldstein	Kenneth	Licensed Site Remediation Professional Association
9	Karp	Susan	NAIOP New Jersey
10	Laiosa	Rayna	PSEG Services Corporation on behalf of itself and its affiliates Public Service Electric & Gas Company, PSEG Fossil LLC, PSEG Nuclear LLC
11	Limbrick	Elizabeth	New Jersey Chapter of the Society for Women Environmental Professionals
12	McCardell	Chris	Stantec
13	Morris	David	Tectonic Engineering and Surveying Consultants, PC

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14	Pietrucha	Mark	Woodard & Curran
15	Pittarese	Christopher	Groundwater & Environmental Services, Inc.
16	Russo	Anthony	Commerce and Industry Association of New Jersey
17	Waters	Edward	Chemistry Council of New Jersey and Site Remediation Industry Network
18	Wilkinson	Craig	NJDEP-SRP-BIR

General Comments

1. COMMENT: The commenter urges the Board to create an apprenticeship or precursor step to full licensure, similar to the program for professional engineers. Such a program would allow persons training to become LSRPs to countersign forms and be supervised by an LSRP in order to gain experience. (13)

RESPONSE: Although the Board did not include a formal apprenticeship as part of the proposed new rules, the Board acknowledges that experience and on-the-job training is required as preparation for becoming an LSRP. That is why, under the proposed licensing scheme, an applicant for the LSRP license must demonstrate experience amounting to at least eight years of full-time professional experience in the field of site remediation, of which at least five years shall have occurred in New Jersey and at least three years shall have occurred in New Jersey immediately prior to submission of the application; as well as a minimum of 5,000 hours of relevant professional experience within New Jersey over the five years immediately prior to submission of the application that is of a professional grade and character that indicates the applicant is competent to issue a response action outcome. An applicant for the LSRP license is also expected to have been trained by, or worked closely with, an LSRP, and therefore must also provide a letter of reference from an LSRP.

2. COMMENT: The commenter requests a response as to how the Office of Dispute Resolution will mediate disputes between an LSRP and the person responsible for conducting the remediation. (13)

RESPONSE: The Office of Dispute Resolution within the Department is not under the jurisdiction of the Board. Therefore, the Board cannot comment on the policies of the Office of Dispute Resolution.

3. COMMENT: The commenter asserts that the Department should not initiate complaints against an LSRP, but should contact the person responsible for conducting the remediation directly. The Department should utilize the Office of Dispute Resolution because it is possible that Department employees may bring complaints as individuals. (13)

RESPONSE: The Department is not under the jurisdiction of the Board. Therefore, the Board cannot dictate how the Department should use its Office of Dispute Resolution, nor how the Department should file a complaint with the Board. The SRRA allows any person, including the Department, to file a complaint against an LSRP. N.J.S.A. 58:10C-6.a(3). A person is defined as an individual, public or private corporation, company, association, society, firm, partnership, joint stock company, the State, and any of its political subdivisions or agents. See N.J.S.A. 58:10C-2. Therefore, the Board does not have the authority to write rules that restrict the Department, as an agent of the State, from filing a complaint against an LSRP.

4. COMMENT: The commenters opine that the proposed new rules are overreaching, overly prescriptive, and too stringent compared to the authority provided by the SRRA. (10 and 17)

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RESPONSE: The Board does not agree that the proposed new rules are overreaching, overly prescriptive, and too stringent compared to the authority provided by the SRRA. The Board has written the rules in accordance with the SRRA to implement the provisions of that act. The Board addresses these issues further when the commenters raise them more specifically in the context of other comments, below.

5. COMMENT: The commenter urges the Board to revise the proposed new rules with respect to public notification, maintenance of information, and retaliatory action in order not to damage the relationship between an LSRP and the person responsible for conducting the remediation. The commenter fears that the proposed new rules, as written, will place obstacles between an LSRP and the person responsible for conducting the remediation, and will make both parties fearful of Board actions, thus limiting the ability of an LSRP to utilize his or her professional judgment. The commenter believes this will result in a less efficient and more costly remediation process, thus slowing progress in reducing the number of contaminated sites and returning contaminated sites to productive economic use. (10)

RESPONSE: The Board does not agree that it needs to revise the provisions in the proposed new rules with respect to public notification, maintenance of information, and retaliatory action in order not to damage the relationship between an LSRP and the person responsible for conducting the remediation. On the contrary, the Board intends these provisions to prevent conflicts between an LSRP and the person responsible for conducting the remediation by clarifying the responsibilities and obligations that the SRRA places on the LSRP. Specifically: a. With respect to the public notification designation, the "LSRP shall respond to public inquiries for information when the person responsible for conducting the remediation designates the LSRP as the point of contact for public inquiries pursuant to N.J.A.C. 7:26C-1.7(o)." See N.J.A.C. 7:26I-6.19(a). The proposed new rules do not set up a conflict between the LSRP and the person responsible for conducting the remediation. Rather, the proposed new rules clarify the responsibilities of the LSRP, should the person responsible for conducting the remediation choose to designate the LSRP as the point of contact for public inquiries. The person responsible for conducting the remediation may choose not to designate the LSRP as the point of contact, in which case N.J.A.C. 7:26I-6.19(a) would not come into effect. b. With respect to the maintenance of information, N.J.S.A. 58:10C-20 sets forth an LSRP's obligation to maintain data, documents, records, and other information. The Board based the language in N.J.A.C. 7:26I-6.27 on N.J.S.A. 58:10C-20, with the clarification that the Board used the term "data, documents, records, and information" throughout the section to ensure that the Board was consistently applying the same obligation. The Board included a time frame in the rules, which the SRRA was silent on, in order to let LSRPs know how long they must maintain data, documents, records, and information in order to comply with this provision. Finally, the Board provides in the proposed new rules that "no one, including without limitation an LSRP's employer and/or clients, shall restrict the LSRP from personally maintaining and preserving all data, documents, records, and information specified in (a) above in the format and location that the LSRP chooses" so that it is clear that the mandate to maintain data, documents, records, and information is personal to the LSRP, and cannot be restricted by anyone. The Board intends by these clarifications in the proposed new rules to prevent conflicts between the LSRP and the person responsible for conducting the remediation by reflecting the obligations that the SRRA places on the LSRP. c. With respect to the retaliatory action language, N.J.S.A. 58:10C-26 prohibits any person from taking retaliatory action against an LSRP. The Board based the language in N.J.A.C. 7:26I-9.2 on N.J.S.A. 58:10C-26, with four important clarifications:

- (i) A person can neither "threaten to take," nor take retaliatory action against an LSRP;
- (ii) The Board added "the Board" wherever "the Department" is included in the statutory provision;
- (iii) The Board included the obligations of an LSRP to report discharges and to provide notice if the LSRP believes that the person responsible for conducting the remediation will not meet applicable remediation timeframes as actions for which retaliatory action is prohibited; and
- (iv) The Board also prohibits an LSRP from taking retaliatory action.

These provisions of the SRRA and the proposed new rules establish a statutory and regulatory framework that the Board intends to prevent conflicts and improve working relationships between an LSRP and the person responsible for conducting the remediation by making it clear to all parties the breadth of actions that may be considered to trigger retaliation, and providing notice that the Board will consider actions adverse to an LSRP in response to the LSRP taking the actions specified in this section to be retaliatory.

6. COMMENT: The commenter opines that the proposed new rules will allow the Department and the Board too much control over LSRPs, which will damage the relationship between an LSRP and the person responsible for con-

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ducting the remediation, and limit an LSRP's ability to use professional judgment for fear of Board action. The commenter also opines that the proposed new rules will make an LSRP responsible for compliance, which is beyond the scope of authority of the Board granted by the SRRA. (17)

RESPONSE: The Board does not agree that the proposed new rules will allow the Department and Board too much control over LSRPs or will negatively impact the relationship between the person responsible for conducting the remediation and the LSRP. On the contrary, the Board intended the proposed new rules to reflect the increase in autonomy that the SRRA allows an LSRP and to prevent conflicts between the LSRP and the person responsible for conducting the remediation by clarifying the responsibilities and obligations that the SRRA places on the LSRP. With respect to the responsibility for compliance, the Board intended the proposed new rules to clarify an LSRP's responsibilities that the SRRA established. The Board, in its proposed new rules, does not make an LSRP responsible for the person responsible for conducting the remediation's compliance with the SRRA or any other statutes or rules.

7. COMMENT: The commenters express appreciation for the issuance of the rule proposal, which will help to implement the SRRA, assist LSRPs in carrying out their responsibilities under the SRRA, and guide the current relationship between the person responsible for conducting the remediation and an LSRP. One commenter notes that the proposed new rules should maintain the distinction between the person responsible for conducting the remediation and that person's LSRP; that is, the person responsible for conducting the remediation is the party responsible for remediating a site, and the LSRP performs his or her duties on behalf of the person responsible for conducting the remediation. (4 and 7)

RESPONSE: The Board acknowledges and appreciates the commenters' support of this rulemaking. The Board believes that the proposed new rules, as intended, prevent conflicts between the LSRP and the person responsible for conducting the remediation by clarifying the responsibilities and obligations that the SRRA places on the LSRP.

8. COMMENT: The commenter suggests that the Board establish a dispute resolution process within the Board or Department to resolve LSRP-related disputes, in which LSRPs could take part on a voluntary basis. (7)

RESPONSE: The SRRA did not establish the Board as an arbiter of conflicts between LSRPs. Because the SRRA did not establish this as a role for the Board to take, the Board is not inclined to establish a dispute resolution process. LSRPs are free to avail themselves of private mechanisms to resolve conflicts, such as mediation, arbitration, alternative dispute resolution, and litigation.

9. COMMENT: The commenter expresses concern with how the public will access the data and records an LSRP holds related to ongoing remediation, and whether such data and records are subject to the Open Public Records Act, as well as when an LSRP should release such data and records. Of particular concern to the commenter is how data and records can be accessed when conducting due diligence in property transactions, for example, pursuant to the "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," ASTM E1527-13, which provides guidance for compliance with the U.S. Environmental Protection Agency's "all appropriate inquiry" rule. (7)

RESPONSE: An LSRP's data and records are not "public records" as defined in the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq. As a result, an LSRP has no obligation under OPRA to provide the public with access to his or her records. An OPRA request for such records is available after the LSRP has submitted them to the Department along with a response action outcome. Until that time, the person interested in such records will have to contact either the LSRP or the person responsible for conducting the remediation to gain access to those records.

10. COMMENT: The commenter expresses concerns relating to a pending complaint that has been made against the commenter. (1)

RESPONSE: The comment concerns an individual complaint investigation, which is not part of the proposed new rules and, therefore, the comment is beyond the scope of this rulemaking and no further response is required.

N.J.A.C. 7:26I-1.3 Definitions

11. COMMENT: The commenters express concern that the definitions of "relevant professional experience" and "full-time professional experience" are not consistent with the SRRA and may allow a non-qualified person to become an LSRP. Commenter 8 suggests that the definition of "full-time professional experience" be amended as follows: "Full-time professional experience means experience in which an applicant is required to apply scientific or engineering principles to contaminated site remediation where the resulting conclusions form the basis for reports, studies, or other documents and

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the project management connected with the remediation of a contaminated site." Remainder of the proposed definition stays the same. (8 and 15)

RESPONSE: According to the SRRA, an applicant must have "eight years of full-time professional experience ... in the field of site remediation, of which five years shall have occurred in New Jersey and at least three years shall have occurred in New Jersey immediately prior to submission of the application." See N.J.S.A. 58:10C-7d(2).

In addition, an applicant must have "a minimum of 5,000 hours of relevant professional experience within the State over the five years immediately prior to submission of the application that is of a professional grade and character that indicates the applicant is competent to issue a response action outcome." See N.J.S.A. 58:10C-7d(3).

The proposed new rules are consistent with the SRRA, also requiring eight years of full-time professional experience, at least five of which shall have occurred in New Jersey, and 5,000 hours of relevant professional experience in New Jersey within the five years immediately prior to submission of the application. See N.J.A.C. 7:26I-2.4(a)2 and 3.

The SRRA defines "full time professional experience" at N.J.S.A. 58:10C-7.e. The Board's definition of "full-time professional experience" in N.J.A.C. 7:26I-1.3 reproduces this definition. The Board believes that this definition encompasses experience equivalent to project management.

The Board defines "relevant professional experience" in the proposed new rules at N.J.A.C. 7:26I-1.3. The definition of "relevant professional experience" corresponds with the SRRA's requirement that relevant professional experience be "within the State" and therefore requires experience specific to New Jersey at a level that includes "knowledge of and experience with implementing the technical, scientific, and regulatory aspects of site remediation, including experience investigating, designing, implementing, and/or managing within each phase of the site remediation process." The Board believes that this definition also encompasses experience equivalent to project management.

The Board, therefore, disagrees with the commenters that the definitions and requirements discussed above are inconsistent with the SRRA and would allow a person who is not qualified to become an LSRP; therefore, the Board declines to revise the proposed new rules as the commenters suggest.

12. COMMENT: The commenter states that according to the SRRA at N.J.S.A. 58:10C-7.e, "the board may allow applicants with relevant advanced degrees up to two years of credit for professional experience, of which one year of credit may be awarded for applicants who have earned a master's degree in a relevant field of study and up to two years of credit may be awarded for applicants who have earned a doctorate degree in a relevant field of study." The commenter asserts that the Board has omitted this provision from the proposed new rules and requests an explanation of the Board's rationale for that omission. (15)

RESPONSE: The Board did in fact include the cited provision in the proposed new rules within the definition of "full-time professional experience."

13. COMMENT: The commenters opine that wherever the Board uses the term "promptly" the Board should specify a timeframe with a more appropriate length of time for the specific task. In some instances seven days may not be workable, and could place a financial burden on the LSRP and his or her employer. (8 and 17)

RESPONSE: Both the SRRA and the proposed new rules use the term "promptly." Since the SRRA does not define this term, the Board defined it in the proposed new rules in order to provide clarity. With respect to how the definition was derived, since "promptly," when undefined, could be an indeterminate period of time, the Board chose 7 days from the date triggering the requirement for a response or notification in order to provide LSRPs with a definite time period. Since the originally proposed definition did not include the date that starts the 7 days, the Board is revising the definition as follows (addition in bold):

"Promptly" means by the date by which the Board or the Department requests a response or, if no such date is given, as soon as possible, not to exceed seven days **from the date that an event occurs that triggers the requirement for an LSRP to provide a response or notification.**

In addition, in order to avoid situations in which seven days may be an insufficient period of time, the Board is revising N.J.A.C. 7:26I-6.15(a) to replace "promptly" with "by the date the Board or the Department specifies" and N.J.A.C. 7:26I-6.28(a) to replace "promptly" with "by the date the Department specifies."

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14. COMMENT: The commenter requests that the Board define several additional terms in the proposed new rules; specifically, "Board website," "client," "continuing education programs," "continuing education activities," "all appropriate inquiry," "executive session," and "retaliatory action." (8)

RESPONSE: The Board specifies "Board website" as www.nj.gov/lsrpboard each time that term appears in the proposed new rules; therefore, no further definition is necessary.

The Board's use of the term "client" in its proposed new rules does not have a meaning specific to the proposed new rules; rather, the Board uses this term according to its common understanding. Whether a client has the legal status of a "person responsible for conducting the remediation" is not relevant for an understanding of the word "client" as the Board uses that term in the rules.

The Board's use of the term "continuing education programs" in its proposed new rules does not have a meaning specific to the proposed new rules; rather, the Board uses this term according to its common understanding.

Although the Board did not define the term "continuing education activities" in N.J.A.C. 7:26I-1.3, the Board does specify in N.J.A.C. 7:26I-4.5 that that term includes "instructing a continuing education program that the Board has approved pursuant to N.J.A.C. 7:26I-4.4," "preparing and giving a presentation," and "authoring a paper published in a professional publication or the peer reviewed proceedings of a conference." The Board does not believe that clarity requires any further definition of the term.

The Board only uses the term "all appropriate inquiry" in a single provision in its proposed new rules, N.J.A.C. 7:26I-2.15(a)2iv. Rather than promulgate a definition for this term, the Board believes that its reference to N.J.S.A. 58:10-23.11g.d(2)(d) is appropriate for the reader to understand how the Board is using that term in its rules. The second place that the Board used this term in its rules, N.J.A.C. 7:26I-6.10(c), is to be deleted upon adoption, as discussed in the Response to Comment 59.

The Board's use of the term "executive session" in its proposed new rules does not have a meaning specific to the proposed new rules; rather, the Board uses this term according to its common understanding.

The Board specifies in N.J.A.C. 7:26I-9.1(d) that it intends for the term "retaliatory action" to include, but not be limited to, "reprisal by discharge, suspension, demotion, or other adverse employment action taken against an employee in the terms and conditions of employment, or otherwise terminating a person's employment or contract to provide professional services." The Board does not use the term "retaliatory action" in its proposed new rules outside of Subchapter 9, so it does not believe that a separate definition is necessary.

For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

15. COMMENT: The commenter opines that the definition of "person" in the proposed new rules is overly broad. The Board wrote the proposed new rules so as to give the Board authority over persons, when the Board should only have authority over LSRPs. To the extent that the proposed new rules apply to "persons" other than LSRPs, they are outside the scope of the Board's authority, particularly where not connected to the Board's specific investigation or audit of an LSRP. In particular, the commenter notes the use of "person" in N.J.A.C. 7:26I-5.6(a), 7.2(a)5, 7.5(f)2 and 3, and 9.3. (8)

RESPONSE: The Board's authority pursuant to the definition of person is not limited to regulating LSRPs, as the SRRA applies to persons other than just LSRPs.

The proposed new rules use the term "person" where the SRRA uses the term "person" and does not extend authority of the Board over "persons" unless the authority has been conferred by the SRRA, with the exception of N.J.A.C. 7:26I-5.6(a). In N.J.A.C. 7:26I-5.6(a) the Board clarifies that it is necessary for "any other person having information regarding an LSRP's submissions and conduct" to cooperate with a Board audit of an LSRP. The Board made this clarification because the audit is crucial to ensuring that an LSRP is functioning within the requirements of the SRRA and other applicable statutes and rules; therefore, it is important that not only the LSRP and the person responsible for conducting the remediation cooperate with an audit, but also any other person with pertinent information.

With respect to N.J.A.C. 7:26I-7.2(a)5 and 9.3, the Board may take action with respect to any person's violation of the SRRA, or any rule, regulation, or order adopted or issued pursuant thereto, based on the authority the SRRA granted to the Board in N.J.S.A. 58:10C-17.

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With respect to N.J.A.C. 7:26I-7.5(f)2 and 3, the Board may take these actions based on the investigative authority set forth in the SRRA in N.J.S.A. 58:10C-18.a and 18.c.

For the above stated reasons, the Board declines to make any revisions to the proposed new rules as the commenter suggests.

With respect to the definition of person, the Board proposed to add terms that were included in the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C) but that were not included in the SRRA; specifically, "entity," "estate," "foreign individual or entity," "interstate agency or authority," "the United States and any of its political subdivisions," and "or any of the other meanings which apply to the common understanding of the term." In response to the comment the Board re-evaluated the proposed definition and agreed with the commenter that since there is no statutory authority for the expansion of the definition, the definition in the proposal is overly broad. Therefore, the Board will remove those terms upon adoption from the definition that are not included in the SRRA definition, so that the definition in the adopted rules corresponds with the SRRA definition.

16. COMMENT: The commenter suggests defining "LSRP of record" and "professional services." (8)

RESPONSE: The Board does not use the term "LSRP of record" in its proposed new rules, and thus there is no reason for the Board to promulgate a definition of this term.

The Board's use of the term "professional services" in its proposed new rules does not have a meaning specific to the proposed new rules; rather, the Board uses this term according to its common understanding.

For the above stated reasons the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-2.7 Application Denial

17. COMMENT: The commenter has concerns with the provisions in the proposed new rules that allow the Board to prohibit license reapplication following the denial of an application and thinks that it would be sufficient to simply deny any applications submitted by an applicant for a period of time. (8)

RESPONSE: The SRRA, at N.J.S.A. 58:10C-8.b, confers authority to the Board to prohibit reapplication for an initial license for an appropriate length of time, up to three years. Since the reasons for prohibition against reapplication are in the Board's discretion, they need not be set forth in the proposed new rules. However, the Board intends to convey the reasons for denial of an application and the period of time before an application may be resubmitted to applicants individually.

N.J.A.C. 7:26I-2.8 LSRP Examination

18. COMMENT: The commenter suggests that the Board revise N.J.A.C. 7:26I-2.8(b) to delete prohibitions against bringing certain items into the examination, as the examination may be revised to be "open book." (8)

RESPONSE: The Board does not intend to revise the examination to allow for candidates to bring books, notes, or other aids. Should the Board decide to make such a revision in the future, the Board will revise its rules accordingly at that time. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-2.9 Result of the LSRP Examination

19. COMMENT: The commenter suggests that the Board allow a candidate that fails an examination to reapply with an abbreviated format application. (8)

RESPONSE: The Board considers each application anew, without bias for or against applicants that have previously applied for the license. Accordingly, the Board requires that every applicant submit the same completed application form and accompanying documents. In that way, applicants that have previously failed the examination will not be distinguished from applicants that have not previously failed, and all applications will be reviewed in the same manner. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-2.10(d) Issuance of a License

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20. COMMENT: The commenter expresses concern that 15 days is too short a period of time for an LSRP to update the Board on a change in contact information, and the commenter also suggests that the Board require an LSRP to notify the Department and clients with respect to a change in contact information. (8)

RESPONSE: It is important that the Board be able to reach an LSRP quickly in case the LSRP is selected for an audit or a complaint has been issued against the LSRP; therefore, it is appropriate for the Board to require an LSRP to report a change in contact information within 15 days after the change. If an LSRP's contact information is in flux, he or she may submit multiple changes of contact information to the Board. The Department sets forth the requirement that an LSRP maintain current contact information with the Department, see "Site and Contact Information Update Form." The Board does not specify obligations of the LSRP with respect to his or her clients outside of the mandates of the SRRA; therefore, it is up to the LSRP and his or her client to determine when and how an LSRP will notify his or her client of a change in contact information. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-2.11 Renewal of a License

21. COMMENT: The commenter suggests that the Board count the eight-hour health and safety training required by the Occupational Safety and Health Act as part of the 36 hours of training required of LSRPs in each license term. (15)

RESPONSE: The Board intends that the 36 continuing education credits that an LSRP must complete during the three-year term of his or her license ensure that he or she is informed of advances in scientific and technical aspects of site remediation, is current with State rules, and understands his or her ethical responsibilities. The eight-hour Occupational Safety and Health Act training is an additional objective that helps ensure that an LSRP is prepared to properly address health and safety concerns at a contaminated site; this goes beyond the scientific, technical, or ethical aspects of remediation. For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

22. COMMENT: The commenter suggests that the Board use the word "certifies" in N.J.A.C. 7:26I-2.11(b). (7)

RESPONSE: The Board agrees that the addition of the word "certifies" is an appropriate clarification, and is editing "demonstrates" to "demonstrates or certifies" in the following rules: N.J.A.C. 7:26I-2.4(a), 2.11(b), and 2.15(a).

