

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
SITE REMEDIATION PROGRAM**

Administrative Requirements for the Remediation of Contaminated Sites

Proposed Readoption of Special Adopted Repeal and New Rules: N.J.A.C. 7:26B-1.5 and 4.1; 7:26C; and 7:26E-1.5, 1.7, 3.12 and 5.2

Proposed Readoption of Special Adopted New Rules: N.J.A.C. 7:14B-1.8; 7:26B-4.3 and 5.9; 7:26D-7.5; and 7:26E-1.9, 1.14 through 1.19 and 7.2

Proposed Readoption of Special Adopted Amendments: N.J.A.C. 7:1E-5.7 and 6.5; 7:1I-1.5, 2.6 and 3.3; 7:1J-1.4, 2.7 and 6.3; 7:7A-5.4 and 15.4; 7:8-5.4; 7:9C-1.1 and 1.6; 7:14A-3.1, 7.4, 7.5 and 9.10; 7:14B-1.6, 1.7, 2.4, 3.5, 3.6, 3.8, 4.2, 5.5, 5.6, 7.2, 7.4, 8.3, 8.4, 8.5, 8.7, 9 and 10.2; 7:22-3.4, 3.11, 3.17, 4.11 and 4.17; 7:26B-1.4, 1.6, 1.8 through 1.11, 3.3, 3.4, 4.2, 5.1, 5.3, 5.5, 6.1 through 6.5, 6.7, 8.1, 8.2, 8.3; 7:26D-1.1, 1.5, 7.1, 7.3, 7.4 and 7:26D Appendix 5; 7:26E-1.2, 1.3, 1.4, 1.6, 1.8, 1.11, 1.12, 2.1, 2.2, 3.1 through 3.5, 3.7, 3.9, 3.13, 4.1, 4.2, 4.4, 4.5, 4.6, 4.8, 5.1, 6, 7.1, 8 and 7:26E Appendix H; 7:38-1.4, 2.4, 6.6, 9.2 and 9.6; and 7:45-8.5

Proposed Readoption of Special Adopted Repeals: N.J.A.C. 7:1J-6.9; 7:26B-2.2, 2.3, 3.1 and 7:26B Appendix A; 7:26D Appendix 6; and 7:26E Appendices B and F

Proposed Amendments: N.J.A.C. 7:14B-8.3; 7:26B-3.3, and 4.3; 7:26C-2.3, 2.4, 4.2, 5.8, 5.10, 5.11, 6.2, 7.2, 7.3, 7.8, 7.9, 7.10, 9.5, 10.5, 11.2; 7:26D-7.4; and 7:26E-1.4, 3.1, 3.13, 4.6, 4.8, 5.2, 6.2, 6.3, 6.7, 7.2, 8.3, 8.4, 8.5, and 8.6,

Authorized by: Bob Martin, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:1K-8; 58:10B-1 through 4, 8, 11, 12, 13, 17.1, 20, 26, 28, 29, 31; 58:10C-1 et seq.; and 58:10-23.11b, 11e2, 11f, 11g and 16

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 08-11-03

Proposal Number: PRN 2011-

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Submit written comments by (no later than 60 days after publication of this proposal) to:

Janis Hoagland, Esq.
Attn.: DEP Docket No. 08-11-03
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 4th Floor
Mail Code 401-04L
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on CD or DVD as well as on paper. Submittal of a CD or DVD is not a requirement. Submittals on CD or DVD must not be access-restricted (locked or read-only) in order to facilitate the Department's use of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal may be viewed or downloaded from the Department's web site at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department is providing a 60-day comment period on this notice of proposal, this proposal is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

I. Background

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department is proposing to readopt with amendments the specially adopted rules (the Interim Rules) that implement P.L. 2009, c. 60 (the Act). The Act includes the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and related amendments to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act (Spill Act), 58:23-11 et seq., the Underground Storage of Hazardous Substances Act (UST Act), N.J.S.A. 58:10A-21 et seq., and the Brownfield and Contaminated Site Remediation Act (Brownfield Act), N.J.S.A. 58:10B-1 et seq. The interim rules include the new Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules, at N.J.A.C. 7:26C, and amendments to other rule chapters related to site remediation. The Interim Rules were published in the New Jersey Register on December 7, 2009, at 41 N.J.R. 4467(a). Pursuant to SRRA at N.J.S.A. 58:10C-29, the Interim Rules became effective on November 4, 2009, upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4), for a period not to exceed 18 months, unless proposed and readopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B. The Interim Rules are scheduled to expire on May 4, 2011. This expiration date is extended by 180 days to October 31, 2011 pursuant to N.J.S.A. 52:14B-5.1c, by the timely filing of this notice of proposal.

Through the Act, the Legislature made sweeping changes to the way in which sites are remediated in New Jersey, as a response to comments received from constituents that the traditional process for remediating sites in New Jersey was not adequately protective of public health and safety and of the environment, and was time consuming and costly. The traditional process entailed Department oversight and pre-approval of each remediation phase. Through the years, the number of Department staff necessary for overseeing remediations under the traditional process did not keep pace with the growing number of contaminated sites being identified in New Jersey. This shortfall in staffing often resulted in delays in moving remediation projects forward, sometimes resulting in prolonged exposure of citizens to contaminated sites and in delays in returning sites to productive and economically beneficial use.

The Act creates a new site remediation paradigm pursuant to which sites would be remediated without prior Department approval, but while still requiring the Department to

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

maintain a certain level of oversight. The cornerstones of this new paradigm are the licensed site remediation professional (LSRP) and the Site Remediation Professional Licensing Board (LSRP Board). The Department oversees the person responsible for conducting the remediation, which is conducted by an LSRP, who oversees the remediation of a site, and the LSRP Board oversees the licensing and conduct of the LSRP. The LSRP Board is authorized to establish a licensing program and licensing requirements for LSRPs, adopt and administer standards for professional conduct for LSRPs, and suspend or revoke licenses and take other enforcement action against LSRPs. SRRA establishes the qualifications for licensing as an LSRP, including having an extensive knowledge and experience in remediating contaminated sites in New Jersey and an extensive knowledge of the New Jersey statutes and rules governing site remediation. Under SRRA's strict code of conduct, the LSRP's highest priority must always be the protection of public health and safety and the environment (see N.J.S.A. 58:10C-16a).

SRRA provides, at N.J.S.A. 58:10C-14.d, that an LSRP is authorized to issue a response action outcome, certifying that, in the opinion of the LSRP, the contaminated site was remediated so that it is in compliance with all applicable statutes and rules, and is protective of public health and safety and of the environment. A response action outcome issued by an LSRP is the equivalent of a no further action letter issued by the Department. Both of these documents are defined as "final remediation documents" in the Spill Act at N.J.S.A. 58:10-23.11b and in the ARRCs rules at N.J.A.C. 7:26C-1.3.

While the LSRP Board is in the process of establishing its licensing program, SRRA requires the Department to establish a temporary licensing program, to remain in effect until the LSRP Board promulgates rules for obtaining an LSRP license. Under the Department's temporary licensing program, over 495 consultants have applied for a temporary LSRP license and over 433 of those consultants have been granted a temporary LSRP license. These licensed LSRPs have been successfully remediating sites, as evidenced by the fact that over 403 remedial action outcome documents have been filed with the Department since the program began on November 4, 2009.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Under the Act, the Department's new role in overseeing the remediation of contaminated sites is to:

1. Support the LSRP Board, including providing resources for investigating complaints about LSRPs;
2. Refer LSRPs to the LSRP Board for disciplinary action based on Department review of documents an LSRP submits to the Department;
3. Promulgate rules that establish the standards, goals, and timeframes for remediation, including the rules the Department herein proposes to readopt;
4. Develop technical guidance, with stakeholder input, that provides technical assistance to the person responsible for conducting the remediation on meeting those regulatory standards, goals, and timeframes;
5. Review, inspect, and audit submissions submitted by LSRPs on behalf of persons responsible for conducting the remediation, to ensure that the remediation is protective of the public health and safety and the environment; and
6. Take all enforcement action necessary to ensure that each person who has a legal obligation to remediate a contaminated site does so according to the established remediation standards, goals, and timeframes.

The Act includes several salient provisions. The Act amended the Brownfield Act at N.J.S.A. 58:10B-1.3 to provide that the person responsible for conducting the remediation has a clear, affirmative obligation to remediate the discharge of a hazardous substance pursuant to all timeframes established by the Department. This affirmative obligation to remediate applies to an owner or operator of an industrial establishment subject to the provisions of ISRA, the discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

to the provisions of the Spill Act at N.J.S.A. 58:10-23.11g, and the owner or operator of an underground storage tank regulated pursuant to the provisions of the UST Act.

Amended N.J.S.A. 58:10B-1.3 also provides that the Department must implement the new site remediation paradigm no later than 36 months after the date of enactment of the Act. The Act was enacted on May 7, 2009. Accordingly, by May 7, 2012, all persons responsible for conducting the remediation are required to utilize the services of an LSRP to direct or oversee the remediation, and to proceed with remediation without obtaining the Department's preapproval. However, SRRA provides for a phase-in period, namely from November 4, 2009, the effective date of the Interim Rules, to May 7, 2012. During the phase-in period, N.J.S.A. 58:10B-1.3 directs that the person responsible for conducting the remediation who initiated remediation on or after the effective date of the Interim Rules to conduct site remediation under the supervision of an LSRP. The person responsible for conducting the remediation who initiated remediation prior to the effective date of the Interim Rules may choose to continue to conduct the remediation of a site under the traditional paradigm without an LSRP until May of 2012, or may choose to hire an LSRP to supervise remediation under the new paradigm.

N.J.S.A. 58:10B-1.3 also requires the person responsible for conducting the remediation who initiated remediation 180 days after the enactment of SRRA, that is, on or after November 4, 2009, to conduct the remediation according to the following requirements:

1. Hire an LSRP to supervise the remediation;
2. Notify the Department of the name and license information of the LSRP who has been hired to perform the remediation;
3. Conduct the remediation without the prior approval of the Department, unless the Department otherwise directs;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

4. Establish a remediation funding source if a remediation funding source is required pursuant to N.J.S.A. 58:10B-3;
5. Pay all applicable fees and oversight costs the Department requires;
6. Provide the Department with access to the contaminated site;
7. Provide the Department access to all applicable documents concerning the remediation;
8. Meet the mandatory remediation timeframes and expedited site specific timeframes established by the Department; and
9. Obtain all necessary permits.

For all remediation initiated prior to November 4, 2009, N.J.S.A. 58:10B-1.3 requires the person responsible for conducting the remediation to conduct the remediation according to items (4) through (9), above.

Other amendments to the Brownfield Act at N.J.S.A. 58:10B-12.g(1) and (10) provide special requirements for a person remediating a site or area of concern that is to be used for residential purposes, as a child care center, as a public school or private school, or as a charter school. For any remediation initiated after the effective date of the Act (May 7, 2009) on one of these sites, the person responsible for conducting the remediation must implement an unrestricted use remedial action, a presumptive remedy, or an alternative remedy approved by the Department: (i) where new construction is proposed for residential purposes, for use as a licensed child care center, or as a public school or private school or charter school; or (ii) where there will be a change in the use of the site to residential, child care, or public school, private school, or charter school purposes or another purpose that involves use by a sensitive population. A presumptive remedy is defined in amended N.J.S.A. 58:10B-1 as one of a number of remedial

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

actions the Department establishes, based on the historic use of the property, the nature and extent of the contamination at the site, the future use of the site, and any other factors deemed relevant by the Department. The Department may include the use of engineering or institutional controls in the presumptive remedies it establishes for these sites. The person responsible for conducting the remediation may propose an alternative by demonstrating to the Department that the use of an unrestricted use remedy or a presumptive remedy is impractical due to conditions at the site, or that an alternative remedy would be equally protective over time as a presumptive remedy; the person may implement that remedy upon approval by the Department.

In some instances, sites cannot be remediated without the use of long term solutions, including institutional controls (such as deed restrictions) or engineering controls (such as long term pumping and treating of ground water). In those instances, SRRA, at N.J.S.A. 58:10C-19.a. and c., authorizes the Department to establish a permit program to regulate the operation, maintenance, and inspection of engineering and institutional controls and related systems as part of a remedial action for a contaminated site. A permittee is required to provide financial assurance to guarantee that funding is available to operate, maintain and inspect any engineering control installed as part of the remedial action for a contaminated site.

Pursuant to SRRA at N.J.S.A. 58:10C-28, the Department now has the statutory authority to establish mandatory remediation timeframes and, where necessary, expedited site specific remediation timeframes, to protect the public health and safety and the environment, for the following remediation milestones: “. . . (i) receptor evaluations; (ii) control of ongoing sources of contamination; (iii) establishment of interim remedial measures; (iv) addressing immediate environmental concern condition; (v) the performance of the preliminary assessment, site investigation, remedial investigation, and remedial action; (vi) completion of the remediation; and (vii) any other activities the Department determines are necessary to effectuate timely remediation. . . .” The purpose for establishing these mandatory timeframes by which remediation milestones must be achieved is to ensure that sites are remediated in a timely manner. As long as the person responsible for conducting the remediation meets each mandatory timeframe (or any Department approved extension thereof), SRRA provides that the person may

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

continue to conduct the remediation under the supervision of an LSRP, with no further Departmental oversight. However, SRRA at N.J.S.A. 58:10C-27 requires that if the person responsible for conducting the remediation fails to meet a mandatory timeframe, the Department must undertake direct oversight of the remediation of the contaminated site.

SRRA, at N.J.S.A. 58:10C-27, includes both mandatory and discretionary triggers for this direct oversight. Note that SRRA also authorizes the Department to exercise direct oversight if the person responsible for conducting the remediation has a history of non-compliance with remediation laws or fails to complete a remedial investigation of the entire site within the statutorily mandated timeframes.

When the person responsible for conducting the remediation is subject to direct oversight, the Department will directly oversee every aspect of the remediation, pre-approve all disbursements from the remediation funding source, and select the remedial action. At the same time, the person responsible for conducting the remediation must: (i) complete a feasibility study of remedial alternatives; (ii) establish a remediation trust fund in the amount of the estimated cost of the remediation; (iii) require that all submissions prepared by the LSRP are provided simultaneously to the Department and the person responsible for conducting the remediation; and (iv) implement a public participation plan approved by the Department to solicit public comment from the members of the surrounding community concerning the remediation of the site.

The Department is implementing the requirements of the Act in three phases. The first phase was the aforementioned adoption of Interim Rules which became effective on November 4, 2009. The second phase includes this readoption of the Interim Rules, which will enable the Department to continue to phase in the new site remediation paradigm as created in SRRA, while incorporating lessons learned by Department in implementing phase one. Phase three will include subsequent rule amendments to the ARRCs and related rules to fully implement the new remediation paradigm by May 7, 2012, and to continue to improve the rules based on experience and stakeholder input. The Department anticipates publishing the phase three rule proposal in June 2011. The Department therefore suggests that commenters consider focusing their attention

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

on that upcoming proposal for purposes of providing substantive comments on the ARRCS rules and related rules implementing the LSRP program.

Recognizing that SRRA required that the Interim Rules be put in place as special adopted rules that became effective without the opportunity for a public comment that is normally provided in rulemaking, the Department has conducted extensive stakeholder outreach by conducting information sessions, and training sessions, and posting requests for public input on the Department's website. The Department has aggressively sought input through numerous presentations highlighting various aspects of the Interim Rules. These presentations always include a question and answer period where the public is invited to express its opinion.

The Interim Rules that the Department is proposing to readopt serve as the bridge from the days of prescriptive requirements for site remediation in New Jersey requiring Department review and approval to the days of focused Department resources, increased private responsibility, streamlined business practices, and expanded community involvement in ensuring sites are remediated in a manner protective of public health and safety and the environment, and beneficial to the economy of New Jersey.

The Department is proposing to readopt the Interim Rules as corrected by three notices of administrative correction, published at 42 N.J.R. 778(a) (April 19, 2010), 42 N.J.R. 1862(a) (August 16, 2010), and 42 N.J.R. 2620(a) (November 1, 2010). The Department is also proposing to readopt the amendments to the ARRCS rules and the Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E, that extended the March 1, 2011 mandatory timeframe for one year, until March 1, 2012, amended the requirements for mitigation of vapor intrusion, amended the penalty table consistent with the other amendments, and revised certain form names. See 42 N.J.R. 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption.

The Department proposes to, where necessary, reformat the rule text to make the rules easier to understand and to correct typographic, grammatical and citation errors. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department also proposes amendments to delete the specific form names that remain in the rules, and instead direct the person responsible for conducting the remediation to the Department's website address www.nj.gov/dep/srp/srra/forms. See the above-referenced proposal and adoption through which the Department revised portions of the rules to this end (42 N.J.R. 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption). The Department recognizes that the names of the various forms may change over time, forms may become obsolete, and new forms may be required. The Department does not want to have to amend rules each time a form name changes. Directing the person responsible for conducting the remediation to the website allows the Department greater flexibility to make such changes in the future. To ensure that the person responsible for conducting the remediation chooses the correct form, the Department has included on its webpage a table that lists each form by using a name that indicates the subject of the form and a cross reference to the citation in the New Jersey Administrative Code to which the form pertains. Also included on this table are the version number of the form and the date that the form was last updated, and a link to the downloadable version of that form. This webpage is updated appropriately as form names change, and forms are added or removed, and alerts concerning form updates appear at the top of the page. Amendments related to form names are proposed at: N.J.A.C. 7:14B-8.3(b); N.J.A.C. 7:26B-3.3(a) and 4.3(a); N.J.A.C. 7:26C-2.3(b)1, 2.4(a)2, 4.2(a)4, (c) and (d), 5.8(a), 5.10(a), 5.11(a), (b)2 and (e), 6.2(b)2i, 7.3(a)1, 7.8(b), 7.9(b) and (c)1, 7.10(b), 10.5(a), 11.2(a); N.J.A.C. 7:26D-7.4(a); N.J.A.C. 7:26E-1.4(d), (e) and (i)5: 3.1(e), 3.13(d)5, 4.6(a)5i, 4.8(a), (d)2iv, (f), 5.2(a), 6.2(a), 6.3(h)1 and 2, 6.7(a), (b)7 and (f), 7.2(b), (c)1, 8.3(b), (b)3v and (b)5, 8.4(c), 8.5(b) and (c)2, and 8.6(c).

II. Proposed Readoption of the Administrative Requirements for the Remediation of Contaminated Sites (AARCS) Rules

The Department proposes to readopt the repeal of the Department Oversight of the Remediation of Contaminated Sites Rules and to readopt the new ARRCs rules to replace them at N.J.A.C. 7:26C. This chapter contains the rules through which the Department administers the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

site remediation program and they are the primary mechanism through which the Department implements SRRA and the related amendments to other statutes in the Act.

N.J.A.C. 7:26C-1, General Information, sets forth the general provisions of these rules including general requirements to conduct the remediation in accordance with all applicable statutes, rules and guidance, definitions, exemptions, certifications, forms and submissions, liberal construction, and severability.

N.J.A.C. 7:26C-2, Obligations of the Person Responsible for Conducting the Remediation of a Contaminated Site, establishes the criteria for determining when a person has initiated remediation, the requirements for a person who has initiated remediation prior to November 4, 2009, and the requirements for a person who has initiated remediation on or after November 4, 2009. Subchapter 2 also establishes the records retention requirements for the person responsible for conducting the remediation.

N.J.A.C. 7:26C-3, Remediation Timeframes and Extension Requests, establishes the requirements for a person to comply with the regulatory timeframes, mandatory remediation timeframes, and expedited site specific remediation timeframes for various remediation milestones enumerated in SRRA, and sets those timeframes at one year from a specific trigger date unique to the respective milestones. Subchapter 3 also establishes the requirements for extensions of regulatory timeframes, mandatory remediation timeframes and expedited site specific remediation timeframes. The Department is proposing to readopt the mandatory remediation timeframes and associated regulatory timeframes for: (i) mitigating the risks from immediate environmental concern conditions; (ii) conducting receptor evaluations; (iii) mitigating the risks from light non-aqueous phase liquids; and (iv) completing preliminary assessments and site investigations. The Department intends to include additional mandatory remediation timeframes in a subsequent rulemaking.

N.J.A.C. 7:26C-4, Fees and Oversight Costs, establishes annual remediation fees, individual review fees, remedial action permit fees, and the methodology the Department will

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

use to calculate oversight costs. Subchapter 4 also establishes the requirements for oversight cost reviews and for the payment of fees and oversight costs.

N.J.A.C. 7:26C-5, Remediation Funding Source, sets forth who has the obligation to establish and maintain a remediation funding source and how to determine remediation funding source amounts. This subchapter also establishes the requirements for trust funds, environmental insurance policies, lines of credit, letters of credit, self-guarantees, and payment of annual surcharges. Subchapter 5 also establishes the requirements for remediation funding source surcharges, remediation cost review, changes in the remediation funding source amount or type, and disbursements. This subchapter also establishes the requirements for the use by another person of the funds from the remediation funding source when there is a failure to perform the remediation.

N.J.A.C. 7:26C-6, Final Remediation Documents, establishes the procedures for response action outcomes and no further action letters, including their modification, rescission, and invalidation. Subchapter 6 also establishes limitations on the scope of final remediation documents and covenants not to sue.

N.J.A.C. 7:26C-7, Remedial Action Permits, establishes a permit program for implementing remedial actions that require an institutional or engineering control or that include operation and maintenance systems, including operation, maintenance, monitoring and biennial certification requirements for these systems. This subchapter also establishes the requirements for the conditions of these permits, along with their modification, transfer and termination. Subchapter 7 also establishes the requirements for financial assurance for remedial action permits that include engineering controls.

N.J.A.C. 7:26C-8, Site Access, establishes the minimum requirements and procedures for the person responsible for conducting the remediation to use when seeking to obtain access to real property not owned by that person in order to conduct remediation.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:26C-9, Enforcement, establishes the procedures for the Department to issue administrative orders and to assess civil administrative penalties for violations of an administrative order, an administrative consent order, the ISRA rules, the ARRCs rules, the UST rules at N.J.A.C. 7:14B-1.3 and 7 through 14, the Discharges of Petroleum and Other Hazardous Substances rules and the Technical Requirements. This subchapter also establishes grace periods that apply to minor violations, during which the violator has time to correct the violation and thereby avoid the assessment of a civil administrative penalty, establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period, and the procedures to be followed for requesting an adjudicatory hearing, and identifies responses required to a directive the Department issues pursuant to the Spill Act at N.J.S.A. 58:10-23.11f.