23. COMMENT: The commenter opines that the Board should change the revocation period from 10 years to eight years, as eight years is consistent with the professional experience requirement in N.J.A.C. 7:26I-2.4(a)2. (8)

RESPONSE: The Board based the language in N.J.A.C. 7:26I-2.11(b)4 on the language in SRRA at N.J.S.A. 58:10C-7.d(7), with the addition of "or certification." As the SRRA specifies 10 years as the minimum period of time since a license has been revoked for an applicant to qualify for a license, the Board does not have the discretion to revise the proposed new rules as the commenter suggests.

24. COMMENT: The commenter questions the criteria that the Board will use to determine when an applicant cannot reapply for a period of time, and the basis for determining the length of the period of time. The commenter proposes that the Board allow an applicant to reapply, as the Board can simply reject the re-application. (8)

RESPONSE: The SRRA, at N.J.S.A. 58:10C-8.b, confers authority to the Board to prohibit reapplication for a license renewal for an appropriate length of time, up to three years. Since the reasons for prohibition against reapplication are in the Board's discretion, they need not be set forth in the proposed new rules. However, the Board intends to convey the reasons for denial of an application and the period of time before an application may be resubmitted to applicants individually.

N.J.A.C. 7:26I-2.12 Expiration of a License

25. COMMENT: The commenter suggests that the Board change 15 days to 30 days in N.J.A.C. 7:26I-2.12(c). (15)

RESPONSE: As the SRRA at N.J.S.A. 58:10C-16.d requires that an LSRP notify the Department within 15 calendar days after being retained or being released from responsibility for conducting remediation, the Board does not have the discretion to make the commenter's suggested rule amendment. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

26. COMMENT: The commenter states that since the proposal of the proposed new rules, the Department has made mandatory the use of the Department's online Regulatory Service Portal for submitting notifications of retention and

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dismissal. Because of this change, and because an LSRP with an expired license would not be able to access the Regulatory Service Portal, N.J.A.C. 7:26I-2.12(c)2 is no longer practicable. (6)

RESPONSE: The commenter is correct that an individual with an expired license would be unable to utilize the Department's online Regulatory Service Portal, which the Department made mandatory since the Board's publication of the proposed new rules. Therefore, the Board is revising the proposed new rules to add "and the Department" after "Board" at paragraph (c)1 and to delete paragraph (c)2.

N.J.A.C. 7:26I-2.13 Suspension of a License

27. COMMENT: The commenter opines that it would be helpful for the Board to establish, by rule, a time frame for license suspension, as well as the basis for suspensions and terminations. (15)

RESPONSE: The SRRA, at N.J.S.A. 58:10C-17.a(1), confers authority to the Board to suspend or revoke a license. The Board applies this authority and exercises its discretion to decide whether to revoke or suspend a license, and if suspend, the length of suspension, depending on the specific circumstances of each case. In this way the Board can impose the most appropriate disciplinary action. Since the reasons for suspending or revoking a license and determining the length of a suspension are in the Board's enforcement discretion, they need not be set forth in the proposed new rules; however, the Board intends to convey such reasons to the LSRP individually.

N.J.A.C. 7:26I-2.14 Revocation of a License

28. COMMENT: The commenter states that suspension of an LSRP's license pending a hearing on a revocation of the license when the Board determines that the conduct of the LSRP is so egregious as to pose a threat to public health, safety, or the environment if the LSRP is allowed to conduct remediation of sites or areas of concern pending a hearing on a revocation of the license is in violation of the LSRP's due process rights. There should be a set time in which the hearing must commence so that the LSRP's license is not held in limbo for an inordinate amount of time. (8)

RESPONSE: The SRRA provides specific authority for the Board, in exceptional circumstances, to suspend an LSRP's license upon a determination by the Board that the conduct of the LSRP is so egregious as to pose an imminent threat to public health, safety, or the environment if the LSRP is allowed to conduct remediation of sites or areas of concern pending a hearing on a revocation of the license. See N.J.S.A. 58:10C-17.b(2). This provision does not preclude a hearing on the revocation, only the suspension. The hearing provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, remain in effect, and the process for holding a hearing would be set by this statute and rule. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-2.15 Inactivation of a License

29. COMMENT: The commenters opine that N.J.A.C. 7:26I-2.15 is too restrictive. The Board should only prohibit an individual who has inactivated his or her license from acting as an LSRP, but not from working in the field of site remediation. As the Board has written the proposed new rules, an LSRP that inactivates his or her license would be unable to work in the field of site remediation. This could create financial hardship for an LSRP that needs to inactivate his or her license. An LSRP may want to inactivate his or her license for many reasons, including to lessen his or her workload or to work on a part-time basis because of medical or family issues. This would disproportionately and unfairly affect persons with these concerns. Furthermore, requiring an LSRP to comply with the requirements for audits or investigations would be burdensome if the LSRP is inactive. An LSRP with an inactive license should have more than 12 months from the license expiration date to renew his or her license. (8, 11, 14, and 15)

RESPONSE: The Board's objective in N.J.A.C. 7:26I-2.15 is to allow an LSRP to voluntarily inactivate his or her license for a limited period of time during which the LSRP will not be working in the field of site remediation in the State of New Jersey. The Board would like to clarify five issues the commenters raise:

1. *Purpose.* As the Board stated in the notice of proposal, the purpose of inactivation is solely to alleviate an LSRP from the need to pay the annual license fee for any year in which the LSRP is inactive for the full calendar year. In order not to intrude upon an LSRP's privacy, the Board does not require an LSRP to disclose the reason for inactivation. However, the

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Board anticipates that an LSRP may exercise this option for reasons that the Board described in the notice of proposal, such as unemployment, prolonged illness, military service, maternity leave, or some similar situation in which the obligation to pay the annual license fee may result in financial hardship. It is for the above stated situations that the Board felt that it is appropriate to offer an inactivation option to an LSRP.

2. *Requirements.* An LSRP with an inactive license is still an LSRP in all other respects, other than payment of his or her annual LSRP fee, and must, therefore, continue to abide by all the provisions of the SRRA and any rule, regulation, or order adopted or issued pursuant thereto. Cooperation with an audit or complaint investigation is required of all LSRPs, whether active or inactive, as it is the means by which the Board ensures that the LSRP has complied with the SRRA in his or her past work. Therefore, an LSRP with an inactive license must comply with all requirements with respect to audits and investigations, must complete the continuing education requirements, and must renew his or her license pursuant to N.J.A.C. 7:26I-2.11. The Board understands that there may be some unique circumstances, such as a prolonged illness, maternity leave, or military service, in which an LSRP may be unable to comply with a regulatory requirement. The Board will deal with these circumstances on a case-by-case basis as they arise.

3. *License Renewal.* An LSRP with an expired license must renew the license within one year of the license expiration date, pursuant to N.J.A.C. 7:26I-2.11(e), whether the license was active or inactive on the date of expiration. If more than 12 months have passed since the license expiration date, the former LSRP may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but must apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.8, whether the license was active or inactive on the date of expiration. The one-year period of time is appropriate, as an LSRP that is not working as an LSRP or obtaining continuing education for more than one year may become out of touch with current technology and administrative requirements.

4. *Voluntary and Optional.* An LSRP's decision to inactivate his or her license is completely voluntary and optional. The Board will not require an LSRP to inactivate his or her license at any time, for any reason. There is no requirement that an active LSRP be retained as an LSRP on any minimum number of sites or work any minimum number of hours as an LSRP. Therefore, an LSRP that plans to work in the field of site remediation but limit his or her hours to part-time, and/or limit his or her activities to non-LSRP work, for a period of time, may still maintain an active license.

5. *Inactivation is not Expiration.* An LSRP that no longer wishes to practice as an LSRP has the option to allow his or her license to expire. A former LSRP with an expired license is not considered to be "inactive." The proposed new rules do not restrict a former LSRP with an expired license from working in the field of site remediation in the State of New Jersey in any capacity, except as an LSRP, pursuant to N.J.A.C. 7:26I-2.3: "No person shall be, act as, advertise as, or hold himself or herself out to be, or represent himself or herself as being an LSRP unless the Board has issued a license to that person pursuant to SRRA and this chapter and the license is current and not expired, suspended, revoked, or inactivated."

N.J.A.C. 7:26I-3.3 Application fee

30. COMMENT: The commenter suggests that Board include a ceiling in the fee increase language, and that the Board include in the notice for an increase in the application fee in the New Jersey Register an explanation as to why the Board needs additional resources to process application fees. (8)

RESPONSE: At N.J.A.C. 7:26I-3.3(a), the Board set forth the criteria for the recalculation of the application fee. The Board does not consider it appropriate to set a ceiling on any potential fee increase, as the Board cannot predict or control the factors that may require a fee increase. The Board will include the information it deems pertinent to the fee increase in the New Jersey Register, which may include an explanation of why additional resources are needed to process application fees, if that is the case. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-3.4 Renewal Fees

31. COMMENT: The commenter suggests that the Board include a ceiling in the renewal fee increase language, and that the Board include in the notice for an increase in the fee in the New Jersey Register an explanation as to why the Board needs additional resources to process renewal fees. (8)

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RESPONSE: At N.J.A.C. 7:26I-3.4(a), the Board sets forth the criteria for the recalculation of the renewal fee. The Board does not consider it appropriate to set a ceiling on any potential fee increase, as the Board cannot predict or control the factors that may require a fee increase. The Board will include the information it deems pertinent to the fee increase in the New Jersey Register, which may include an explanation of why additional resources are needed to process application fees, if that is the case. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-3.5 Annual license fee

32. COMMENT: The commenter states that the annual license fee of \$ 900.00 is too high, and out of line with other professions. A major component of the Board's budget is preparation of the examination. Since many examination questions have already been prepared, the cost for examination preparation should be lower, thus decreasing the budget. In addition, the commenter suggests imposing an examination fee or increasing the application fee so that the cost of the examination is borne by those taking the examination. (8)

RESPONSE: The Board acknowledges that examination expenses are an important component of the Board's annual operating expenses. The Board considers it equitable to spread the cost across all LSRPs; particularly since the number of candidates in the last three administrations of the examination averaged less than 100 per administration. With respect to the amount of \$ 900.00 for the annual license fee, at the time this notice of proposal was published, the Board determined that a \$ 900.00 annual license fee was the appropriate amount to support the Board's activities to administer services required for the licensing and oversight of LSRPs. However, since the time that the notice of proposal was published, the Board's annual operating expenses have proven to be lower than expected, and the number of LSRPs is higher than expected. Thus, a surplus of funds has accumulated. Consistent with N.J.A.C. 7:26I-3.5(a)4, the Board intends to adjust the \$ 900.00 annual license fee to account for the surplus in funds from the previous calendar year.

33. COMMENT: The commenter suggests that the Board include a ceiling in the annual license fee increase language, and that the Board include in the notice for an increase in the fee in the New Jersey Register an explanation as to why the Board needs additional resources to accomplish all tasks associated with the Board's duties. (8)

RESPONSE: At N.J.A.C. 7:26I-3.5(a), the Board set forth the criteria for the recalculation of the annual license fee. The Board does not consider it appropriate to set a ceiling on any potential fee increase, as the Board cannot predict or control the factors that may require a fee increase. The Board will include the information it deems pertinent to the fee increase in the New Jersey Register, which may include an explanation of why additional resources are needed to accomplish all tasks associated with the Board's duties, if that is the case. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

34. COMMENT: The commenter states that an LSRP typically receives the annual fee invoice long after the invoice date, which could significantly reduce the period of time the LSRP has to submit the payment. An administrative error on the part of the Board or Department, such as the invoice being sent to the wrong address or not getting mailed, could result in the LSRP failing to pay the annual license fee within the 90-day period. The proposed new rules should include provisions that stipulate an LSRP should be sent multiple invoices, or an unpaid invoice notification or warning letter, prior to allowing his or her license to expire due to an unpaid invoice. (8)

RESPONSE: The Board believes that the commenter may be misreading the rules, as the payment period begins when the LSRP receives the invoice. N.J.A.C. 7:26I-3.5(e) provides that an LSRP shall pay the invoice within 60 days after receipt of the invoice, and N.J.A.C. 7:26I-3.5(f) provides that an LSRP's license shall immediately expire 90 days after the LSRP's receipt of the Board's annual license fee invoice if the LSRP fails to pay the annual license fee within that 90-day period. Since the 90-day period does not begin until the date the LSRP receives the invoice, if delivery is delayed, the LSRP still has 90 days from the day he or she actually receives the invoice to pay it. It is the Board's intent that should it not receive a payment within 60 days after invoices are mailed, the Board shall investigate with respect to whether the LSRP did receive the invoice, and resend one if necessary. For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-4 Continuing Education

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35. COMMENT: The commenter suggests that the Board recognize training programs approved by other professional boards or societies for continuing education credit. It should not be necessary for the Board to review and approve each and every continuing education program for continuing education credit. (8)

RESPONSE: The Board has established criteria for approval of continuing education programs that are specific to the training needs of an LSRP; specifically, each continuing education program should have as the primary purpose to increase each participant's professional competence as an LSRP; be developed and conducted by a person or persons the Board deems qualified, based on practical and academic experience; and include subject matter related to the regulation of site remediation, the scientific and technical principles of site remediation, and/or the LSRP's ethical obligations.

Since other organizations evaluate the merit of continuing education programs utilizing criteria not specific to the training needs of an LSRP, the Board cannot rely on other organizations to ensure that the continuing education program provides training that would be specifically beneficial to an LSRP. For this reason, the Board requires its review and assessment of each continuing education program for which an LSRP seeks continuing education credits, and therefore, the Board declines to revise the proposed new rules as the commenter suggests.

36. COMMENT: The commenter opines that a portion of the 36 continuing education credits that an LSRP must earn in a three-year license term may be discretionary. (3)

RESPONSE: The proposed new rules allow an LSRP the discretion to choose which of the continuing education programs he or she wishes to attend to meet the requirement of 36 continuing education credits, including three in ethics education, 10 in regulatory education, and 14 in scientific and technical education. The LSRP may earn the remaining nine required continuing education credits in any of these three categories. If the provider of a continuing education program that the LSRP wishes to attend has not submitted an application for approval, the LSRP may submit the application for such approval pursuant to N.J.A.C. 7:26I-4.4(c). In addition, an LSRP may apply for up to 18 continuing education credits through continuing education activities, which include instructing a continuing education program that the Board has approved for continuing education credits by the Board, preparing and giving a presentation, or authoring a paper published in a professional publication or the peer-reviewed proceedings of a conference, pursuant to N.J.A.C. 7:26I-4.5. In this way, the Board has incorporated significant LSRP discretion into how he or she wishes to meet the continuing education requirements.

37. COMMENT: The commenter states that an LSRP needs to have all of his or her continuing education requirements completed prior to applying for license renewal, which is three months prior to the license expiration date. As the Board has written the proposed new rules, during those three months any continuing education programs the LSRP attends cannot count toward either license term. The commenter suggests that the Board allow any continuing education programs an LSRP attends after the LSRP submits a license renewal application to count toward the next license term. (12)

RESPONSE: The proposed new rules reflect the Board's policy that an LSRP must complete all continuing education requirements by the time he or she submits his or her application for license renewal. Once the LSRP submits an application for license renewal, the LSRP may count any continuing education credits earned toward the next licensing cycle. Therefore, the Board agrees to revise the proposed new rules to allow an LSRP to apply continuing education credits earned toward his or her next license term beginning the 89th day before his or her license expires, which is the day after the close of the license renewal application period.

38. COMMENT: The commenters request that the Board modify the proposed new rules to allow an LSRP to rollover excess continuing education credits earned during one license term to the next license term. Not allowing this adds administrative burdens to course providers and LSRPs. (8 and 16)

RESPONSE: The Board has decided that it is important for an LSRP to continually earn continuing education credits throughout his or her license term. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-5.3 Selection of LSRPs to be Audited

39. COMMENT: The commenters note that the Board does not specifically mention in N.J.A.C. 7:26I-5.3 that the selection of an LSRP it will audit is random, although the proposed new rules do mention random selection. The language

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should be consistent. In addition, the Board should state in the proposed new rules how it selects an LSRP for audit. (8 and 18)

RESPONSE: The SRRA directs the Board to conduct audits but does not specify how the Board should select LSRPs for this purpose. The method the Board uses to select an LSRP for audit is not set forth in the proposed new rules, but is a component of the Board's procedures.

The Board does acknowledge that it mentioned random selection in the Summary statement of the rule proposal, and this is the method the Board currently uses. However, the Board may change the selection process if it determines that another method of selection is preferable. Therefore, the Board declines to revise the proposed new rules as the commenters suggest.

40. COMMENT: The commenters suggest that the Board modify the proposed new rules to allow more than 24 months after the date of completion of an audit for an LSRP to be eligible for another audit. One commenter suggests that the Board not re-audit an LSRP until the Board has audited all other LSRPs. The other commenter suggests that the Board extend the time period during which the Board cannot re-audit an LSRP from two years to three years after the date of completion of the previous audit. (8 and 15)

RESPONSE: The Board does not believe that it is appropriate to extend the exemption from auditing beyond 24 months. The Board believes 24 months is an appropriate timeframe based on the number of LSRPs audited per month, which is currently five. The Board believes that an important component of the audit is the surprise factor, and if it were to extend the period of time between audits or implement a procedure by which no LSRP that had been previously audited could be audited again until all other LSRPs were audited, this would create a significant period of time in which LSRPs could be sure that they would not be audited. The Board believes that lengthening the time in which an LSRP would be sure he or she could not be audited could weaken the effectiveness of the audit for monitoring the conduct of LSRPs. For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

41. COMMENT: The commenter opines that allowing the Board's Audit Review Team to recommend that an LSRP be investigated and to refer the audit to the Board's Professional Conduct Committee does not give the LSRP the chance to defend himself or herself. It provides a unilateral opportunity for the Board to create a complaint. (8)

RESPONSE: The Board believes that it is entirely appropriate that it have the ability to "create a complaint" if, during an audit, it finds the basis for an investigation by its Professional Conduct Committee. An audit is not a disciplinary action, but a fact-finding process. An LSRP has the opportunity to cooperate in an audit, provide information to the Audit Review Team, and discuss any issues that arise. If the Audit Review Team identifies an issue that indicates that the LSRP may have violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, it is appropriate for the Board's Audit Review Team to refer that LSRP to the Board's Professional Conduct Committee, which is the committee that investigates possible violations. An LSRP will have the opportunity to address any issue that arises in an audit leading to a complaint during the complaint investigation, pursuant to N.J.A.C. 7:26I-7.5(c)3. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-5.6 Failure to Cooperate with an Audit

42. COMMENT: The commenter opines that the way the Board has written N.J.A.C. 7:26I-5.6 indicates that an LSRP is responsible for causing others to cooperate with an audit. The LSRP cannot be responsible for the cooperation, or false swearing, of another party. This also opens the door for a disgruntled person responsible for conducting the remediation to retaliate against an LSRP by simply not cooperating with the audit. (8)

RESPONSE: An LSRP is not responsible for causing others to cooperate with an audit. The Board specifies in N.J.A.C. 7:26I-5.6 that "the LSRP, the person responsible for conducting the remediation, and any other person having information regarding an LSRP's submissions and conduct shall cooperate with the Board in the conduct of an audit and shall provide any information the Board requests." The Board specifies in the proposed new rules that the LSRP, the person responsible for conducting the remediation, and any other person having information regarding an LSRP's submissions and conduct are each individually required to cooperate with an audit, and are each individually accountable for any failure to so cooperate.

N.J.A.C. 7:26I-6 Rules of Professional Conduct

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43. COMMENT: The commenter states that the Board should consider addressing, within this section, the nature of the relationship amongst LSRPs. The Board should place an explicit and affirmative obligation upon LSRPs to cooperate with each other, particularly in light of the responsibility to protect public health and safety and the environment. The proposed new rules should include a clear statement requiring cooperation amongst LSRPs. (7)

RESPONSE: N.J.A.C. 7:26I-6.2 specifies that an LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment. The Board expects, therefore, that LSRPs will cooperate with one another when necessary to accomplish this mandate, and the other provisions of the SRRA and any rule, regulation, or order adopted or issued pursuant thereto. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.3 Professional Competency

44. COMMENT: The commenter notes that N.J.A.C. 7:26I-6.3 allows an LSRP to vary from technical guidance in accordance with their professional judgment, and encourages the Board to emphasize to the Department the value of instituting a mechanism to catalogue all variances from technical guidance that have been approved by the Department. Such a tool would be a valuable reference source for an LSRP and the person responsible for conducting the remediation to guide and assist them in remediations. (7)

RESPONSE: The Department is not under the jurisdiction of the Board. Therefore, the Board cannot comment on the policies of the Department.

45. COMMENT: The commenter opines that N.J.A.C. 7:26I-6.3(a)8 is too broad, and should be clarified with the addition of the words "NJDEP remediation" before "standards" and "NJDEP environmental" before "rules or regulations." (8)

RESPONSE: The language the Board included in N.J.A.C. 7:26I-6.3(a)8 reflects the language in the SRRA at N.J.S.A. 58:10C-14.c(1)(d), with the addition of "rules or regulations." If the Legislature had intended to limit this provision in any way, it would have included language to do so. As the Legislature elected not to include any such limiting language, the Board declines to revise the proposed new rules as the commenter suggests.