N.J.A.C. 7:26C-10, Technical Assistance Grants, establishes the procedures according to which the Department provides technical assistance grants to non-profit organization community groups. This subchapter establishes the eligibility, pre-application, application, and reporting requirements for these grants. Pursuant to this subchapter, a grant may be awarded to a community group in an amount not to exceed \$10,000 per remediation phase, for the remedial investigation phase and the remedial action phase, respectively. The money awarded in a technical assistance grant may only be used for the limited purposes of hiring an LSRP to support and advise a grant recipient concerning the following activities: (1) interpret and comment on remediation documents prepared by the person responsible for conducting the remediation; (2) participate in public meetings concerning the contaminates site; (3) evaluate the potential impacts of the remediation on the community based upon the information provided by the persons responsible for conducting the remediation; and (4) interpret site information that is ancillary to the remediation, such as public health and redevelopment information.

N.J.A.C. 7:26C-11, Hazardous Discharge Site Remediation Fund, establishes the procedures to be followed by a person who wishes to apply for a loan or grant from the Hazardous Discharge Site Remediation Fund for the remediation of a suspected or known discharge of a hazardous substance or hazardous waste.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:26C-12, Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund, establishes the procedures to be followed by a person who wishes to apply for a loan or grant from the Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund to help finance project costs for the upgrade and closure of State regulated underground storage tanks and remediation of discharges from regulated and non-regulated underground storage tanks.

N.J.A.C. 7:26C-13, Remediation of Unregulated Heating Oil Tank Systems, establishes the requirements for the remediation of discharges from unregulated heating oil tank systems. Storage tanks containing home heating oil, whether they are located underground, above ground or in the basement, can rust and leak over time, posing a number of environmental and health risks. In the event of a storage tank discharge, where heating oil comes into contact with soil or ground water, New Jersey requires homeowners to take prompt action to minimize those risks.

Appendix A, Developer Certification, sets forth the model developer certification.

Appendix B, Model Termination of Deed Notice, sets forth the model document to be used upon receipt of a notice from the Department that the Department has terminated a remedial action permit at the completion of remediation, pursuant to 7:26C-7.10(c).

III. Proposed Readoption of Amendments to Related Rules as Part of the Special Adoption of the Administrative Requirements for the Remediation of Contaminated Sites Rules

As part of the special adoption of Interim Rules, the Department adopted amendments to the following rules to comport those chapters to the new ARRCS rules:

- Discharges of Petroleum and Other Hazardous Substances, N.J.A.C. 7:1E;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.A.C. 7:1I;
- Processing of Damage Claims Pursuant to the Spill Compensation and Control Act, N.J.A.C. 7:1J;
- Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A;
- Stormwater Management, N.J.A.C. 7:8;
- Ground Water Quality Standards, N.J.A.C. 7:9C;
- New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A;
- Underground Storage Tanks (UST rules), N.J.A.C. 7:14B;
- Financial Assistance Programs for Environmental Infrastructure Facilities, N.J.A.C. 7:22;
- Industrial Site Recovery Act Rules (ISRA rules), N.J.A.C. 7:26B;
- Remediation Standards, N.J.A.C. 7:26D;
- Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E
- Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38; and
- Rules for the Review Zone of the Delaware and Raritan Canal State Park, N.J.A.C. 7:45.

The Department is proposing to readopt the amendments that were adopted as part of the specially adopted rules. A description of the amendments follows.

A. Proposed Readoption of Amendments That Affect Multiple Rules

The Department proposes to readopt the amendments made to each of the rules in the special adoption of the ARRCS rules, to correct grammatical and typographic errors, update citations and cross-references, update mailing addresses and telephone numbers, and update internet URL references.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

In the rules that cross reference chapter 7:26C, the Department proposes to readopt the name change for the chapter from the “Department Oversight of the Remediation of Contaminated Sites” to the “Administrative Requirements for the Remediation of Contaminated Sites.” The following rules are affected: N.J.A.C. 7:1E, N.J.A.C. 7:14A, N.J.A.C. 7:14B, N.J.A.C. 7:26B, and N.J.A.C. 7:38.

The Department proposes to readopt the amendments that cross reference the ARRCs rules as the rules that govern how to conduct a remediation. The following rules are affected: N.J.A.C. 7:1E, N.J.A.C. 7:7A, N.J.A.C. 7:8, N.J.A.C. 7:14B, N.J.A.C. 7:22, N.J.A.C. 7:26B, and N.J.A.C. 7:26E. Every remediation must be conducted according to the requirements of the ARRCs rules.

In N.J.A.C. 7:1I and N.J.A.C. 7:1J, the Department proposes to readopt the definition of “covenant not to sue,” and the amendments that substitute a cross reference to the definition of this term at N.J.S.A. 58:10C-13.1 and N.J.S.A. 58:10C-13.2, for a cross reference to the ARRCs rules. The Department is proposing to readopt these amendments since the ARRCs rules do not contain a definition of “covenant not to sue.”

The Department proposes to readopt the amendments that replaced the reference to a “no further action letter” with a reference to a “final remediation document” in N.J.A.C. 7:1I, N.J.A.C. 7:1J, N.J.A.C. 7:22, N.J.A.C. 7:26B, N.J.A.C. 7:26E, and N.J.A.C. 7:38. The Department also proposes to readopt the amendments adding the definition of “final remediation document” in N.J.A.C. 7:1I, N.J.A.C. 7:1J, N.J.A.C. 7:14B, N.J.A.C. 7:22, N.J.A.C. 7:26B, N.J.A.C. 7:26E, and N.J.A.C. 7:38. The Department proposes to readopt the amendments deleting the definition of “no further action letter” in N.J.A.C. 7:1I, N.J.A.C. 7:1J, and N.J.A.C. 7:38. Under the new remediation paradigm, an LSRP issues a response action outcome, which is equivalent to a Department-issued no further action letter. Both of these documents are final remediation documents.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments that added the definition of “licensed site remediation professional” in N.J.A.C. 7:14B, N.J.A.C. 7:22, N.J.A.C. 7:26B, N.J.A.C. 7:26E, and N.J.A.C. 7:38, all of which cross reference the definition of that term at N.J.A.C. 7:26C-1.3 or N.J.S.A. 58:10C-1 et seq., as this term is now used in each of the rules cited.

The Department proposes to readopt the amendments that added the acronym of licensed site remediation professional, namely “LSRP,” to the following rules: N.J.A.C. 7:14B, N.J.A.C. 7:22, N.J.A.C. 7:26B, and N.J.A.C. 7:26E.

In N.J.A.C. 7:26D and N.J.A.C. 7:26E, the Department proposes to readopt the amendments to the definition of “person responsible for conducting the remediation” that point to the definition of that term in N.J.A.C. 7:26C-1.3 of the ARRCS rules.

Because under the new remediation paradigm some sites will be remediated with the initial oversight of an LSRP, and not the Department, the Department proposes to readopt the following amendments that are designed to reflect this new paradigm:

- Amendments that replaced language specifying Department approval, consideration, or determination (i.e., “Department approves,” “Department approved,” “approved by the Department,” “Department will consider,” or “written determination by the Department”) with language cross referencing the ARRCS rules, N.J.A.C. 7:26C, in N.J.A.C. 7:1J, N.J.A.C. 7:7A, N.J.A.C. 7:8, N.J.A.C. 7:9C, N.J.A.C. 7:14A, N.J.A.C. 7:22, and N.J.A.C. 7:26E (except that the Department proposes to readopt N.J.A.C. 7:8-5.4(a)2iii(1) as administratively corrected at 42 N.J.R. 778(a) (April 9, 2010), which restored the phrase “Department approved” in the phrase “Department approved landfill closure plan,” because only a stormwater recharge that is consistent with a Department approved landfill closure plan should be allowed from a high pollutant loading area); and
- Amendments that replaced the phrase “oversight document” with a cross reference to the ARRCS rules in N.J.A.C. 7:22 and N.J.A.C. 7:38, to reflect that as part of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

new remediation paradigm, oversight documents will no longer be issued, and instead remediations are to be conducted in accordance with the ARRCs rules.

B. Proposed Readoption of Amendments that are Particular to Specific Chapters

1. Freshwater Wetlands Protection Act (FWPA) Rules

The FWPA Rules are codified at N.J.A.C. 7:7A. N.J.A.C. 7:7A-15.4 pertains to property suitable for mitigation and the criteria for addressing contaminated sites. The Department proposes to readopt the amendments in N.J.A.C. 7:7A-15.4(h)1 that replaced the reference to a memorandum of agreement with the requirement to remediate the site pursuant to the ARRCs rules at N.J.A.C. 7:26C-2.4, because the Department no longer enters into memoranda of agreement under the LSRP paradigm.

2. Ground Water Quality Standards (GWQS)

The GWQS are codified at N.J.A.C. 7:9C. N.J.A.C. 7:9C-1.1 describes the scope of the chapter. The Department proposes to readopt the amendments in N.J.A.C. 7:9C-1.1(b) that added a reference to the Site Remediation Reform Act (N.J.S.A. 58:10C et. seq.) as additional statutory authority for the Ground Water Quality Standards.

N.J.A.C. 7:9C-1.6 pertains to exceptions to the ground water classification system (i.e., classification exception areas). The Department proposes to readopt the amendment in N.J.A.C. 7:9C-1.6(d) that replaced the phrase “a Department-approved remedial action” with the phrase “the remediation of a contaminated site,” to indicate that the Department need not approve a remedial action for a classification exception area to be identified as part of the remediation of a contaminated site.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

3. New Jersey Pollutant Discharge Elimination System (NJPDDES) rules

The NJPDDES rules are codified at N.J.A.C. 7:14A. Subchapter 9 sets forth ground water monitoring requirements for sanitary landfills, and N.J.A.C. 7:14A-9.10 pertains to remedy selection. The Department proposes to readopt the amendments in N.J.A.C. 7:14A-9.10(g) that replaced the phrase “request to conduct” with “implement” to indicate that Department approval is no longer necessary because the owner or operator of a landfill may proceed with cleanup of discharges at the landfill, and that added the word “from” prior to the phrase “natural variation in ground water quality” for clarity.

4. Underground Storage Tank (UST) rules

The UST rules are codified at N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.7 pertains to certifications. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-1.7(g) and (h) correcting cross-references to reflect that the work about which a subsurface evaluator is certifying concerns identifying a suspected release and confirming whether there was a discharge.

The Department proposes to readopt new N.J.A.C. 7:14B-1.8, “General Requirements,” that require the owner or operator of an underground storage tank system to comply with the regulatory timeframes set forth in the UST or ARRCs rules, and in the Technical Requirements, when indicated. Additionally, new N.J.A.C. 7:14B-1.8(a)1 provides that, where site investigation and tank closure activities were initiated prior to November 4, 2009, those activities must be conducted using the services of an individual certified in subsurface evaluation and/or closure. However, when those activities were initiated on or after November 4, 2009, new N.J.A.C. 7:14B-1.8(a)2 provides that those activities must be conducted in accordance with the ARRCs rules that contain the requirements for a person who initiated remediation on or after November 4, 2009 at N.J.A.C. 7:26C-2.4, including using the services of an LSRP.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Subchapter 2 of the UST rules pertains to registration requirements and procedures. The Department proposes to readopt new N.J.A.C. 7:14B-2.4(d), which provides that the Department will remove an underground storage tank system from its registrant list when the Department receives a final remediation document and an Amended New Jersey Underground Storage Tank Facility Certification Questionnaire.

Subchapter 3 of the UST rules pertains to fees. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-3.5 changing the name of this section from “Program oversight cost fees” to “Program fees and oversight costs.” Until May 2012, the Department will be assessing both annual remediation fees for sites the remediation of which is proceeding under the supervision of an LSRP, and oversight costs for sites the remediation of which is proceeding under Department oversight pursuant to N.J.A.C. 7:26C-4.5.

The Department proposes to readopt the amendments in N.J.A.C. 7:14B-3.5(a), 8.3(a), and 9.5(a) that indicate that fees and oversight costs related to the remediation of underground tank systems are promulgated in both this chapter and in N.J.A.C. 7:26C.

The Department proposes to readopt the amendments in N.J.A.C. 7:14B-3.5(e) that state that oversight costs are only due when payment is required by the Department.

N.J.A.C. 7:14B-3.6 pertains to payment for Department services. The Department proposes to readopt the amendments that deleted previous N.J.A.C. 7:14B-3.6(a) and added new N.J.A.C. 7:14B-3.6(a)1 and 2. These new provisions provide that fees may be paid using e-checks and credit cards beginning at such time as the Department is able to accept electronic payments, and also set forth the mailing address to which fees should be sent.

Subchapter 4 of the UST rules regulates the design, construction and installation of underground storage tank systems, and N.J.A.C. 7:14B-4.2 pertains to upgrading existing underground storage tank systems. The Department proposes to readopt the amendments in

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:14B-4.2(a)3 that replaced the provision that stated that UST system closure requirements include only the applicable requirements for corrective action under N.J.A.C. 7:14B-8 with the provision that expands closure requirements to include the applicable requirements under N.J.A.C. 7:14B-8 and the ARRCs rules.

Subchapter 5 of the UST rules contains general operating requirements for underground storage tank systems, and N.J.A.C. 7:14B-5.5 pertains to release response plans. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-5.5(a)4 that clarify that this subsection applies to a plan for a release of a hazardous substance, and not just to a discharge, and to reflect that an owner and operator has to determine whether the remediation must be performed using an LSRP pursuant to N.J.A.C. 7:26C-2.

Recordkeeping requirements are codified in N.J.A.C. 7:14B-5.6. The Department proposes to readopt the amendments at N.J.A.C. 7:14B-5.6(a)4 expanding recordkeeping requirements from maintaining the results of all site investigations and remedial investigations conducted pursuant to N.J.A.C. 7:14B-8 and 9 to maintaining all remediation documents prepared or required pursuant to the UST rules, to ensure that all documents associated with the remediation, not just those associated with site investigations and remedial investigations, are maintained.

Subchapter 7 of the UST rules pertains to release reporting and investigation. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-7.2(b) and 7.4 that change the regulatory timeframe schedule for completing a site investigation from 60 days of discovery of a suspected release and 90 days after the Department's written request for a site investigation, respectively, to the schedule codified at N.J.A.C. 7:26E-3.3(e).

N.J.A.C. 7:14B-7.4 concerns unknown sources of contamination. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-7.4 that delete references to directives issued by the Department because the Department no longer directly oversees site remediations. Instead, the person responsible for conducting the remediation and the LSRP have this

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

responsibility; amendments to the remaining text in the section reflect this new paradigm. The Department also proposes to readopt the amendments that place the affirmative obligation to remediate discharges, promulgated in the Brownfield Act at N.J.S.A. 58:10B-1.3, on the person responsible for conducting the remediation.

Subchapter 8 of the UST rules concerns conducting remediation activities at underground storage tank systems, and includes the reporting requirements for remediation activities at N.J.A.C. 7:14B-8.3. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-8.3(a) modifying the procedures that are to be followed when paying fees and the timeframe by which all required fees are to be paid. These amendments align these provisions with the new regulatory timeframes for submitting a site investigation or remedial investigation report in the Technical Requirements. The Department proposes to readopt similar amendments in N.J.A.C. 7:14B-9.5(a) (reporting requirements for out-of-service underground storage tank systems and closure of underground storage tank systems).

The Department proposes to readopt new N.J.A.C. 7:14B-8.3(b), which requires an owner or operator of a Federally regulated underground storage tank to report to the Department the source and cause of the confirmed release on a form, in accordance with the timeframe applicable for submittal of the site investigation or remedial investigation report. The Department is proposing to readopt this new provision because the Federal Energy Policy Act, 42 USC §13201 et seq. (2005), requires the Department to report the source and cause of a confirmed release from an underground storage tank subject to regulation at 40 C.F.R. Part 280. In order to comply with the Federal reporting requirement, the Department must obtain the information from the owners or operators of Federally regulated underground storage tanks. The Department also proposes to readopt the recodification of (b) through (f) as (c) through (g).

The Department proposes to readopt the amendments in N.J.A.C. 7:14B-8.3(c), (d), (e), and (h) that cross reference new N.J.A.C. 7:14B-1.8, General Requirements, because new N.J.A.C. 7:14B-1.8 requires that site investigations and tank closures be conducted in accordance with these UST rules, the Technical Requirements and the ARRCS rules. The Department also

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

proposes to readopt the amendment to N.J.A.C. 7:14B-8.3(c) that require that these activities must be conducted by using the services of a licensed subsurface evaluator or LSRP, as applicable.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:14B-8.3(e) adding the text “accompanied by the applicable fee required in N.J.A.C. 7:14B-3,” to ensure that fees are paid at the time a document is submitted, and according to the fee requirements at N.J.A.C. 7:14B-3.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:14B-8.3(g) replacing the text “revised” with the text “correct the deficiencies.” This provision had required the owner or operator to revise any submittals made pursuant to the reporting requirements of Subchapter 8 if the Department determined that the submittal was inadequate or incomplete. The amendments proposed for readoption clarify that the revisions must reflect that the identified deficiencies were corrected.

The Department proposes to readopt the amendments by which it deleted N.J.A.C. 7:14B-8.3(g). This provision had required a back-and-forth review of documents between the person responsible for conducting the remediation and the Department. However, to encourage the owner and operator of sites where remediation was initiated prior to November 4, 2009 to choose to remediate the site using an LSRP, and thereby avoid Department oversight, the Department has deleted this provision.

The Department proposes to readopt the amendments to N.J.A.C. 7:14B-8.3(h) that now specify who may request an extension of time to submit the remedial investigation report and that cross reference the ARRC rules concerning request approval procedures, in lieu of the deleted text that had required that requests be received at least 14 days before the deadline and required the Department to approve or disapprove the extension request in writing.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:14B-8.3(k) that reflect that the requirements for immediate environmental concern situations for all types of sites are now promulgated in the Technical Requirements at N.J.A.C. 7:26E-1.14.

The Department proposes to readopt new N.J.A.C. 7:14B-8.3(*J*), which states that for all cases where the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2 (where work is initiated on or after November 4, 2009), the work must be conducted pursuant to the ARRCs rules, N.J.A.C. 7:26C.

N.J.A.C. 7:14B-8.4 describes how to implement remedial action requirements, and N.J.A.C. 7:14B-8.5 pertains to remedial action reports. The Department proposes to readopt new N.J.A.C. 7:14B-8.4(a) and 8.5(a), which specify that the requirements set forth in these subsections pertain only to cases where work is initiated prior to November 4, 2009. Additionally, the Department proposes to readopt new N.J.A.C. 7:14B-8.4(b) and 8.5(b), which state that for all cases where work is initiated on or after November 4, 2009, the work must be conducted pursuant to the ARRCs rules, N.J.A.C. 7:26C, including payment of fees and costs, and which set forth how to submit a request for an extension of a regulatory timeframe.

Subchapter 9 of the UST rules pertains to out-of-service underground storage tank systems and closure of underground storage tank systems. The Department proposes to readopt the amendment to N.J.A.C. 7:14B-9.1(a)1, changing the number of days that the owner or operator of an underground storage tank system that is out-of-service has to notify the Department that the underground storage tank system is out-of-service from 30 days to 5 days. This amendment brings the timeframe for completing this task in line with the timeframes for completing other tasks associated with underground storage tanks, specifically, the requirements in N.J.A.C. 7:26E-1.4(d).

The Department proposes to readopt new N.J.A.C. 7:14B-9.1(e), and readopt the amendments that recodified the bulk of existing subsection (e) as paragraph (e)1 and added new

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

paragraph (e)2. These amendments set forth the responsibilities of subsurface evaluators and LSRPs respectively.

N.J.A.C. 7:14B-9.2 codifies the closure requirements for underground storage tank systems containing hazardous substances which are not hazardous wastes. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-9.2(a)1iv that require that the owner or operator of an underground storage tank system submit either the certification numbers and categories of service of the business firm(s) performing closure activities, or provide the license number of the LSRP, if applicable.

The Department proposes to readopt the amendments in N.J.A.C. 7:14B-9.2(c) that specify that the requirements set forth in the subsection pertain to cases where work is initiated prior to November 4, 2009 (pursuant to N.J.A.C. 7:14B-1.8). The Department also proposes to readopt the amendments deleting the text regarding variances, because the new variance requirements established in N.J.A.C. 7:26E-1.7 do not require Department approval of the variance.

The Department proposes to readopt the amendments and new provisions of N.J.A.C. 7:14B-9.2(d) and 9.3(c) that distinguish when a certified subsurface evaluator may supervise underground storage tank closure and associated site remediation operations (when those activities were initiated prior to November 4, 2009) and when these activities must be supervised by an LSRP (when those activities were initiated on or after November 4, 2009).

N.J.A.C. 7:14B- 9.3 contains closure requirements for underground storage tank systems containing hazardous wastes. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-9.3(d), including the amendments that added new paragraph 2, as these amendments specify when a subsurface evaluator may perform closure activities for underground storage tank systems containing hazardous wastes (when the closure was initiated prior to November 4, 2009), and when an LSRP is required to perform the closure activities (when the closure is initiated on or after November 4, 2009).

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:14B-9.4 contains requirements for changing the service of an underground storage tank system from containing hazardous wastes to containing nonregulated substances. The Department proposes to readopt the amendment to N.J.A.C. 7:14B-9.4(a)3 replacing the timeframe for submitting a site investigation report from within 120 days to 270 days after cleaning the tank, to comport this provision with other timeframes in the Technical Requirements.

The Department proposes to readopt the amendments in N.J.A.C. 7:14B-9.4(b) and 9.5(b) that require that an owner or operator of an underground storage tank conduct remediation of a discharge of a hazardous substance, rather than conduct a remedial investigation, and that the remediation be conducted in accordance with the ARRCs rules instead of in accordance with subchapter 8 of the UST rules.

The Department proposes to readopt the amendment recodifying the last sentence of N.J.A.C. 7:14B-9.4(b) at new N.J.A.C. 7:14B-9.4(c) and adding the phrase “that documents the change of substance.” The amendment underscores that the owner or operator is required to submit a New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.5(c) on which the change of substance from regulated to nonregulated is to be documented.

N.J.A.C. 7:14B-9.5 pertains to reporting and recordkeeping requirements for out-of-service underground storage tank systems and closure of underground storage tank systems. The Department is proposing to require that the site investigation be conducted within the mandatory timeframes in the ARRCs rule at N.J.A.C. 7:26C-3.3 and the regulatory timeframes in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3.3(e) discussed above.

Subchapter 10 of the UST rules pertains to permitting requirements for underground storage tank systems. N.J.A.C. 7:14B-10.2 pertains to permits required in wellhead protection areas. The Department proposes to readopt the amendments in N.J.A.C. 7:14B-10.2(b)1ii that

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

require that if a discharge has occurred, the Department will not issue a permit for upgrading or modifying an underground storage tank system in a wellhead protection area until the owner or operator has submitted a remedial investigation report and remedial action workplan in accordance with the Technical Requirements. These amendments make the rules more protective of ground water in wellhead protection areas.

5. Financial Assistance Programs for Environmental Infrastructure Facilities (FAPEIF) rules

The FAPEIF rules are codified at N.J.A.C. 7:22. Subchapter 3 pertains to fund procedures and requirements (disposition of appropriations pursuant to various State and Federal acts), and includes definitions. The Department proposes to readopt the amendments to the definition of “remedial action activities” at N.J.A.C. 7:22-3.4 that adds “or by a licensed site remediation professional,” and to readopt the new definitions of “final remediation document” and “licensed site remediation professional,” because these terms are used in amendments proposed to be readopted elsewhere in the FAPEIF rules.

N.J.A.C. 7:22-3.11 sets forth procedures for applying for a loan from any of the funds from which monies are available under the FAPEIF rules, and N.J.A.C. 7:22-4.11 sets forth procedures for applying for a loan from the Environmental Infrastructure Trust. The Department proposes to readopt the amendments at N.J.A.C. 7:22-3.11(d)5viii(1) and 4.11(d)5viii(1), which relate to information to be submitted regarding remedial action activities, that reflect that some cases will be processed through a Department case manager, whereas others will be processed by an LSRP. The Department also proposes to readopt the amendments adding the text “program interest number,” and “name and license number of licensed site remediation professional.” These amendments provide additional information for tracking cases, and institute a mechanism for notifying the Department of the name and license number of the LSRP overseeing the case.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

6. Industrial Site Recovery Act (ISRA) Rules

The ISRA Rules are codified at N.J.A.C. 7:26B. Subchapter 1 pertains to general information, and N.J.A.C. 7:26B-1.4 contains definitions. The Department proposes to readopt the amendments to the definition of “remediation agreement” because the Department ceased to enter into remediation agreements on November 4, 2009.

The Department proposes to readopt the new definition of “remediation certification” as the term is used throughout N.J.A.C. 7:26B and particularly at N.J.A.C. 7:26B-4.3.

The Department proposes to readopt the new definitions of “final remediation document,” “licensed site remediation professional” and “response action outcome,” each of which cross references the definition of these terms in the ARRCS rules at N.J.A.C. 7:26C-1.3.

N.J.A.C. 7:26B-1.5 pertains to forms and submissions. The Department proposes to readopt new N.J.A.C. 7:26B-1.5(a) which more accurately reflects how and from where forms may be obtained and sets forth the correct Department address to which forms should be submitted. These amendments emphasize the use of forms that are available from the Department’s website. Requiring that forms be submitted through a single portal will help the Department implement its centralized submissions clearinghouse.

The Department proposes to readopt new N.J.A.C. 7:26B-1.5(b), which specifies that submissions must be made in both paper and CD formats.

The Department proposes to readopt new N.J.A.C. 7:26B-1.5(c), which states that when the Department acquires the capability, submittals will be required to be in electronic format.

N.J.A.C. 7:26B-1.6 sets forth certification and signatory requirements. The Department proposes to readopt the amendments at N.J.A.C. 7:26B-1.6 by which it deleted the specific signatory requirements previously codified in subsections (b) through (f), and added a cross

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

reference to the certification requirements codified in the ARRCs rules at N.J.A.C. 7:26C-1.5, because the certification requirements for each of the rules that pertain to site remediation are consolidated at N.J.A.C. 7:26C-1.5.

N.J.A.C. 7:26B-1.8 pertains to no further action letters and ISRA authorizations. The Department proposes to readopt the amendments adding the acronym “ISRA” in the heading of N.J.A.C. 7:26B-1.8 and removing the word “letter,” because ISRA authorization may not always be in the form of a letter.

N.J.A.C. 7:26B-1.8(a) discusses the circumstances under which the Department will issue a no further action letter. The Department proposes to readopt the amendments to this subsection that limit the circumstances only to the case of a qualifying transactional event for which the Department received a General Information Notice prior to November 4, 2009. This amendment distinguishes these circumstances from the circumstances under which it will be up to an LSRP to file a response action outcome (for those cases where the Department received a General Information Notice on or after November 4, 2009); under those circumstances, the Department will not issue a no further action letter.

The Department proposes to readopt the amendments deleting N.J.A.C. 7:26B-1.8(b), since it is proposing amendments at N.J.A.C. 7:26B-1.10 that address when an owner or operator may transfer ownership of operations.

The Department proposes to readopt the amendments recodifying previous N.J.A.C. 7:26B-1.8(c) as N.J.A.C. 7:26B-1.8(b). This subsection formerly provided that the Department may authorize the transfer of ownership or operations of an industrial establishment or the cessation of operations of an industrial establishment without the issuance of a no further action letter under certain enumerated circumstances. The Department proposes to readopt the amendments that replace case-by-case Department authorization with a blanket authorization under the rule for the owner or operator to allow transfer of ownership or operations of an industrial establishment, or cease operations. Under other amendments to the ISRA rules,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

authorization may be based upon the issuance of either a response action outcome issued by an LSRP or the submittal of a remediation certification, as either of these documents falls under the definition of a final remediation document.

The Department also proposes to readopt the amendments to N.J.A.C. 7:26B-1.8(b)1 that replaced the Department's issuance of a remediation agreement or remediation agreement amendment with the owner or operator's submission of a remediation certification, as one of the conditions under which the owner or operator is authorized to transfer ownership or operation of an industrial establishment or to cease operations at that establishment.

The Department also proposes to readopt the amendments that added new N.J.A.C. 7:26B-1.8(c)6, which provides that a de minimis quantity exemption is another circumstance under which an owner or operator is authorized to transfer ownership or operations of an industrial establishment or the cessation of operations of an industrial establishment. Former N.J.A.C. 7:26B-2.3 concerned de minimis exemptions, and these requirements have been recodified at N.J.A.C. 7:26B-5.9. It is appropriate that all forms of authorization be codified in one section.

The Department proposes to readopt the amendments recodifying previous N.J.A.C. 7:26B-1.8(d) as N.J.A.C. 7:26B-1.8(c) with no change in the text.

N.J.A.C. 7:26B-1.9 pertains to right of entry and inspection. N.J.A.C. 7:26B-1.9(b) requires the buyer or transferee of an industrial establishment that has been sold after the seller or transferor obtained an approved remedial action workplan or remediation agreement from the Department to allow the Department and duly authorized representative of the seller or transferor access to the industrial establishment under certain circumstances. The Department proposes to readopt the amendments by which it now requires that the owner or operator of the industrial establishment that has submitted a remediation certification also comply with the requirements of this subsection. Additionally, the Department proposes to readopt the amendments in N.J.A.C. 7:26B-1.9(b)1 to include the owner or operator among those who are to be provided with split

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

samples upon request, so that an owner or operator of an industrial establishment may be able to perform independent analyses of those samples. The Department also proposes to readopt the amendments in N.J.A.C. 7:26B-1.9(b)2 adding “remediation certification” to the list of submittals or agreements to which a duly authorized representative of the seller or transferor may seek access. New N.J.A.C. 7:26B-4.3 concerns remediation certifications, and this amendment to N.J.A.C. 7:26B-1.9(b)2 ensures that N.J.A.C. 7:26B-1.9(b)2 lists all of the documents applicable to transferring ownership or operations.

N.J.A.C. 7:26B-1.10 pertains to liability for ISRA compliance. The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26B-1.10(b), and recodifying N.J.A.C. 7:26B-1.10(c) through (h) as (b) through (g), because the Department will no longer be executing remediation agreements. ISRA owners and operators who seek to transfer property without or prior to the issuance of a final remediation document must submit a remediation certification to the Department instead of executing a remediation agreement with the Department.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26B-1.10(b)1 adding the text “or a licensed site remediation professional has issued a remedial action outcome” and changing the cross-reference from N.J.A.C. 7:26B-1.8(a) to N.J.A.C. 7:26C-6. Similarly, the Department proposes to readopt the amendments in recodified N.J.A.C. 7:26B-1.10(b)2 adding the text “or a licensed site remediation professional has certified,” due to the establishment of the licensed site remediation professional program pursuant to N.J.S.A. 58:10C.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26B-1.10(b)3 reflecting the fact that an owner or operator may transfer ownership or operations provided that he or she has executed a remediation agreement or remediation agreement amendment or submitted a remediation certification. References to November 4, 2009 are included to demarcate the date when remediation certifications, as opposed to remediation agreements, were required.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Subchapter 2 of the ISRA rules pertains to applicability, and Subchapter 3 pertains to the General Information Notice. The Department proposes to readopt the amendments deleting N.J.A.C. 7:26B-2.2, 2.3, and 3.1 in their entirety. N.J.A.C. 7:26B-2.2 concerned applicability determinations, and the Department has determined that it will no longer perform this function. N.J.A.C. 7:26B-2.3 concerned de minimis exemptions, and these requirements have been recodified at N.J.A.C. 7:26B-5.9, which the Department is proposing to readopt under this proposal. N.J.A.C. 7:26B-3.1 concerned pre-notice filing conferences; the Department has determined to handle these situations through a more informal process, rather than through regulatory requirements.

N.J.A.C. 7:26B-3.3 pertains to the specific information to be included in the General Information Notice. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-3.3(a) replacing the requirement that the General Information Notice be submitted to the Department at the specified address with the requirement that the General Information Notice be submitted to the Department on a form available from the Department.

The Department proposes to readopt the amendments in N.J.A.C. 7:26B-3.3(a)10 that added the receptor evaluation to the list of submittals that must be included in the required schedule of remediation tasks that must be submitted with the General Information Notice. This amendment mirrors an amendment proposed for the Technical Requirements at N.J.A.C. 7:26E-1.15 that requires that a person responsible for conducting the remediation must always conduct a receptor evaluation as part of the remediation of a site.

The Department proposes to readopt the amendments in N.J.A.C. 7:26B-3.3(a)10i regarding the list of schedules with which the owner or operator may state they intend to comply, to include the remediation schedule proposed for inclusion in the Technical Requirements at N.J.A.C. 7:26E-1.15.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in N.J.A.C. 7:26B-3.3(a)10ii clarifying that if an owner or operator submits an alternative remediation schedule, that schedule may not exceed the timeframes set forth in the ARRCs rules at N.J.A.C. 7:26C-3.

The Department proposes to readopt the amendments to N.J.A.C. 7:26B-3.3(c) and to readopt new N.J.A.C. 7:26B-3.3(d). These amendments and new rules clarify how the Department will proceed concerning General Information Notices submitted before November 4, 2009, and specify the requirements for owners and operators who submit their General Information Notice on or after November 4, 2009. For General Information notices submitted prior to November 4, 2009, the Department will review and reply, whereas for General Information Notices submitted on or after November 4, 2009, the owner or operator is required to comply with N.J.A.C. 7:26C-2.4 without further input from the Department.

N.J.A.C. 7:26B-3.4 concerns how to make revisions to the General Information Notice and how to withdraw a notice by an owner or operator. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-3.4(a) that replace the provision concerning when and how to withdraw the General Information Notice with a provision that puts the ISRA owner or operator on notice that parties who have liability for contamination under other statutes have an affirmative obligation to remediate pursuant to the Brownfield Act at N.J.S.A. 58:10B-1.3 and are required to proceed in accordance with N.J.A.C. 7:26C-2.4, even if none of the transactional events that triggers compliance with the ISRA rules occurs.

Subchapter 4 of the ISRA rules pertains to remediation agreements and remediation certifications. To that extent, the Department proposes to readopt the amendments expanding the title of Subchapter 4 to include remediation certifications, which will be used instead of remediation agreements for sites for which remediation was initiated on or after November 4, 2009.

N.J.A.C. 7:26B-4.1 pertains to remediation agreements. The Department proposes to readopt the repeal of previous N.J.A.C. 7:26B-4.1 and the addition of new N.J.A.C. 7:26B-4.1.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Because the Department will no longer be requiring remediation agreements, the detailed requirements of the remediation agreement application at prior N.J.A.C. 7:26B-4.1(a)1 through 8 are replaced with a paragraph that confirms the validity of existing remediation agreements executed prior to November 4, 2009, and requires that an owner or operator remediate the site in accordance with the remediation agreement and with the ARRCs rules.

N.J.A.C. 7:26B-4.2 pertains to remediation agreement amendments. The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26B-4.2(b) and (c), both of which concerned future amendments to remediation agreements, because, since the Department will no longer be amending remediation agreements, provisions concerning their potential amendment are unnecessary. Additionally, the Department proposes to readopt the amendments to previous N.J.A.C. 7:26B-4.2(a) that replaced the provisions that allowed an owner or operator of an industrial establishment to request from the Department permission to transfer ownership or operation prior to the Department's approval of a negative declaration or remedial action workplan, with a provision requiring an owner or operator who amended a remediation agreement prior to November 4, 2009 to proceed with the remediation pursuant to the terms of the remediation agreement and any amendments thereto, and pursuant to the ARRCs rules.

The Department proposes to readopt new N.J.A.C. 7:26B-4.3, pertaining to remediation certifications. This new section implements the amendments to ISRA at N.J.S.A. 13:1K-9 that are a part of the Act, and that allow for the transfer of ownership or operations prior to completion of the remediation of the industrial establishment upon submittal of the remediation certification to the Department. The ISRA amendments provide that an owner or operator submitting a remediation certification must provide a series of documents to the Department, including the estimated cost of the remediation as prepared and certified by an LSRP, a certification of the statutory liability of the owner or operator to timely remediate the industrial establishment and in a manner that is consistent with all applicable laws and regulation, evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation as prepared by the LSRP, a certification by the owner or operator that they understand and accept their liability to conduct remediation pursuant to ISRA and acknowledge

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

liability for penalties for failing to do so, and evidence of the payment of all applicable fees be paid as part of the remediation certification process. The Department proposes to collect this information by requiring that it be submitted on a form to the Department, and to require that the owner or operator also allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A. 13:1K-10.

Subchapter 5 of the ISRA rules pertains to alternate compliance options. Accordingly, the Department proposes to readopt the amendments to the title of N.J.A.C. 7:26B-5 replacing the word “expedited” with the word “alternate.”

N.J.A.C. 7:26B-5.1 pertains to expedited reviews. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-5.1(a) that provides that the expedited review process only applies if the Department received the General Information Notice prior to November 4, 2009. The expedited review option does not apply to cases where the owner or operator submits a General Information Notice on or after November 4, 2009, because those owners and operators must hire an LSRP and proceed without the involvement of the Department.

N.J.A.C. 7:26B-5.3 pertains to regulated underground storage tank waivers. The Department proposes to readopt new N.J.A.C. 7:26B-5.3(c)4, which requires that, in order to qualify for a regulated underground storage tank waiver, the owner or operator shall provide proof of compliance with the financial responsibility requirements in N.J.A.C. 7:14B-15, and to recodify N.J.A.C. 7:26B-5.3(c)4 as (c)5. Since the Department is waiving the requirement to complete remediation of a regulated underground storage tank system as part of the ISRA remediation, the owner or operator is therefore required to remediate the underground storage tank pursuant to the UST rules, N.J.A.C. 7:14B, including posting financial assurance to ensure that money will be available to complete the remediation should the tank owner or operator fail to do so.

N.J.A.C. 7:26B-5.5 pertains to limited site reviews. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-5.5(a) that provide that the limited site review process only

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

applies to sites where the Department received the General Information Notice prior to November 4, 2009. The limited site review option does not apply to owners and operators who submit a General Information Notice on or after November 4, 2009, because these owners and operators are required to hire an LSRP and proceed without the oversight of the Department.

The Department proposes to readopt new N.J.A.C. 7:26B-5.9, regarding de minimis quantity exemptions. Under this new exemption, ISRA owners or operators who can certify that quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment are below threshold amounts specified at N.J.A.C. 7:26B-5.9(b)1 through 4, as qualified by (c) (total aggregate of hazardous substances or wastes may not exceed 500 pounds or 55 gallons), and (d) (mixtures in final product form are not to be included in the total quantity calculation for industrial establishments identified by the enumerated NAICS codes), are exempt from complying with all of the ISRA rules except for the fee requirements set forth at N.J.A.C. 7:26B-8.1, provided that the industrial establishment is not contaminated above any standard set forth in the Remediation Standards, N.J.A.C. 7:26D. New N.J.A.C. 7:26B-5.9(e) describes how to apply for this exemption, and new N.J.A.C. 7:26B-5.9(f) describes the procedure the Department will use to process the application and provides that the owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.

Subchapter 6 of the ISRA rules pertains to remediation procedures. N.J.A.C. 7:26B-6.1 pertains to preliminary assessments, site investigations, and remedial investigations with requirements related to the completion of a preliminary assessment and site investigation and submittal of related reports. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-6.1(b) and (c) that extend the timeframe for submitting preliminary assessment, and site investigation reports from 35 and 120 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) to the timeframe indicated at N.J.A.C. 7:26E-3.1(e) and 3.3(e) respectively. Similarly, the Department proposes to readopt the amendments in N.J.A.C. 7:26B-6.1(d) extending the timeframe for completing a remedial

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

investigation workplan from 180 calendar days to 270 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B- 3.2(a) so that the timeframe for submittal of the remedial investigation workplan coincides with the 270 day timeframe for the submittal of the site investigation report required in N.J.A.C. 7:26B-6.1(c) and N.J.A.C. 7:26E-3.3(e).

The Department also proposes to readopt the amendments in N.J.A.C. 7:26B-6.1(e) extending the timeframe for submittal of a remedial investigation report and negative declaration from 300 to 420 calendar days. This amendment ensures that the timeframe for submittal of the remedial investigation report is achievable and reasonable in light of the amended timeframe for submission of the site investigation report within 270 days after the date that the General Information Notice was required to be submitted. The 420 days is consistent with the ISRA requirement at N.J.A.C. 7:26B-6.3 for submittal of the ground water and surface water remedial action workplans. Additionally, the Department proposes to readopt the amendments deleting the requirement to submit the remedial investigation report within 120 days of the Department's approval of the remedial investigation workplan, because pursuant to N.J.S.A. 58:10C and N.J.A.C. 7:26C, the Department will no longer be approving workplans.

The Department believes that these extended timeframes are more practical and achievable, and result in standardized regulatory timeframes. Establishing standardized timeframes that apply to the remediation process, regardless of whether remediation is being conducted to achieve compliance with ISRA, the UST Act, or the Spill Act, will help LSRPs keep projects on track and will help parties responsible for conducting remediation to better understand their obligations.

N.J.A.C. 7:26B-6.2 concerns soil remedial actions and remedial action workplans. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-6.2(a) that except an owner or operator who is conducting a soil remedial action from the requirement to obtain the Department's preapproval of a remedial action workplan where the owner or operator is remediating an industrial establishment pursuant to N.J.A.C. 7:26C-2.4. In that case, the owner

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

or operator may proceed without the Department's approval of a remedial action workplan, as provided in new subsection (h), which the Department is also proposing to readopt. Owners and operators who are proceeding in accordance with N.J.A.C. 7:26C-2.4 will be using an LSRP; therefore, prior Department approval is not necessary. New N.J.A.C. 7:26B-6.2(h) also establishes the timeframe for submittal of the remedial action workplan, which is the same timeframe as for submittal of the remedial investigation report, namely, 420 days after the date that the General Information Notice was required to be submitted.

N.J.A.C. 7:26B-6.3 pertains to ground water or surface water remedial action workplans. The Department is proposing to readopt the amendments in N.J.A.C. 7:26B-6.3(a) and to readopt new N.J.A.C. 7:26B-6.3(b) to clarify and distinguish that owners or operators not remediating pursuant to N.J.A.C. 7:26C-2.4 are still required to submit to and have approved by the Department a remedial action workplan for ground water and/or surface water, whereas owners or operators remediating pursuant to N.J.A.C. 7:26C-2.4, under the supervision of an LSRP, do not need prior Department approval of the remedial action workplan for ground water and/or surface water.

N.J.A.C. 7:26B-6.4 requires that the owner or operator submit a remediation funding source upon the Department's approval of a remedial action workplan for an industrial establishment. Since an LSRP may also certify a remedial action workplan, this event should also trigger the requirement to submit a remediation funding source. Accordingly, the Department proposes to readopt the amendments in N.J.A.C. 7:26B-6.4 adding the text "or a licensed site remediation professional's certification," to reflect that an LSRP remedial action workplan certification also triggers the requirement to submit a remediation funding source.

N.J.A.C. 7:26B-6.5 contains remediation schedule compliance requirements. The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26B-6.5(b), which concerned notification of expected noncompliance with remediation schedules, because the Department has established a centralized mechanism for requesting extension of compliance dates in N.J.A.C. 7:26C-3.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:26B-6.7 pertains to submission and review of negative declarations. The Department proposes to readopt the amendments in N.J.A.C. 7:26B-6.7(a) specifying that negative declarations are only required for cases for which the Department received the General Information Notice prior to November 4, 2009, and the amendments adding new N.J.A.C. 7:26B-6.7(g), which states that a negative declaration is not required if remediation is initiated on or after November 4, 2009 and is conducted pursuant to N.J.A.C. 7:26C-2.4. These proposed amendments reflect that an LSRP will be filing response action outcomes, and that the Department will not be approving a negative declaration.