46. COMMENT: The commenter suggests the addition of "in accordance with [N.J.A.C.] 7:26I-6.3(c)" at the end of N.J.A.C. 7:26I-6.3(b). (8)

RESPONSE: N.J.A.C. 7:26I-6.3(b), as proposed, mirrors the applicable provision in the SRRA at N.J.S.A. 58:10C-14.c(3). The Legislature did not tie this statutory provision to N.J.S.A. 58:10C-14.c(4), the statutory equivalent of N.J.A.C. 7:26I-6.3(c), as the commenter suggests the Board do in its proposed new rules. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

47. COMMENT: The commenters state that proposed N.J.A.C. 7:26I-6.3(c) requires an LSRP to explain why Department technical guidance is "inappropriate or unnecessary" if not used. The SRRA does not authorize this requirement and thus it exceeds the Board's authority. This section should be modified to remove the requirement that an LSRP provide a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary, and instead require the LSRP to explain the rationale for use and provide adequate justification to document that the decisions made remain protective of public health and safety and the environment. (8 and 17)

RESPONSE: The Board disagrees that it exceeded its authority including this requirement in its proposed new rules. The Legislature included a requirement for the LSRP to set forth the justification for using either U.S. EPA guidance or other relevant, applicable, and appropriate methods and practices, and the Board has reflected that requirement in its proposed new rules. Furthermore, there is nothing in the SRRA that supports the commenters' contention that while the Legislature took pains to specifically identify certain requirements that ensure the protection of the public health and safety and the environment, that it intended to have an LSRP simply ignore them without comment or justification. Consequently, the proposed new rules require that the LSRP include in the appropriate report a written rationale that explains why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements and which justifies the use of the guidance or methods that were utilized. This requirement is in sync with the Technical Requirements for Site Remediation (N.J.A.C. 7:26E-1 et seq.) and the Administrative Requirements for Site Remediation (N.J.A.C. 7:26C-1 et seq.). (see N.J.A.C. 7:26E-1.5, which requires that "any person conducting remediation

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pursuant to this chapter shall apply, pursuant to N.J.A.C. 7:26C-1.2(a)3, any available and appropriate technical guidance concerning site remediation as issued by the Department, or shall provide a written rationale and justification for any deviation from guidance.") Therefore, the Board declines to revise the proposed new rules as the commenters suggest.

N.J.A.C. 7:26I-6.5(a) Notification of Retention and Release

48. COMMENT: The commenters state that the Board should clarify in its proposed new rules that an LSRP need only submit a notification of retention when a person responsible for conducting the remediation retains the LSRP as the "LSRP of record." One commenter suggests that after "The person responsible for conducting the remediation retains the LSRP," the Board add the phrase "to perform services as the LSRP of Record for a site or area of concern," since a client may retain an LSRP in a capacity other than that of an LSRP. (8 and 16)

RESPONSE: According to N.J.A.C. 7:26C-2.3(a)2, a notification of retention is required when the person responsible for conducting the remediation hires an LSRP "to conduct or oversee the remediation." N.J.A.C. 7:26I-6.5(a)1 directs the LSRP to submit the LSRP Notification of Retention or Dismissal when "the person responsible for conducting the remediation retains the LSRP." N.J.A.C. 7:26C-2.3(a)2 does not limit the requirement to submit a notification only to LSRPs "perform[ing] services as the LSRP of Record for a site or area of concern"; therefore, it is not appropriate for N.J.A.C. 7:26I-6.5(a)1 to include this limitation. Consequently, in whatever capacity the LSRP is conducting or overseeing the remediation, a notification must be submitted pursuant to N.J.A.C. 7:26C-2.3(a)2 and 6.5(a)1. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

49. COMMENT: The commenter suggests changing "www.nj.gov/dep/srp/srra/forms" to "http://www.nj.gov/dep/online." (8)

RESPONSE: The web address as written, www.nj.gov/dep/srp/srra/forms, links to www.nj.gov/dep/online, as well as instructions, an update log, and the governing rule. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

50. COMMENT: The commenter suggests that the Board add new N.J.A.C. 7:26I-6.5(c) to clarify that an LSRP is by default "dismissed" after the issuance of an unrestricted response action outcome, and thus does not need to submit a notification of dismissal. The commenter proposed the following as section (c): "Upon issuance of a response action outcome for any activity, the LSRP shall be considered released as LSRP of Record for that activity. A Notification of Dismissal is not required to be filed by the LSRP after the issuance of an unrestricted entire site response action outcome. Other than the record keeping requirements required by SRRA and these Rules, the LSRP's remediation oversight responsibility for the activity is concluded." (8)

RESPONSE: The Board has written N.J.A.C. 7:26I-6.5 to implement N.J.S.A. 58:10C-16.d. The SRRA does not address the responsibility of an LSRP with respect to a site after he or she issues a response action outcome, nor does it provide the Board with the authority to do so. The Board considers this issue to be within the jurisdiction of the Department. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.6 Correcting Deficiencies and N.J.A.C. 7:26I-6.7(b) Responsibility of Successor LSRP

51. COMMENT: The commenters state that in N.J.A.C. 7:26I-6.6 and 6.7(b), the Board places the responsibility upon the LSRP to correct deficiencies the Department identifies "in accordance with timeframes the Department established." However, the person responsible for conducting the remediation is responsible for complying with regulatory timeframes. The Board should amend the proposed new rules to more closely outline and distinguish the responsibilities of the LSRP and the person responsible for conducting the remediation with respect to timeframes and remediation. In addition, one commenter urged that the Board modify N.J.A.C. 7:26I-6.6 and 6.7(b) to restrict the requirement to correct deficiencies to only those "associated with the work of the LSRP." (7, 8, and 9)

RESPONSE: The commenters are not correct that the LSRP does not have the responsibility to correct deficiencies within a particular regulatory timeframe. The SRRA identifies who has the responsibility to correct deficiencies within particular regulatory timeframes. N.J.S.A. 58:10C-16.e, which is the statutory basis for N.J.A.C. 7:26I-6.6, states: "A licensed site remediation professional **and** the person responsible for conducting the remediation shall correct any deficiency the department identifies in a document submitted concerning a remediation. The deficiency shall be corrected in

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accordance with timeframes established by the department" (emphasis added). Thus it is clear that N.J.S.A. 58:10C-16.e requires both the LSRP and the person responsible for conducting the remediation to correct any deficiency the Department identifies. Since Subchapter 6 of the proposed new rules are the rules of professional conduct for LSRPs, the Board did not include the obligations of the person responsible for conducting the remediation in this subchapter, but only the obligations of the LSRP.

Similarly, the Board based N.J.A.C. 7:26I-6.7(b) on N.J.S.A. 58:10C-16.g, with the following modifications:

1. The Board changed "another licensed site remediation professional" to "another site remediation professional, licensed or not," in recognition that sites with a long remediation history may have been remediated prior to the LSRP program by site remediation professionals who were not LSRPs; and
2. The Board changed "deficiencies in a document submitted by the previous licensed site remediation professional identified by the department" to "deficiencies in a document submitted by the previous site remediation professional including but not limited to those the Department identified," in recognition that as an independent professional whose highest priority is public health and safety and the environment, an LSRP is responsible for correcting deficiencies in a document that he or she becomes aware of, whether or not the Department has identified those deficiencies.

The SRRA includes in both N.J.S.A. 58:10C-16e and 16g the requirement for the LSRP to correct deficiencies "in accordance with timeframes established by the Department." Since the SRRA clearly establishes that the LSRP must meet the timeframes, the proposed new rules are consistent with the SRRA.

Furthermore, the Board does not agree that it should modify N.J.A.C. 7:26I-6.6 and 6.7(b) to restrict the requirement to correct deficiencies to only those "associated with the work of the LSRP." If an LSRP submits a document with a deficiency, it is incumbent upon the LSRP to correct that deficiency, whether it is associated with the work of the LSRP or not. An LSRP must submit a new, corrected document so that the Department can discard the deficient document and replace it with the new, corrected document.

For the above stated reasons the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.7 Responsibility of Successor LSRP

52. COMMENT: The commenters opine that the Board requires a successor LSRP to question and potentially "redo" the work of a previous LSRP in N.J.A.C. 7:26I-6.7. This will result in duplication of prior work and potentially greatly increase the costs of a remediation. The Board should revise the proposed new rules to reflect that a new LSRP may utilize his or her professional judgment to determine if any deficiencies in work previously done by another LSRP are valid environmental concerns that will impact the effectiveness of the remediation to protect public health and safety and the environment. A new LSRP should only "redo" previous work when there is a legitimate and justifiable environmental concern. (8, 9, and 17)

RESPONSE: The Board agrees with the commenters that a successor LSRP should have discretion to determine when work completed by a previous site remediation professional may be relied on. However, the Board believes the commenters are incorrect that N.J.A.C. 7:26I-6.7 requires a successor LSRP to "redo" or duplicate the work of a previous LSRP. N.J.A.C. 7:26I-6.7(a) specifically provides that a successor LSRP may complete any phase of remediation based on the work of another LSRP, provided that the successor LSRP abides by the requirements of paragraphs (a)1, 2, and 3. A successor LSRP is responsible for correcting deficiencies in documents submitted by previous site remediation professionals, including deficiencies identified by the Department or the LSRP himself or herself. It is incumbent upon the LSRP to use his or her professional judgment to identify deficiencies not identified by the Department in documents that warrant correction. Although correcting a deficiency may indeed require additional work and expenditure of additional funds, such measures may be necessary to protect public health and safety and the environment. However, the Board recognizes that there may be deficiencies that are not "material" to the remediation, and that the LSRP is in the best position to evaluate deficiencies and whether or not they are material, and thus warrant correcting. Therefore, the Board will add "material" before "deficiencies" in N.J.A.C. 7:26I-6.7(b).

The Board notes that N.J.A.C. 7:26I-6.7(c) includes the term "material" in referring to "facts, data, or other information concerning any phase of the remediation for which a report was submitted to the Department." The term "material"

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indicates that the LSRP should evaluate the facts, data, and other information and decide if they are significant or relevant or important to "any phase of the remediation." The Board disagrees that only those facts, data, and other information that are so important that failure to disclose them will impact the effectiveness of the remediation to protect public health and safety and the environment warrant notification. However, the LSRP does have the discretion to use his or her professional judgment to decide if the facts, data, and other information are material and, thus, to decide if they warrant notification. Therefore, the Board declines to make any additional revisions to the proposed new rules as the commenter suggests.

53. COMMENT: The commenter states that the expansion of N.J.A.C. 7:26I-6.7(c) to include site remediation professionals, licensed or not, is not supported by N.J.S.A. 58:10C-16.o. The Board should modify the proposed new rules to only refer to LSRPs. (9)

RESPONSE: N.J.A.C. 7:26I-6.7(c) tracks the language of N.J.S.A. 58:10C-16.o. However, the Board used the phrase "who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not" instead of the phrase "who succeeds another licensed site remediation professional" in recognition that an LSRP may be engaged to take over remediation on a site where some remediation was conducted prior to the initiation of the licensed site remediation professional program; therefore, the previous site remediation professional(s) working on the site may not have been licensed. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.8 Exercise of Independent Professional Judgment

54. COMMENT: The commenter suggests that the Board revise N.J.A.C. 7:26I-6.8(a) to include the word "applicable" before the phrase "rule, regulation, and order adopted or issued pursuant thereto." (8)

RESPONSE: The phrase "any rule, regulation, or order adopted or issued pursuant thereto" is used throughout the SRRA, and is concomitantly used by the proposed new rules. Being "adopted or issued pursuant" to the SRRA makes any rule, regulation, or order applicable; therefore, the use of this phrase obviates the need to use the word "applicable." For the above stated reasons the Board declines to revise the proposed new rules as the commenter suggests.

55. COMMENT: The commenters opine that the regulatory requirement in N.J.A.C. 7:26I-6.8(c) for an LSRP to notify the Department in writing when applicable timeframes will not be met is excessive and not supported by the SRRA. The Board should modify the proposed new rules to reflect that the LSRP is only required to notify the person responsible for conducting the remediation. It is the person responsible for conducting the remediation who is regulated by the Department and who controls the time, money, and resources of a remediation. The person responsible for conducting the remediation should notify the Department and request an extension. The Board should not include in the proposed new rules a requirement for the LSRP to notify the Department. (8, 9, 10, 15, and 17)

RESPONSE: At N.J.A.C. 7:26I-6.8(c), the Board requires an LSRP to notify the person responsible for conducting the remediation and the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met. The Board's requirement to have the LSRP notify the Department is warranted because the failure, or even potential failure, to meet applicable mandatory or expedited site-specific timeframes is a strong indication that a remediation is not progressing. When a remediation is not progressing, as part of the LSRP's obligation to protect public health and safety and the environment, it is reasonable and necessary for the LSRP to notify the person responsible for conducting the remediation and the Department that any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met. Notification that the person responsible for conducting the remediation is unlikely to meet a timeframe allows the Department to refer the case to compliance assistance to help move the remediation forward. In addition to notification, the Board expects the LSRP to communicate with the person responsible for conducting the remediation about pending deadlines and the work necessary to meet them. The timing and details of such communications are a matter of professional judgment. For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.9 Responsibility to Report an Immediate Environmental Concern

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56. COMMENT: The commenter notes that it would be helpful to provide a guideline or definition of what constitutes "independent professional judgment." (3)

RESPONSE: The Legislature uses the phrase "independent professional judgment" throughout the SRRA, and concomitantly the Board uses the phrase throughout the proposed new rules. This term does not have a meaning specific to the SRRA or the proposed new rules; therefore, it should be interpreted according to the common understanding of the term. For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

57. COMMENT: The commenters suggest that the Board modify the proposed new rules to delete the requirement that the LSRP notify the Department, as two separate notifications to the Department by the LSRP and the person responsible for conducting the remediation may result in the assignment of two incident numbers, complicating the administrative process. (8 and 16)

RESPONSE: N.J.A.C. 7:26I-6.9 reproduces N.J.S.A. 58:10C-16.j, with the addition of the term "previously unreported," and the Department hotline number "1-877-WARNDEP." The SRRA does not provide an exception for the LSRP to not notify the Department if the person responsible for conducting the remediation has provided such notice. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

58. COMMENT: The commenter is concerned with the duty to report a discharge by an LSRP that is not retained as the LSRP for a site or area of concern. The commenter opines that an LSRP who is not so retained should not be obligated to act upon information that he or she learns, because he or she would not have all of the necessary information to make any informed regulatory decisions for a potentially complex regulatory action or property transaction. The commenter requests that the Board clarify this issue. (7)

RESPONSE: The commenter asks for clarification of an LSRP's duty of disclosure when the LSRP "comes across information but is not retained as the LSRP for the site [or] area of concern." If an LSRP that is not responsible for a site or area of concern identifies a previously unreported condition that the LSRP considers to be an immediate environmental concern, the LSRP shall immediately advise the person responsible for conducting the remediation and immediately notify the Department, pursuant to N.J.A.C. 7:26I-6.9. The Board considers it of utmost importance that the LSRP report the existence of the immediate environmental concern in order to protect public health and safety and the environment. It is not necessary for the LSRP to have information to make informed regulatory decisions prior to making such a report. In the case of a contaminated site or area of concern for which the LSRP is responsible, if the LSRP obtains specific knowledge that a previously unreported discharge has occurred on the contaminated site or area of concern, the LSRP shall immediately notify the person responsible for conducting the remediation, the Department, and any other LSRP working on the site, pursuant to N.J.A.C. 7:26I-6.10.

N.J.A.C. 7:26I-6.10 Responsibility to Report a Discharge

59. COMMENT: The commenters express concern with regard to the Board's interpretation in the proposed new rules of the phrase "for which he is responsible." The proposed new rules change the LSRP's reporting obligations, and would undermine the business and contractual relationship between the LSRP and responsible party. An LSRP should only be responsible for a site if he is the LSRP of record. The commenter is concerned that requiring an LSRP to report a discharge, even if the LSRP was hired only for specific tasks, such as preparing a "DPCC" plan or for permitting tasks that did not require the submittal of a notification of retention, would mean that LSRPs would be excluded from this type of work. As written, the proposed new rules would make the LSRP a "cop" for the Site Remediation Program, which was not intended by the SRRA and would unnecessarily damage the program. Such a role could reduce the use of appropriate professional judgment and slow down the remediation process without technical need. (8 and 17)

RESPONSE: The Board based N.J.A.C. 7:26I-6.10(a) on N.J.S.A. 58:10C-16.k. The Board included N.J.A.C. 7:26I-6.10(b) and (c) to clarify the meaning of "for which he or she is responsible" in subsection (a). Since commenters, in this comment and others, have expressed confusion over subsections (b) and (c) and how subsection (a) should be interpreted in light of subsections (b) and (c), it is clear to the Board that subsections (b) and (c) do not serve to clarify the meaning of "for which he or she is responsible." Therefore, the Board has decided to delete subsections (b) and (c) upon adoption.

60. COMMENT: The commenter questions whether N.J.A.C. 7:26I-6.10(a) requires an LSRP to report an unrelated discharge on an off-site property that he or she discovers while delineating a plume originating on-site. For example, if the

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contaminated site the LSRP is remediating has a BTEX plume, but an offsite well placed by the LSRP indicates VOC contamination, should the LSRP report it? (18)

RESPONSE: Pursuant to N.J.A.C. 7:26I-6.10(a), an LSRP has an obligation to report a previously unreported discharge when the LSRP obtains specific knowledge that a discharge has occurred on a contaminated site for which he or she is responsible. "Contaminated site" is defined by the Technical Requirements for Site Remediation as "all portions of environmental media and any location where contamination is emanating, or which has emanated there from, that contain one or more contaminants at a concentration above any remediation standard or screening criterion." See N.J.A.C. 7:26E-1.8. A contaminated site does not stop at the property boundary. The commenter presumes that because a monitoring well is not within the property boundary, it is not on the contaminated site, and, therefore, the LSRP is not responsible for it. That does not comport with the definition of "contaminated site" quoted above. The Board expects an LSRP to report any discharges on a contaminated site that were not previously reported.

61. COMMENT: The commenter suggests revising N.J.A.C. 7:26I-6.10(c)1 from "does not own the contaminated site" to "never owned the contaminated site." In addition, an "and" should be added between "1" and "2," as (c)1, 2, and 3 must all be true for the exemption to apply. (18)

RESPONSE: As stated in the Response to Comment 59, the Board has decided to delete N.J.A.C. 7:26I-6.10(b) and (c) upon adoption.

62. COMMENT: The commenters opine that the word "hired" is too broad. An individual with an LSRP license may have been hired by an entity to provide services other than LSRP services. In those cases, the LSRP may not be involved in decisions or have access to information pertaining to the investigation. The Board should change the word "hired" to "retained as LSRP." In addition, if the person responsible for conducting the remediation retains an LSRP for an investigation of an area of concern and not the entire site, it is unreasonable to expect him to be responsible for the entire site. Thus, the commenters also recommend changing both occurrences of "site" to "site or area of concern." (8, 10, and 15)

RESPONSE: As stated in the Response to Comment 59, the Board has decided to delete N.J.A.C. 7:26I-6.10(b) and (c), upon adoption.

63. COMMENT: The commenter states that if a prospective purchaser does not have to retain an LSRP to conduct a preliminary assessment, as implied by N.J.A.C. 7:26I-6.10(c), a lender or property owner should not have to either. The proposed new rules should clarify that lenders conducting due diligence for mortgages do not have to use an LSRP and that a property owner conducting a preliminary assessment of his own property does not have to use an LSRP. (8)

RESPONSE: As stated in the Response to Comment 59, the Board has decided to delete N.J.A.C. 7:26I-6.10(b) and (c) upon adoption. The Department, not the Board, regulates when a party must use an LSRP. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.11 Deviation from Workplan by Client

64. COMMENT: The commenters suggest that the Board modify the proposed new rules to include the following provision at N.J.A.C. 7:26I-6.11(a) after "other report concerning the remediation": "that will impact the effectiveness of the remediation in protection of human health and the environment." One commenter also suggests adding "significant" before "deviation." Another commenter also noted that requiring the LSRP to report the client to the Department is a conflict of interest, and may result in retaliation by the client against the LSRP. (8, 15, and 17)

RESPONSE: The Board based N.J.A.C. 7:26I-6.11 on N.J.S.A. 58:10C-16I. The Board included language in the proposed new rules that is substantially the same as the language of the SRRA. The plain meaning of the language from the SRRA is clear without the addition of the recommended phrases the commenters suggest. The Board expects an LSRP to determine when there is a deviation from the workplan or other report, and believes that adding the term "significant" will complicate this determination, for then the LSRP will have to determine if a deviation is "significant" or "insignificant." It is enough that the LSRP determine that there is a deviation from the workplan or other report. The LSRP must then notify the client and the Department of the deviation in writing, whether or not the deviation impacts the effectiveness of the remediation in protection of human health and the environment. In that way, the client and the Department will know that the workplan or other report is not being followed, and can discuss with the LSRP how the deviation may impact the effectiveness of the remediation. The Board also notes that any retaliation against the LSRP for reporting a

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deviation by the client is included in the prohibition against retaliatory action of N.J.A.C. 7:26I-9. Therefore, the Board declines to revise the proposed new rules as the commenters suggest.

7:26I-6.13 New Information after Submitting Report

65. COMMENT: The commenter suggests that the Board modify the proposed new rules to include the following provision at N.J.A.C. 7:26I-6.13(a) after "report submitted": "that will impact the effectiveness of the remediation in protection of human health and the environment." (8)

RESPONSE: The Board based N.J.A.C. 7:26I-6.13 on N.J.S.A. 58:10C-16.n. The language of the Board included in this provision of the proposed new rules is substantially the same as the language of the SRRA. Since the Legislature did not include the suggested phrase in the SRRA, the Board is not inclined to include it in the proposed new rules. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

7:26I-6.14 Responsibility to Disassociate from Unscrupulous Persons

66. COMMENT: The commenter states that the term "business venture" is vague, and questions whether the LSRP is required to dismiss himself or can continue to work for the client as a non-LSRP. (8)

RESPONSE: The Board based N.J.A.C. 7:26I-6.14 on N.J.S.A. 58:10C-16.p. The Board uses the term "business venture" according to the common understanding. An LSRP that knows or should know that a person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP should not allow the use of his or her name by, or associate with the person in a business venture, in any capacity, including, but not limited to, working for the person as an employee or contractor, partnering with the person, or otherwise engaging in business with the person.