Subchapter 8 of the ISRA rules pertains to fees. The Department proposes to readopt the amendments changing the subchapter title from “Fee Schedule and Direct Billing Fees” to “Program Fees and Oversight Costs” to better reflect its contents.

N.J.A.C. 7:26B-8.1 pertains to fee schedules. The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26B-8.1(a)1, which set the fee for applicability determinations, and to recodify N.J.A.C. 7:26B-8.1(a)2 through 12 as (a)1 through 11. The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26B-8.1(a)13 and 14, which set the fees for remediation agreements and remediation agreement amendments, and to recodify N.J.A.C. 7:26B-8.1(a)15 and 16 as (a)12 and 13. These three fees are not needed because these documents are no longer available.

The Department proposes to readopt the amendments deleting Appendix A, “Standard ISRA Remediation Agreement,” in its entirety because the standard ISRA Remediation Agreement is no longer available.

7. Remediation Standards

The Remediation Standards are codified at N.J.A.C. 7:26D. Subchapter 1 of this chapter pertains to general information, and N.J.A.C. 7:26D-1.1 sets forth the purpose of the chapter.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in N.J.A.C. 7:26D-1.1(b) deleting “by the Department,” and adding “and the Department’s Soil Remediation Standards Guidance for Impact to Ground Water available at” the Department’s website to reflect that the person responsible for conducting the remediation, rather than the Department, now has the obligation to develop the impact to ground water soil remediation standards, and that these standards should be developed according to the Department’s guidance document.

At N.J.A.C. 7:26D-1.5, the Department proposes to readopt the amendment to the definition of the “person responsible for conducting the remediation” to substitute for the cross reference to the Technical Requirements a cross reference to the definition of this term in the ARRCs rules.

Subchapter 7 of the Remediation Standards contains the requirements for establishing an alternative remediation standard, and N.J.A.C. 26D-7.1 sets forth the purpose of the subchapter. The amendment to the text of N.J.A.C. 7:26D-71 is discussed below with regard to N.J.A.C. 7:26D-7.5.

N.J.A.C. 7:26D-7.3 pertains to the basis for an alternative remediation standard. The Department proposes to readopt the amendment in N.J.A.C. 7:26D-7.3(b)4 changing the cross-references to Appendices 5 through 7 to Appendices 4 and 5 because the Department proposes to readopt amendments deleting two of the previous appendices and renumbering those that remain.

N.J.A.C. 7:26D-7.4 enumerates the steps in the alternative soil remediation standards application and approval process. The Department proposes to readopt the amendment in N.J.A.C. 7:26D-7.4(a) deleting reference to Appendix 6 and adding the requirement to submit the information on a form provided by the Department’s website, because the Department is proposing to readopt the amendments deleting Appendix 6 from this rule; the information formerly contained in this appendix has been converted to a form.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendment deleting N.J.A.C. 7:26D-7.4(b), which required the person responsible for conducting the remediation to pay oversight costs for review of the application for an alternative soil remediation standard. This amendment reflects that the person responsible for conducting the remediation will no longer be paying oversight costs, but will instead be paying annual fees.

N.J.A.C. 7:26D-7.5 sets forth procedures for the development of alternative soil remediation standards without prior approval from the Department. The Department proposes to readopt this new section. As a related amendment, the Department proposes to readopt the amendment in N.J.A.C. 7:26D-7.1 adding the phrase, “the procedures for the person to develop an alternative remediation standard without the Department’s prior approval” to reflect that this provision has been added to this subchapter at N.J.A.C. 7:26D-7.5. As an additional related amendment, the Department proposes to readopt the amendment in N.J.A.C. 7:26D-7.3(a) cross-referencing N.J.A.C. 7:26D-7.5, under which a person can develop an alternative soil remediation standard without prior Department approval as an exception to the procedure otherwise applicable under N.J.A.C. 7:26D-7.3(a).

N.J.A.C. 7:26D Appendix 5 pertains to methods for the development of alternative inhalation soil remediation standards. The Department proposes to readopt the amendments in N.J.A.C. 7:26D Appendix 5 adding a title to the Appendix and inserting “B. Alternative Remediation Standard Options” and “Option I, Volatile Phase Contaminants.” At B. Option I, Volatile Phase Contaminants, 1i(4), the Department proposes to readopt the amendment that qualifies when the Department will require the use of an institutional control for an alternative remediation standard (not required for an ARS based on depth range of contamination when the depth range of contamination begins at the ground surface, but is required when the depth range of contamination begins below the ground surface). The Department also proposes to readopt the requirement at B. Option I, Volatile Phase Contaminants, 1i(4) to use an institutional control pursuant to N.J.A.C. 7:26E-8 when an alternative remediation standard is based on depth range of contamination that begins below the ground surface. The model used to develop the remediation standards assumes that contamination is present starting at the surface. Calculation

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

of this specific alternative remediation standard is based on contamination not occurring within some distance of the surface. In order for this alternative remediation standard to remain valid, it is necessary to maintain the non-contaminated soils, in effect, a “clean cap.” Therefore, both an institutional and an engineering control are required to ensure that these surface soils remain uncontaminated.

8. Technical Requirements for Site Remediation rules (Technical Requirements)

The Department proposes to readopt all of the amendments made to the Technical Requirements for Site Remediation (the Technical Requirements), N.J.A.C. 7:26E, as part of the Special Adoption of Interim Rules. In addition to the amendments to these rules previously discussed above (see section entitled, “Proposed Readoption of Amendments to Related Rules as Part of the Special Adoption of the Administrative Requirements for the Remediation of Contaminated Sites Rules”), the Department proposes to readopt the following amendments.

The Department proposes to readopt the amendments that replaced descriptions of time periods with precise numbers of days or weeks, as applicable. These proposed amendments affect N.J.A.C. 7:26E-1.4(i)2 and 5, (j)1, and (l)1, 5 and 6. As a related amendment, the Department also proposes to readopt the new definition of the term “day” at N.J.A.C. 7:26E-1.8 which specifies that “day” means “calendar day.”

The Department proposes to readopt the amendments that replaced “groundwater” with “ground water” throughout the rule.

The Department proposes to readopt amendments to the Technical Requirements that comport the rules with the requirements of SRRA that remediation projects proceed under the auspices of an LSRP and, unless otherwise provided, without Department oversight. The following amendments fall under this category:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Delete paragraph N.J.A.C. 7:26E-1.3(b) (and to recodify N.J.A.C. 7:26E-1.3(c) through (e) as N.J.A.C. 7:26E-1.3(b) through (d)), which formerly required that any person seeking Department review of work undertaken pursuant to the Technical Requirements execute an oversight document with the Department pursuant to N.J.A.C. 7:26C (the former Oversight of Remediation Contaminated Sites rules), comply with the requirements of N.J.A.C. 7:26B (ISRA rules), or comply with the requirements of N.J.A.C. 7:14B (UST rules);
 - Delete from recodified N.J.A.C. 7:26E-1.4(j)2 the reference to a No Further Action and Covenant Not to Sue letter issued by the Department pursuant to N.J.A.C. 7:26C, or on a schedule approved by the Department, as no longer relevant. The phrase “all the required remediation is completed and the final remediation document is filed or issued” more accurately articulates the culmination of a site remediation project;
 - Readopt new N.J.A.C. 7:26E-1.5, Certifications, forms and submissions, which requires that all documents submitted to the Department be certified by both the person responsible for conducting the remediation and the LSRP, if applicable;
 - Readopt the amendments in N.J.A.C. 7:26E-1.6(b) that deleted the reference to schedules contained in oversight documents executed by the Department or as required by the Department pursuant to ISRA or UST because, going forward, the Department will not be issuing oversight documents;
 - Readopt the amendments in N.J.A.C. 7:26E-2.1(a)2, which replaced “Department” with “person responsible for conducting the remediation,” because it is the person responsible for conducting the remediation who will be responsible for determining the acceptability of data provided by an analytical laboratory;
 - Readopt the amendments in recodified N.J.A.C. 7:26E-2.1(a)9 that provide that where analytical methods are not available for a contaminant, an analysis of indicator parameters “may be acceptable with technical rationale in the applicable remedial phase report that is submitted to the Department,” rather than “may be

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c);”

- Readopt the amendments in N.J.A.C. 7:26E-2.1(b)4 in which it replaced the provision providing other field screening methods may be “acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c)” with a provision stating they may be “used if use of the selected method enables the person to meet the sampling goals set forth in this subchapter, and the person provides the technical rationale for using the selected sampling method in the applicable remedial phase report submitted to the Department;”
- Replace at N.J.A.C. 7:26E-2.2(a) the provision that a Quality Assurance Project Plan is only to be prepared if the Department so requires pursuant to an oversight document or the ISRA, UST or any other regulatory program, in accordance with a schedule set forth therein, with the affirmative obligation on the person responsible for conducting the remediation to prepare a Quality Assurance Project Plan;
- Readopt the amendments in N.J.A.C. 7:26E-3.2(a)4 relating to preliminary assessment reports deleting reference to Department oversight with regard to recommendation in the report for areas of concern “that have not been remediated;
- Readopt the amendments in N.J.A.C. 7:26E-3.2(b) regarding remedial action workplans approved by the Department or prepared by a licensed site remediation professional, because under SRRA and ARRCs rules, both the Department and the LSRPs may approve workplans;
- Delete N.J.A.C. 7:26E-3.2(c), which concerned Department evaluation and pre-approval of submissions for preliminary assessment reports;
- Replace the provision at N.J.A.C. 7:26E-3.4(a)4 concerning how to obtain prior Department approval before sampling may be modified with a provision specifying that the person responsible for conducting the remediation shall provide the rationale for alternative sampling location in the site investigation report. This will allow the LSRP to exercise his or her best professional judgment when remediating a site, and to continue

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

moving the remediation process forward without waiting for the Department to approve a variance from sampling requirements;

- Readopt the amendments to N.J.A.C. 7:26E-3.9(a)2iv, 3.9(a)5iv, 3.9(b)2ii, 3.9(d)1iii, 3.9(e)1ii, 3.9(e)3i, 3.9(e)3ii(1), 3.9(e)3iii(1), 3.9(f)1iv (deleted in its entirety), and 3.9(f)2 that deleted the requirement to obtain prior Department approval before varying from codified sampling procedures or that conditionally allowed variance from those procedures, subject to Departmental approval, and to add a cross reference to the new variance procedures codified at N.J.A.C. 7:26E-1.7, since the person responsible for conducting the remediation does not need prior Department approval to vary from codified sampling procedures so long as the variance meets new N.J.A.C. 7:26B-1.7;

- Readopt the amendments in N.J.A.C. 7:26E-4.2(a) replacing the requirement that a remedial investigation workplan required by the Department in an oversight document or by the ISRA or UST programs must include proposals to complete all applicable requirements pursuant to N.J.A.C. 7:26E-4.1 and 4.3 through 4.7 with the requirement that the person responsible for conducting the remediation must prepare a remedial investigation workplan prior to conducting the remedial investigation, and to delete the unnecessary verb “presented” with reference to the format for the remedial investigation workplan;

- Readopt the amendments in N.J.A.C. 7:26E-4.4(g)1 deleting the requirement that variations from the well construction procedures in N.J.A.C. 7:9D be proposed to the assigned case manager prior to requesting a variance under N.J.A.C. 7:9D;

- Readopt the amendments in N.J.A.C. 7:26E-4.4(g)11 replacing the requirement that damage or vandalism to a monitoring well or piezometer be reported to the Department with the requirement that the person responsible for conducting the remediation shall, within 14 days after discovering the damage, properly repair or decommission the well;

- Readopt the amendments to N.J.A.C. 7:26E-4.5(c)1 deleting the requirement that the person wishing to take advantage of the exemption from conducting

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

a surface water investigation submit documentation acceptable to the Department with the remedial investigation report specifying why the surface water migration pathway is not considered significant, with a provision specifying that if the person responsible for conducting the remediation determines that the surface water migration pathway is not considered significant, that person shall provide a technical rationale supporting that conclusion in the remedial investigation report;

- Readopt the amendments in N.J.A.C. 7:26E-4.8(a), in which the Department deleted “approved” and “if applicable” from remedial investigation report requirements, since prior Department approval of workplans is no longer required;

- Readopt the amendments by which the Department deleted the word “proposed” throughout recodified N.J.A.C. 7:26E-5.1(d). Since the person responsible for conducting the remediation may proceed with the remediation, including the remedial action, without prior Department approval, there is no need to propose a remedial action to the Department;

- Readopt the amendments in recodified N.J.A.C. 7:26E-5.1(e), which concerns proceeding with the implementation of innovative remedial action technologies, that deleted references to review and approval by the Department of an application to use an innovative technology, because the person responsible for conducting the remediation may proceed with the remediation, including the use of innovative technologies, without prior approval from the Department;

- Readopt the amendments replacing previous N.J.A.C. 7:26E-5.2, which required that the person responsible for conducting the remediation must demonstrate the appropriateness of the remedial action to the Department prior to its implementation, with new N.J.A.C. 7:26E-5.2, which requires that the person responsible for conducting the remediation must submit the details of the selected remedial action with the remedial action report. While it is still necessary to keep the Department informed as to the selected remedial action, Department approval prior to implementing the remedial action is no longer required;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Readopt the amendments in N.J.A.C. 7:26E-6.2(a) replacing the provision concerning how to submit a remedial action workplan to the Department where such submittal is required for Department pre-approval with a provision specifying that the person responsible for conducting the remediation must prepare and submit a remedial action workplan in a format that corresponds to the outline of N.J.A.C. 7:26E-6.2. However, as discussed above, the Department is not proposing to readopt the reference to the form name;
- Readopt the amendments in N.J.A.C. 7:26E-6.3(d)7 deleting the requirement that the Department make a determination on a case-by-case basis as to whether contaminant levels in ground water present a vapor risk to any receptors, because the person responsible for conducting the remediation now makes this determination without Department oversight;
- Readopt the amendments in N.J.A.C. 7:26E-6.4(d) replacing the requirement that a soil reuse evaluation proposal be conducted and submitted to the Department prior to the reuse of contaminated soils, with the requirement that the person responsible for conducting the remediation prepare a soil reuse plan pursuant to the Department's Guidance Document for the Remediation of Contaminated Soils, and to readopt the amendments at N.J.A.C. 7:26E-6.4(d)1iii that deleted the requirement that varying from the sampling frequency for reused soils is subject to prior Department approval;
- Readopt the amendments in N.J.A.C. 7:26E-6.5(b)1 deleting the requirement that the monthly timeframes that are required for the remedial action schedule include a consideration of Department review time for submitted reports and that specific dates should not be listed, because these dates are no longer contingent upon Department approval of the remedial action workplan;
- Readopt the amendments in N.J.A.C. 7:26E-8.1(b)1 replacing “propose” with “prepare with regard to the deed notice for an engineering and/or institutional control;”

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Readopt the amendments at N.J.A.C. 7:26E-8.1(c) that shift the responsibility for evaluating the protectiveness of a remedial action that includes an engineering or institutional control from the Department to the person responsible for conducting the remediation, and that require that person to document in the remedial action workplan how the criteria at N.J.A.C. 7:26E-8.1(c)1-6 were evaluated to ensure that the remedial action is protective of public health and safety and of the environment;

In addition to the amendments just discussed, the Department proposes to readopt the following additional amendments to the Technical Requirements.

Subchapter 1 of the Technical Requirements lists the general requirements and information required of all phases of a remediation. At N.J.A.C. 7:26E-1.2, the Department proposes to readopt the addition of the phrase “and to protect the environment” to emphasize that the statutes to which this section cites require the Department to protect the environment. The Department also proposes to readopt the amendment in which it added the cross references to the Brownfield Act and to SRRA, because both of these statutes are statutory authority for these rules.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-1.3(a) that reworded the statement of applicability to more clearly state that the chapter applies to any person conducting remediation pursuant to any of the listed statutes, and to include SRRA in this list at paragraph 9. The Department also proposes to readopt the addition of the statutory citation to the Brownfield Act.

The Department proposes to readopt the new notification requirements at N.J.A.C. 7:26E-1.4(d) and (e) and to readopt the recodification of N.J.A.C. 7:26E-1.4(d) and (e) as (f) and (g). Requiring that the Department be notified within five days of a discharge as provided in N.J.A.C. 7:26E-1.4(d) provides a consistent start date for compliance with mandatory and regulatory timeframes. Requiring the person responsible for conducting the remediation to notify the Department prior to conducting sampling of potable wells, indoor air, or sub-slab soil gas

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

ensures that the Department will be aware of upcoming sampling activities and will have enough information with which to respond to any calls from residents concerning the sampling event.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(g), that expands the applicability of this subsection from a person responsible for conducting the remediation of an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential dwelling to a person responsible for conducting the remediation of any unregulated heating oil tank system, but that limits the notification provisions with which these persons must comply to those listed in N.J.A.C. 7:26E-1.4 (a) through (c), because requiring more than the notification requirements codified in (a) through (c) is not necessary.

The Department proposes to readopt the deletion of N.J.A.C. 7:26E-1.4(f), which required the person responsible for conducting the remediation to identify sensitive populations and resources located within 200 feet of the site boundary, and to readopt the recodification of N.J.A.C. 7:26E-1.4(g) through (n) as (h) through (o). The requirements formerly codified at N.J.A.C. 7:26E-1.4(f) are now folded into the requirements for receptor evaluations at N.J.A.C. 7:26E-1.15 through 1.19. The Department proposes to readopt the recodification of N.J.A.C. 7:26E-1.4(e) as N.J.A.C. 7:26E-1.4(g), as well as the deletion of the reference to previous N.J.A.C. 7:26E-1.4(l) (recodified as N.J.A.C. 7:26E-1.4(m)). The requirements of recodified N.J.A.C. 7:26E-1.4(g) apply to residential sites, whereas the requirements of recodified N.J.A.C. 7:26E-1.4(m) apply to soil contamination migrating to an adjoining property. This situation rarely if ever occurs. Typically, ground water contamination will migrate to the adjoining property, but not soil contamination. Based on the nature of the contamination, it is highly unlikely that contaminated soils from a residential property will migrate to any adjoining properties. Therefore, the reference to N.J.A.C. 7:26E-1.4(l) (now recodified at (m)) has been deleted from recodified N.J.A.C. 7:26E-1.4(g).

Recodified N.J.A.C. 7:26E-1.4(h) concerns providing public notice to neighboring property owners, either by posting a sign or by sending periodic notification letters. The Department proposes to readopt the amendments clarifying that, although the public notice needs

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

to be understandable by both English and non-English language speakers, the notice need not be translated into all of the non-English languages in the area around the site. Rather, it is sufficient to translate the notice into only the predominant non-English language spoken in the area around the site. The Department also proposes to readopt a similar amendment to recodified N.J.A.C. 7:26E-1.4(l)3. When the person responsible for conducting the remediation chooses to provide notice by posting a sign, N.J.A.C. 7:26E-1.4(i) applies. The Department proposes to readopt the amendments that deleted the subparagraph formerly codified at N.J.A.C. 7:26E-1.4(h)2ii as extraneous, and that merged the remaining text at (h)2i into newly codified (i)2. Additionally, the Department proposes to substitute “two weeks” with “14 days” in newly codified N.J.A.C. 7:26E-1.4(i)2 for clarity. The Department proposes to readopt this same amendment at N.J.A.C. 7:26E-1.4(j)1 and (l)1, and is similarly proposing to amend N.J.A.C. 7:26E-1.4(l)5 and 6 to substitute “30 days” for “four weeks.”

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(i)3. Requiring that a sign must remain posted until the Department issues a No Further Action and Covenant Not to Sue letter is not appropriate because the Department no longer issues these documents. Rather, requiring that the sign remain posted until the required remediation is completed and the final remediation document is filed or issued comports with the fact that it is the LSRP who issues a response action outcome, the equivalent to the former no further action letter.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(i)4ii that specify the contact information to be included on the posted sign.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(i)4iii deleting the text “(1-877 WARNDEP or 1-877-927-6337)” at the end of the subparagraph, and a similar amendment at N.J.A.C. 7:26E-1.4(j)4iii and (l)4iii. The Department’s hotline phone number was originally included so that the person responsible for conducting the remediation would call that number to obtain an incident number to place on the sign. However, instead of obtaining the incident number for the sign, persons responsible for

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

conducting the remediation have instead been including the Department's hotline phone number. The Department is therefore proposing to delete the Department's hotline phone number to eliminate the confusion on this issue.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(i)5 requiring the person responsible for conducting the remediation to submit a form along with information regarding the sign. All submittals are to be accompanied by a form to aid the Department in determining whether it needs to inspect a document. However, as discussed elsewhere in this summary, the Department is proposing to remove specific names of the various forms.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(i)5ii that include the address for the Department of Environmental Protection Office of Community Relations, as the address referenced by the original language was deleted as part of the deletion of previous 1.4(f).

The Department proposes to readopt the amendments that deleted former subparagraph (i)1ii as obsolete (because reflecting a time limitation already past), and that merged former (i)1i into recodified (j)1.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(j)1, inserting "or remedial action" after "remedial investigation," because it is equally important that notification letters be sent prior to initiating a remedial action, until all required remediation is completed .

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(j)2 deleting the text "after the initiation of the single phase remediation or the remedial action" because the additional notification letters should be sent every two years, regardless of the type of remediation being conducted.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(j)3ii that replaced reference to each school and child care facility identified in the sensitive population and resource checklist with reference to each school and child care center located within 200 feet of the site boundary, because the provision at N.J.A.C. 7:26E-1.4(f) is proposed to be deleted. The 200 foot distance is consistent with the requirements for receptor evaluation at N.J.A.C. 7:26E-1.16 and N.J.A.C. 7:26E-1.18.

The Department proposes to readopt the amendments to recodified N.J.A.C. 7:26E-1.4(j)4iii that allow substitution in the public notice letters of the communication center incident number, which was provided when the discharge was initially reported to the Department, for the Department's preferred ID or the EPA site identification number.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(j)4v that requires that the person responsible for conducting the remediation must make the public aware of the current phase of the remediation, and when date field activities are expected to begin at the site, as a part of the notice prepared pursuant to N.J.A.C. 7:26E-1.4.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(j)4vi that require that the name and telephone number for the LSRP be included on the sign, and, if no LSRP is involved in the remediation, that the telephone number for the Department's Office of Community Relations be included. Additionally, the Department is readopting the amendment that instructs the person responsible for conducting the remediation to obtain the telephone number for the Office of Community Relations from the Department's website because the telephone number for the Department's Office of Community Relations may change over time. The Department proposes to readopt similar amendments to recodified N.J.A.C. 7:26E-1.4(l)4ix concerning contact information to be included on fact sheets.

Recodified N.J.A.C. 7:26E-1.4(k) sets forth the steps to be followed where a person responsible for conducting the remediation proposes to bring contaminated material on to the site for certain enumerated reasons. The Department proposes to readopt the amendment that adds

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

raising the topographic level in the floodplain as one of the reasons for which fill is brought onto the site, as this amendment makes this provision consistent with the definition of “fill material” at N.J.A.C. 7:26E-1.8. The Department also proposes to readopt the amendments deleting the construction of engineering controls approved by the Department in a landfill closure plan pursuant to N.J.A.C. 7:26-2A.9 as a reason for bringing fill onto the site because landfill closures that are being performed as a site remediation are regulated entirely by N.J.A.C. 7:26E, and N.J.A.C. 7:26-2A.9 is not germane. The Department also proposes to readopt the amendments that require Department prior approval, and compliance with the Department's Alternative Fill Protocol as well as with the remaining provisions of the subsection to ensure that contaminated materials brought onto a site are used in a manner that is protective of public health and safety and of the environment. The Department's Alternative Fill Protocol sets forth the methodologies for placement of contaminated materials at contaminated sites in a manner that is acceptable to the Department.

The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26E-1.4(k)1ii, and merging recodified N.J.A.C. 7:26E-1.4(l)1i into N.J.A.C. 7:26E-1.4(l)1, as the deleted requirement is outdated.

The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26E-1.4(k)2, as these requirements are incorporated in N.J.A.C. 7:26E-1.4(l)6.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(l)2 deleting reference to updates of fact sheets, to reflect that requirements regarding updated fact sheets are provided at N.J.A.C. 7:26E-1.4(l)6. The Department also proposes to readopt the amendment deleting “all” prior to “real property,” as this modifier is not necessary.

The Department proposes to readopt the amendments identifying that in recodified N.J.A.C. 7:26E-1.4(l)4iii “communication center incident” number provided by the Department’s hotline is the number which may be substituted in the fact sheet if the required identification numbers are not available.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.4(l)5i replacing “(k) above” with “this subsection” to reflect that the subsections have been recodified. The Department also proposes to readopt the amendment adding “pursuant to this section and the Department’s Public Notification guidance” so the person responsible for conducting the remediation knows what is required to be included in the fact sheet and where to find Department guidance regarding how to publish the fact sheet. A similar reference to the Department’s Public Notification Guidance is proposed for readoption at N.J.A.C. 7:26E-1.4(l)6i.

At N.J.A.C. 7:26E-1.4(l)6, the Department proposes to readopt the new subparagraph iii that requires the person responsible for conducting the remediation to conduct public notification pursuant to N.J.A.C. 7:26E-8.3 once delineation of ground water contamination is completed and the Department establishes a classification exception area, and to readopt at the beginning of subparagraph i the cross-reference to (l)6iii as the exception for conducting public notification for ground water contamination. The Department also proposes to readopt the amendment in recodified N.J.A.C. 7:26E-1.4(l)6i “prepared pursuant to (k)2 above” as extraneous, and to readopt the amendment to N.J.A.C. 7:26E-1.4(l)6ii that modifies “fact sheet” with “updated,” to ensure that it is the most current information that is being disseminated to the public.

N.J.A.C. 7:26E-1.4(o) concerns the ability to propose an alternate public notification plan for cases being remediated under Department oversight. These requirements are distinguishable from the requirements described N.J.A.C. 7:26E-1.4(p) relating to alternate plans for public notification prepared by LSRPs. Accordingly, the Department proposes readopting the cross-reference to (p) as exception to the requirements of N.J.A.C. 7:26E-1.4(o).

The Department proposes to readopt new N.J.A.C. 7:26E-1.4(p), which allows the person responsible for conducting the remediation to implement an alternative public notification plan if that plan is prepared by an LSRP, and that plan meets the intent of N.J.A.C. 7:26E-1.4. The person responsible for conducting the remediation is required to include, in the applicable

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

remedial phase report that is submitted to the Department, the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice. The Department included this requirement to ensure public notification of cases being remediated by an LSRP.

With the proposed readoption of new subsections including (p), the Department proposes to readopt the recodification of N.J.A.C. 7:26E-1.4(o) through (q) as N.J.A.C. 7:26E-1.4(q) through (s).

N.J.A.C. 7:26E-1.6 concerns how compliance with the Technical Requirements is to be documented. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-1.6(a) and (b) that require the person responsible for conducting the remediation to include all reporting information required in subchapters 1 through 8 in applicable reports, as opposed to subchapters 2 through 8, because subchapter 1 now includes reporting requirements.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-1.6 deleting (c) and (d) and recodified (e) as (c) with no change in the text. Former subsections (c) and (d) described when and how the person responsible for conducting the remediation may vary from the provisions of this chapter. In place of these two subsections, the Department is proposing to readopt new N.J.A.C. 7:26E-1.7, which contains new requirements concerning varying from the Technical Requirements and Guidance. Specifically, new N.J.A.C. 7:26E-1.7(a) describes the information that must be provided to the Department whenever the person responsible for conducting the remediation varies from the requirements of N.J.A.C. 7:26E-1 through 8 and guidance referenced therein, and new N.J.A.C. 7:26E-1.7(b) sets forth those non-technical requirements codified in N.J.A.C. 7:26E from which the person responsible for conducting the remediation may not vary. The Department believes that the information required in N.J.A.C. 7:26E-1.7(a) is essential for determining whether the conducted alternative investigation is protective of the public health and safety and the environment. The requirements set forth in N.J.A.C. 7:26E-1.7(b) are statutorily mandated or required pursuant to other Department rules. The variance procedure established in new N.J.A.C. 7:26E-1.7(a) is far more flexible than the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

previous procedure, and allows the LSRP to use his or her best professional judgment when remediating a site. Remediation projects will also proceed in a timelier manner, as the remediation no longer needs to stop while the Department is reviewing a request to approve a variance.

N.J.A.C. 7:26E-1.8 contains the definitions of terms used throughout the Technical Requirements. The Department proposes to readopt the amendments to the definition of “area of concern” that clarify that an area of concern refers to each individual location where contamination may exist at a site, to comport the definition with the requirements for determining the annual remediation fee for a site that are codified at N.J.A.C. 7:26C-4.2.

The Department proposes to readopt the amendments to the definitions of “immediate environmental concern” and “timely manner,” which follow the definitions of these terms in the Site Remediation Reform Act.

The Department proposes to readopt the amendments to the definitions of “no further action letter” and “person responsible for conducting the remediation” so that the definitions reference the definitions of these terms in N.J.A.C. 7:26C-1.3.

The Department proposes to readopt the new definitions in N.J.A.C. 7:26E-1.8 for the following terms, which are used in the amendments and new requirements in the Technical Rules that are being proposed for readoption: “child care center,” “day,” “discharge to ground water proposal,” “engineered system response,” “feasibility study,” “final remediation document,” “indoor air screening level,” “licensed site remediation professional,” “light non-aqueous phase liquid,” “remediation costs,” “sanitary landfill,” “school,” “soil gas,” and “soil gas screening level.”

The Department proposes to readopt the deletion of the definition for “oversight document” because, going forward, the Department will not be issuing oversight documents.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the definition of “remediation costs,” which substitute for the deleted terms and definition, “remedial action costs,” so that the terms used in the Technical Requirements are consistent with the Brownfield Act, N.J.S.A. 58:10B, as well as the ARRCs rules, N.J.A.C. 7:26C. The Department also proposes to readopt related amendments by which it substituted at N.J.A.C. 7:26E-6.6(b)7i and at N.J.A.C. 7:26E-6.7(b)6 remediation costs for remedial action costs.

The Department proposes to readopt new N.J.A.C. 7:26E-1.9 General remediation requirements, and to recodify N.J.A.C. 7:26E-1.9 and 1.10 as 1.10 and 1.11, with no change in the text. These requirements apply to all remediations, and include complying with regulatory timeframes, submitting all necessary and required documents, forms, and other submissions in the specified format, complying with guidance documents, and directing each LSRP hired to conduct the remediation pursuant to N.J.A.C. 7:26C-2.4. The Department believes that application of these requirements to all remediation projects will help to ensure the success of the LSRP program. These provisions will also help ensure that sites are remediated in a timely manner that is protective of the public health and safety and the environment. The requirements will also encourage transparency in the remediation process by making submissions more easily accessible because they will be in an electronic format on the Department’s website.

Recodified N.J.A.C. 7:26E-1.12 sets forth the measures necessary to timely remove sources of contamination and to implement necessary interim remedial actions. The Department proposes to readopt the renaming of this section from “Bias for action” to “Control of ongoing sources and implementation of interim remedial measures,” because it better reflects the focus of this section.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.12(a), that deleted the phrase “implement an interim response action to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors,” and adding new provisions at (a)1 and 2. These subsections require the person responsible for conducting the remediation to identify the interim remedial measures, if any, that are necessary

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

to remove, contain, or stabilize a source of contamination to prevent contaminant migration and exposure to receptors, and to include in each remedial phase report a description of each interim remedial measure implemented and each interim remedial measure that is planned. The purpose of these amendments is to clearly describe the process for managing situations requiring interim remedial measures; a clear description more likely ensures that the person responsible for conducting the remediation will understand the necessity of working to remediate the sources of contamination as soon as possible in order to eliminate human exposure to the contamination and to enable the overall remediation to proceed more quickly and efficiently.

The Department proposes to readopt new N.J.A.C. 7:26E-1.12(b) to replace the deleted N.J.A.C. 7:26E-1.12(b) and (c). New N.J.A.C. 26E-1.12(b) requires the person responsible for conducting the remediation to follow the Department's Light Non-aqueous Phase Liquid (LNAPL) Free Product Interim Remedial Measures guidance concerning free product removal. N.J.A.C. 7:26E-1.12(b)1 sets the timeframe within which recovery of free product and notification to the Department are to occur, and N.J.A.C. 7:26E-1.12(b)2 sets the timeframe within which delineation of the free product is to be completed, a LNAPL recovery system is to be installed, operational monitoring is to be initiated, and a Free Product Interim Remedial Measures Report is to be submitted. These amendments are a part of the Department's overall consolidation in subchapter 1 of the salient remediation requirements that apply across all phases of remediation, and clearly set forth the steps to be followed to remove LNAPL as a source of continuing contamination of the environment. The Department has adopted amendments to modify the timeframes set forth in these requirements (see 42 NJR 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption).

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-1.13, including replacing reference to Department oversight with reference to Department's prior approval. The ARRCs rules do not address the specific situations when the Department's prior approval of the remediation is required. Such requirements are instead codified in the Technical Requirements.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt new N.J.A.C. 7:26E-1.13(a)3. This paragraph states that Department oversight is required for sites either (a) with landfills where all or part of the landfill is planned to be developed for human occupancy, or (b) where landfill remediation activities are funded by the Hazardous Discharge Site Remediation Fund, a Brownfield redevelopment agreement, or the Municipal Landfill Closure and Remediation Reimbursement Program. The Department added this provision so that the rules clearly set forth the types of landfill remediations that the Department will oversee. Additionally, if the person responsible for conducting the remediation of a landfill wants a final remediation document, that person must conduct the remediation of the landfill with the Department's prior approval.

The Department proposes to readopt new N.J.A.C. 7:26E-1.14, Immediate environmental concern requirements. The Department added this new section because, although immediate environmental concerns were noted in previous versions of N.J.A.C. 7:26E, specific requirements for these situations were not codified. The Department determined that, due to the importance of this issue to the Legislature, which included a definition of the term in SRRA, and due to the nature of immediate environmental concerns, it was necessary to include requirements in the Technical Requirements to provide LSRPs with rules by which to remediate immediate environmental concern situations so that they are remediated consistently Statewide, and so that LSRPs implement measures that are protective of human health and of the environment as quickly as possible. The Department has adopted amendments to modify these requirements (see 42 NJR 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption).

The Department proposes to readopt new N.J.A.C. 7:26E-1.15 through 1.19. Codifying all of the requirements concerning receptor investigation and control requirements sequentially in one subchapter will make implementing the requirements less confusing for the person responsible for conducting the remediation. New N.J.A.C. 7:26E-1.15, Receptor evaluation - general and reporting requirements, sets forth the general requirements and information for conducting a receptor evaluation and requires that copies of all receptor evaluations be submitted to local authorities. The Department has adopted amendments to modify the timeframes set forth

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

in these requirements (see 42 NJR 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption).

At new N.J.A.C. 7:26E-1.16, Receptor evaluation - land use, the Department proposes to recodify the requirements from deleted N.J.A.C. 7:26E-1.4(f), as well as information required in the Sensitive Population and Resource Checklist pursuant to deleted N.J.A.C. 7:26E-1.4(f)1.

The Department proposes to readopt new N.J.A.C. 7:26E-1.17, Receptor evaluation - ground water, which recodifies many of the requirements previously found at N.J.A.C. 7:26E-3.7(e)3i through (e)3iii regarding conducting a well search. Additionally, new N.J.A.C. 7:26E-1.17 differs from the prior N.J.A.C. 7:26E-3.7(e)3 as follows:

- Changed the timeframe to complete the well search from six weeks (42 days) to 90 days after ground water contamination is confirmed;
- Replaced text “area of concern” with “point of ground water contamination;”
- Deleted examples of available Department records;
- Moved the requirements to perform a door-to-door survey to a separate subparagraph;
- Added examples of “types” of wells to be identified by the well search;
- Added a requirement to determine whether ground water contamination is located in a Tier 1 or Tier 2 well head protection area;
- Changed the timeframe within which to notify the Department of the existence of potable wells from eight weeks (56 days) to 120 days;
- Changed the timeframe for sampling identified potable wells from 10 weeks (70 days) to 120 days;
- Added a requirement to sample irrigation wells if there are any exposure concerns;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Added the requirement that if ground water contamination is detected in a potable well, the person responsible for conducting the remediation is to follow the immediate environmental concern requirements at N.J.A.C. 7:26E-1.14;
- Moved the requirements to continue delineating ground water contamination and to continue sampling into the provisions concerning immediate environmental concern requirements;
- Added a new requirement that the person responsible for conducting the remediation is to notify each person of the analytical results if contamination is not detected in any of the potable wells sampled; and
- Added a requirement that the person responsible for conducting the remediation is to provide the potable sampling results to the Department in the applicable remedial phase report.

The Department believes that these amendments will help ensure that the person responsible for conducting the remediation is better able to protect potable wells from becoming contaminated, and is better able to prevent people from using potable wells that have been impacted by contamination.

New N.J.A.C. 7:26E-1.18, Receptor evaluation - vapor intrusion, codifies requirements that previously were set forth in the Department's Vapor Intrusion Guidance document (www.nj.gov/dep/srp/guidance/vaporintrusion/vig.htm). These requirements reflect how the Department believes vapor intrusion investigations should be conducted, and how the Department has been conducting vapor intrusion investigations since it released the Vapor Intrusion Guidance document in October 2005. The Department has adopted amendments to modify these requirements (see 42 NJR 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt new N.J.A.C. 7:26E-1.19, Receptor evaluation – ecological, which requires the person responsible for conducting the remediation to conduct a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 as part of the receptor evaluation.

Subchapter 2 of the Technical Requirements for Site Remediation pertains to quality assurance for sampling and laboratory analysis. The Department proposes to readopt new N.J.A.C. 7:26E-2.1(a)1v through (a)1vii. New N.J.A.C. 7:26E-2.1(a)1v requires that laboratories performing analyses of soil gas or indoor air samples collected during an investigation of a vapor intrusion pathway must be certified or have obtained temporary approval to analyze regulatory samples pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18. New N.J.A.C. 7:26E-2.1(a)1vi requires that the person responsible for conducting the remediation follow the Department’s Protocol for Addressing Extractable Petroleum Hydrocarbons for the analysis of samples for petroleum hydrocarbons. New N.J.A.C. 7:26E-2.1(a)1vii sets forth requirements regarding certification for conducting field analytical methods. This comports the Technical Requirements with N.J.A.C. 7:18 (Regulations Governing the Certification of Laboratories and Environmental Measurements), as the laboratory certification regulations now include field analytical methods.

The Department proposes to readopt new N.J.A.C. 7:26E-2.1(a)6 through 8, and to readopt the amendment by which it recodified N.J.A.C. 7:26E-2.1(a)7 through 13 as N.J.A.C. 7:26E-2.1(a)10 through 17. N.J.A.C. 7:26E-2.1(a)6 sets forth requirements concerning analysis of aqueous samples to determine potability, N.J.A.C. 7:26E-2.1(a)7 sets forth requirements regarding hexavalent chromium analysis, and N.J.A.C. 7:26E-2.1(a)8 concerns sensitivity of analytical method(s). The Department added these provisions to provide LSRPs with clear requirements concerning performing these tasks without Department oversight.

The Department proposes to readopt the amendments by which it recodified previous N.J.A.C. 7:26E-2.1(a)14 as N.J.A.C. 7:26E-2.1(a)17, as well as the amendments that make the provision easier to read, and that delete the cross reference to variance procedures formerly codified at N.J.A.C. 7:26E-1.6(c) in favor of requiring that any deviation from the Department’s

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Field Sampling Manual be documented in the applicable remedial phase report submitted to the Department.

The Department proposes to readopt the recodification of existing N.J.A.C. 7:26E-2.1(a)15 as N.J.A.C. 7:26E-2.1(a)18.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-2.1(c) in which it added the phrase “for all environmental media,” to ensure that it is clear that the requirements of N.J.A.C. 7:26E-2.1(c) for selection of analytical parameters apply to all environmental media, including soil, ground water, surface water, sediment, and air.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-2.1(c)1 where it deleted the extraneous phrase “from each area of concern.”

The Department proposes to readopt new N.J.A.C. 7:26E-2.1(c)1i, which specifies that the person responsible for conducting the remediation must analyze environmental samples for contaminants that may be present at the site, as determined during the preliminary assessment and from any other information obtained during the remediation of the site.

The Department proposes to readopt the amendments deleting N.J.A.C. 7:26E-2.1(c)2 and replacing this paragraph with new N.J.A.C. 7:26E-2.1(c)1ii (note that the Department published a notice of administrative correction concerning these and associated provisions at 42 NJR 4(2)(April 1, 2010)). Prior to the adoption of the Interim Rule amendments to the Technical Requirements, then codified N.J.A.C. 7:26E-2.1(c)2 required that samples be analyzed using either Target Compound List plus 30/Target Analyte List (TCL +30/TAL) or Priority Pollutant plus 40 (PP + 40) list of contaminants, and also that analyses be performed for both petroleum hydrocarbons and pH when contaminants in an area are unknown or not well documented, although a limited contaminant list was allowed to be used subject to the Department’s review. As part of the Interim Rules, the Department reorganized N.J.A.C. 7:26E-2.1(c), and deleted the requirement to analyze samples using the priority pollutant list of analytes. New N.J.A.C.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26E-2.1(c)1ii now requires the person responsible for conducting the remediation to use the Target Compound List and the Target Analyte List (TCL/TAL) exclusively when contaminants are not known or not well documented at a site. The TCL/TAL is the list of analytes that EPA uses for its Superfund program. The rationale behind this amendment was that Department believes that the use of the TCL/TAL is appropriate for the Site Remediation Program and will provide consistency between the Federal remediation sites and the State and privately funded remediations.

New N.J.A.C. 7:26E-2.1(c)1ii also replaces the number “30” with “TICs” (the acronym for tentatively identified compounds) in reference to the Target Compound List to make this provision consistent with the most current version of the USEPA Contract Laboratory Program Statement of Work for Organic Analysis. The Statement of Work no longer uses the convention “TCL+30” but rather “TCL+TICs.”

N.J.A.C. 7:26E-2.1(c)1ii also specifically states that samples be analyzed for hexavalent chromium when contaminants in an area are unknown or not well documented. Hexavalent chromium is not included in the target analyte list of metals, and it poses a greater threat to the public health and safety and the environment than trivalent chromium and therefore it has a much lower remediation standard. Typically, trivalent chromium is more prevalent. The conventional analysis for chromium which measures total (hexavalent plus trivalent) chromium, will often mask the presence of hexavalent chromium.

The Department proposes to readopt new N.J.A.C. 7:26E-2.1(c)2 through 4. N.J.A.C. 7:26E-2.1(c)2 allows the person responsible for conducting the remediation to limit future sampling events, based on sampling conducted pursuant to N.J.A.C. 7:26E-2.1(c)1, to fewer contaminants than those for which the person initially sampled. While sampling must be conducted at various phases throughout the remediation, it is not necessary to analyze each sample for the full set of contaminants, when the initial sampling reveals the contaminants that are actually present at the site. Accordingly, this new provision allows the person responsible for conducting the remediation to limit future analyses to only those contaminants that were detected

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

in the initial sampling episode, allowing the person responsible for conducting the remediation to allocate resources to the analysis and remediation of known contaminants.

New N.J.A.C. 7:26E-2.1(c)3 requires the person responsible for conducting the remediation to analyze samples as needed to develop site-specific standards for the soil impact to ground water pathway, the vapor intrusion pathway, and the ecological pathway, and to develop alternative remediation standards for the soil inhalation pathway. This new provision aligns sampling requirements in the Technical Requirements with the Remediation Standards, N.J.A.C. 7:26D.

New N.J.A.C. 7:26E-2.1(c)4 requires the person responsible for conducting the remediation to analyze concrete and other building material that will be recycled and to conduct sampling pursuant to Department's Guidance for Characterization of Concrete and Clean Material Certification. This new provision alerts the person responsible for conducting the remediation to the methods to be used to ensure that these materials are properly characterized.