N.J.A.C. 7:26I-6.15 Responsibility in Board and Department Investigations

67. COMMENT: The commenter states that since the Board, not the Department, investigates complaints against LSRPs pursuant to N.J.S.A. 58:10C-5.i, "Department" should be removed wherever it appears in N.J.A.C. 7:26I-6.15. (17)

RESPONSE: N.J.A.C. 7:26I-6.15 is based on N.J.S.A. 58:10C-16.q, and sets forth the responsibilities of the LSRP to cooperate in investigations conducted by the Board and investigations conducted by the Department. The Board does not interpret N.J.S.A. 58:10C-16.q as limited to just investigations of complaints against LSRPs, but understands it as including any investigations conducted by the Board or the Department. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

7:26I-6.16 Circumstances under which an LSRP is Held Responsible for Subordinate LSRP

68. COMMENT: The commenter notes that "a violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto" is an expansion of the SRRA at N.J.S.A. 58:10C-16.r, which says "a violation of any provision of this section." Since the statutory language is specific to Subchapter 16, the proposed new rules should be specific to Subchapter 6. (8)

RESPONSE: The Board agrees with the commenter that N.J.A.C. 7:26I-6.16 should refer only to Subchapter 6, therefore, the Board has revised the proposed new rules to change "a violation of the SRRA or any rule, regulation or order adopted or issued pursuant thereto" to "a violation of any provision of this subchapter."

N.J.A.C. 7:26I-6.18 Duty Regarding Client Communications

69. COMMENT: The commenter opines that the requirement that an LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by providing them with written documentation of these assumptions is very broad. For instance, it appears to include contractual/payment issues. While such disclosure is certainly desirable, it would not appear to be within the Board's statutory authority to require this disclosure. (15)

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RESPONSE: The Board based the language of N.J.A.C. 7:26I-6.18(a) on N.J.S.A. 58:10C-16.t. The SRRA addresses only the professional responsibilities of LSRPs, not contract or payment terms. Therefore, contract or payment terms are not covered by this section of the proposed new rules, only assumptions, limitations, or qualifications involving the work of the LSRP.

70. COMMENT: The commenter opines that N.J.A.C. 7:26I-6.18(b)3 transgresses into the realm of providing legal advice and should be deleted. (8)

RESPONSE: N.J.A.C. 7:26I-6.18(b)3 is not intended to direct LSRPs to provide legal advice, but simply to inform clients of the provisions in applicable statutes and regulations that will be triggered if timeframes are not met. This is information that an LSRP should know and he or she is responsible for sharing that knowledge with the person responsible for conducting the remediation. This can be particularly helpful to those clients of an LSRP who have not retained counsel that might otherwise advise the client, in a general way, of the potential enforcement consequences of the client's non-compliance with the applicable regulatory, mandatory, and expedited site specific timeframes in the Department's rules. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.19 Duty Regarding Public Communication

71. COMMENT: The commenter expresses concern that N.J.A.C. 7:26I-6.19 is not broad enough, given the ability of LSRPs to hold onto sampling data for months if not years throughout the remediation without having to submit the data to the Department until regulatory closure. As a result, site remediation in New Jersey under the LSRP program is much less transparent than it was prior to enactment of the SRRA. The Board should modify the proposed new rules so that an LSRP hired for any site in New Jersey is subject to the same information dissemination requirements, regardless of whether the LSRP has been designated as the point of contact by the person responsible for conducting the remediation. (2)

72. COMMENT: The commenters state that the proposed new rules designate the LSRP as the contact for public notification, which includes information required by public notification rules, information submitted to the Department, and important information to protect the public health and safety. The commenters believe that the Department should be the repository of submitted reports and public information. The SRRA does not provide authority to the Board to designate the LSRP as the contact to provide this information. (8, 9, and 17)

RESPONSE TO COMMENTS 71 AND 72: The purpose of N.J.A.C. 7:26I-6.19 is to clarify the responsibilities of an LSRP when the person responsible for conducting the remediation designates the LSRP as the point of contact pursuant to N.J.A.C. 7:26C-1.7(o). The SRRA does not provide the authority for expanding the proposed new rules to require LSRPs to provide information to the public unless the LSRP has been designated the point of contact pursuant to N.J.A.C. 7:26C-1.7(o). Therefore, the Board declines to revise the proposed new rules as the commenters suggest.

73. COMMENT: The commenter recommends that the Board add: "The LSRP is no longer obligated to comply with this section after the LSRP issues an unrestricted response action outcome or is otherwise no longer retained as the LSRP responsible for the site," to N.J.A.C. 7:26I-6.19. (8)

RESPONSE: The Board's objective in N.J.A.C. 7:26I-6.19 is to clarify the responsibilities of an LSRP when the person responsible for conducting the remediation designates the LSRP as the point of contact pursuant to N.J.A.C. 7:26C-1.7(o). The person responsible for conducting the remediation may designate the LSRP as the point of contact at any time, and the LSRP shall act in this capacity, as long as this designation continues. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.22 Duty to Notify Even if no Longer Employed by Client

74. COMMENT: The commenters opine that N.J.A.C. 7:26I-6.22 is too broad. The language in this section can be interpreted to extend an LSRP's duty to notify of any deviation, infraction, or release indefinitely, regardless of the timing of the dismissal. Once an LSRP's employment relative to the site has terminated, the LSRP will not be privy to the status of the investigation and will be unable to comply with this requirement. An LSRP cannot keep tabs on an investigation once he or she is no longer associated with it. It's up to the person responsible for conducting the remediation, along with the current LSRP and Department, to manage compliance with timeframes. One commenter suggests including a time frame within which the LSRP will be responsible for notifications after he or she is dismissed. (8 and 15)

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RESPONSE: The Board based N.J.A.C. 7:26I-6.22 on N.J.S.A. 58:10C-16.w. The Board's objective in this section is to clarify that an LSRP must provide any notifications that the LSRP is required to make while he or she is an LSRP. A discharge, whether initiated by the LSRP or the client, will not relieve the LSRP of a notification requirement that has already arisen. However, once an LSRP is discharged, he or she is not responsible for notifications that arise after his or her discharge. In order to further clarify the proposed new rule, the Board will add the clarification that the notification requirement must have arisen during the LSRP's retention.

N.J.A.C. 7:26I-6.23(b) Conflict of Interest

75. COMMENT: The commenter opines that the Board should allow an LSRP to exercise professional judgment. It does not seem reasonable to prohibit an LSRP from providing services on a site where he or she may have a financial interest, as other State licensing rules allow Professional Engineers in New Jersey to do. (3)

RESPONSE: The Board based the language of N.J.A.C. 7:26I-6.23(b) on N.J.S.A. 58:10C-16.y, without modification. Therefore, the Board has no authority to delete this subsection.

N.J.A.C. 7:26I-6.24 Certification

76. COMMENT: The commenter notes that N.J.A.C. 7:26I-6.24 establishes the conditions under which an LSRP may certify any documents submitted to the Department, but does not specify that the LSRP must have been retained as the LSRP of Record for the site. The Board should add "of Record" after "LSRP" in the opening sentence of this provision. (15)

RESPONSE: The Board does not use the term "LSRP of record" in its proposed new rules. This section is intended to apply to all LSRPs that are retained to conduct remediation on a site. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-6.25(a)1 Response Action Outcome

77. COMMENT: The commenter suggests that the Board revise N.J.A.C. 7:26I-6.25(a)1 to include "or area of concern" after "contaminated site." If a person responsible for conducting the remediation retains an LSRP to remediate an area of concern only, the LSRP has no responsibility for the entire site. (8)

RESPONSE: Since an LSRP can issue an entire site or area of concern specific response action outcome, the Board agrees with the commenter's suggestion, and is revising N.J.A.C. 7:26I-6.25(a)1 to include "contaminated site 'or area of concern.'"

N.J.A.C. 7:26I-6.27 Maintenance of Data, Documents, Records, and Information

78. COMMENT: The commenter questions why the Board requires an LSRP to save all data if he or she is no longer the LSRP and did not issue a response action outcome for the site. This is inconsistent with the SRRA, which does not specify a timeframe and indicates that an LSRP needs to forward this information to the Department with the response action outcome. At that point the Department has all the information and it is a public record. There is no reason to compel an LSRP to retain records that the Department already has. Many persons responsible for conducting remediation have large portfolios of sites and those sites will periodically be transferred to new LSRPs. For LSRPs that manage multiple sites over the course of a decade, this requirement is onerous and unnecessary. (15)

RESPONSE: The Board requires an LSRP to save all data, documents, records, and information because SRRA also requires an LSRP to do so; the Board is without authority to eliminate that legal requirement. The commenter is incorrect that the SRRA terminates the obligation to maintain data, documents, records, and information at the time that a response action outcome is filed with the Department. Since the SRRA does not specify a period of time for an LSRP to retain his or her records, the Board specified what it believed was a reasonable timeframe in N.J.A.C. 7:26I-6.27(a)1, anticipating the commenter's concerns. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

79. COMMENT: The commenters are concerned that an LSRP must maintain data and documents for 10 years from the date of dismissal or his or her last response action outcome for a site or area of concern. Maintenance of these records will place responsible parties and LSRPs in conflict with each other, especially upon dismissal of the LSRP, as the LSRPs

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do not own the documents, the clients do. Another concern is when the LSRP changes employers, do the documents stay with the employer or the LSRP? No other profession has an equivalent requirement. (8 and 17)

RESPONSE: The Board based N.J.A.C. 7:26I-6.27 on N.J.S.A. 58:10C-20. As the Board based this section on the SRRA, the Board has no authority to delete this section. With respect to conflicts between LSRPs and clients or employers, the Board expects that the LSRP will personally maintain copies of data, documents, records, and information in the format the LSRP chooses. Anticipating the commenter's concerns, the Board thought it was appropriate and consistent with the SRRA that in subsection (b) the Board prohibit anyone from restricting an LSRP from personally maintaining the data, documents, records, and information in the format or location that he or she chooses.

N.J.A.C. 7:26I-6.28(b) Cooperation with Department Review of Remediation

80. COMMENT: The commenters note that the Board states in this section that "the LSRP may continue to remediate the contaminated site," but the person responsible for conducting the remediation remediates the site, not the LSRP. (7 and 8)

RESPONSE: The Board based the language of N.J.A.C. 7:26I-6.28(b) on N.J.S.A. 58:10C-21.e, but removed the phrase "the person responsible for conducting the remediation" because the Board did not intend for the proposed new rules to direct a person responsible for conducting the remediation with respect to its remediation obligations, but leaves such direction to other rules adopted or issued pursuant to the SRRA and other statutes. The Board did not intend this section to suggest that an LSRP becomes responsible for conducting the remediation, but simply that the LSRP may continue to perform remediation on the site. The Board has clarified this point in N.J.A.C. 7:26I-6.28 by adding that the LSRP may continue to remediate the contaminated site "on behalf of the person responsible for conducting the remediation ..."

N.J.A.C. 7:26I-7 Disciplinary Proceedings

81. COMMENT: The commenters note that the Board uses the term "person" in several places in Subchapter 7, indicating that the Board may investigate and take disciplinary action against any such "person." However, the definition of "person" describes individuals and entities that are not under the authority of the Board. The Board can only investigate and take disciplinary action against an LSRP. Therefore, these sections of the proposed new rules are beyond the Board's authority and the Board must revise them. (10 and 17)

RESPONSE: The SRRA provides that "whenever, on the basis of available information, the board finds that a *person* is in violation of P.L. 2009, c.60 (C.58:10C-1 et al.), or any rule, regulation, or order adopted or issued pursuant thereto, or who knowingly has made any false statement, representation, or certification in any documents or information required to be submitted to the board or the department, the board may" take an enforcement action against that person. N.J.S.A. 58:10C-17.a(1) (emphasis added). Consequently, the Board drafted the proposed new rules to reflect the authority that the SRRA conferred to the Board, which is to investigate and take an enforcement action against any "person," who violates the SRRA or any rule, regulation, or order adopted or issued pursuant to the SRRA. This includes both individuals who are LSRPs and individuals who are not LSRPs. For example, the SRRA provides that no person shall be, act as, advertise as, or hold himself out to be, or represent himself as being, a licensed site remediation professional unless the Board has issued that person a license (N.J.S.A. 58:10C-11) and prohibits any person from taking retaliatory action against an LSRP (N.J.S.A. 58:10C-26). The Board has the clear authority from the SRRA to take enforcement action against these and any other person who violates the SRRA or any rule, regulation, or order adopted or issued pursuant to the SRRA (N.J.S.A. 58:10C-17). The Board, therefore, does not agree that the SRRA limits the Board's authority to LSRPs.

82. COMMENT: The commenters note that in this subchapter the Board outlines the process for a complaint review team to follow when someone files a complaint against an LSRP. The commenter understands that the Board is interested in overseeing the conduct of an LSRP to ensure that he or she adheres to the high standards outlined in the SRRA and that the LSRP performs remediation that is protective of public health and safety and the environment. However, the commenter also encourages the Board to ensure that investigations proceed in a timely, expeditious manner and that the Board put safeguards in place to protect an LSRP from unwarranted, false claims that could potentially damage the LSRP's professional standing amongst his or her peers and clients. One commenter suggests that the Board should stipulate in this subchapter that a complaint review team have an obligation to respond to requests, inquiries, questions, papers, legal

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briefs, and position statements from the subject of the complaint within 35 days after receipt. This is the same length of time as specified in the adjudicatory hearing process in N.J.A.C. 7:26I-8.3(b)1 and 8.4(b)1. (7 and 8)

RESPONSE: The Board understands the profound impact that a complaint may have upon the professional life of an LSRP. The Board believes that it has put in place the appropriate safeguards that will protect an LSRP from unwarranted or false claims. For example, in order to ensure that the Board does not wrongly discipline an LSRP, the Board has carefully laid out the steps in Subchapter 7 that it will follow when determining whether to investigate a complaint, when investigating a complaint, and when responding to a finding of a violation.

As the Board promulgates at N.J.A.C. 7:26I-7.4(b), the Board's professional conduct committee reviews each complaint and considers whether there are grounds to investigate. This committee will find grounds to investigate if the complaint states facts which, if true, would support a finding that a person violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or knowingly made any false statement, representation, or certification in any documents or information submitted to the Board or the Department. If there are no grounds to investigate the complaint, the Professional Conduct Committee will then recommend that the Board dismiss the complaint.

Once the professional conduct committee determines that there are grounds to investigate a complaint, the Board convenes a complaint review team to thoroughly investigate the facts and circumstances underlying the complaint. The Board does not specify in the proposed new rules a timeframe in which the complaint review team must complete each investigation, because it is not possible to predict how much time it will need to thoroughly investigate the complaint, as an investigation may require obtaining files and documents, visiting sites, and interviewing the subject of the complaint, the complainant, and witnesses. Although it is the Board's goal to complete the complaint investigation in a timely and expeditious manner, of paramount importance is conducting a thorough and complete investigation, so that the Board arrives at an appropriate disposition of the complaint. This goal helps to prevent the situation the commenters raise.

With respect to stipulation of time to respond to requests from the subject of the complaint, the complaint investigation is not a legal proceeding, but an internal deliberative process.

N.J.A.C. 7:26I-7.3 Filing of Complaint

83. COMMENT: The commenter asserts that the Board should modify the complaint form to establish whether there has been mediation between the parties, whether the Office of Dispute Resolution has been involved, and whether the contract with the LSRP that is the subject of the complaint is concluded or active. Finally, the commenter urges stronger wording in the complaint form to indicate the seriousness of a complaint and its potential impact on an LSRP's livelihood. In addition, the Board should specify on the complaint form the penalties for making a frivolous or retaliatory complaint. (13)

RESPONSE: Although the Board did not propose its complaint form as part of this chapter, and, therefore, making any comments on the form is beyond the scope of this rulemaking, the Board has considered the commenter's suggestions. The Board disagrees with the commenter that the Board should modify the complaint form to indicate the seriousness of a complaint and its potential impact on an LSRP's livelihood, and to specify the penalties for making a frivolous or retaliatory complaint. The Board's purpose in drafting the complaint form was to fashion a document that provides the information necessary for the Board to begin an investigation. The Board believes that the commenter's suggestions could have a chilling effect on the filing of complaints. The Board would rather err on the side of having the person file the complaint. The Board may then determine whether to investigate the complaint. Therefore, the Board does not think that it is appropriate to modify the complaint form as the commenter suggests.

84. COMMENT: One commenter urges the Board to modify the complaint form to ask whether there is a civil or criminal complaint in process or pending at the time a complaint is made to the Board, as the Board should not consider a complaint if a civil or criminal action is pending or contemplated. Another commenter recommends that the Board include rule language that would prohibit a person from filing a complaint against an LSRP during the pendency of a case in civil court in which the LSRP is involved (similar to the rule applicable to attorneys). (7 and 13)

RESPONSE: The Board sees no reason that it should defer investigating a complaint because there is a civil or criminal complaint pending against the LSRP at the time a person files a complaint with the Board. The length of time that such litigation may take could delay the Board from investigating a complaint for many years. The Board has an obligation to timely investigate each complaint a person files with it and to take timely action against any violator as a result of

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the facts and circumstances the Board uncovers in that investigation. Thus, the Board does not think that it is appropriate for it to defer investigating a complaint if the LSRP is also involved in a pending civil or criminal action.

85. COMMENT: The Board should not allow the Department to file a complaint against an LSRP unless the Department has first completed its own legal action against the person responsible for conducting the remediation. The commenter urges the Board to ensure that the Department does not use a complaint as a vehicle for the Department to improve or prevail in its litigation, including administrative actions. (7)

RESPONSE: SRRA does not impose any conditions on any person before that person can file a complaint against an LSRP. In addition, not all complaints against an LSRP will involve a scenario in which the person responsible for conducting the remediation has the same parallel obligation as the LSRP, thus making the commenter's condition inapplicable. Therefore, the Board does not agree that it should make the regulatory changes the commenter suggests.

86. COMMENT: The commenter states that the Board, in the proposed new rules, would allow any person to file a complaint without any limitations on the grounds for the complaint. The commenter believes that this provides complainants with too much power, and suggests that the Board revise the proposed new rules as follows (additions in bold; deletion in brackets):

N.J.A.C. 7:26I-7.3(a):

"Any person may file a complaint with the Board [alleging] if they believe that a person has specifically:

1. Violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; or

2. Knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department."

The complainant should have to describe his or her relationship to the case, project, or LSRP. While the complaint form includes questions directing the complainant to describe a business or contractual relationship with the LSRP, the proposed new rules should also include this requirement. This information is critical for the Board to pursue an effective investigation of the nature of the complaint and the facts alleged thereto.

The commenter recommends that the Board amend N.J.A.C. 7:26I-7.3(b) to include this critical description of the relationship as follows (additions in bold):

"A person shall make a complaint to the Board on the form available on the Board website at www.nj.gov/lsrpboard, and include a description of their contractual, business, or other relationship to the LSRP and/or the person responsible for conducting the remediation."

The commenter further recommends that the Board amend N.J.A.C. 7:26I-7.3 to emphasize that a person not use the complaint process for retaliation, as the Board prohibits such conduct in N.J.A.C. 7:26I-9. The first determination the Board should make is whether or not a person's filing of a complaint is a retaliatory action. Therefore, the Board should add new N.J.A.C. 7:26I-7.3(c) and (d) as follows:

(c) "Any person cannot make a complaint for any other reason, including for retaliation. A contextual determination will be made of every complaint files, as to whether the complaint is perceived to be retaliatory and therefore, expressly excluded from Board action."

(d) "Any person can only make a complaint on the grounds of provided in (a)1 and 2 above."

(8)

RESPONSE: As stated in the Response to Comment 85, the SRRA does not impose any conditions on any person before that person can file a complaint against an LSRP. The Board believes that the conditions that the commenter suggests could have a chilling effect on the filing of complaints. The Board would rather err on the side of having the person file the complaint and allow the Board to determine the merits of the complaint. The Board believes it is appro-

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appropriate to ensure that the complaint process be very open, without adding language limiting the description of who may file a complaint. For the Board to revise the proposed new rules as the commenter suggests would discourage complaints, without providing useful information to the Board.

Furthermore, revisions of the proposed new rules as the commenter suggests are unnecessary, as the Board's procedures for investigating complaints are capable of accomplishing the objectives stated by the commenter. In investigating a complaint the Board examines the relationship between the complainant and the subject of the complaint, and whether a person filed the complaint as a retaliatory action. The Board does not base its findings or disposition solely on what the complainant says in his or her initial complaint, but on the facts that the Board discovers through its investigation.

For the above stated reasons the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-7.4 Board's Determination to Investigate Complaint and N.J.A.C. 7:26I-7.6 Board's Actions in Response to Complaint

87. COMMENT: The commenters request that the Board publish on its website only those complaints that the Board deems to have merit. Further, the commenters recommend that the Board specify in N.J.A.C. 7:26I-7.4(d)1ii and 7.6(e) that the Board will not make public the name of the LSRP and complainant when publishing the disposition of the complaint, if the Board dismisses the complaint or finds no violation. The commenters opine that when a complaint is dismissed or there is a finding of no violation, the existence of the complaint should not reflect on the LSRP's professional reputation. This is, in effect, retaliatory action, which the SRRA prohibits, and negates the presumption of innocence until guilt is proven. Given the stigma associated with the Board revealing a person's identity on the Board's website in association with a complaint, the Board should redact any information that reveals the identity of the LSRP where the Board decides to dismiss the complaint or not enforce after an investigation.

The commenters further state that the provisions in Subchapter 9 prohibiting retaliatory action against a complainant may in fact encourage baseless complaints. The commenter refers the Board to N.J.A.C. 7:26I-7.6(e), which requires the Board to publish a summary of the complaint and disposition on the Board's website, even when the Board has made the decision to dismiss the complaint. Again, if no Board action is required, the name of the LSRP and complainant should remain confidential.

One commenter recommends the following revisions (additions in bold):

N.J.A.C. 7:26I-7.4(d)1ii

Publish a summary of the complaint **with the names of the complainant and the LSRP redacted**, including the reason(s) for dismissal on the Board website.

N.J.A.C. 7:26I-7.6(e)

"Upon the Board's determination pursuant to (b)2 or 3 above, a summary of the complaint, **with the names of the complainant and the LSRP redacted**, and its disposition shall be made available on the Board website at www.nj.gov/lsrpboard.

N.J.A.C. 7:26I-7.6(f)

Upon a determination by the Board pursuant to (b)3 above, a summary of the complaint with the names of the complainant and the LSRP included, and its disposition shall be made available on the Board website at www.nj.gov/lsrpboard.

(3, 5, and 8)

RESPONSE: In the interest of openness and transparency, the Board posts on the Board website a summary of every complaint and its disposition, even if the Board dismisses the complaint. The Board believes it is important to provide this

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information in order to establish a record of every complaint and every Board determination. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

The Board does not specify, however, whether or not it will publish the names of the complainant and subject of the complaint in the summary of the disposition of a complaint on the Board website. While the Board has established a practice of not publishing these names when the Board dismisses a complaint or makes a finding of no violation, the Board believes that there are circumstances that may warrant an exception to this practice. In order to allow the Board the flexibility to determine, in specific circumstances, whether it should publish names, the Board declines to revise the proposed new rules as the commenter suggests.

N.J.A.C. 7:26I-7.5 Board's Investigation of Complaint

88. COMMENT: The commenter expresses concern that the language in N.J.A.C. 7:26I-7.5(d) allows the Board's complaint review team to avoid notifying the subject of the complaint about the complaint. This subsection allows a complaint review team to potentially undermine the LSRP's professional status by investigating the allegations in the complaint without notifying the LSRP as provided in N.J.A.C. 7:26I-7.5(c). By conducting an investigation, a complaint review team could contact other parties potentially involved in the complaint before notifying the LSRP. Despite any precautions that a complaint review team may employ, the release of the confidential information regarding the existence of a complaint is inappropriate and could unfairly damage the reputation and professional status of the LSRP should the Board subsequently dismiss the complaint. The commenter recommends that the Board modify the language as follows (additions in bold; deletions in brackets):

(d) If the Complaint Review Team determines that the investigation of the complaint could be undermined by notifying the subject of the complaint, the Complaint Review Team may delay notification until [a later date] **the review of the readily available documents has been completed, but before any of the parties are contacted.**

(8)

RESPONSE: The complaint review team may delay its notification of the LSRP until a later date in the limited circumstances where it determines that notification would undermine the investigation. The complaint review team must have the option to time the notification so that a subject of the complaint does not take action adverse to the investigation. Furthermore, a complaint review team must be able to determine when notification is appropriate with respect to the circumstances of the case, not simply after "the review of readily available documents has been completed."

For the above stated reasons, the Board declines to revise the proposed new rules as the commenter suggests.

89. COMMENT: The commenters are concerned that this section allows a complaint review team to expand the scope of the investigation beyond the allegations in the complaint. The second sentence of N.J.A.C. 7:26I-7.5(e) grants a complaint review team the unprecedented power to investigate complaints not granted to any other professional licensing board in New Jersey and far beyond the legislative intent authorized in the SRRA. The commenters believe that this provision could essentially allow a "witch-hunt" wherein a complaint review team is permitted to investigate an LSRP with impunity without the limitations the SRRA imposes. The commenters assert that this was a last minute change in the complaint review team's authority which was not contained in earlier drafts of the proposed new rules that were available for review.

One commenter further asserts that the second sentence of N.J.A.C. 7:26I-7.5(e) would prevent an LSRP from utilizing his or her professional judgment to vary from the Technical Requirements for Site Remediation while being protective of human health and the environment, for it would subject an LSRP to potential action by the complaint review team for a perceived violation of the Technical Requirements for Site Remediation. Clearly, this is completely counter to the legislative intent, the Department's existing regulations, and guidance that encourages use of professional judgment (with technical justification) to provide a protective and compliant remedy. The LSRP's professional judgment must be based on the hierarchy of statute, regulation, and guidance established by the SRRA at N.J.S.A. 58:10C-14(c)4.

One commenter strongly recommends that the Board eliminate the additional language of N.J.A.C. 7:26I-7.5(e) and modify N.J.A.C. 7:26I-7.5(g) as shown below to be consistent with the SRRA and current Board policy (additions in bold; deletions in brackets):

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N.J.A.C. 7:26I-7.5(e)

The Complaint Review Team shall take such actions it deems necessary to thoroughly investigate the allegations of the complaint. [The Complaint Review Team may expand its investigation beyond the allegations of the complaint to investigate whether the subject of the complaint has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.]

N.J.A.C. 7:26I-7.5(g)

The Complaint Review Team may review information from other persons regarding an LSRP that is the subject of the complaint [including, but not limited to:] **regarding the nature of the complaint.**

[1. Records from other cases that the LSRP is or was involved in;

2. Prior complaints; and

3.] Prior disciplinary actions may be considered by the Complaint Review Team only after the Board has determined that a violation has occurred and that a disciplinary action is warranted."

(5 and 8)

RESPONSE: The basis for the Board to take enforcement action against an LSRP is not limited to information that it may obtain pursuant to a complaint filed with the Board. The SRRA, at N.J.S.A. 58:10C-17.a, authorizes the Board to take enforcement action on the basis of "available information," without limiting that information to the four corners of a complaint as the commenters suggest. The SRRA authorizes the Board to oversee the performance of LSRPs (N.J.S.A. 58:10C-3.a), to administer standards of professional conduct (N.J.S.A. 58:10C-5.h), and to investigate complaints (N.J.S.A. 58:10C-5.i). The success of the new site remediation paradigm that the Legislature established in the SRRA is contingent upon the Board's ability to implement this statutory authority in order to ensure that all LSRPs are providing high quality professional services pursuant to the requirements that the Legislature established in the SRRA. Thus, the Board has the authority to investigate any information the Board obtains that indicates an LSRP may have violated the SRRA, or any rule, regulation, or order adopted or issued pursuant thereto. This includes an LSRP's possible violation of the Department's existing rules and technical guidance that informs an LSRP's exercise of his or her professional judgment based upon the hierarchy in N.J.S.A. 58:10C-14.c.

The Board included N.J.A.C. 7:26I-7.5(e) to clarify that the Board has the authority to conduct a full and thorough investigation. Unlike a complaint filed in the Superior Court of New Jersey, a complainant is not a plaintiff, and is not required to specify all potential violations. Nor is the Board required to limit a subsequent investigation based upon the scope of the complaint. Therefore, in order to fulfill its legislatively mandated duties, the Board must have the ability to expand its investigation to include potential violations not alleged in the complaint. For the above stated reasons, the Board declines to revise N.J.A.C. 7:26I-7.5(e) as the commenter suggests.

With respect to the commenter's proposed revision of N.J.A.C. 7:26I-7.5(g), the commenter proposes that the complaint review team not consider prior disciplinary actions until the Board has determined that a violation has occurred and that a disciplinary action is warranted. The Board considers prior disciplinary actions to determine whether there has been a pattern of violations by the subject of the complaint that may warrant more severe disciplinary measures than a first time offense would warrant. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

90. COMMENT: The commenters are concerned with the broad powers the Board asserts in N.J.A.C. 7:26I-7.5(f), and have serious doubts regarding the Board's authority to undertake the actions set forth in the proposed new rule (for example, subpoenas). As written, the Board appears to have the authority to enter any person's property that is subject to the SRRA and seize any property that it deems relevant to its investigation. This is overly broad and places a burden on a person responsible for conducting the remediation, the LSRP, and the property owner with regard to access and other proprietary rights. The Board should more narrowly tailor this provision. Further, N.J.A.C. 7:26I-7.5(f) provides a com-

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plaint review team with subpoena power, which is not appropriate, when the Board itself does not even have this power. (8 and 16)

RESPONSE: The SRRA, at N.J.S.A. 58:10C-18, provides the authority for the Board to undertake the actions enumerated in N.J.A.C. 7:26I-7.5(f). A complaint review team is an agent of the Board, and it has the authority the Board delegates to it. N.J.S.A. 58:10C-16.q refers to subpoenas, which indicates that the Board may issue subpoenas. Therefore, the Board declines to revise N.J.A.C. 7:26I-7.5(f) to limit the power of the Board.

N.J.A.C. 7:26I-7.9 Administrative Order

91. COMMENT: The commenter opines that the Board should not be determining what is required as part of a corrective action, and should not have the power to require that the LSRP produce or analyze samples. These technical aspects of site remediation are not within the Board's purview, which is limited to the LSRP's conduct and the requirement to follow all applicable rules and regulations. The LSRP is not responsible for producing technical work product or furthering the corrective action, except as the responsible party authorizes.

The Board should not be allowed to recover costs directly from the LSRP, including costs incurred by a separate agency not of the Board. The investigation is at the Board's discretion, and is therefore beyond the control of the LSRP under investigation. The conditions around which the Board can decide efforts, costs, and the need for recovery would need definition. It is noted that, as written, these decisions around cost recovery from the LSRP may occur before any input or response from the LSRP regarding the investigation. This is overly broad and outside of the Board's right to assess civil administrative penalties.

Moreover, certain of these items should remain discretionary ("may" rather than "shall"). In particular, it would be unfair and inappropriate for the Board to assess its or another agency's costs (for example, investigation costs of the Attorney General's) against every LSRP that it disciplines. The shifting of such costs is highly uncommon (for example, the Department does not do so), and it is contrary to the "American rule" of our civil litigation system that each party bears its own costs. Thus, the Board's assessment of costs and fees should be discretionary and reserved for unusually egregious matters. (8)

RESPONSE: The Board's authority to undertake the actions enumerated in N.J.A.C. 7:26I-7.9(b) is from N.J.S.A. 58:10C-18.d. The Board's authority to undertake the actions enumerated in N.J.A.C. 7:26I-7.9(c) is from N.J.S.A. 58:10C-17.f(3). As the Board based these subsections on the SRRA, the Board sees no reason to delete these subsections. In addition, N.J.A.C. 7:26I-7.9(c) does not require the Board to assess and recover its costs in every administrative order the Board issues. Instead, this provision states that "the Board **may** assess" its costs "when determined to be appropriate." N.J.A.C. 7:26I-7.9(c) (emphasis added).

The Board disagrees with the commenter's contention that the Board should not be allowed to recover costs directly from the LSRP. The Legislature established this public policy in the SRRA at N.J.S.A. 58:10C-17.f(3), which gives the Board the authority to assess and recover the costs of any investigation and the reasonable costs of preparing and successfully enforcing a civil administrative penalty pursuant to N.J.S.A. 58:10C-17.f. The person against whom the Board attempts to assess these costs, that is, any person who violates the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, will have a right to request an administrative hearing on the Board's action, thus allowing that person to respond to the Board assessment.

The Board's authority to recover costs that the SRRA gave it, is similar to the authority to recovery costs that the Department has pursuant to both the Spill Compensation and Control Act and the Water Pollution Control Act. See N.J.S.A. 58:10-23.11u.c(4) and 58:10A-10.d(1)(c), respectively. The SRRA's cost shifting provision, therefore, is not as uncommon as the commenters allege.

N.J.A.C. 7:26I-8 Adjudicatory Proceedings

92. COMMENT: The commenter suggests that the Board include "cost recovery" as one of the Board actions upon which a person can request an adjudicatory hearing. (8)

RESPONSE: A person may request an adjudicatory hearing on the Board's assessment and recovery of costs that the Board includes in an administrative order, as with any other provision of the order, pursuant to N.J.A.C. 7:26I-8.3(a)3.

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93. COMMENT: The commenter asserts that 35 days is not enough time for an LSRP to prepare for and request a hearing, including preparation of the items under N.J.A.C. 7:26I-8.3(c). The commenter notes that failure to respond in this short time frame is automatic grounds for denial of the hearing request. The Board should allow an LSRP adequate time to review the complaint, the information provided by the Board, secure legal representation, and prepare for the appeal as required. The commenter recommends that the Board change this time period to a minimum of 60 days. (8)

RESPONSE: The SRRA establishes the 35-day period that the Board has applied to any request for a hearing on any enforcement or disciplinary action the Board takes. See N.J.S.A. 58:10C-17.b(2), .d(2), and .f(2)(a). The Board has no authority to alter this statutory time frame. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

94. COMMENT: The commenter recommends that the Board include additional language that provides that the Board is willing to negotiate. (8)

RESPONSE: Whether and to what extent the Board may be inclined to negotiate a particular matter will depend on the specific circumstances of each particular case. It is important that a person against whom the Board has taken an enforcement action does not consider the enforcement action merely as an invitation from the Board to negotiate. It is not appropriate, therefore, for the Board to commit to negotiate every action it may take under this subchapter. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

95. COMMENT: The commenter requests that the Board make the following revisions to N.J.A.C. 7:26I-8.3:

1. Under paragraphs (c)1, 6, 7, 8, and 9, define the term "disciplinary document," or replace it with "administrative order."
2. Under paragraph (c)2, define the term "petitioner," or replace it to clarify as meaning the LSRP or subject of the complaint.
3. Under paragraph (c)4, define or clarify the term "barrier-free location."
4. Under paragraph (c)9, in the phrase "... settlement with the program ..." change the term "program" to "Board." (8)

RESPONSE: The Board uses the term "disciplinary document" in N.J.A.C. 7:26I-8.3(c) to apply to more than administrative orders; it means any of the disciplinary actions it lists at N.J.A.C. 7:26I-8.3(a). The Board believes that the meaning of this term is clear as used in this context and, therefore, declines to revise the proposed new rules as the commenter suggests.

Similarly, when the Board uses the term "petitioner," in N.J.A.C. 7:26I-8.3 and 8.4, the Board believes that the context is clear that it refers to the person who is requesting an adjudicatory hearing. Therefore, the Board declines to revise the proposed new rules as the commenter suggests.

With respect to the term "barrier-free location," this term is commonly understood to mean a location that is accessible to persons with physical disabilities, and therefore, no further definition is required. Accordingly, the Board declines to revise the proposed new rules as the commenter suggests.

With respect to the term "program," the phrase "program issuing the disciplinary document" refers to a program within the Department that is issuing a disciplinary document. In response to the comment, the Board re-evaluated the use of this phrase and agrees it is inappropriate since it would be the Board, and not a program within the Department, that would be issuing a disciplinary document under this chapter. Therefore, on adoption, the Board will substitute the word "Board" for the phrase "program issuing the disciplinary document."

N.J.A.C. 7:26I-8.4 Procedures for Denying a Request for an Adjudicatory Hearing

96. COMMENT: The commenter recommends that the Board revise this section to indicate that if a petitioner complies with all prerequisites of the hearing request, the Board must grant the hearing. (8)

RESPONSE: The Board believes that the way N.J.A.C. 7:26I-8.4(a) was written indicates that the Board may choose whether to grant a hearing at its discretion, which is not the case. A person has the right to a hearing to appeal any of the actions listed in N.J.A.C. 7:26I-8.3(a). If a petitioner complies with the procedures listed in N.J.A.C. 7:26I-8.3(b) and (c),

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the Board will grant the hearing request. Therefore, the Board has decided to delete N.J.A.C. 7:26I-8.4(a) upon adoption, leaving only subsection (b), which sets forth the criteria for the Board to deny a hearing request; which are, the petitioner did not submit the request within 35 days after receipt of notification of the Board's action and the petitioner did not comply with the requirements for requesting a hearing at N.J.A.C. 7:26I-8.3.

N.J.A.C. 7:26I-9 Prohibition Against Retaliatory Action

97. COMMENT: The commenters note that the Board indicates in this subchapter that termination of employment or of a contract for professional services may be considered a retaliatory action. The Board should not reference in the proposed new rules the LSRP and responsible party contracts or business relationships, as they do not have jurisdiction over these contracts. The Board is overreaching its authority granted by the SRRA and will create an adverse relationship between an LSRP and his or her client, which will slow down remediation and make the process more costly. The Board has regulatory authority over LSRPs and should limit the scope of this section to only those individuals over whom it has jurisdiction. One commenter also notes that the Board does not describe in Subchapter 9 how it will investigate potential retaliatory actions or assess civil administrative penalties for such retaliatory actions. (8 and 17)

RESPONSE: The SRRA does not limit the Board's enforcement authority to LSRPs; the SRRA applies to persons other than just LSRPs. In N.J.A.C. 7:26I-9.1(d), the Board enumerates various actions that a person could take in retaliation, but acknowledges that a person may take these actions for reasons other than retaliation, and that other actions not so enumerated may also constitute retaliation. While the Board agrees with the commenters that the Board may not have jurisdiction to regulate the contracts between an LSRP and his or her client, the SRRA did give the Board authority to take an enforcement action against any person who takes retaliatory action against an LSRP. Thus, the Board disagrees with the commenters' conclusion that the Board is overreaching its authority when it references the LSRP and his or her client's contracts or business relationships.

The Board evaluates each claim of retaliation individually, and conducts an independent investigation of the facts and circumstances surrounding each alleged retaliatory action. Investigation of potential retaliatory action is subject to the investigation procedures of Subchapter 7, and a finding of retaliatory action is the basis for disciplinary measures pursuant to Subchapter 7. Therefore, the Board declines to revise the proposed new rules as the commenters suggest.

98. COMMENT: The commenter suggests that the Board remove the phrase "otherwise terminating a person's employment or contract to provide professional services" from the list of retaliatory actions in N.J.A.C. 7:26I-9.1(d). It is not in the statute and is perceived to be an undue restriction on an LSRP's freedom to contract for unilateral or negotiated termination provisions including agreeing that the client and/or LSRP can terminate for any reason or no reason. An LSRP terminating his or her own contract due to non-compliance of the person responsible for conducting the remediation cannot be retaliation. (8)

RESPONSE: The Board's objective in this section is to protect an LSRP from retaliatory action by another person against the LSRP. The Board does not consider a person's exercise of an agreement with an LSRP in an employment contract or a contract with a client to be retaliation. Therefore, there is no reason for the Board to delete this phrase as the commenter suggests.

99. COMMENT: The commenter notes that the Board should also explicitly prohibit retaliation against the LSRP's employer/firm. (8)

RESPONSE: The Board believes that prohibiting retaliation against an LSRP includes prohibiting actions directed against the LSRP's firm or employer that are intended to impact the LSRP personally. A site remediation professional license is held by an individual, not a firm, therefore, the Board declines to revise the proposed new rules to specifically prohibit retaliatory actions against firms.

100. COMMENT: The commenter asserts that the standard of "reasonableness" and the enumerated wrongs that the Board includes in N.J.A.C. 7:26I-9.2(a) are conspicuously absent in N.J.A.C. 7:26I-9.2(b). The absence renders N.J.A.C. 7:26I-9.2(b) grossly flawed and violative of fundamental constitutional protections.

Taken on its face, an LSRP could never take an action against any complainant, for any reason. There is no standard of "reasonableness" or belief. No matter what the complaint says or accuses, it is unactionable, whether true or false, malicious or benign, or based in fact, or imagination. The Board created essentially two classes of persons; LSRPs with no

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rights against any accusation and the rest of the population, who can make accusations with no repercussions. This is a clear example of a suspect classification.

Further, N.J.A.C. 7:26I-9.2(b) goes against the grain of statutory law, specifically, N.J.S.A. 2A:47A-1, false complaints of unprofessional conduct; liability for damages.

Statutory law takes precedence over administrative regulations. Even if N.J.A.C. 7:26I-9.2(b) could pass a strict scrutiny test of constitutionality, which it cannot, it would still violate N.J.S.A. 2A:47A-1. N.J.S.A. 2A:47A-1 sets forth a cause of action for malicious prosecution when a person makes a false and malicious claim, without probable cause, of unprofessional conduct to a licensing board.

For all the reasons stated above, N.J.A.C. 7:26I-9.2(b) and N.J.S.A. 2A:47A-1 are contradictory and in direct conflict. This portion of the rule, therefore, must fail in the face of statutory law and fundamental constitutional protections of the rights of individuals.

The commenter proposes deleting N.J.A.C. 7:26I-9.2(b). (4)

RESPONSE: The Board has reviewed N.J.A.C. 7:26I-9.2(b) in light of N.J.S.A. 2A:47A-1. The statute that the commenter references concerns false complaints of unprofessional conduct and liability for damages, as follows:

Any person who falsely and maliciously and without probable cause makes a complaint, orally or in writing, of unprofessional conduct against a member of any profession requiring a license or other authority to practice such profession, to any court or to any ethics and grievance committee, or to any board or other public body authorized to and having the right to hear such complaint and to act thereon or to recommend action thereon and to take or recommend the taking of disciplinary action against the person complained of, such as disbarment or suspension in the case of an attorney-at-law, or the revocation or suspension of a license of other professional persons, shall be liable for any and all damages suffered and sustained by the member of a profession so complained of, to be recovered in a civil action in the nature of an action at law for malicious prosecution. In any such action, exemplary or punitive damages may be awarded.

N.J.A.C. 7:26I-9.2(b) states that an LSRP may not take or threaten to take retaliatory action against a person who files a complaint against the LSRP, or provides information to the Board during the investigation of a complaint or an audit of the LSRP. This subsection does not presume to limit or thwart the rights of an LSRP under N.J.S.A. 2A:47A-1, or any other applicable statute or constitutional provision. Furthermore, N.J.S.A. 2A:47A-1 addresses false complaints, whereas an LSRP may retaliate in response to a person's legitimate complaint or participation in an investigation, actions which are not covered by N.J.S.A. 2A:47A-1. Should a person make a false complaint against an LSRP, the LSRP would certainly have the right to pursue remedies, including those available under N.J.S.A. 2A:47A-1, without fear of having the Board consider such pursuit "retaliatory action." The Board recognizes that the identification of retaliatory action is very fact specific, and an action that is retaliatory in one case may not be so in another. For the above stated reasons the Board declines to revise the proposed new rules as the commenter suggests.

Federal Standards Statment

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65) require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

New N.J.A.C. 7:26I is not promulgated under the authority of or in order to implement, comply with, or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. The establishment of a licensing program for site remediation professionals comes solely from New Jersey statutory authority and has no Federal counterpart. Accordingly, no further analysis is required. The adopted new rules do refer to 29 CFR 1910.120, which are the Federal Occupational Safety and Health Standards covering employee exposure to safety or health hazards, and require that an applicant for a license or license renewal submit proof that he or she has completed the training required by 29 CFR 1910.120 within one year prior to the submission of the application.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

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CHAPTER 26I

REGULATIONS OF THE NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

SUBCHAPTER 1. GENERAL PROVISIONS

7:26I-1.1 Purpose of chapter

The purpose of this chapter is to establish the rules of the Site Remediation Professional Licensing Board governing the licensing and performance of Licensed Site Remediation Professionals.