The Department proposes to readopt the amendments in which it replaced previous N.J.A.C. 7:26E-2.1(d), including Table 2-1, with new text and a new Table 2-1. New N.J.A.C. 7:26E-2.1(d) sets forth the requirements the person responsible for conducting the remediation must follow for analyzing samples associated with petroleum hydrocarbon discharges. Pursuant to N.J.A.C. 7:26E-2.1(d), for all petroleum storage and discharge areas, the person responsible for conducting the remediation is required to analyze all samples pursuant to the Department's "Protocol for Addressing EPH Contamination Guidance," its guidance entitled "Replacement of TPH Method 418.1 for the Site Remediation Program," and the requirements in Table 2-1. Table 2-1 lists the specific analytical requirements for each of the different types of petroleum products. The person responsible for conducting the remediation is now required to analyze for semivolatile organic compounds plus tentatively identified compounds that are associated with the TCL. The Department also proposes to readopt new N.J.A.C. 7:26E-2.1(d)2, which requires that, for contaminants where Table 2-1 indicates that additional analytical parameters are required, the person responsible for conducting the remediation shall conduct additional analyses

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

on those samples with the highest PHC concentrations. Lastly, the Department proposes to readopt new N.J.A.C. 7:26E-2.1(d)3, to add new sampling requirements for all matrices where sheen or odor indicate the potential presence of PHCV from an unknown source.

The Department proposes to readopt the amendments by which it replaced previous Table 2-1 with an entirely new Table 2-1. The new Table 2-1 accounts for the deletion of the priority pollutant list of analytical parameters (see summary above for changes to N.J.A.C. 7:26E-2.1(c)2), and includes an expanded list of petroleum hydrocarbon classifications. New Table 2-1 also includes changes to some of the required additional analyses; for example, for number 2 fuel oil and diesel fuel oil discharges, the requirement to conduct contingency analyses for volatile organics has been deleted, and replaced with the requirement to conduct contingency analyses for two semi-volatile compounds, 2-methylnaphthalene and naphthalene. These amendments were made based on data that the Department has collected over many years. It should be noted that additional amendments were adopted for Table 2-1 in the Notice of Administrative Corrections published in the New Jersey Register on April 19, 2010 (see 42 N.J.R. 778a) and in the Notice of Administrative Corrections published in the New Jersey Register on August 16, 2010 (see 42 N.J.R. 1862(a)).

Subchapter 3 of the Technical Requirements pertains to the requirements for preliminary investigations and site investigations. The Department proposes to readopt the amendments recodifying the text requiring that a site investigation be conducted if any potentially contaminated areas of concern are identified, but that provides that no further remediation is required at the site if no potentially contaminated areas of concern are identified, from N.J.A.C. 7:26E-3.1(a) to N.J.A.C. 7:26E-3.1(d) and (e), respectively. New N.J.A.C. 7:26E-3.1(d) requires that a site investigation be conducted pursuant to N.J.A.C. 7:26E-3.3 through 3.13 if any potentially contaminated areas of concern are identified during the preliminary assessment. New N.J.A.C. 7:26E-3.1(e) requires that if no potentially contaminated areas of concern are identified during the preliminary assessment, no further remediation is required. An exception to this requirement is if the General Information Notice requirements of the ISRA rules, N.J.A.C. 7:26B-3, are triggered. In that event, the person responsible for conducting the remediation is

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

required to submit a preliminary assessment report. Pursuant to ISRA, N.J.S.A. 13:1K-6 et seq., the person responsible for conducting the remediation is required to obtain a final remediation document. In order to obtain a final remediation document, it is necessary to document that the site is not contaminated above applicable remediation standards. This necessitates submittal of a preliminary assessment to document that no areas of concern are present.

The Department proposes to readopt the amendment in which it deleted previous N.J.A.C. 7:26E-3.1(b), and recodified N.J.A.C. 7:26E-3.1(c) as N.J.A.C. 7:26E-3.1(b). Subsection (b) was a statement, not a requirement, and is no longer relevant.

The Department also proposes to readopt the amendments to recodified N.J.A.C. 7:26E-3.1(b)1vi, which clarify that the person responsible for conducting the remediation is to evaluate the photographic history of the site back to 1932, correct the name of the Department, delete the street address for the Aerial Photo Library of the Tidelands Management Program, and add a statement that, in addition to sources within the Department, commercial services may be used to obtain photographic coverage.

The Department proposes to readopt new N.J.A.C. 7:26E-3.1(b)1xv and xvi, which require the person responsible for conducting the remediation to include an evaluation of all waste disposal records for any onsite landfill, and all permit requirements pursuant to a Solid Waste Operating Permit, or Disruption and Closure Permit, respectively. Since landfills can be sources of contamination, it is necessary to know what materials were disposed of in the landfills in order to properly remediate the site.

The Department proposes to readopt new N.J.A.C. 7:26E-3.1(c), which requires that a preliminary assessment and/or site assessment at a child care center be conducted pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers. This new requirement ensures that the person responsible for conducting the remediation properly evaluates potential exposure pathways for sensitive receptors at these sites.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendment to the title of N.J.A.C. 7:26E-3.2, concerning preliminary assessments, adding the word “report.”

The Department proposes to readopt the amendments to N.J.A.C. 7:26E-3.2(a)5 by which the reference to No Further Action Letter was replaced with final remediation document because final remediation document is defined as either a no further action letter issued by the Department or a remedial action outcome issued by the LSRP.

The Department proposes to readopt the amendments throughout N.J.A.C. 7:26E-3.2(a)5 deleting references to “site,” as (a)5 specifically applies to an area of concern at a site and not to the entire site.

The Department proposes to readopt new N.J.A.C. 7:26E-3.2(a)6, and similar provisions at 3.13(b)5, 4.2(b)11, 4.8(b)6, 6.2(a)19, and N.J.A.C. 7:26E-6.7(g), which require the person responsible for conducting the remediation to include a case inventory document with the preliminary assessment report, the remedial investigation workplan, the remedial investigation report, the remedial action workplan, and the remedial action report, respectively. The case inventory document is a concise summary of all areas of concern and major case components upon which remedial decisions were based. The tracking of areas of concern and major case components allows the person responsible for conducting the remediation and the Department to efficiently track the progress of all areas of concern, from identification to issuance of a final remediation document, in one easily identified section of the technical reports, review a summary of the work completed and planned at each area of concern, and identify the current case status. This tracking process allows for a snapshot review of remedial efforts for the case.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-3.3(a) deleting the phrase “unrestricted use.” Remediation is required whenever any remediation standard is exceeded, not just the “unrestricted use” remediation standards. For example, if contamination in excess of a non-residential standard is detected at a site, it is still necessary to delineate the contamination and establish a deed notice and engineering controls, as needed.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments to N.J.A.C. 7:26E-3.3(b)9 adding the requirement to conduct a site investigation in accordance with the landfill provisions in N.J.A.C. 7:26E-3.12 if applicable, because new N.J.A.C. 7:26E-3.12 concerns both landfills and historic fill material.

The Department proposes to readopt the amendments by which it deleted the previous N.J.A.C. 7:26E-3.3(d). This subsection allowed the person responsible for conducting the remediation to investigate areas suspected of being more contaminated first, and also allowed the person responsible for conducting the remediation to discontinue the site investigation and proceed with remedial investigation or remedial action once the presence of contamination above applicable standards was confirmed. These requirements are already included at N.J.A.C. 7:26E-1.12, Control of ongoing sources and implementation of interim remedial measures. Furthermore, N.J.A.C. 7:26E-1.12 directs the person responsible for conducting the remediation to identify the need for any interim remedial measures necessary to remove, contain, or stabilize a source of contamination to prevent contaminant migration and exposure to receptors.

The Department proposes to readopt new N.J.A.C. 7:26E-3.3(d), which requires the person responsible for conducting the remediation to compare all site data with the Department's applicable remediation standards to determine if contaminated areas of concern are present. This new provision links the Technical Requirements with the Department's Compliance Guidance. Note that the Remediation Standards at N.J.A.C. 7:26D are to be used for determining whether contamination is present and remediation is required.

As explained above, the Department proposes to readopt new N.J.A.C. 7:26E-3.3(e), including the regulatory timeframes at (e)1 and 2 by which the person responsible for conducting the remediation is required to submit the site investigation report to the Department, depending on whether the site being remediated is an old or new case pursuant to N.J.A.C. 7:26C-2.2(b). This regulatory timeframe comports with the mandatory timeframe established pursuant to N.J.A.C. 7:26C-3.3(e). Note that in its October 4, 2010 proposal, 42 N.J.R. 2297(a), the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department proposed to extend the regulatory timeframe from either November 26, 2010 or 27-days after the initiation of remediation to either March 1, 2011 or one year after initiation of the remediation. The adoption of these amendments was published in the February 22, 2011 New Jersey Register (see 43 N.J.R. 389(c)).

The Department proposes to readopt the amendments to N.J.A.C. 7:26E-3.4(a) deleting “whether relating to current or former uses of the site,” because the phrase is irrelevant. The person responsible for conducting the remediation has an affirmative statutory obligation to remediate the discharges at a site, regardless of when the discharge occurred.

The Department proposes to readopt the amendment to N.J.A.C. 7:26E-3.5 clarifying that the investigation of building interiors is to be conducted by the person responsible for conducting the remediation. Additionally, the Department proposes to readopt the amendments deleting the text concerning where the minimum requirements for investigating contaminants inside buildings may be found, and that provided that the Department would specify the requirements for investigating contaminants outside buildings which have the potential to migrate into buildings on a site specific basis. This section sets forth requirements concerning investigation of vapor intrusion issues; issues concerning contaminants outside of buildings are addressed within the area of concern requirements codified at N.J.A.C. 7:26E-3.9. Additionally, the Department will not specify sampling requirements when contamination outside buildings has the potential to migrate into buildings. Rather, the LSRP is required to use best professional judgment to determine the appropriate sampling to be conducted in these situations. Also, the Department proposes to readopt the amendments by which it added the requirement that the person responsible for conducting the remediation must conduct the site investigation of the vapor intrusion pathway pursuant to the Technical Requirements and the Department's Vapor Intrusion Guidance, to ensure that vapor intrusion investigations are properly conducted.

N.J.A.C. 7:26E-3.7 contains the requirements to be followed when conducting a site investigation of ground water. The Department proposes to readopt the deletion of N.J.A.C.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26E-3.7(e)3 (which is recodified at N.J.A.C. 7:26E-1.17), and to readopt the recodification of previous N.J.A.C. 7:26E-3.7(e)3iv(1) through (4), as new N.J.A.C. 7:26E-3.7(e)3i through iv.

The Department proposes to readopt the amendments by which it repealed previous N.J.A.C. 7:26E-3.12 concerning specific requirements for the investigation of sites with historic fill material, and replaced it with new N.J.A.C. 7:26E-3.12, Site investigation – landfills and historic fill material. New N.J.A.C. 7:26E-3.12(a) sets forth the requirements for the site investigation of landfills. The remediation of certain landfills will be completed under the authority of the Technical Requirements, especially if the person responsible for conducting the remediation desires a final remediation document for the area of the site where the landfill is located.

New N.J.A.C. 7:26E-3.12(b) sets forth the requirements for the site investigation of historic fill. This subsection explains how to conduct the site investigation for historic fill for both soil and ground water, and includes provisions that indicate at what investigative phase the person responsible for conducting the remediation may proceed directly from site investigation to remedial action. This will allow these types of investigations to proceed more quickly. In a related amendment, the Department proposes to readopt the amendments in which it deleted N.J.A.C. 7:26E-4.6(b)6, because this paragraph, which formerly prescribed the number of ground water samples to be taken in historic fill areas, is rendered extraneous with the readoption of new N.J.A.C. 7:26E-3.12(b).

Since the Department proposes to readopt the amendments deleting Appendix B, which contained the well search format, the Department also proposes to readopt the amendment deleting the requirement in N.J.A.C. 7:26E-3.13(b)2iii to use the well search format at Appendix B, in favor of the requirement to use the Department's Well Search Guidance.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-3.13(c)3v that exempts from the requirement to submit data in support of the site investigation report in electronic form those persons responsible for conducting the investigation of an event or an area

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

of concern that consists of a storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no ground water impact. This amendment codifies the long-standing Department policy that these types of tanks are not subject to these electronic data deliverables requirements.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-3.13(c)3v(1)(B), updating the rule to include the correct web address for obtaining computer programs from the Department by which latitude and longitude may be converted to New Jersey State Plane coordinates.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-3.13(d)3 that require that the distribution of free product be included on the maps that are to accompany the site investigation report, in support of N.J.A.C. 7:26E-1.12(b), which requires that free product be delineated and addressed immediately upon discovery.

The Department proposes to readopt new N.J.A.C. 7:26E-3.13(e) through (h). These new subsections require the person responsible for conducting the remediation to include information in the site investigation report detailing the results of any vapor intrusion investigations, baseline ecological evaluations, landfill and/or historic fill investigations, and a summary and rationale for each variance from this rule or guidance, respectively.

Subchapter 4 of the Technical Requirements contains the requirements for remedial investigations. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-4.1(a) replacing the word “the” with the word “any,” and deleting the text “unrestricted use soil remediation standards or the applicable groundwater or surface water.” A remedial investigation is required whenever any standard is exceeded, not just when there is an exceedance of the unrestricted use soil remediation standards. The Department also proposes to delete the cross-reference to N.J.A.C. 7:26E-1.13 to reflect that this section of the rule has been deleted and the requirements codified in the Remediation Standards, N.J.A.C. 7:26D.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-4.1(b) replacing the requirement that delineation of the horizontal and vertical limits of contamination to the applicable unrestricted use remediation standard for all media shall be conducted as part of the remedial investigation, with the requirement that the person responsible for conducting the remediation shall delineate contamination in all media pursuant to the Department's Compliance Guidance, because steps for delineating the limits of contamination are now explained in the Department's Compliance Guidance.

N.J.A.C. 7:26E-4.6 concerns the remedial investigation of landfills and historic fill material. The Department proposes to readopt the amendments replacing the requirements for conducting the remedial investigation of landfills at N.J.A.C. 7:26E-4.6(a) with new, more detailed requirements for conducting landfill remedial investigations. These amendments are in response to the statutory mandate at N.J.S.A. 58:10B-12g(12), which prohibits construction of single family residences, public schools, private schools, or charter schools, or child care facilities on a landfill that undergoes a remediation if engineering controls are required for the management of landfill gas or leachate. Since more and more brownfields, including landfills, are being returned to productive use, and since those new uses may include development on former landfills and areas containing historic fill material, it is imperative that developers and landowners have clear rules by which they redevelop these sites to single family or educational uses.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-4.6(b) specifying that it is the person responsible for conducting the remediation who must determine the extent of the on-site location of the historic fill material. These amendments align this subsection with N.J.A.C. 7:26E-4.6(a), which places the affirmative obligation for conducting the remedial investigation on the person responsible for conducting the remediation.

N.J.A.C. 7:26E-4.8 concerns remedial investigation reports. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-4.8(a) that require that submissions to the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department are to be accompanied by appropriate forms, as the forms are designed to assist the Department in determining which reports are to be reviewed.

The Department proposes to readopt new N.J.A.C. 7:26E-4.8(b)1, which requires that the remedial investigation report include a copy of the remedial investigation workplan, and to recodify N.J.A.C. 7:26E-4.8(b)1 through 4 as N.J.A.C. 7:26E-4.8(b)2 through 5.

The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26E-4.8(b)2ii and merging N.J.A.C. 7:26E-4.8(b)2i into recodified N.J.A.C. 7:26E-4.8(b)3. Updated well search reporting requirements are included in the ground water receptor evaluation, N.J.A.C. 7:26E-1.17, and the updated receptor evaluation is included at new N.J.A.C. 7:26E-4.8(f); accordingly, N.J.A.C. 7:26E-4.8(b)2ii is extraneous.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-4.8(b)5 that require that the findings and recommendation section of the remedial investigation report include a determination of whether a remedial action is required for soil pursuant to the Department's Compliance Guidance, because the Department's Compliance Guidance explains how to determine whether a remedial action is required, based on the concentrations of the contaminants present.

The Department proposes to readopt new N.J.A.C. 7:26E-4.8(e) through (g). These new subsections require that the person responsible for conducting the remediation include in the remedial investigation report the results of any vapor intrusion investigations (N.J.A.C. 7:26E-4.8(e)), an updated receptor evaluation (N.J.A.C. 7:26E-4.8(f)), and the results of all other investigations conducted as part of the remedial investigation (N.J.A.C. 7:26E-4.8(g)). These amendments parallel the new requirements to perform vapor intrusion investigations and the receptor evaluation, and to ensure that the person responsible for conducting the remediation provides in the remedial investigation report all relevant information.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Subchapter 5 pertains to the requirements for remedial action selection. The Department proposes to readopt the amendments to N.J.A.C. 7:26E-5.1(c) rephrasing the main clause of the introductory sentence to provide that the person responsible for conducting the remediation must select a remedial action that reduces contamination to below all applicable remediation standards or eliminates exposure to contamination above the applicable remediation standards based on the current and future land use for the site and the standards listed at (c)1 through 4. New N.J.A.C. 7:26E-5.1(c)1 through 4 codify the hierarchy of standards to which a site must be remediated as set forth in SRRA at N.J.S.A. 58:10C-14c, and clearly establish that the goal of any remedial action must be to reduce contamination below applicable standards or to entirely eliminate exposure to contamination, based on the current and future use of the site.

The Department proposes to readopt the amendments by which it recodified the second sentence of previous N.J.A.C. 7:26E-5.1(c) as new N.J.A.C. 7:26E-5.1(d), added the word “also” and recodified previous N.J.A.C. 7:26E-5.1(c)1 through 5 as (d)1 through 5. The Department made these changes to indicate that the person responsible for conducting the remediation shall base the remedial action on the requirements codified in both N.J.A.C. 7:26E-5.1(c) and 5.1(d).

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-5.1(d)2i adding the word “or” after (d)2i, deleting previous N.J.A.C. 7:26E-5.1(c)2ii, and recodifying (c)2iii as (d)2ii with no change in the text. N.J.A.C. 7:26E-5.1(c)2ii required the person responsible for conducting the remediation to determine the appropriate remedial action based on whether the remedial action could be conducted in a timely fashion, and provided criteria on which to determine timeliness. Pursuant to SRRA and the ARRCs rules, the person responsible for conducting the remediation is required to continue with the remediation without Department approvals when that person has engaged an LSRP, and therefore this provision is no longer necessary. Additionally, it is anticipated that in subsequent rule amendments, the Department will establish regulatory and mandatory timeframes for implementing remedial actions, so this requirement was deleted so that there would be no confusion as to whether regulatory and mandatory timeframes have been established for implementing remedial actions. With these amendments, N.J.A.C. 7:26E-5.1(d) establishes that the person responsible for

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

conducting the remediation is required to select a remedial action based on either technical feasibility or on the consent of the property owner to implement a limited restricted use or restricted use remedial action.

The Department proposes to readopt the amendments recodifying previous N.J.A.C. 7:26E-5.1(d) as N.J.A.C. 7:26E-5.1(e), and to readopt the amendments in recodified N.J.A.C. 7:26E-5.1(e)2 in which it added the requirement that, where innovative technology is used as a remediation technique, information regarding the use of that technology must be submitted with the remedial action selection report, the remedial action workplan or the feasibility study, as applicable, to ensure that this information is submitted to the Department with the correct report.

The Department proposes to readopt new N.J.A.C. 7:26E-5.1(f), and to recodify (e) and (f) as (g) and (h) with no change in text, to implement requirements of SRRA at N.J.S.A. 58:10C-27c(2), which require submittal of a feasibility study that is consistent with USEPA guidance with a remedial investigation report instead of submitting a remedial action selection report, for cases under direct Department oversight. The Department is requiring use of USEPA guidance in lieu of the Department's creating its own guidance on feasibility studies.

The Department proposes to readopt the amendments adding new provisions at N.J.A.C. 7:26E-5.1(i) through (k) regarding the use of presumptive remedies. N.J.S.A. 58:10B-12g(10) requires the Department to establish presumptive remedies, the use of which is required on any site or area of concern where an unrestricted use remedial action is not implemented and the site or area of concern is to be used for residential purposes, as a licensed child care center, as a public or private school, or as a charter school. N.J.A.C. 7:26E-5.1(i) sets forth when a presumptive remedy is required to be implemented and lists the presumptive remedies, (j) prohibits the implementation of an alternative remedy for a site that will be used as a residence, a school or a child care center, without the Department's prior written approval, and (k) prescribes how one may request approval from the Department for the use of an alternative remedy.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The requirements for remedial actions are codified in Subchapter 6 of the Technical Requirements. The Department proposes to readopt the amendments by which it reworded N.J.A.C. 7:26E-6.1(b) in its entirety. The new subsection contains many of the same requirements of the subsection that it is replacing, but these requirements are more clearly written. Additionally, the new subsection addresses the requirements of SRRA, including provisions that state that remedial actions may be approved by LSRPs as well as the Department.

The Department proposes to readopt the amendment to N.J.A.C. 7:26E-6.2(a)16ii providing that a copy of the draft deed notice need not be submitted to the Department as part of the remedial action workplan if an LSRP has been hired since an LSRP may approve a deed notice.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-6.2(a)18 adding “monitoring” and cross-referencing N.J.A.C. 7:26E-6.3, because monitoring is an important component of planning for the use of engineering and institutional controls.

The Department proposes to readopt new N.J.A.C. 7:26E-6.2(b), which excepts from the requirement to obtain Department approval prior to implementing a soil remedial action instances where the remediation can be completed within five years from the commencement of the implementation of the remedial action, or where the person responsible for conducting the remediation is implementing a soil remediation that meets the applicable residential or nonresidential soil remediation standards. Remediating within five years and to applicable standards were formerly codified at N.J.A.C. 7:26E-5.1(c)2ii.

The Department proposes to readopt the amendments by which it replaced previous N.J.A.C. 7:26E-6.2(b) with new N.J.A.C. 7:26E-6.2(c) and recodified the remainder of previous N.J.A.C. 7:26E-6.2(b)1 through 3 as N.J.A.C. 7:26E-6.2(c)1 through 3, with no change in the text. Deleted N.J.A.C. 7:26E-6.2(b) required that the soil reuse plan be included as part of the remedial action workplan, or at any appropriate time during the remediation process. New N.J.A.C. 7:26E-6.2(c) allows the person responsible for conducting the remediation to proceed

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

with reusing contaminated soil as a part of a remedial action as long as that person prepares a remedial action workplan that includes a soil reuse plan prepared pursuant to the Department's Guidance Document for the Remediation of Contaminated Soils, and that includes the information specified in N.J.A.C. 7:26E-6.2(c)1 through 3.