7:26I-1.2 Scope of chapter

(a) This chapter establishes:

1. A licensing program for site remediation professionals, including:

i. Eligibility requirements for a license, pursuant to N.J.A.C. 7:26I-2.4;

ii. Application for a license, pursuant to N.J.A.C. 7:26I-2.5;

iii. Process for review and approval or denial of license applications, pursuant to N.J.A.C. 7:26I-2.6 and 2.7;

iv. Process for examination of approved applicants, pursuant to N.J.A.C. 7:26I-2.8 and 2.9;

v. Issuance of a license, pursuant to N.J.A.C. 7:26I-2.10;

vi. Renewal of a license, pursuant to N.J.A.C. 7:26I-2.11;

vii. Expiration of a license, pursuant to N.J.A.C. 7:26I-2.12;

viii. Suspension of a license, pursuant to N.J.A.C. 7:26I-2.13;

ix. Revocation of a license, pursuant to N.J.A.C. 7:26I-2.14; and

x. Inactivation of a license, pursuant to N.J.A.C. 7:26I-2.15;

2. The fees necessary to support all tasks associated with the Board's duties, including application fee, renewal fee, and annual license fee, pursuant to N.J.A.C. 7:26I-3;

3. The continuing education requirements that an LSRP shall fulfill each three-year license term, and the standards and procedures for Board accreditation of educational programs and activities, pursuant to N.J.A.C. 7:26I-4;

4. The Board's procedures for auditing the submissions and conduct of an LSRP, including the process by which the Board selects an LSRP for audit, the Board's audit review process, the outcome of an audit, and the consequences for failure to cooperate with an audit, pursuant to N.J.A.C. 7:26I-5;

5. The standards for professional conduct of an LSRP, pursuant to N.J.A.C. 7:26I-6;

6. The procedures for disciplinary proceedings, including the filing of a complaint, the Board's investigation of a complaint, the Board's actions in response to a complaint, and the Board's actions in response to a finding of violation, pursuant to N.J.A.C. 7:26I-7;

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7. The procedures for adjudicatory hearings to appeal certain Board determinations, pursuant to N.J.A.C. 7:26I-8; and

8. The prohibition of retaliatory action against an LSRP for certain actions that he or she may take in order to fulfill his or her duties and responsibilities, and the prohibition of retaliatory action by an LSRP against a person who files a complaint with the Board or provides information to the Board in the investigation of a complaint or an audit, pursuant to N.J.A.C. 7:26I-9.

7:26I-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Alternative verifiable learning format" means any format of continuing education alternative to in-person attendance including, but not limited to, videotape, audiotape, remote place viewing, on-line internet computer presentation, satellite simulcast, teleconferencing, videoconferencing, internet computer self-study, or other alternative format the Board authorizes.

"Area of concern" means any location defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Board" means the New Jersey Site Remediation Professional Licensing Board established pursuant to N.J.S.A. 58:10C-3.

"Contaminated site" means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Continuing education" means educational programs or activities concerning regulation of site remediation, scientific and technical principles of site remediation, and/or ethical obligations of an LSRP that are designed principally to advance the professional competence, skill and knowledge of an LSRP, and/or to expand an appreciation and understanding of the ethical and professional responsibilities of an LSRP.

"Continuing education credit" or "CEC" means a Board-approved unit of continuing education. Generally, one CEC is approved for each hour of instruction.

"Day" means a calendar day.

"Department" means the New Jersey Department of Environmental Protection.

"Discharge" means any action or omission defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Full-time professional experience" means experience in which an applicant is required to apply scientific or engineering principles to contaminated site remediation where the resulting conclusions form the basis for reports, studies, or other documents connected with the remediation of a contaminated site. The Board may consider the applicant's work activities, field of practice, duration of employment, and work products prepared in determining the credit to be allowed for professional experience. The Board may allow applicants with relevant advanced degrees up to two years of credit for professional experience, of which one year of credit may be awarded for applicants who have earned a master's degree in a relevant field of study and up to two years of credit may be awarded for applicants who have earned a doctorate degree in a relevant field of study.

"Immediate environmental concern" or "IEC" means any such concern as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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"License" means an approval that the Board issues to an individual pursuant to the SRRA and this chapter that authorizes the individual to act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP in the State of New Jersey.

"Licensed Site Remediation Professional" or "LSRP" means an individual who the Board has licensed as a site remediation professional pursuant to the SRRA and this chapter.

"Person" means *[any]* ***an*** individual^{*}, *[or entity, including, without limitation, a]* public or private corporation, company, *[estate,]* association, society, firm, partnership, joint stock company, *[foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions,]* the State *[of New Jersey, or any of the political subdivisions of or found within the State of New Jersey, or any of the other meanings that apply to the common understanding of the term]* ***and any of its political subdivisions or agents***.

"Person responsible for conducting the remediation" means any person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

"Promptly" means by the date by which the Board or the Department requests a response or, if no such date is given, as soon as possible, not to exceed seven days ***from the date that an event occurs that triggers the requirement for an LSRP to provide a response or notification***.

"Relevant professional experience" means experience working on New Jersey remediation cases. To prove relevant professional experience, the applicant shall demonstrate that he or she has:

1. Knowledge of and experience with implementing the technical, scientific, and regulatory aspects of site remediation, including experience investigating, designing, implementing, and/or managing within each phase of the site remediation process:

i. Preliminary Assessment;

ii. Site Investigation;

iii. Remedial Investigation; and

iv. Remedial Action;

2. Produced, or participated in producing, workplans and/or reports for each phase of the site remediation process; and

3. Knowledge of and experience with meeting the Department's administrative requirements including, but not limited to, requirements pertaining to submittal of forms, regulatory and mandatory timeframes, applicable fees, presumptive remedies, remedial action permits, and public notification.

"Remediation" or "remediate" means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Response action outcome" or "RAO" means a written determination by an LSRP as defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

"SRRA" means the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

7:26I-1.4 Construction

The rules in this chapter shall be liberally construed to permit the Board to carry out its statutory functions.

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7:26I-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. LICENSURE

7:26I-2.1 Purpose

(a) The purpose of the licensing program for site remediation professionals established in this subchapter is to require that an individual applying for licensure as a site remediation professional:

1. Demonstrate that he or she meets the standards and requirements for education, training, experience, and professional conduct required for licensure; and
2. Is examined to ensure that he or she possesses sufficient knowledge of the State and Federal statutes, rules, regulations, guidance, standards, and requirements applicable to site remediation to be qualified to obtain a license.

7:26I-2.2 Scope

(a) This subchapter contains provisions that govern the:

1. Eligibility requirements for a license in N.J.A.C. 7:26I-2.4;
2. Application for a license in N.J.A.C. 7:26I-2.5;
3. Process for review and approval or denial of license applications in N.J.A.C. 7:26I-2.6 and 2.7;
4. Process for examination of approved applicants in N.J.A.C. 7:26I-2.8 and 2.9;
5. Issuance of a license in N.J.A.C. 7:26I-2.10;
6. Renewal of a license in N.J.A.C. 7:26I-2.11;
7. Expiration of a license in N.J.A.C. 7:26I-2.12;
8. Suspension of a license in N.J.A.C. 7:26I-2.13;
9. Revocation of a license in N.J.A.C. 7:26I-2.14; and
10. Inactivation of a license in N.J.A.C. 7:26I-2.15.

7:26I-2.3 Proscription

No person shall be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP unless the Board has issued a license to that person pursuant to the SRRA and this chapter and the license is current and not expired, suspended, revoked, or inactivated.

7:26I-2.4 Eligibility requirements

(a) In order to be eligible to sit for the licensing examination the Board administers, an individual shall submit an application pursuant to N.J.A.C. 7:26I-2.5 that demonstrates ***or certifies*** that he or she meets the following qualifications:

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1. Holds a bachelor's degree or higher in natural, chemical, or physical science or an engineering degree in a discipline related to site remediation from an accredited institution of higher education;
2. Has experience amounting to at least eight years of full-time professional experience in the field of site remediation, of which at least five years shall have occurred in New Jersey and at least three years shall have occurred in New Jersey immediately prior to submission of the application;
3. Has a minimum of 5,000 hours of relevant professional experience within New Jersey over the five years immediately prior to submission of the application that is of a professional grade and character that indicates the applicant is competent to issue an RAO;
4. Has attended and completed the minimum environmental health and safety education and training pursuant to 29 CFR 1910.120, no more than one year prior to submission of the application;
5. Has completed a Board-approved course on the State's rules and regulations concerning the technical requirements for site remediation no more than three years prior to submission of the application;
6. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related criminal offense under Federal or state law, or any crime involving fraud, theft by deception, forgery, or any similar or related offense under Federal or state law; and
7. Has not had a professional license or certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years.

7:26I-2.5 Application

(a) An applicant for the site remediation professional license shall submit or cause to be submitted directly to the Board the following items:

1. A completed application form available on the Board website at www.nj.gov/lrspboard;
2. The application fee as set forth in N.J.A.C. 7:26I-3;
3. A signed and notarized affidavit attached to the application that attests that all information provided in connection with the application is true to the best of the applicant's knowledge and belief, and that any omission, inaccuracy, or failure to make full disclosure may be deemed sufficient to deny licensure or to deny renewal of or suspend or revoke a license;
4. Three separate letters of reference submitted directly to the Board by the writer of the reference on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lrspboard, from each of the following persons with personal knowledge of the applicant's training, experience, and professional conduct who are not related to the applicant:
 - i. An LSRP;
 - ii. A current or past employer of the applicant from any state; and
 - iii. A person of the applicant's choosing. This person may be an LSRP or current or past employer of the applicant who is different from the LSRP or employer who submitted a letter of reference pursuant to (a)4i or ii above; and
5. An original transcript or equivalent documentation delivered directly to the Board from each of the following institutions:
 - i. The educational institution(s) from which the applicant earned the degree needed to demonstrate the minimum education requirement for licensure; and

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ii. The educational institution(s) from which the applicant earned relevant advanced degrees for which the applicant seeks credit for professional experience.

(b) At any time during its review of an application the Board may require the applicant to supplement the application with one or more of the following:

1. The applicant's appearance before the Board for a personal interview;
2. The submission of additional information the Board specifies; or
3. The provision of additional information from the Department, current and former employers or supervisors, educational institutions, or any other person that may have information relevant to the Board's review of the application.

(c) An application is not complete until the Board receives each item specified in (a) and (b) above.

7:26I-2.6 Application approval

(a) The Board shall approve an application if the applicant:

1. Submitted a complete application pursuant to N.J.A.C. 7:26I-2.5; and
2. Demonstrated in the application that he or she meets all of the eligibility requirements set forth in N.J.A.C. 7:26I-2.4.

(b) When the Board approves an application, the Board shall notify the applicant that he or she is a candidate for the LSRP examination and shall include in the notification registration information for the next scheduled LSRP examination.

7:26I-2.7 Application denial

(a) The Board shall deny an application if the applicant:

1. Did not submit a complete application pursuant to N.J.A.C. 7:26I-2.5; or
2. Did not meet any one or more of the eligibility requirements set forth in N.J.A.C. 7:26I-2.4.

(b) When the Board denies an application, the Board shall notify the applicant of the Board's findings and reasons for denial of the application and the period of time during which an applicant cannot reapply, up to three years.

7:26I-2.8 LSRP examination

(a) With Board approval of an application, the applicant may sit for an LSRP examination according to the instructions received from the Board pursuant to N.J.A.C. 7:26I-2.6(b) and this section.

(b) The Board shall provide each candidate who registers for the LSRP examination an LSRP Licensing Examination Candidate Agreement. The LSRP Licensing Examination Candidate Agreement shall contain the standards of conduct for candidates before, during, and after the examination including, but not limited to, prohibitions against:

1. Bringing into the examination room and accessing or utilizing during the examination anything that the exam administrator designates as unauthorized material including, but not limited to, books, reference material, study aides, notes, photographic or image-capturing or copying devices, communication devices, or electronic devices;
2. Taking the examination for someone else or having someone else take the examination for the candidate;

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3. Removing notes, reproductions of the examination or any part of the examination, or the actual examination or any part of the examination, from the examination room;
4. Seeking or offering help during the examination;
5. Copying or attempting to copy examination responses of other candidates;
6. Allowing another candidate to copy his or her examination responses;
7. Disrupting the examination in any way; and
8. Disclosing or discussing the contents of the examination with anyone at any time in any form including, but not limited to, verbally, in writing, or electronic format.

(c) In order to take the LSRP examination, each candidate shall:

1. Read the LSRP Licensing Examination Candidate Agreement; and
2. Sign a statement certifying that he or she has read the LSRP Licensing Examination Candidate Agreement and agrees to abide by its terms.

(d) A candidate's violation of the LSRP Licensing Examination Candidate Agreement at any time before, during, or after the LSRP examination constitutes grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.

7:26I-2.9 Results of the LSRP examination

(a) The Board shall communicate the results of the LSRP examination to each candidate. The Board shall not return the LSRP examination to the candidate.

(b) A candidate who does not pass the examination who wishes to retake the examination shall submit an application pursuant to N.J.A.C. 7:26I-2.4 through 2.8.

7:26I-2.10 Issuance of a license

(a) The Board shall issue a non-transferable license with a three-year term to each candidate who:

1. Obtains a passing score on the LSRP examination; and
2. Pays the annual license fee as set forth in N.J.A.C. 7:26I-3.

(b) A license shall be effective on the date specified on the license, and shall expire pursuant to N.J.A.C. 7:26I-2.12.

(c) Upon issuance of a license, the Board will list the LSRP's name and contact information on the list of active LSRPs maintained on the Board website at www.nj.gov/lsrcboard.

(d) An LSRP shall notify the Board of any change in contact information within 15 days of the change, so that the Board may maintain current and accurate contact information for each LSRP on the Board website at www.nj.gov/lsrcboard.

7:26I-2.11 Renewal of a license

(a) In order to continue to be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP, without interruption, an LSRP shall renew his or her license prior to the expiration date of the license.

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(b) In order to be eligible to renew his or her license, an LSRP shall submit an application pursuant to (c) below that demonstrates ***or certifies*** that he or she meets the following qualifications:

1. Has attended and completed the minimum environmental health and safety education and training pursuant to 29 CFR 1910.120 no more than one year prior to submission of the application for license renewal;
2. Has fulfilled the continuing education requirements set forth at N.J.A.C. 7:26I-4;
3. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related criminal offense under Federal or state law, or any crime involving fraud, theft by deception, forgery, or any similar or related offense under Federal or state law;
4. Has not had a professional license or certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years; and
5. Has no outstanding annual license fees due to the Board.

(c) An applicant for renewal of the site remediation professional license shall submit or cause to be submitted directly to the Board at least 90 days and no more than 120 days prior to the expiration of his or her license the following items:

1. A completed application form available on the Board website at www.nj.gov/lrspboard; and
2. The renewal fee as set forth in N.J.A.C. 7:26I-3.

(d) At any time during its review of an application for license renewal, the Board may require the applicant to supplement the application with one or more of the following:

1. The applicant's appearance before the Board for a personal interview;
2. The submission of additional information the Board specifies; or
3. The provision of additional information from the Department, current and former employers or supervisors, continuing education providers, or any other person that may have information relevant to the Board's review of the application for license renewal.

(e) An application for license renewal is not complete until the Board receives each item specified in (c) and (d) above.

(f) The Board shall approve an application for license renewal if the applicant:

1. Submitted a complete application for license renewal pursuant to (e) above; and
2. Demonstrated in the application that he or she meets all of the eligibility requirements set forth in (b) above.

(g) When the Board approves an application for license renewal, the Board shall notify the applicant and provide the applicant with a renewed license.

(h) The Board shall deny an application for license renewal, if the applicant did not:

1. Submit a complete application for license renewal pursuant to (e) above; or
2. Meet any one or more of the eligibility requirements set forth in (b) above.

(i) When the Board denies an application for license renewal, the Board shall notify the applicant of the following:

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1. The Board's findings and reasons for denial of the application and the period of time during which an applicant cannot reapply, up to three years;

2. The procedures for an applicant to request a hearing on the license renewal denial and a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lrspboard.

(j) A pending hearing on the denial of a license renewal shall not extend the original expiration date of the license.

7:26I-2.12 Expiration of a license

(a) An LSRP's license shall immediately expire on the later of:

1. The expiration date stated on the license, if not renewed pursuant to N.J.A.C. 7:26I-2.11; or

2. Ninety days after the LSRP's receipt of the Board's annual license fee invoice, if the LSRP fails to pay the annual license fee within that 90-day period.

(b) An individual with an expired license shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP until the license has been renewed pursuant to N.J.A.C. 7:26I-2.11 or the individual obtains a new license.

(c) No later than 15 days after the date of the expiration of the license, if not renewed, the individual whose license has expired shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board ***and the Department*** at the address in N.J.A.C. 7:26I-3.7(b), that he or she is no longer an LSRP; ***and***

[2. Submit an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which he or she had submitted a Notification of Retention; and]

***[3.]* *2.* Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on.**

(d) The Board shall remove all individuals with expired licenses from the list of active LSRPs on the Board website at www.nj.gov/lrspboard.

(e) An individual whose license has expired may apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date.

1. If more than 12 months have passed since the license expiration date, the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

7:26I-2.13 Suspension of a license

(a) Whenever, on the basis of available information, the Board finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may suspend the license of the LSRP.

(b) Suspension is the temporary removal of a license. When the Board has suspended an individual's license, that individual shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP until the end of the period of suspension.

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(c) An individual may resume practicing as an LSRP immediately following the last day of the suspension period, if his or her license expiration date has not yet been reached.

(d) An individual whose license has expired while suspended may apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date. If more than 12 months have passed since the license expiration date the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

(e) When issuing the suspension, the Board may impose conditions on the reinstatement of the license including, but not limited to, a requirement for earning additional continuing education credits beyond the requirements of N.J.A.C. 7:26I-4.

(f) No later than 15 days after the date of the final order of suspension, the individual whose license has been suspended shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that for the duration of the suspension he or she will not be an LSRP;
2. Submit an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which he or she had submitted a Notification of Retention; and
3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on.

(g) The Board shall maintain a list of all LSRPs whose licenses are suspended on the Board website at www.nj.gov/lrspboard.

7:26I-2.14 Revocation of a license

(a) Whenever, on the basis of available information, the Board finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may revoke the license of the LSRP.

(b) Revocation is the termination of a license. When the Board has revoked an individual's license, that individual shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP.

(c) An individual whose license has been revoked one time may apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10 after three years, unless a shorter period is specified by the Board.

(d) Upon the second revocation of a license, an individual is permanently prohibited from applying for a license.

(e) If the Board determines that the conduct of the LSRP is so egregious as to pose an imminent threat to public health and safety and the environment if the LSRP is allowed to remediate contaminated sites pending a hearing on a revocation of the license, the Board may summarily suspend the license prior to the outcome of the hearing.

(f) No later than 15 days after the date of the final order of revocation, the individual whose license has been revoked shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that as of the date of the final order of revocation he or she is no longer an LSRP;
2. Submit an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which he or she had submitted a Notification of Retention; and

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3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on.

(g) The Board shall maintain a list of all LSRPs whose licenses are revoked on the Board website at www.nj.gov/lsrpboard.

7:26I-2.15 Inactivation of a license

(a) An LSRP may inactivate his or her license by submitting to the Board a written certification of inactivation on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lsrpboard, which demonstrates ***or certifies*** that:

1. He or she has ceased to be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP for a specific period of time not to exceed the expiration date of his or her license;

2. His or her employment in New Jersey, if any, is not in any way related to the work typically performed by site remediation professionals, licensed or not, including, but not limited to:

i. The investigation or remediation of contaminated sites;

ii. The investigation or remediation of discharges from, or the removal of, underground storage tanks, regulated or not;

iii. The assessment of sites for environmental conditions; or

iv. The preliminary assessment or site investigation of contaminated sites for the purpose of conducting all appropriate inquiry into the previous ownership and uses of the property as provided in N.J.S.A. 58:10-23.11g;

3. He or she does not render assistance or advice to persons engaged in site remediation, including, but not limited to, site remediation professionals, licensed or not, or persons responsible for conducting the remediation;

4. He or she has notified each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), of his or her intent to become an inactive LSRP;

5. He or she has submitted an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which the LSRP had submitted a Notification of Retention; and

6. He or she has provided for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on.

(b) Upon the receipt of a certification of inactivation pursuant to (a) above, the Board shall summarily inactivate the license for the requested duration by removing the LSRP's name and license number from the list of active LSRPs on the Board website at www.nj.gov/lsrpboard.

(c) The inactivation of a license shall not extend the expiration of the license beyond the expiration date the Board has indicated on the license.

(d) An individual with an inactive license may apply to have the Board reactivate his or her license for the original term of the license if the license has not expired. The Board shall summarily reactivate the license, and reactivation shall occur on the date the Board relists the LSRP's name and license number on the list of active LSRPs on the Board website at www.nj.gov/lsrpboard.

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(e) An individual with an inactive license whose license has expired while inactive may reactivate his or her license by applying for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date. If more than 12 months have passed since the license expiration date the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

(f) An individual with an inactive license shall pay the annual fee for any calendar year in which he or she is active for one or more days in the calendar year.

(g) If the Board selects an individual with an inactive license for an audit, the Board may determine whether to defer the audit until the license becomes active again. The Board shall not defer an audit or complaint investigation that is pending at the time the LSRP becomes inactive, and the inactive LSRP shall meet all obligations as set forth in N.J.A.C. 7:26I-5 and 7.

SUBCHAPTER 3. FEES

7:26I-3.1 Purpose

This subchapter identifies and describes the fees and the methodology for the calculation of fees to support all tasks associated with the Board's duties.

7:26I-3.2 Scope

(a) This subchapter contains:

1. The fees and the factors the Board uses to calculate each fee, including the:

i. Application fee at N.J.A.C. 7:26I-3.3;

ii. Renewal fee at N.J.A.C. 7:26I-3.4; and

iii. Annual license fee at N.J.A.C. 7:26I-3.5;

2. The requirements for the Site Remediation Professional Licensing Board Fee Calculation Report at N.J.A.C. 7:26I-3.6; and

3. The method for the payment of fees at N.J.A.C. 7:26I-3.7.

7:26I-3.3 Application fee

(a) The Board shall annually recalculate the application fee, if the Board determines that the current fee does not cover the Board's costs to process and review license applications.