Specific remedial action requirements are codified at N.J.A.C. 7:26E-6.3. The Department proposes to readopt the amendments by which it deleted previous N.J.A.C. 7:26E-6.3(c). Provisions for discharge to ground water permits are now codified at N.J.A.C. 7:26E-7.2, and the Department also proposes to readopt those newly codified provisions. A discharge to ground water proposal requires Department approval prior to implementation, but a remedial action workplan (N.J.A.C. 7:26E-6.3) no longer requires Department approval prior to implementation. Therefore, the Department recodified these requirements from the remedial action subchapter into N.J.A.C. 7:26E-7.

The Department proposes to readopt new N.J.A.C. 7:26E-6.3(c), regarding remedial action requirements for landfills.

The Department proposes to readopt the amendments adding new N.J.A.C. 7:26E-6.3(f) and (g), which specify the information necessary to monitor and optimize the effectiveness of an active ground water remedial action; since both active and natural remedial actions are in use at many sites, the rules should address both types of remedial actions. Note that N.J.A.C. 7:26E-6.3(d) continues to address how to assess the effectiveness monitoring for natural ground water remedial actions.

The Department proposes to readopt new N.J.A.C. 7:26E-6.3(h), which implements SRRA at N.J.S.A. 58:10C-19, by requiring that a ground water remedial action permit be obtained for both natural attenuation and active ground water remedial actions, and specifies the content of the permit application.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments renaming N.J.A.C. 7:26E-6.4 from “Post-remedial action requirements” to “Additional remedial action requirements,” because the new title better reflects the content of this section.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-6.4(a) and (b) clarifying the person responsible for conducting the remediation must document the effectiveness of the remedial action and restore all areas of concern.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-6.4(e) that comport the terms used in this subsection with the terminology used in the Remediation Standards, N.J.A.C. 7:26D, by replacing the term “unrestricted” with “residential” with respect to soil remediation standards.

The Department proposes to readopt new N.J.A.C. 7:26E-6.4(f), which requires the person responsible for conducting the remediation to implement a post-remedial action monitoring plan to determine whether ground water contaminant concentrations will rebound. Based on its experience, the Department has had numerous cases where ground water contaminant concentrations rebounded after decreasing to, or below, the applicable ground water remediation standards. It is therefore necessary to monitor contamination concentrations for at least two consecutive high seasonal water table monitoring events to ensure that any increases in contaminant concentrations are detected and additional remedial actions are taken.

Requirements for remedial action schedules are found in N.J.A.C. 7:26E-6.5. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-6.5(b)4 deleting, “including, without limitation, progress reports, ground water monitoring reports, post-remedial action data reports for individual areas of concern, construction design reports and final remedial action reports.” The person responsible for conducting the remediation will be aware of what reports are necessary to submit based on the work completed and described in other sections of the rules.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26E-6.5(b)5. Because reports are no longer required to be submitted to the Department prior to completion of the remedial action, it is no longer necessary to include in a remedial action schedule timeframe for submittal of reports. Deletion of N.J.A.C. 7:26E-6.5(b)5 necessitated recodification of previous N.J.A.C. 7:26E-6.5(b)6 and 7 as N.J.A.C. 7:26E-6.5(b)5 and 6, respectively, as well as deletion of the word “and” at the end of recodified N.J.A.C. 7:26E-6.5(b)5.

The Department proposes to readopt new N.J.A.C. 7:26E-6.5(b)7, which requires the person responsible for conducting the remediation to include a schedule for the submission of a ground water remedial action permit application in the remedial action schedule. SRRA at N.J.S.A. 58:10C-19 requires the person responsible for conducting the remediation to obtain a remedial action permit.. The permit requirements are found in Subchapter 7 of the ARRCs rules.

N.J.A.C. 7:26E-6.6 concerns remedial action progress reports. The Department proposes to readopt the amendment to N.J.A.C. 7:26E-6.6(a) by which it excludes from the requirement to submit remedial action progress reports those persons who do not have a remedial action permit, because responsibilities for ongoing remediation are addressed in the remedial action permit.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-6.6(b)9 removing the reference to “active” because the information required in this paragraph is applicable to both active ground water remedial actions and natural ground water remedial actions.

N.J.A.C. 7:26E-6.7 pertains to remedial action reports. The Department proposes to readopt new N.J.A.C. 7:26E-6.7(b)7 (and recodifying N.J.A.C. 7:26E-6.7(b)7 as (b)8), which requires the person responsible for conducting the remediation to include, if applicable, a copy of the deed notice, the applicable form, and a remedial action permit application fee with the remedial action report.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt new N.J.A.C. 7:26E-6.7(f), which requires the person responsible for conducting the remediation to submit an updated receptor evaluation with the remedial action report, to emphasize the ongoing obligation of the person responsible for conducting the remediation to ensure that no new receptors are being impacted by discharges at the site; this requirement is also codified at N.J.A.C. 7:26E-1.15(d)2.

Subchapter 7 pertains to permit identification, permit application schedule and discharge to ground water proposals. The Department proposes to readopt the amendments renaming Subchapter 7 so that the title reflects all of the requirements codified in this subchapter.

N.J.A.C. 7:26E-7.1 concerns permit identification, and N.J.A.C. 7:26E-7.1(a) requires any person conducting a remedial action to identify all relevant permits or permit modifications or certifications needed to implement the selected remedial action, and then goes on to list, without exclusivity, types of permits that should be identified. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-7.1(a)18iii by which it added the cross reference to N.J.A.C. 7:26E-7.2, because permitting requirements for NJPDES discharge to ground water permits are included at both N.J.A.C. 7:14A and new N.J.A.C. 7:26E-7.2.

N.J.A.C. 7:26E-7.1(a)30 provides that the person conducting a remedial action is required to identify any Hazardous Waste Treatment, Storage and Disposal Facility permits that may be necessary to implement the selected remedial action, and goes on to provide that certain hazardous waste treatment, storage, or disposal facility permits are not required for any remediation conducted pursuant to any of the listed remediation oversight documents or approvals. The Department proposes to readopt the amendments to N.J.A.C. 7:26E-7.1(a)30 replacing the list of oversight documents with a cross reference to the ARRCs rules, N.J.A.C. 7:26C, because remediation projects are no longer conducted pursuant to Department oversight documents or Department approvals, but instead are conducted pursuant to N.J.A.C. 7:26C. The Department proposes to readopt similar amendments at N.J.A.C. 7:26E-7.1(c), replacing

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

reference to conducting a remedial action pursuant to an oversight document with reference to the person responsible for conducting the remediation.

Subchapter 8 of the Technical Requirements addresses the use of engineering and institutional controls in remedial actions at contaminated sites. These requirements for the monitoring and maintenance of remedial actions ensure that they are protective of the public health and safety, and of the environment, over time. As such, these provisions serve as the substantive content of the remedial action permits that the Department will issue pursuant to the ARRCs rules at N.J.A.C. 7:26C-7.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.1(b) referencing the person responsible for conducting the remediation, to make the subsection consistent with the other introductory subsections throughout the rules. The Department also proposes to readopt the amendments inserting “as part of a remedial action” to clarify that institutional and engineering controls are part of the remedial action implemented at a site.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.1(b)1i allowing engineering controls, such as a cap or fencing, to be included where soil contamination will remain above a concentration that would allow for the unrestricted use of the property, and to readopt the amendments in N.J.A.C. 7:26E-8.1(b)1ii that add a ground water pump and treat system and a slurry wall as examples of a ground water remedial action that includes containment, and to add new N.J.A.C. 7:26E-8.1(b)1iii, which adds landfill remediation to the list of situations for which the person responsible for conducting the remediation must prepare a deed notice.

N.J.A.C. 7:26E-8.2 sets forth deed notice requirements. Throughout this section, the Department proposes to readopt the amendments that substitute references to proposing or proposed deed notices with the obligation to use or implement a deed notice; replace the requirement to provide the Department with a draft of the deed notice for the Department’s approval or provide the Department with documentation with the requirement to use or file a

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

deed notice and to so document; and to delete provisions that concern waiting for Department approval or that concern what actions should be taken after receipt of that approval.

The Department proposes to readopt the amendments throughout N.J.A.C. 7:26E-8.2 replacing references to “the site” or “site” with the references to “property” or “any real property,” because a deed notice is filed for a property, not for a site.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.2(d) replacing “who elects to” with “that will,” with reference to the person responsible for conducting the remediation, to reflect that these provisions only apply to sites that require a deed notice.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.2(d)1 adding a cross reference to the Department’s Deed Notice Guidance.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.2(d)1i by which it revised the requirements concerning formatting of maps that are to be included with deed notices.

The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26E-8.2(e), which required the person responsible for conducting the remediation to submit a final draft of the deed notice to the Department as part of the remedial action report, and to readopt the amendments recodifying N.J.A.C. 7:26E-8.2(f) through (h) as N.J.A.C. 7:26E-8.2(e) through (g).

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.2(f) replacing the phrase that made the timing of actions after receipt of Department approval of the deed notice the subject of this subsection with a phrase that makes the person responsible for conducting the remediation that will use a deed notice as a part of a remedial action for a contaminated site the subject of this subsection. The Department also proposes to readopt the amendments in N.J.A.C. 7:26E-8.2(f)1 replacing “Department’s assigned case manager” with “Department.”

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:26E-8.2(g) concerns what is to be done when a person chooses to redevelop or change the use of a property in a manner inconsistent with a remedial action that includes an engineering or institutional control, or conduct additional remediation or other activities. Formerly, the “other activities” to which this subsection referred were activities that “may compromise the integrity of an engineering control, such that the remedy no longer meets the applicable health risk standard, or is no longer protective of public health, safety and of the environment,” and required that if this subsection is triggered, the person must obtain the Department’s prior written approval of such activities. The Department proposes readopting the amendments by which it deleted the language qualifying to which activities the subsection pertains, and the requirement that prior Departmental approval be obtained, and inserted language that makes the subsection apply to circumstances that would result in the need to file a new deed notice or replace a declaration of environmental restrictions associated with the real property, and the requirement to comply with N.J.A.C. 7:26C-2.4.

The Department proposes to readopt the amendments deleting N.J.A.C. 7:26E-8.2(h)1 through 3, and (i) through (j) because they pertained to memorandum of agreement and therefore are no longer applicable.

N.J.A.C. 7:26E-8.3 pertains to ground water classification exception areas. The Department proposes to readopt the amendments replacing previous N.J.A.C. 7:26E-8.3(b) through (e) with new (b) through (e). New N.J.A.C. 7:26E-8.3(b) incorporates many of the requirements of subsection (b) that it is replacing. Additional requirements, which clarify for the person responsible for conducting the remediation the information needed to properly establish a classification exception area, include the following:

- New provisions requiring submittal of the information on a form available from the Department, rather than as part of the remedial action workplan;
- Comparison of ground water exceedances to both surface water quality standards (N.J.A.C. 7:9B) and vapor intrusion ground water screening levels;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Description of the depth and range of ground water contamination, and the thickness of the overlying clean water lens, if appropriate;
- Description of the sequential reductive dechlorination of chlorinated volatile organic compounds;
- Inclusion of a brief conceptual site model;
- Inclusion of summary of how the fate and transport of the contaminant plume were determined;
- For volatile organics, a description of how changes in property use may be impacted by vapor intrusion issues;
- Specification that maps should be in PDF format and/or compatible with the Department's geographic information system (GIS);
- Inclusion of a cross-section indicating the location of the plume, hydrostratigraphy, and other elements of the ground water flow regime; and
- Inclusion of a map indicating all properties and areas of concern that caused the ground water contamination, as well as each downgradient monitoring well(s) closest to the area(s) of concern.

New N.J.A.C. 7:26E-8.3(c) specifies that the Department will establish the ground water classification exception area based on both the area and the depth of the contaminant plume, and that a final CEA/WRA Permit Fact Sheet that will be issued by the Department will contain both the effective date on which the classification exception area was established and the expiration date of the classification exception area.

New N.J.A.C. 7:26E-8.3(d) mirrors subsection (d) that it is replacing, with the exception that the Department added the requirement that an updated final CEA/WRA Permit Fact Sheet will be issued by the Department if the classification exception area is revised or reestablished. This amendment is intended to ensure that all parties impacted by the classification exception area will be better informed regarding any changes in the classification exception area.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

New N.J.A.C. 7:26E-8.3(e) also mirrors subsection (e) that it replaced, with the exception of updating the cross reference to N.J.A.C. 7:26E-8.6 regarding ground water sampling.

N.J.A.C. 7:26E-8.4 sets forth who has the obligation to undertake monitoring, maintenance and biennial certification of a remedial action that includes an engineering or an institutional control, including when that obligation is triggered. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.4(c) by which it added the text, “as part of a remediation,” to clarify that engineering and institutional controls are considered part of the remediation.

N.J.A.C. 7:26E-8.5 sets forth specific requirements for the monitoring, maintenance and biennial certification of deed notices and declarations of environmental restrictions. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.5(a)4 by which it amended the citation cross reference from N.J.A.C. 7:26E-8.4(e) to just N.J.A.C. 7:26E-8.4, because all of N.J.A.C. 7:26E-8.4 applies to determining the certification due date.

The November 2009 special adoption amended N.J.A.C. 7:26E-8.5(b), which applies to the person responsible for monitoring the protectiveness of a remedial action, to substitute submittal of a biennial certification report along with a Remedial Action Protectiveness Certification form for a monitoring report. The Department proposes to readopt the amendments, except for the title of the form to be submitted (“Remedial Action Protectiveness Certification”) because, as explained elsewhere, form names may change over time or may become obsolete, and the Department does not want to have to amend rules each time a form name changes. Directing the person responsible for conducting the remediation to the website allows the Department greater flexibility to make such changes in the future.

The Department proposes to readopt new N.J.A.C. 7:26E-8.5(b)2xi, which requires that the biennial certification report include the name and license number of the LSRP, as this information is essential.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:26E-8.6 sets forth specific requirements for the monitoring, maintenance and biennial certification of ground water classification exception areas. The Department proposes to readopt new N.J.A.C. 7:26E-8.6(a), and the recodification of N.J.A.C. 7:26E-8.6(a) and (b) as N.J.A.C. 7:26E-8.6(b) and (c). New N.J.A.C. 7:26E-8.6(a) exempts the person responsible for conducting the remediation from both conducting monitoring and maintenance of a ground water remedial action and submitting a biennial certification on its continued protectiveness if the classification exception area was established for ground water contamination solely from historic fill. The Department has determined that there would be no benefit to requiring submittal of biennial certifications for classification exception areas associated with historic fill. Because biennial certification requires an evaluation of any changes from the last time the site was evaluated and certified, and because the contamination from historic fill at historic fill sites does not change, no new data will be gained through recertification.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)2 replacing provisions requiring the determination as to any planned changes within a 25-year water use planning horizon to be made by reviewing all plans, records and other relevant information from the listed sources with a provision requiring review only of the listed sources (as modified).

The Department proposes to readopt the amendments deleting previous N.J.A.C. 7:26E-8.6(a)2i and ii, which listed the New Jersey Water Supply Master Plan and the Department of Environmental Protection, Bureau of Water Allocation as sources to be used to determine whether there are any planned changes within the 25-year water use planning horizon. The Department is currently undertaking an update of the New Jersey State Water Supply Plan. Deletion of these two subparagraphs along with the addition of new N.J.A.C. 7:26E-8.6(a) necessitated recodification of N.J.A.C. 7:26E-8.6(a)2iii through viii as N.J.A.C. 7:26E-8.6(b)2i through vi, and the Department proposes to readopt these recodifications.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)2ii specifying local zoning because it is zoning local to the classification exception area that is germane.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)2iii adding “wells or well fields,” because it is important to know whether wells or well fields will be installed in the future in the area of the classification exception area, as these may impact the classification exception area.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)3i in which it replaced the requirement to complete a Department computer generated well search through the Bureau of Water Allocation with the requirement to use the Department’s CEA Biennial Certification Compliance: Tools for Performing Well Searches for CEA Biennial Certifications. This amendment makes the person responsible for conducting the remediation aware of the guidance available from the Department for completing well searches as part of the biennial certification process for classification exception areas.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)3ii requiring the identification of wells other than ground water monitoring wells within one mile of the CEA to replace doing so using the format at Appendix B with reference to information available on the Department’s web site. The Department is proposing to readopt the amendments by which it deleted Appendix B, because it has converted the information formerly found in Appendix B to a form that is now available for download from the Department’s website.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)6i adding the new affirmative requirement to conduct additional remediation, modify the remedial action, or propose a revision to the ground water classification exception area, and apply for a modification of the ground water remedial action permit where any of the proposed changes in the ground water use have influenced the protectiveness of the remedial action. If the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

person responsible for monitoring the protectiveness of a remedial action determines that changes in either the water planning horizon or in the water use planning area indicate that the remedial action is no longer protective, that person is required to perform whatever remediation activities are necessary to ensure that the remedial action remains protective of the public health and safety and the environment.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)6ii requiring the determination of whether there is a need to reevaluate fate and transport of the ground water contaminant plume or the contaminants in the plume with regard to the risk of vapor intrusion and, if necessary, conduct additional remediation, modify the remedial action, or propose a revision to the CEA as well as apply for a modification of the ground water remedial action permit. These amendments will ensure that if the person responsible for monitoring the protectiveness of a remedial action determines that vapor intrusion issues are now of concern, whatever remediation activities are necessary to ensure that the remedial action remains protective of the public health and safety and the environment will be performed.

The Department proposes to readopt new N.J.A.C. 7:26E-8.6(b)6iii, which requires the person responsible for conducting the remediation to reassess risk of vapor intrusion after any changes in the property use. This amendment addresses the vapor intrusion issues associated with ground water contaminant plumes.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)7i extending from 120 days to 180 days the number of days after the projected expiration of the ground water CEA for collecting ground water samples, to allow for greater seasonal variability in the potential ground water samples.

The Department proposes to readopt the amendments in recodified N.J.A.C. 7:26E-8.6(b)7iii clarifying that ground water sampling may be performed at any time prior to the expiration of the CEA, for clarity.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments adding new N.J.A.C. 7:26E-8.6(c)2ix, which requires that the name and license number of the LSRP be included in the biennial certification report.

The Department proposes to readopt the amendments to N.J.A.C. 7:26E-8.6(c)5 that require that all wells and/or waterlines found within one mile from any part of the boundaries of the ground water classification exception area be located and identified on a scaled map. Such a map will assist in evaluating potential impacts to the classification exception area.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)6i in which it replaced the requirement that the maintenance and evaluation log for each monitoring well include a copy of any report concerning damaged monitoring wells submitted to the Department, with the requirement that the log include a description of any well damage or vandalism identified and repairs completed. These amendments ensure that information regarding any well damage or vandalism identified or repairs completed is included as part of the biennial certification.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)6ii replacing reference to “well closure report” with “Well Abandonment Report” because the latter is the title of the report that is codified in the Well Construction; Maintenance and Sealing of Abandoned Wells rules at N.J.A.C. 7:9D.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)8i replacing a general description of changes in the ground water use that influenced or may influence the protectiveness of the remedial action that includes the ground water classification exception area with examples of changes in ground water use that should be included in the analysis. This amendment enumerates for the person responsible for evaluating the protectiveness of the remedial action the types of actions performed pursuant to recodified N.J.A.C. 7:26E-8.6(b)6i that must be included in the biennial certification.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)8ii by which it replaced the requirement to discuss whether there is a need to reevaluate the fate and transport of the ground water plume or classification exception area with the affirmative obligation to reevaluate the fate and transport of the ground water contamination plume, and that the evaluation include a discussion of any additional remediation conducted, modification of the remedial action, or proposed revision of the ground water classification exception area. These amendments also require that an application must be submitted for any modification of the ground water remedial action permit. The purpose of these amendments is to ensure that the person responsible for evaluating the protectiveness of the remedial action includes the details of any actions performed pursuant to recodified N.J.A.C. 7:26E-8.6(b)6ii in the biennial certification and applies for any necessary permit modifications.

The Department proposes to readopt new N.J.A.C. 7:26E-8.6(c)8iii, which requires the person responsible for conducting the remediation to evaluate any changes in property use that increase the risk of vapor intrusion. This amendment requires the person responsible for evaluating the protectiveness of the remedial action to include the details of any actions performed pursuant to recodified N.J.A.C. 7:26E-8.6(b)6iii in the biennial certification.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)10 deleting the requirement to submit a description and map of a proposed revised CEA in both paper and electronic format and replacing it with requirement to submit a revised ground water classification exception area application. The person responsible for evaluating the protectiveness of a remediation action is required to submit a new application for a classification exception area if revisions to the classification exception area are required.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)11 replacing the requirement to submit all test and sampling results of each ground water classification exception area with the requirement to simply submit ground water sampling results for each classification exception area, to clarify that the information required to be

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

included in the biennial certification is limited to the ground water sampling results for each classification exception area.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)12 that require that a biennial certification include a description of both additional remediation and additional action, rather than just any additional action.

The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.6(c)13ii replacing the requirement that a re-evaluation of the ground water quality standards pursuant to N.J.A.C. 7:26E-8.3(b), based on the current configuration of the ground water contaminant plume, be included in the biennial certification with the requirement to include a description of any additional remediation conducted. The deleted text is no longer relevant in view of amendments proposed to be readopted in other provisions of the rules that require that the evaluation be made if it is known that ground water contaminant concentrations have not decreased to or below the applicable ground water quality standards. The provision proposed for readoption requires the person responsible for evaluating the protectiveness of the remedial action to include information regarding additional remediation conducted in response to the ground water quality standard exceedances.

The Department proposes to readopt new N.J.A.C. 7:26E-8.6(c)13iii, which provides that, for the first biennial certification required after the projected expiration of the ground water classification exception area, if the contaminant concentrations in the ground water have not decreased to or below the applicable ground water quality standards throughout the classification exception area, the person responsible for evaluating the protectiveness of the remedial action is required to submit a revised ground water classification exception area application.