1. The Board shall calculate the application fee by multiplying the average number of hours to process and review a license application by the projected hourly salary and overhead costs of Board staff processing and reviewing the license application.

2. Beginning calendar year 2015, the application fee shall be \$ 400.00.

3. The Board shall provide notice in the New Jersey Register of any change to the application fee in subsequent years.

(b) The Board shall not return the application fee to an applicant, regardless of the outcome of the license application.

7:26I-3.4 Renewal fee

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(a) The Board shall annually recalculate the license renewal fee, if the Board determines that the current fee does not cover the Board's costs to process and review license renewal applications.

1. The Board shall calculate the renewal fee by multiplying the average number of hours to process and review a license renewal application by the projected hourly salary and overhead costs of Board staff processing and reviewing the license renewal application.

2. Beginning calendar year 2015, the renewal fee shall be \$ 100.00.

3. The Board shall provide notice in the New Jersey Register of any change to the renewal fee in subsequent years.

(b) The Board shall not return the renewal fee to an applicant, regardless of the outcome of the license renewal application.

7:26I-3.5 Annual license fee

(a) The Board shall annually recalculate the annual license fee, if the Board determines that the current fee does not cover the Board's costs as set forth in the annual budget.

1. The Board shall set its budget by estimating the dollar amount needed to accomplish all tasks associated with the Board's duties. Such tasks include, but are not limited to:

i. The Board's administrative functions;

ii. Legal support of the Board;

iii. Development and maintenance of data systems;

iv. Development and maintenance of the Board website;

v. Development and administration of LSRP examinations; and

vi. Any additional tasks the Board identifies that are necessary to carry out its duties and responsibilities as articulated in the SRRA and this chapter.

2. The Board shall project the collection amounts anticipated in the upcoming calendar year from application fees and renewal fees;

3. The Board shall subtract the projected collection amounts as described in (a)2 above from the budget estimated in (a)1 above, and divide the result by the number of LSRPs holding licenses in the current calendar year, rounding up to the nearest 10.00 dollars; or if the number of LSRPs holding licenses in the current calendar year is projected to significantly change in the upcoming calendar year, the Board shall subtract the projected collection amounts as described in (a)2 above from the budget estimated in (a)1 above, and divide the result by the number of LSRPs projected to be holding licenses in the upcoming calendar year, rounding up to the nearest 10.00 dollars;

4. The Board shall adjust the final annual license fee as necessary to account for any shortfall or surplus in funds from the previous calendar year.

(b) Beginning calendar year 2015, the annual license fee shall be \$ 900.00.

(c) The Board shall provide notice in the New Jersey Register of any change to the annual license fee in subsequent years.

(d) The Board shall invoice each LSRP for the annual license fee on or about November 1 of each year.

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(e) Each LSRP shall pay to the Board the annual license fee no later than 60 days after his or her receipt of the Board's annual license fee invoice.

(f) An LSRP's license shall immediately expire 90 days after the LSRP's receipt of the Board's annual license fee invoice if the LSRP fails to pay the annual license fee within that 90-day period.

7:26I-3.6 Fee report

(a) Each calendar year, the Board shall prepare an Annual Site Remediation Professional Licensing Board Fee Calculation Report, which shall:

1. Be based on the Board's proposed budget produced pursuant to N.J.A.C. 7:26I-3.5; and

2. Include:

- i. The factors used to calculate each fee included in this subchapter; and
- ii. Each of the fees that shall be due and payable for the following calendar year.

(b) Beginning October 2015, and each October thereafter, the Board shall:

1. Publish in the New Jersey Register a notice that includes:

i. A summary of the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board's budget; and

ii. A notice that the full report is available on the Board website at www.nj.gov/lsrpboard; and

2. Post on the Board website at www.nj.gov/lsrpboard the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board's budget.

(c) Until the first day of the calendar year following the Board's approval and publication of the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board's budget, the fees shall be as follows:

1. An application fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.3;

2. A renewal fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.4; and

3. An annual license fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.5.

7:26I-3.7 Payment of fees

(a) Any person required to pay a fee pursuant to the SRRA or this chapter shall make payment of fees by:

1. A certified check, attorney check, personal check, or money order, made payable to "Treasurer, State of New Jersey"; or

2. An e-check or credit card after the Board posts a notice of availability of this method of payment on the Board website at www.nj.gov/lsrpboard.

(b) Payments shall be mailed to the following address, unless otherwise indicated on the billing invoice:

New Jersey Site Remediation Professional Licensing Board

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c/o New Jersey Department of Environmental Protection
Site Remediation Program
Office of the Assistant Commissioner
PO Box 420
Mail Code 401-06
401 East State Street
Trenton, NJ 08625-0420

SUBCHAPTER 4. CONTINUING EDUCATION

7:26I-4.1 Purpose

(a) This subchapter establishes:

1. The mandatory continuing education requirements to be met by each LSRP during each three-year license term in order to renew his or her license; and
2. The Board's procedure to approve continuing education credit for educational programs and activities.

7:26I-4.2 Scope

(a) This subchapter contains provisions that govern the:

1. LSRP continuing education requirements at N.J.A.C. 7:26I-4.3;
2. Board approval of continuing education credit for educational programs at N.J.A.C. 7:26I-4.4; and
3. Board approval of continuing education credit for educational activities at N.J.A.C. 7:26I-4.5.

7:26I-4.3 LSRP continuing education requirements

(a) Each LSRP shall complete 36 continuing education credits during each three-year license term, as follows:

1. Three continuing education credits in ethics education;
2. Ten continuing education credits in regulatory education;
3. Fourteen continuing education credits in scientific and technical education; and
4. Nine additional continuing education credits in any of the above areas of education.

(b) Each LSRP shall earn the required 36 continuing education credits by:

1. Attending Board-approved continuing education programs; or
2. Participating in Board-approved continuing education activities, as described in N.J.A.C. 7:26I-4.5.

(c) No more than 18 continuing education credits per three-year license term may be earned from Board approved alternative verifiable learning format programs.

(d) No more than 18 continuing education credits per three year license term may be earned from Board-approved continuing education activities.

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(e) An LSRP may not earn continuing education credits by attending or instructing the same continuing education program more than once during each three-year license term.

(f) No LSRP may apply continuing education credits earned during one license term toward another license term*, **provided, however, that an LSRP may apply continuing education credits earned toward his or her next license term beginning the 89th day before his or her license expires, which is the day after the close of the license renewal period***.

(g) It is the responsibility of the LSRP to:

1. Track fulfillment of the continuing education requirements described in this subchapter; and
2. Demonstrate fulfillment of continuing education requirements when applying for license renewal.

7:26I-4.4 Board approval of continuing education programs

(a) In order for the Board to approve a continuing education program for continuing education credits, the Board shall find that the program:

1. Has significant intellectual, educational, or practical content;
2. Has as the primary purpose to increase each participant's professional competence as an LSRP;
3. Is developed and conducted by a person or persons the Board deems qualified, based on practical and academic experience; and
4. Constitutes an organized program of learning that includes subject matter related to the:
 - i. Regulation of site remediation;
 - ii. Scientific and technical principles of site remediation; and/or
 - iii. Ethical obligations of LSRPs.

(b) In addition to the requirements in (a) above:

1. Continuing education approved for ethics credit shall have educational content that is designed to advance the LSRP's understanding of the tenets of ethical conduct with respect to the provision of professional services as an LSRP in New Jersey. Approvable ethics credit shall include education regarding the differences between ethical and unethical behavior and shall incorporate the rules of professional conduct of LSRPs found in the SRRA and this chapter with direct examples of situations that an LSRP may face during performance of his or her duties at contaminated sites in New Jersey;
2. Continuing education approved for regulatory credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate site remediation in New Jersey in compliance with applicable statutes and rules. Approvable regulatory credit shall include education regarding understanding and complying with the broad range of statutory and regulatory requirements applicable to site remediation in New Jersey; and
3. Continuing education approved for scientific and technical credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate the scientific and technical components of site remediation. Approvable scientific and technical credit shall include education regarding site remediation, although it may include more general scientific and technical principles if they are clearly relevant to the scientific and technical components of site remediation.

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(c) The provider of a continuing education program or an LSRP may request Board approval of a continuing education program by submitting the application found on the Board website at www.nj.gov/lsrpboard. The applicant shall submit a completed application, including, but not limited to:

1. A full description of the program, including the title, name of the provider, and date(s), time(s), and location(s) that the program will be or was offered;
2. The number and type of continuing education credits requested;
3. A written outline or syllabus of the continuing education content;
4. A written statement describing the continuing education and establishing its relevance to the regulation of site remediation, scientific and technical principles of site remediation, and/or ethical obligations of LSRPs in New Jersey;
5. The credentials of the instructor(s);
6. A statement that the provider will or did:
 - i. Utilize sign-in and sign-out sheets to verify attendance;
 - ii. Maintain the sign-in and sign-out sheets for a minimum of seven years; and
 - iii. Provide the sign-in and sign-out sheets to the Board for inspection at the Board's request;
7. A statement that the provider will or did provide certificates of attendance to each attendee no later than 30 days after successful completion of the continuing education program;
8. A statement that the provider will or did, at the completion of the continuing education program, conduct and retain for the Board's inspection for a period of three years a confidential evaluation of the continuing education and the continuing education instructor(s);
9. A statement that the provider will or did allow the Board or its authorized representatives, without charge or need for advance registration or notice, to monitor the program without earning any continuing education credits;
10. For an in-person attendance format program, a statement describing the provider's policy on partial credit when an attendee misses a portion of the continuing education program; and
11. For an alternative verifiable learning format program, an examination or other mechanism that the Board shall approve on an individual basis that an LSRP taking the program shall successfully complete in order to verify attendance and thereby earn continuing education credits.

(d) At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

(e) The Board shall determine the number and type(s) of continuing education credits to approve for each continuing education program on an individual basis.

(f) The Board shall post on the Board website at www.nj.gov/lsrpboard, a table of each Board-approved continuing education program and the number and type(s) of continuing education credits approved for each program.

7:26I-4.5 Board approval of continuing education activities

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(a) An LSRP may request approval of continuing education credits for instructing a continuing education program that the Board has approved pursuant to N.J.A.C. 7:26I-4.4 according to the following requirements:

1. The LSRP shall make the request no later than 90 days after the date of the program, and shall include the information on the continuing education application for instructors, which is found on the Board website at www.nj.gov/lsrpboard. Such information shall include, but is not limited to:

i. A full description of the program, including the title, name of the provider, and date(s), time(s), and location(s) of the program;

ii. The number and type of continuing education credits requested;

iii. A written outline or syllabus of the continuing education content; and

iv. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for instructing each continuing education program on an individual basis.

(b) An LSRP may request approval of continuing education credits for preparing and giving a presentation according to the following requirements:

1. The LSRP shall make the request no later than 90 days after the date of the presentation, and shall include the information on the continuing education application for presenters, which is found on the Board website at www.nj.gov/lsrpboard. Such information shall include, but is not limited to:

i. A full description of the presentation, including the title, name of the provider, and date(s), time(s), and location(s) of the presentation;

ii. The number and type of continuing education credits requested;

iii. A copy of the presentation; and

iv. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for preparing and giving each presentation on an individual basis.

(c) An LSRP may request approval of continuing education credits for authoring a paper published in a professional publication or peer reviewed proceedings of a conference.

1. The LSRP shall make the request no later than 90 days after the date of publication and shall include the information on the continuing education application for publications, which is found on the Board website at www.nj.gov/lsrpboard. Such information shall include, but is not limited to:

i. A full description of the journal or proceedings;

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ii. The number and type of continuing education credits requested;

iii. A copy of the paper;

iv. The date of publication; and

v. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for authoring each paper published in a professional publication or peer reviewed proceedings of a conference on an individual basis.

SUBCHAPTER 5. AUDIT PROCEDURES

7:26I-5.1 Purpose

(a) This subchapter:

1. Describes the Board's process to audit the performance of an LSRP to determine compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto; and

2. Establishes the audit compliance requirements for an LSRP.

(b) The Board's auditing of the submissions and conduct of LSRPs is separate and distinct from the Department's inspection and review of documents and information submitted by an LSRP and review of the performance of a remediation pursuant to N.J.S.A. 58:10C-21.

7:26I-5.2 Scope

(a) This subchapter establishes:

1. The Board's process for selecting LSRPs for audit at N.J.A.C. 7:26I-5.3;

2. The Board's audit review process at N.J.A.C. 7:26I-5.4;

3. The outcome of an audit at N.J.A.C. 7:26I-5.5; and

4. The consequences to an LSRP who fails to cooperate with an audit at N.J.A.C. 7:26I-5.6.

7:26I-5.3 Selection of LSRPs to be audited

(a) The Board shall calculate the number of LSRPs to be audited at or prior to the beginning of each calendar year.

(b) The Board shall audit at least 10 percent of the total number of LSRPs in each calendar year.

(c) The Board shall not divulge to anyone outside of the Audit Review Team the name of an LSRP being audited, until the audit is complete.

(d) An LSRP under Board investigation pursuant to N.J.A.C. 7:26I-7 shall be exempt from an audit until such time as the investigation is complete.

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(e) The Board shall not audit an LSRP within 24 months of the date of completion of his or her previous audit.

7:26I-5.4 Audit review process

(a) Except as provided in (b) below, each month the Audit Committee shall assemble an Audit Review Team consisting of two or more Board members, including at least one Board member who is not an LSRP and at least one Board member who is an LSRP, to conduct the audits for the month.

(b) For audits of LSRPs who are Board members, the Audit Review Team shall consist of four Board members, including:

1. The Chairperson of the Board or the State Geologist;
2. A Board member who represents the environmental community;
3. The Board member who represents the business community or the Board member that represents the academic community; and
4. A Board member who is an LSRP.

(c) Should any Board member designated by (b) above be unable to serve on the Audit Review Team, the Audit Committee may select any other Board member as a replacement for that Board member, provided that the Audit Review Team includes at least one Board member who is not an LSRP and at least one Board member who is an LSRP.

(d) Prior to serving on an Audit Review Team, each member shall certify that he or she is:

1. Free of conflict with each LSRP to be audited; and
2. Can fairly and objectively conduct the audits.

(e) If any Board member has a conflict with the LSRP to be audited or cannot fairly and objectively conduct the audit, the Audit Committee may select any other Board member as a replacement for that Board member, provided that the Audit Review Team includes at least one Board member who is not an LSRP and at least one Board member who is an LSRP.

(f) Following selection of an LSRP to be audited, the Board staff shall notify the LSRP of the commencement of the audit. The notification shall include an audit questionnaire, which is found on the Board website at www.nj.gov/lsrcboard, that the LSRP shall complete and return to the Board within 30 days of receipt.

(g) At any time during its review, the Audit Review Team may require the LSRP being audited to supplement the questionnaire with additional information as the Board may specify.

(h) At any time during its review, the Audit Review Team may request information from the Department, current and former employers or supervisors of the LSRP being audited, continuing education providers, or any other person that may have information relevant to the audit.

(i) The Audit Review Team shall review the submissions and the conduct of the LSRP to:

1. Evaluate the LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto; and
2. Determine that the LSRP has not knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

7:26I-5.5 Outcome of an audit

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(a) Upon conclusion of its review, the Audit Review Team shall determine whether the LSRP's submissions and conduct have met the standards in N.J.A.C. 7:26I-5.4(i).

(b) Upon determining that the LSRP has met the standards in N.J.A.C. 7:26I-5.4(i), the Audit Review Team shall report to the Audit Committee:

1. The name of the LSRP audited;
2. The Audit Review Team's findings; and
3. A recommendation that the audit review is complete.

(c) Upon receiving a recommendation that an audit review is complete, the Audit Committee shall determine to:

1. Conclude the audit; or
2. Refer the audit back to the Audit Review Team for further review.

(d) Upon the Audit Committee's determination that the audit is concluded:

1. The Audit Committee shall report to the Board the name of the LSRP;
2. The Board shall notify the LSRP of the outcome of the audit; and
3. The Board shall post the LSRP's name and audit outcome on the Board website at www.nj.gov/lsrpboard.

(e) Upon determining that the LSRP has not met the standards in N.J.A.C. 7:26I-5.4(i), the Audit Review Team shall submit a report to the Audit Committee stating:

1. The name of the LSRP audited;
2. The Audit Review Team's findings; and
3. A recommendation that the LSRP be further investigated.

(f) Upon receiving a recommendation that the LSRP be further investigated, the Audit Committee shall refer the audit to the Professional Conduct Committee, which shall convene a Complaint Review Team to commence an investigation pursuant to N.J.A.C. 7:26I-7.5.

7:26I-5.6 Failure to cooperate with an audit

(a) The LSRP, the person responsible for conducting the remediation, and any other person having information regarding an LSRP's submissions and conduct shall cooperate with the Board in the conduct of an audit and shall provide any information the Board requests.

(b) Failure to cooperate with the Board in the conduct of an audit shall be grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.

SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT

7:26I-6.1 Purpose

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This subchapter sets forth the rules of professional conduct that an individual shall implement in the performance of professional services as an LSRP.

7:26I-6.2 Highest priority

An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

7:26I-6.3 Professional competency

(a) An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate technical guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:

1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12;
2. The Remediation Standards rules at N.J.A.C. 7:26D;
3. The indoor air standards adopted by the Department of Health pursuant to N.J.S.A. 52:27D-130.4;
4. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
5. The Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C;
6. The mandatory remediation timeframes and expedited site-specific timeframes adopted by the Department pursuant to N.J.S.A. 58:10C-28;
7. The presumptive remedies adopted by the Department pursuant to N.J.S.A. 58:10B-12; and
8. Any other applicable standards, rules, or regulations adopted pursuant to law.

(b) An LSRP shall apply any available and appropriate technical guidance concerning site remediation as issued by the Department.

(c) When there is no specific technical guidance issued by the Department, or in the judgment of the LSRP the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, and justifies the use of the guidance or methods that were utilized:

1. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and
2. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of public health and safety and the environment.

(d) An LSRP shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.

(e) An LSRP shall not provide professional services outside his or her areas of professional competence, unless the LSRP has relied upon the technical assistance of another professional whom the LSRP has reasonably determined to be qualified by education, training, and experience.

7:26I-6.4 Engineering services

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An LSRP shall not perform services that constitute the practice of professional engineering, unless the LSRP is a professional engineer licensed in the State of New Jersey.

7:26I-6.5 Notification of retention and release

(a) An LSRP retained by a person responsible for conducting the remediation shall submit an LSRP Notification of Retention or Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms no later than 15 days after:

1. The person responsible for conducting the remediation retains the LSRP; and
2. The person responsible for conducting the remediation releases the LSRP from responsibility for remediation, if the release occurs prior to issuance of the RAO.

(b) When an LSRP decides to terminate his or her position as the LSRP responsible for the remediation of a contaminated site prior to issuing an RAO, the LSRP shall, within 15 days after terminating his or her position:

1. Communicate this directly in writing to the person responsible for conducting the remediation; and
2. Submit a Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms.

7:26I-6.6 Correcting deficiencies

An LSRP shall, in accordance with timeframes the Department establishes, correct any deficiency the Department identifies and resubmit the document to the Department.

7:26I-6.7 Responsibility of successor LSRP

(a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, licensed or not, provided that the LSRP:

1. Reviews all available documentation on which he or she relies;
2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and
3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

(b) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, shall correct all ***material*** deficiencies in a document submitted by the previous site remediation professional including, but not limited to, those the Department identifies, in accordance with timeframes the Department establishes.

(c) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, before the issuance of a final remediation document, and who learns of material facts, data, or other information concerning any phase of the remediation for which a report was submitted to the Department and the material facts, data, or other information were not disclosed in the report, shall promptly notify the LSRP's client and the Department in writing of those material facts, data, or other information and circumstances.

7:26I-6.8 Exercise of independent professional judgment

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(a) An LSRP shall exercise independent professional judgment and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, and order adopted or issued pursuant thereto.

(b) An LSRP shall notify the person responsible for conducting the remediation in writing when in his or her professional judgment based on site history any one or more applicable regulatory timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.

(c) An LSRP shall notify the person responsible for conducting the remediation and the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.

(d) An LSRP shall make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports, and other information evidencing conditions at a contaminated site for which he or she is responsible that are in the possession of the owner of the property, the Department, or that are otherwise available, and identify and obtain whatever additional data and other information as the LSRP deems necessary.

(e) An LSRP shall disclose and explain in any document submitted to the Department any facts, data, information, qualifications, or limitations the LSRP knows that do not support the conclusions reached in the document.

7:26I-6.9 Responsibility to report an immediate environmental concern

(a) If an LSRP identifies a previously unreported condition at a contaminated site that in his or her independent professional judgment is an immediate environmental concern, the LSRP shall:

1. Immediately verbally advise the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition; and
2. Immediately notify the Department of the condition by calling the Department's telephone hotline at 1-877-WARNDEP.

7:26I-6.10 Responsibility to report a discharge

(a) If an LSRP obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred on a contaminated site for which he or she is responsible, the LSRP shall:

1. Immediately notify the person responsible for conducting the remediation of the discharge and of that person's duty to notify the Department of the discharge;
2. Immediately notify the Department of the discharge by calling the Department's telephone hotline at 1-877-WARNDEP; and
3. Immediately notify any other LSRP that is working on the contaminated site of the discharge.

*[(b) An LSRP is considered to be responsible for a contaminated site if he or she has been hired by a person responsible for conducting the remediation at that site.

(c) The provisions of this section shall not apply to an LSRP who has been hired by any person who:

1. Does not own the contaminated site;
2. Conducts a preliminary assessment or site investigation of the contaminated site for the purpose of conducting all appropriate inquiry into the previous ownership and uses of the property as provided in N.J.S.A. 58:10-23.11g; and

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3. Has not discharged a hazardous substance at the site or is not in any way responsible for a hazardous substance discharged at the site pursuant to N.J.S.A. 58:10-23.11g.]*

7:26I-6.11 Deviation from workplan by client

If an LSRP learns of a client's action or decision that results in a deviation from the remedial action workplan or other report concerning the remediation, the LSRP shall promptly notify the client and the Department, in writing, of the deviation.

7:26I-6.12 Client confidentiality

An LSRP shall not reveal information obtained in a professional capacity, except as may be authorized or required by law, without the prior consent of the client, if the client has notified the LSRP, in writing, that the information is confidential. The provisions of this section shall not apply to information that is in the public domain.

7:26I-6.13 New information after submitting report

An LSRP who learns of material facts, data, or other information subsequent to the completion of a report concerning any phase of remediation, which would result in a report with material differences from the report submitted, shall promptly notify the client and the Department in writing of those facts, data, information, and circumstances.

7:26I-6.14 Responsibility to disassociate from unscrupulous persons

An LSRP shall not allow the use of his or her name by a person, and shall not associate with a person in a business venture, if the LSRP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP.

7:26I-6.15 Responsibility in Board and Department investigations

(a) An LSRP shall cooperate in an investigation by the Board or the Department by *[promptly]* furnishing, in response to requests, orders, or subpoenas, any information the Board or the Department, or persons duly authorized by the Board or the Department, deems necessary to perform its duties*, **by the date the Board or the Department specifies***.

(b) An LSRP shall, in the time and manner the Board or the Department prescribes, provide all information the Board or the Department requests including, but not limited to:

1. The LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto,
2. A description of and the status of any remediation the LSRP has participated in including, but not limited to:
 - i. Investigative and remedial activities completed to date;
 - ii. Investigative and remedial activities required or planned to be completed in the future;
 - iii. The LSRP's role in the remediation;
 - iv. Any other person's role in the remediation;
 - v. Each natural resource or environmental media included in the investigation or remediation;
 - vi. Data and information collected or available concerning the remediation;

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vii. A projection of the cost for investigative and remediation activities required or planned to be completed in the future; and

viii. Any information that an LSRP may have that any person has violated (c) below.

(c) In response to a Board or Department investigation an LSRP shall not:

1. Knowingly make a false statement of material fact;
2. Fail to disclose a fact necessary to correct a material misunderstanding known by the LSRP to have arisen in the matter;
3. Knowingly and materially falsify, tamper with, alter, conceal, or destroy any data, documents, records, remedial systems, or monitoring devices that are relevant to the investigation, without obtaining the prior approval of the Department; or
4. Knowingly allow or tolerate any employee, agent, or contractor of the LSRP to engage in any of the foregoing activities.

7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinate LSRP

(a) An LSRP shall be jointly responsible for a violation of *[the SRRA or any rule, regulation, or order adopted or issued pursuant thereto]* ***any provision of this subchapter*** committed by another LSRP whose work he or she supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another LSRP under his or her supervision;
2. The LSRP knows that the professional services constitute a violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; and
3. The LSRP fails to take reasonable steps to avoid or mitigate the violation.

7:26I-6.17 Duty to comply with Board directives regarding disciplinary matters

An LSRP shall comply with all conditions the Board imposes as a result of a license suspension, revocation, or other Board disciplinary proceeding.

7:26I-6.18 Duty regarding client communications

(a) An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by promptly providing the client or prospective client with written documentation of these assumptions, limitations, or qualifications.

(b) An LSRP shall inform a client of:

1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which the client has hired the LSRP;
2. The dates by which each component of the remediation shall be completed in order to meet the timeframes in (b)1 above; and
3. The penalties and consequences set forth in applicable statutes and regulations, if the timeframes in (b)1 above are not met.

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7:26I-6.19 Duty regarding public communications

(a) An LSRP shall respond to public inquiries for information when the person responsible for conducting the remediation designates the LSRP as the point of contact for public inquiries pursuant to N.J.A.C. 7:26C-1.7(o).

(b) Information that the LSRP shall provide, when his or her client has designated the LSRP as the point of contact for the public pursuant to (a) above, shall include:

1. Information that is required to be provided to the public pursuant to N.J.A.C. 7:26C-1.7;
2. Information that has been submitted to the Department; and
3. Any additional information that is important for the public to know in order to protect their health and safety.

(c) An LSRP shall not communicate to the public information that he or she knows is false, inaccurate, misleading, or incomplete. An LSRP shall be deemed to have provided incomplete information when he or she withholds information that is encompassed within (b) above.

(d) The client confidentiality requirements of N.J.A.C. 7:26I-6.12 apply to this section.

7:26I-6.20 LSRP shall not induce or threaten based on connection to agency or official

An LSRP shall not state or imply, as an inducement or a threat to a client or prospective client, an ability to improperly influence a government agency or official.

7:26I-6.21 Prohibition against misrepresentation

(a) In any description of qualifications, experience, or ability to provide services, an LSRP shall not knowingly:

1. Make a material misrepresentation of fact;
2. Omit a fact when the omission results in a materially misleading description; or
3. Make a statement that, in the Board's opinion, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules, or regulations, including the SRRA and any rule, regulation, or order adopted or issued pursuant thereto.

7:26I-6.22 Duty to notify even if no longer employed by client

An LSRP shall provide any notification to the Board and the Department required pursuant to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto ***if the notification requirement arises during the LSRP's retention,*** even if the client discharges the LSRP, or the LSRP discharges himself or herself, prior to providing the notification.

7:26I-6.23 Conflict of interest

(a) An LSRP shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting, unless the circumstances are fully disclosed and agreed to by all persons engaging the LSRP.

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(b) An LSRP shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the LSRP is providing remediation services.

(c) An LSRP shall not allow any ownership interest, compensation, or promise of continued employment, of the LSRP or any immediate family member, to affect the professional services the LSRP provides.

7:26I-6.24 Certification

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP has:

1. Managed, supervised, or performed the work that is the basis of the submission;
2. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or
3. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable, pursuant to N.J.A.C. 7:26I-6.7.

(b) For documents that the person responsible for conducting the remediation submits to the Department that require LSRP certification, the LSRP shall certify that:

1. The work was performed;
2. The LSRP has:
 - i. Managed, supervised, or performed the work that is the basis of the submission;
 - ii. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or
 - iii. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable pursuant to N.J.A.C. 7:26I-6.7; and
3. The work and the submitted documents conform to, and are consistent with, the remediation requirements in N.J.A.C. 7:26I-6.3(a).

(c) An LSRP shall certify electronic submissions he or she makes to the Department concerning the remediation of a contaminated site. The LSRP shall attest that no other person is authorized or able to use any password, encryption method, or electronic signature that the Board or the Department has provided to the LSRP.

7:26I-6.25 Response action outcome

(a) Upon completion of the remediation, the LSRP shall not issue an RAO to the person responsible for conducting the remediation until:

1. In the LSRP's opinion, the contaminated site ***or area of concern*** has been remediated so that it is in compliance with all applicable statutes, rules, and regulations protective of public health and safety and the environment; and
2. The person responsible for conducting the remediation has paid to the Department all fees and oversight costs.

(b) The LSRP shall file the RAO with the Department no later than 30 days after issuing it to the person responsible for conducting the remediation.

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7:26I-6.26 Direct oversight

For any contaminated site subject to direct oversight pursuant to the SRRA and N.J.A.C. 7:26C-14, the LSRP shall provide all submissions concerning the remediation that the Department requires simultaneously to the Department and the person responsible for conducting the remediation.

7:26I-6.27 Maintenance of data, documents, records, and information

(a) An LSRP shall maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on including, but not limited to, technical records, contractual documents, raw sampling data, and monitoring data. This obligation exists whether or not the data, documents, records, and information concerning remediation activities at the contaminated site were developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors, or attorneys.

1. The period of time during which an LSRP shall maintain all data, documents, records, and information concerning remediation activities at a contaminated site shall be a minimum of 10 years following the later of the following dates:

- i. The date that the LSRP submits a notification of dismissal to the Department; or
- ii. The date that the LSRP issues his or her last area of concern specific or entire site RAO for the site.

(b) No one, including without limitation an LSRP's employer and/or clients, shall restrict the LSRP from personally maintaining and preserving all data, documents, records, and information specified in (a) above in the format and location that the LSRP chooses.

7:26I-6.28 Cooperation with Department review of remediation

(a) An LSRP shall ***[promptly]*** provide any data, documents, records, and information the Department requests to conduct a review of the remediation of a contaminated site pursuant to N.J.S.A. 58:10C-21*, **by the date the Department specifies***.

(b) Unless the Department directs otherwise, the LSRP may continue to remediate the contaminated site ***on behalf of the person responsible for conducting the remediation*** while the Department conducts any inspection or additional review of documents pursuant to N.J.S.A. 58:10C-21.

SUBCHAPTER 7. DISCIPLINARY PROCEEDINGS

7:26I-7.1 Purpose

(a) This subchapter describes the procedures the Board shall follow to:

1. Investigate complaints against any person suspected of violating the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or knowingly making any false statement, representation, or certification in any document or information submitted to the Board or the Department;
2. Take disciplinary action against any person the Board finds to have violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or to have knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department; and
3. Maintain on the Board website a record of the disposition of complaints and provide the public with information upon request.

7:26I-7.2 Scope

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(a) This subchapter governs the:

1. Filing of a complaint at N.J.A.C. 7:26I-7.3;
2. Board's determination to investigate a complaint at N.J.A.C. 7:26I-7.4;
3. Board's investigation of a complaint at N.J.A.C. 7:26I-7.5;
4. Board's actions in response to a complaint at N.J.A.C. 7:26I-7.6; and
5. Board's actions in response to any person's violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto at N.J.A.C. 7:26I-7.7, which include license suspension or revocation (N.J.A.C. 7:26I-7.8), issuance of an administrative order (N.J.A.C. 7:26I-7.9), and issuance of a civil administrative penalty (N.J.A.C. 7:26I-7.10).

7:26I-7.3 Filing of complaint

(a) Any person may file a complaint with the Board alleging that a person has:

1. Violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; or
2. Knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

(b) A person shall make a complaint to the Board on the form available on the Board website at www.nj.gov/lsrpboard.

7:26I-7.4 Board's determination to investigate complaint

(a) Upon receipt of a complaint, Board staff shall:

1. Acknowledge receipt of the complaint to the complainant;
2. Redact the identities of the subject of the complaint and the complainant; and
3. Forward the complaint with the identities of the subject of the complaint and the complainant redacted to the Professional Conduct Committee.

(b) The Professional Conduct Committee shall review each complaint and determine if there are grounds to investigate the complaint.

(c) If the Professional Conduct Committee finds grounds to investigate the complaint it shall assemble a Complaint Review Team consisting of two or more Board members, including at least one Board member who is not an LSRP and at least one Board member who is an LSRP, to investigate the complaint.

(d) If the Professional Conduct Committee finds there are no grounds to investigate the complaint, it shall refer the complaint to the Board with a recommendation that the complaint be dismissed.

1. If the Board decides to dismiss the complaint the Board shall:

- i. Notify the subject of the complaint and the complainant that the complaint has been dismissed; and
- ii. Publish a summary of the complaint, including the reason(s) for dismissal on the Board website at www.nj.gov/lsrpboard.

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2. If the Board decides to investigate the complaint despite the Professional Conduct Committee's recommendation to dismiss the complaint, the Board shall remand the complaint to the Professional Conduct Committee for investigation pursuant to N.J.A.C. 7:26I-7.5.

7:26I-7.5 Board's investigation of complaint

(a) Upon the convening of a Complaint Review Team pursuant to N.J.A.C. 7:26I-7.4(c), the Board staff shall inform the Complaint Review Team of the identities of the subject of the complaint and the complainant.

(b) Each Complaint Review Team member shall certify that he or she is free of conflict with the subject of the complaint and the complainant, and can fairly and objectively investigate the complaint.

(c) The Board staff shall notify the subject of the complaint that a complaint has been received. The notification letter shall include:

1. The name of the complainant;
2. A copy of the complaint form; and
3. A request for information and a response to the allegations of the complaint.

(d) If the Complaint Review Team determines that the investigation of the complaint could be undermined by notifying the subject of the complaint, the Complaint Review Team may delay notification until a later date.

(e) The Complaint Review Team shall take such actions it deems necessary to thoroughly investigate the allegations of the complaint. The Complaint Review Team may expand its investigation beyond the allegations of the complaint to investigate whether the subject of the complaint has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

(f) The Complaint Review Team has the authority to take any one or more of the following actions:

1. Request, order, or subpoena the subject of the complaint, the complainant, and any other person that may have information regarding the facts of the complaint to:

- i. Submit to questioning or interviews;
- ii. Produce data, documents, records, and information;
- iii. Respond to inquiries from the Complaint Review Team; and
- iv. Make sites, remedial systems, monitoring devices, or other equipment available for inspection;

2. Enter, at reasonable times and in a reasonable manner, any known or suspected site, vessel, or other location, whether public or private, for the purpose of investigating, sampling, inspecting, or copying any records, condition, equipment, practice, or property relating to activities subject to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto. In the event entry is denied or the Board does not wish to provide prior notice, the Board shall seek a warrant authorizing entry before entering the site; and

3. Seize any records, equipment, property, or other evidence relating to activities subject to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto when the Complaint Review Team has reason to believe that any person has made fraudulent representations to the Board or the Department or has destroyed or concealed evidence.

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(g) The Complaint Review Team may review information from other persons regarding an LSRP that is the subject of the complaint including, but not limited to:

1. Records from other cases that the LSRP is or was involved in;
2. Prior complaints; and
3. Prior disciplinary actions.

(h) Upon completion of its investigation, the Complaint Review Team shall prepare and submit a report to the Professional Conduct Committee with the identities of the subject of the complaint and the complainant redacted, which shall contain the following information:

1. A summary of the complaint;
2. An opinion as to the validity of the complaint;
3. A statement of the Complaint Review Team's findings of fact;
4. A statement of the Complaint Review Team's findings with respect to any violation(s); and
5. A recommendation, if applicable, as to the type of disciplinary action along with a basis for this recommendation.

(i) The Professional Conduct Committee shall review the findings and recommendations of the Complaint Review Team and present the Complaint Review Team's report and its own recommendation to the Board in executive session.

(j) In the executive session the Professional Conduct Committee shall not disclose to the Board the identity of the complainant and the subject of the complaint.

7:26I-7.6 Board's actions in response to complaint

(a) The Board shall review the findings and recommendations of the Complaint Review Team and Professional Conduct Committee in executive session.

(b) The Board shall take one of the following actions with regard to the complaint:

1. Refer the complaint back to the Professional Conduct Committee for further investigation of specific issues;
2. Determine that no violation has been identified; or
3. Determine that the subject of the complaint has committed one or more violations of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made one or more false statements, representations, or certifications in any document or information submitted to the Board or the Department.

(c) Upon a determination pursuant to (b)3 above, the Board may exercise any of the remedies provided by the SRRA or this chapter.

(d) The identities of the subject of the complaint and complainant shall remain confidential until the Board makes a determination pursuant to (b)2 or 3 above.

(e) Upon the Board's determination pursuant to (b)2 or 3 above, a summary of the complaint and its disposition shall be made available on the Board website at www.nj.gov/lsrpboard.

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7:26I-7.7 Board's actions in response to violation

(a) Whenever the Board determines that a person has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may:

1. Suspend or revoke the license of an LSRP or impose another sanction on the LSRP;
2. Institute a civil action in Superior Court;
3. Issue an administrative order;
4. Bring an action in Superior Court for a civil penalty;
5. Assess a civil administrative penalty; or
6. Petition the Attorney General to bring a criminal action.

(b) The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy.

7:26I-7.8 License suspension or revocation

(a) In each notice of intent to suspend or revoke the license of an LSRP or impose another sanction, the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;
3. Specify the license to be suspended or revoked, or the sanction to be imposed;
4. If suspension, specify the term of suspension and any conditions on the reinstatement of the license;
5. Order the LSRP to provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on;
6. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and
7. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrcboard.

7:26I-7.9 Administrative order

(a) In each administrative order the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;
3. Order the violator to comply with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, including, but not limited to, the provision(s) violated;
4. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and

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5. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard.

(b) In each administrative order, when determined to be required as part of the corrective action, the Board may:

1. Require the production or analysis of samples;
2. Require the production of data, documents, records, and information; and
3. Impose restraints on or require action by the violator.

(c) In each administrative order, when determined to be appropriate, the Board may assess and recover the costs of:

1. Any investigation incurred by the Board and any other State agency; and
2. Preparing and successfully enforcing a civil administrative penalty pursuant to this subchapter.

[(c)] *(d)* Issuance of an order pursuant to this section shall not preclude, and shall not be deemed an election to forego, any action to suspend or revoke a license, recover damages, or seek injunctive relief, civil, or criminal penalties, or any other remedy.

7:26I-7.10 Civil administrative penalty

(a) In each civil administrative penalty the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;
3. State the amount of the civil penalty to be assessed, which shall not be more than \$ 10,000 for a first violation and not more than \$ 20,000 for every subsequent violation;
4. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and

5. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard.

SUBCHAPTER 8. ADJUDICATORY PROCEEDINGS

7:26I-8.1 Purpose

The purpose of this subchapter is to establish the procedures for requesting an adjudicatory hearing to appeal any of the Board's determinations set forth in N.J.A.C. 7:26I-8.3(a).

7:26I-8.2 Scope

(a) This subchapter contains provisions that govern the procedures for:

1. Requesting and conducting an adjudicatory hearing at N.J.A.C. 7:26I-8.3;
2. Denying a request for an adjudicatory hearing at N.J.A.C. 7:26I-8.4; and

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3. Issuing final orders and other Board decisions at N.J.A.C. 7:26I-8.5.

7:26I-8.3 Procedures for requesting and conducting an adjudicatory hearing

(a) A person may request an adjudicatory hearing to appeal any of the following Board actions:

1. A denial of a person's application for an LSRP license renewal pursuant to N.J.A.C. 7:26I-2.11;
2. License suspension or revocation, or other sanction, pursuant to N.J.A.C. 7:26I-2.13, 2.14, and 7.8;
3. An issuance of an administrative order pursuant to N.J.A.C. 7:26I-7.9; and
4. An assessment of a civil administrative penalty pursuant to N.J.A.C. 7:26I-7.10.

(b) The person requesting a hearing pursuant to (a) above shall:

1. Have 35 days after receipt of notification of the Board's action within which to request a hearing;
2. Comply with all procedures in (c) below; and
3. Deliver all items specified in (c) below to the following:

New Jersey Site Remediation Professional Licensing Board
c/o New Jersey Department of Environmental Protection
Site Remediation Program
Office of the Assistant Commissioner
P.O. Box 420
Mail Code 401-06
401 East State Street
Trenton, NJ 08625-0420

(c) A person requesting a hearing shall do so in writing on the Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lrspboard, and include at a minimum each item specified below:

1. The disciplinary document, disciplinary document number, and dates issued and received;
2. The name, mailing address, email address, and telephone number of the petitioner and petitioner's attorney;
3. The time required for the hearing;
4. Whether a barrier-free location is required;
5. A list of all specific issues being appealed;
6. A document in which the petitioner admits, denies, or makes a statement of insufficient knowledge for each specified paragraph in the disciplinary document;
7. A list of all information and copies of written documents the petitioner intends to rely on to support the appeal of the disciplinary document;
8. A list of all defenses, stated in short and plain terms, to each of the findings in specified paragraphs in the disciplinary document; and

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9. A statement of willingness to negotiate settlement with the *[program issuing the disciplinary document]* **Board*** or with mediation through the Department's Office of Dispute Resolution.

(d) The Board shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26I-8.4 Procedures for denying a request for an adjudicatory hearing

*(a) The Board shall determine whether to grant an administrative hearing based upon:

1. The petitioner's compliance with N.J.A.C. 7:26I-8.3; and
2. The standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.]*

(b)] **(a)*** The Board shall deny the hearing request if the petitioner does not:

1. Submit a request within 35 days after receipt of notification of the Board's action; or
2. Comply with the requirements for requesting a hearing at N.J.A.C. 7:26I-8.3.

7:26I-8.5 Final orders and other Board decisions

(a) A notice of denial of an application for a renewed LSRP license shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(b) A notice of intent to suspend or revoke the license of an LSRP, or to impose another sanction, shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(c) An administrative order shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(d) A notice of assessment of a civil administrative penalty shall become a final order and the penalty due and payable upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;

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2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or

3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

SUBCHAPTER 9. PROHIBITION AGAINST RETALIATORY ACTION

7:26I-9.1 Purpose

(a) In the performance of his or her duties and obligations under the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, an LSRP may be required to take action that is adverse to a client, an employer, or another person in order to protect public health and safety and the environment or otherwise carry out his or her professional services in compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto.

(b) This subchapter is intended to deter a person from retaliating against an LSRP in the performance of his or her professional services.

(c) This subchapter is intended to deter an LSRP from retaliating against a person who files a complaint with the Board about the LSRP, or who provides information to the Board during the conduct of an audit or investigation of the LSRP.

(d) Retaliatory actions shall include, but not be limited to, reprisal by discharge, suspension, demotion, or other adverse employment action taken against an employee in the terms and conditions of employment, or otherwise terminating a person's employment or contract to provide professional services.

7:26I-9.2 Retaliatory action prohibited

(a) No person shall take or threaten to take retaliatory action if an LSRP:

1. Discloses, or undertakes to disclose, to the Board or to the Department an activity, policy, or practice that the LSRP reasonably believes:

i. Is a violation of law, or a rule or regulation adopted pursuant to law, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity; or

ii. Is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the LSRP reasonably believes may defraud any client, customer, the Board, the Department, or any other governmental entity;

2. Provides notice to the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met;

3. Provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law, or rule or regulation adopted pursuant to law, by a client or customer with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity, or provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into the quality of remediation of a contaminated site;

4. Reports a discharge or immediate environmental concern to the Department; or

5. Objects to, or refuses to participate in, any activity, policy, or practice that the LSRP reasonably believes:

i. Is in violation of law, or a rule or regulation adopted pursuant to law, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity;

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ii. Is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the LSRP reasonably believes may defraud any client, customer, the Board, the Department, or any other governmental entity; or

iii. Is incompatible with a clear mandate of public policy concerning the protection of public health and safety and the environment.

(b) No LSRP shall take or threaten to take retaliatory action against a person who files a complaint with the Board against an LSRP or provides information to the Board during an investigation of a complaint pursuant to the SRRA and this chapter or provides information to the Board during an audit pursuant to the SRRA and this chapter.

7:26I-9.3 Disciplinary action

Any person who violates any provision of this subchapter shall be subject to disciplinary action by the Board pursuant to N.J.A.C. 7:26I-7.