The Department proposes to readopt the replacement of N.J.A.C. 7:26E-8.6(c), which contained lengthy requirements for certification and report submittal that applied to persons responsible for monitoring the protectiveness of a remediation action that includes a ground water classification exception area, with a simplified new N.J.A.C. 7:26E-8.6(c)14, which

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

requires the person responsible for conducting the remediation to certify the biennial certification report.

The Department proposes to readopt new N.J.A.C. 7:26E-8.6(d), which requires the person responsible for conducting the remediation to submit the biennial certification along with a form provided by the Department to the listed entities, and to notify any persons who were given notice of the initial ground water classification exception area. These requirements are recodifications of the concepts previously codified in N.J.A.C. 7:26E-8.6(c)3i and ii.

N.J.A.C. 7:26E-8.7 sets forth specific requirements for the monitoring, maintenance and biennial certification of engineering and institutional controls. The Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.7(b)2vi and (b)2vii, replacing the text “no further action letter” with the text “final remediation document,” because, pursuant to SRRA and the ARRCs rules, final remediation documents include both no further action letters issued by the Department and response action outcomes issues by LSRPs. Additionally, the Department proposes to readopt the amendments in N.J.A.C. 7:26E-8.7(b)2vii adding the text “if applicable,” because a case manager will not be assigned to every case.

The Department proposes to readopt new N.J.A.C. 7:26E-8.7(b)2xi, which requires that the biennial certification report include the name and license number of the LSRP, if applicable.

The Department proposes to readopt the amendments to N.J.A.C. 7:26E-8.7(c)3 updating the cross-reference for submittal of the certification from N.J.A.C. 7:26E-8.4(e)1 to N.J.A.C. 7:26E-1.5(a)2.

The Department proposes to readopt the amendments deleting previous Appendix B, “Well Search Format” and previous Appendix F, “Ground Water Classification Exception Area Fact Sheet.” These forms instead will be available from the Department’s website to allow flexibility in incorporating updates to these forms.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to readopt the amendments adding the text “FOR A DGW PROPOSAL” to the title of Appendix H, to reflect that this appendix containing a Model Public Notice applies specifically to discharge to ground water proposals.

The Department proposes to readopt the amendments in Appendix H correcting the name of the Site Remediation Program.

The Department proposes to readopt the amendments adding the heading “Public Notice” after the first paragraph of Appendix H, which highlights in the newspaper that the information that follows is a formal public notice.

The Department proposes to readopt the following amendments in the second paragraph of Appendix H:

- Deleting reference to requesting a permit-by-rule authorization and adding reference to requesting a permit issued to reflect the new permitting process under the Site Remediation Reform Act, N.J.S.A. 58:10C-19;
- Capitalizing the word “System,” as this word is part of the formal title of the NJPDES rules at N.J.A.C. 7:14A;
- Replacing the acronym NJDEP with the Department; and
- Replacing the provision stating the Department is overseeing the remediation under a case number with a provision stating the Department is reviewing the proposal to discharge to ground water for the purpose of remediating a contaminated site under a program interest number. Pursuant to SRRA and the ARRCs rule, the remediation of the site may proceed without direct Department oversight. The program interest number is added to allow for easier identification and tracking of the case.

The Department proposes to readopt the following amendments in the third paragraph of Appendix H:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Deleting the word “approved,” as pursuant to SRRA and the ARRCs rule, the Department will no longer be approving remedial action workplans;
- Replacing the word “aquifer” with “formation receiving the discharge,” as this language is more precise;
- Replacing the requirement to submit copies of the plans which include the proposed discharge to ground water, with the requirement to submit a copy of the public notice; and
- Replacing the listing of specific local authorities with the more generic reference to designated local health official in a particular region.

The Department proposes to readopt the amendments in the fourth paragraph of Appendix H that replaced the requirement to submit the proposed plan to discharge to ground water with the requirement to submit a copy of the DGW proposal, and adding the phrase that directs that requests for this information be obtained from the person responsible for conducting the remediation.

The Department proposes to readopt the amendments in the fifth paragraph of Appendix H that direct interested persons to submit written comments not to the Department’s case manager, but rather to the specified address, and to delete phrases that concern discharge to ground water plans with the more contemporary reference to a “DGW proposal. The Department also proposes to replace “approve or modify” with “render a decision regarding,” to more accurately reflect the new process for addressing discharges to ground water performed as part of a remediation at a site.

The Department proposes to readopt the amendments in the sixth paragraph of Appendix H that replaced the reference to a plan to discharge to ground water with “DGW proposal,” replaced “meeting” with the word “hearing” in two locations within the paragraph because of the new process for addressing discharges to ground water performed as part of a remediation at a

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

site, and deleted the reference to the case manager because pursuant to SRRA and the ARRCs rules, case managers will no longer be assigned to cases.

The Department proposes to readopt the amendments in the seventh paragraph of Appendix H that added “ATTN: DGW proposal” to ensure that comments or a written request for a public hearing regarding a DGW proposal are sent to the attention of the appropriate Department personnel,

The Department proposes to readopt the amendments deleting the eighth (last) paragraph of Appendix H. This paragraph stated that additional information concerning the proposal may be obtained from either the person submitting the proposal or the Department case manager. The paragraph is being deleted because this information is already stated in the fourth paragraph of this model public notice.

9. Highlands Water Protection and Planning Act Rules

The Highlands Water Protection and Planning Act (Highlands) Rules are codified at N.J.A.C. 7:38. Subchapter 1 of this chapter pertains to general information, and N.J.A.C. 7:38-1.4 contains definitions. The Department proposes to readopt the amendment in N.J.A.C. 7:38-1.4 deleting the definitions of “administrative consent order,” “memorandum of agreement,” and “no further action letter” to make the definitions in the Highlands rules consistent with the ARRCs rules.

Subchapter 6 of the Highlands rules pertains to Highlands preservation area approvals. N.J.A.C. 7:38-6.6 pertains to waivers for redevelopment in certain previously developed areas in the Highlands preservation area, specifically Department-designated Highlands Brownfields. The Department proposes to readopt the amendment in N.J.A.C. 7:38-6.6(b)2ii, 6.6(d)1, and 6.6(f)1 and 3, recognizing that LSRPs also have a role in issuing final remediation documents and approving remedial action workplans in certain instances.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Subchapter 9 of the Highlands rules pertains to application contents, and N.J.A.C. 7:38-9.2 pertains to the application requirements for a Highlands applicability determination. The Department proposes to readopt the amendments in N.J.A.C. 7:38-9.2(d)15 providing that the application list either the Department's case manager or the LSRP assigned to the case, to reflect the new role of an LSRP in the remediation of a contaminated site.

The Department is not proposing to readopt the amendments in the Interim Rules that changed the statutory cross-reference at N.J.A.C. 7:38-2.4(b)8 and 9.2(d)15, from the Brownfield Act, N.J.S.A. 58:10B-1 et seq. to SRRA, N.J.S.A. 7:10C-1 et seq.. The Department changed this text to correctly cross reference the Brownfield Act by notice of administrative change (see 42 N.J.R. 1862(a) (August 16, 2010)), to comport the rule text with the exemptions provisions of the Highlands Water Protection and Planning Act (the Highlands Act) at N.J.S.A. 13:20-28 that specifically exempt sites that are being remediated according to the Brownfield Act, but not according to SRRA. Since the Brownfield Act was amended by SRRA and cross-references back to SRRA, this change does not affect the universe of sites to which this Highlands Act exemption applies.

10. Rules for the Review Zone of the Delaware and Raritan Canal State Park

The Rules for the Review Zone of the Delaware and Raritan Canal State Park are codified at N.J.A.C. 7:45. All of the amendments the Department made to this rule as part of the November 4, 2009 special adoption are described in the summary above, at Section III A. Proposed Readoption of Amendments That Affect Multiple Rules.

Social Impact

New Jersey industries, while producing the commercial goods and products upon which much of the State's economy is based, have also produced a significant volume of byproducts and wastes, many of which are hazardous. Both the New Jersey Legislature and the New Jersey

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Supreme Court have noted that this industrial history has left the State with a legacy of contaminated sites that now threatens the State's public health as well as its ecology.

Sites that become contaminated due to discharges of hazardous substances affect virtually everyone in the State, either directly due to proximity to a contaminated site and the increased public health risks they pose, or indirectly due to the potential cost to taxpayers, businesses and individuals to remediate these sites. Discharges of hazardous substances can threaten ground water and potable water sources, and can create vapor hazards that may pose both an immediate explosion risk and a long term health risk from exposure to hazardous vapors. Contamination caused by these discharges lowers property values, impedes smooth and orderly real estate transactions and can render land unfit for development and use.

The Department has been refining the procedures for the remediation of contaminated sites for nearly four decades. The Department's focus over time has been on protecting the public health and safety and the environment by identifying and cleaning up discharged hazardous substances, eliminating the direct contact exposure pathway to human beings, and ensuring that the State's critical supplies of potable water are protected. The challenge for the Department had been the iterative process that required the Department's approval before a person could implement any phase of remediation.

The problem with the prior system of oversight was that, while the person responsible for conducting the remediation was awaiting Departmental approval to continue with any particular phase of remediation, contamination remained unaddressed, with the ongoing potential to spread and impact the health of our residents. Many of these sites are in urban communities where residents are already struggling with a multitude of other quality of life challenges. Another drawback to these sites remaining unremediated was that properties that could not be developed and placed back on the tax rolls or converted to open spaces, remained as blighted, unused lots, compromising the economic vitality of the State. This *status quo* is unacceptable. It is critical to the health of our citizens and the environment, including to the health of our economy, to remediate contaminated sites in New Jersey as quickly as possible while maintaining the strict

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

cleanup standards the Department has historically applied. The proposed readoption with amendments of the Interim Rules will help accomplish this goal, and will therefore have a positive social impact on the citizens of New Jersey.

Through the proposed readoption of the Interim Rules with amendments, the Department has redefined how site remediation is to be accomplished in New Jersey. For example, the requirement at N.J.S.A. 58:10B-1.3 that a person liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act has an affirmative obligation to conduct the cleanup and removal of a discharge is expressly promulgated in the Department's rules for the first time in Subchapter 2 of the ARRCs rules.

Proposed N.J.A.C. 7:26C-2.4 requires the person responsible for conducting the remediation to hire an independent LSRP to oversee the remediation. Moreover, the person responsible for conducting the remediation is now required to continue with the remediation, using an LSRP, without waiting for the Department's review and approval of each different phase. The Department's new role under this paradigm has been changed to one of inspection and review of submissions prepared by LSRPs. Because this new paradigm includes the application of mandatory remediation timeframes proposed for readoption with amendment at N.J.A.C. 7:26C-3 and the use of remedial action permits for the implementation of the remedial action proposed for readoption with amendment at N.J.A.C. 7:26C-7, there is no longer a need for the Department to establish site-specific oversight documents for each remediation. This new remediation paradigm will have a positive social impact by allowing sites to be remediated more quickly, thus eliminating human exposure to contaminants and returning these sites to productive use.

Three distinct communities will be affected by the proposed readoption with amendments of the Interim Rules. The first are the LSRPs who perform the remediation on behalf of their clients; the clients of the LSRPs, who are the individuals and business entities that are legally responsible for the remediation of contamination discharged at these sites; and the citizens of

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

New Jersey who have to live, work and play around the corner from the approximately 16,000 contaminated sites yet to be remediated.

To date, the Department has temporarily licensed over 430 LSRPs. A majority of these professionals are members of a newly created LSRP Association. Exhibiting strong support for New Jersey's new site remediation paradigm, the Association has been vocal in supporting the Department in the implementation of the Interim Rules.

The individuals and business entities that are legally responsible for the hazardous substances have also generally supported the new site remediation paradigm in New Jersey. This group has been working with the Department to modify certain aspects of the Interim Rules, and has generally supported the Department's efforts to implement changes in its Site Remediation Program in accordance with the Interim Rules.

The proposed readoption of the Interim Rules with amendments will have a positive social impact on the State by facilitating the remediation of more contaminated sites in less time. The positive social impacts of this proposal are based upon the premise that LSRPs will be able to move remediation projects along more quickly under the new paradigm, since persons responsible for conducting the remediation will no longer have to wait for the Department's approval of each phase of the remediation before continuing with the next phase. A simpler and more efficient administrative process has many positive effects. It gets sites through the remediation process more quickly, remediation is begun and completed more quickly, contaminated sites impact the public for a shorter period of time, and the quality of the environment is improved sooner for the use and enjoyment of the citizens of the State.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Economic Impact

A. Economic Impacts of the Interim Rules

The direct economic impact from the proposed readoption of the Interim Rules with amendments is expected to be a positive one. The Department's experience in implementing the Interim Rules thus far indicates that there are economic impacts that can be qualitatively described, and some limited quantification.

As explained above, the ARRCS rules are promulgated pursuant to SRRA, as well as other statutes discussed in the introductory paragraphs of this proposal. SRRA requires remediating parties to use the services of an LSRP in order to determine how to remediate the site so that it is protective of human health and the environment. SRRA and the ARRCS rules allow for a phase in period for a person that had initiated remediation prior to November 4, 2009 for the requirement to use an LSRP. On and after May 4, 2012, all persons responsible for conducting the remediation will be required to use the services of an LSRP. Prior to May 2012, persons responsible for conducting the remediation may employ an environmental consultant who is not an LSRP. The ARRCS rules at N.J.A.C. 7:26C-2.3(b) provide that a person responsible for conducting the remediation that is not required to use the services of an LSRP prior to May 2012 may opt to remediate a site pursuant to the new remediation paradigm, including using an LSRP.

The Department does not anticipate that the requirement to hire an LSRP will increase the cost of site remediation. Under the prior paradigm, most, if not all, persons responsible for conducting the remediation enlisted the services of a remediation consultant. The difference under the Interim Rules is that, for persons who wish to opt in under N.J.A.C. 7:26C-2.3(b) prior to May 2012 and for new remediation projects, an LSRP must oversee the remediation.

The Department anticipates that transactional costs associated with a given remediation may actually decrease for at least three reasons. First, the responsible person will no longer be

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

responsible for paying Department oversight costs associated with multiple reviews and comments on each phase of the remediation. Rather, the person simply pays the annual remediation fee as calculated pursuant to N.J.A.C. 7:26C-4. That fee, which is based on the number of areas of concern and the number of contaminated media, ranges from \$450 for fewer than two areas of concern and no affected media to \$13,700 for a site with more than 20 contaminated areas of concern and contamination in the ground water, surface water and sediment. Necessarily, that fee will decrease as areas of concern and contaminated media are cleaned up.

This new fee structure is in response to the new site remediation paradigm that no longer necessitates multiple Department reviews of each phase of remediation prior to implementation. The new fee structure allows for more predictable financial planning for remediation. For example, consider a site with multiple areas of concern requiring multiple submittals. Under the non-LSRP program, the person responsible for conducting the remediation may be actively remediating one area of concern (AOC) when that person receives Department approval to proceed in a different AOC with a more immediate schedule. This type of situation has led to additional costs related to equipment and personnel mobilization and possibly contract penalties or extras borne by the persons responsible for conducting the remediation. The Interim Rules provide parties in the LSRP program increased and direct control of the remediation schedule. It is anticipated that the new remediation paradigm embodied in this proposed readoption with amendments will result in faster, more flexible and more cost-effective remediation. Accordingly, direct transactional costs to the person responsible for conducting the remediation should, at a minimum, be more predictable, and may actually decrease in the long term.

Second, because the property can be remediated more quickly, municipalities should experience a positive budgetary impact in terms of increased ratables as properties are returned to more productive use. Additionally, the use of an LSRP on a brownfield remediation project lends economic certainty to transactions involving contaminated sites undergoing remediation. As the real estate and banking communities become more familiar with the LSRP program, including understanding that the remedial action outcome issued by an LSRP is equivalent to a

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

no further action letter issued by the Department, transactions involving these properties will be able to proceed without the intercession (and the resultant delays) of the Department.

Finally, the transactional costs to the citizens of New Jersey should also decrease. As sites are remediated more quickly, the potential health risks to residents and workers in the vicinity of the site will be ameliorated. Health impacts from contamination, whether through contact with contaminated soils or ground water, have been well documented, and health care costs associated with treatment of maladies resulting from exposure through any of these pathways can be expensive. The more quickly sites are remediated, the more rapidly health risks due to exposure may be minimized.

An indication of the positive economic impact expected from the LSRP program is the number of business entities that have chosen to opt in and conduct remediation using LSRPs. Since the inception of the LSRP program, business entities responsible for the remediation of more than 909 cases have opted into the LSRP program. It is presumed that one of the reasons that these companies have chosen to opt in is because remediating a site using the LSRP paradigm is more cost effective than following the traditional method. For example, Shell Oil Company approached the Department to request permission to opt into the new program pursuant to N.J.A.C. 7:26C-2.3(b). Shell was the first major company to opt into the new program with well over 300 contaminated sites that it wanted to remediate using a team of LSRPs. Shell and the Department have worked cooperatively together over the last several months to develop and implement a strategy for Shell to avail itself of the benefits of the new program operating under the Interim Rules.

The Department and stakeholders (industry representatives, LSRPs, environmentalists and legal professionals) established an LSRP Implementation Measures of Success Committee to develop metrics to evaluate the success of the new site remediation paradigm. This committee met from March 2010 through October 2010 and has completed its recommendations for metrics to be used now or to be further developed in the future. The metrics fall under four general categories, namely timeliness, program performance, oversight, and protectiveness. Timeliness

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

measures are designed to evaluate the amount of time needed to conduct remediation tasks and thereby the length of time to complete the remediation. Program performance measures the difference the LSRP program and rule amendments have made to the environment and economy through an examination of a variety of factors including: the total numbers of Response Action Outcomes (RAOs) issued by LSRPs, subcategorized by the numbers of acres subject to the RAO, the number of acres as successfully prepared for reuse, and average remediation costs. Oversight measures capture the activities conducted by the LSRP or remediating party and focus on their performance. The protectiveness measures highlight other important site conditions, including but not limited to immediate environmental concerns, presence of light non-aqueous phase liquid (LNAPL), and ground water classification exception area status. Planning is currently underway to determine the research methods needed to capture these data, including the data concerning economic impacts of these rules.

B. Economic Impact of Amendments to the Interim Rules

The proposed amendments to the Interim Rules clarify language in rule provisions and remove all form names; these amendments will have no economic impact.

Environmental Impact

New Jersey's natural resources are a treasure to be protected. New Jersey's varied ecosystems, such as its mountains, lakes, rivers and shoreline, and its diverse wildlife, provide not only an ecologically healthy home and workplace and a source of recreation for the citizens of our State, but also a source of revenue from environmental tourism.

The Interim Rules being proposed for readoption with amendments will have a positive environmental impact by allowing contaminated sites to be remediated more quickly. As explained above, the prior system of oversight and approval of each phase of the remediation equated to contamination remaining unaddressed, potentially spreading and potentially impacting

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

the health of New Jersey residents and of natural resources. In addition, the longer contamination persists in the environment, the more likely it will spread to ground water, surface water and soil. The more area and media being impacted by the contamination, the more difficult the remediation becomes.

The new paradigm for remediating contaminated sites using the services of LSRPs and without Department prior approval will result in the expeditious remediation of contamination. This means less human and ecological exposure to the contamination, thus fewer negative consequences to humans and the State's natural resources.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. Following are analyses for the rules proposed for readoption with amendments.

Discharge of Petroleum and Other Hazardous Substances (DPOHS) Rules, N.J.A.C. 7:1E

N.J.A.C. 7:1E 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. However, there are Federal standards or requirements to which a meaningful comparison can be made, and the Department has performed this comparison for rules in N.J.A.C. 7:1E being proposed for readoption.

The effect of the DPOHS rules that cross-reference the ARRCS rules is that the remediation of a discharge will have to be conducted according to the ARRCS rules, including the use of an LSRP as applicable. To the extent that the Federal regulations do not require the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

use of an LSRP, the addition of the requirement to comply with the ARRCs rules may be perceived as making the DPOHS rules more stringent than their Federal analogues.

The Department is unable at this time to determine whether the requirement that remediation be conducted using the services of an LSRP will increase or decrease the cost of the remediation. Although the Interim Rules have been in effect since November 4, 2009, the Department has not collected enough meaningful data to determine the costs versus the benefits of the new remediation paradigm. The remediation of a discharge under the rules in place prior to the Interim Rules could be performed without the aid of a professional who is trained in site remediation. The Department has no data on whether fees to be charged by an LSRP will be higher or lower than the fees currently charged by existing site remediation professionals. However, as discussed in the Economic Impact Statement, the underlying purpose of SRRA is to help streamline the remediation process and the Department anticipates that added efficiencies may offset any costs that may result from the requirement to use an LSRP.

Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act Rules, N.J.A.C. 7:1I

N.J.A.C. 7:1I 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, standards or requirements. Accordingly, no further analysis is required.

Processing of Damage Claims Pursuant to the Spill Compensation and Control Act Rules, N.J.A.C. 7:1J

N.J.A.C. 7:1J 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, standards or requirements. Accordingly, no further analysis is required.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Freshwater Wetlands Protection Act (FWPA) Rules, N.J.A.C. 7:7A

A comparison of the adopted amendments with the Federal regulations is appropriate in the case of the FWPA rules, because the Department is obligated under Federal law to ensure that its FWPA rules are at least as stringent as the regulations implementing the Federal 404 wetlands permitting program. As discussed above in connection with the DPOHS rules, to the extent that the Federal regulations do not require the use of an LSRP, the addition of the requirement to comply with the ARRCs rules may be perceived as making the FWPA rules more stringent than their Federal analogues. However, as discussed above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of an LSRP will increase or decrease the cost of the remediation because there is not yet enough meaningful information available regarding the cost of using an LSRP.

Stormwater Management Rules, N.J.A.C. 7:8

There are no current, analogous Federal requirements for stormwater management planning; however, there are several Federal programs concerning stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act (33 U.S.C. §§1251 et seq.) requires permits under Section 402 of that Act for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the NJPDES rules, N.J.A.C. 7:14A, rather than in the Stormwater Management rules. Section 319 of the Clean Water Act authorizes a Federal grant-in-aid program to encourage states to control nonpoint sources. The Department developed a management program for nonpoint source control under which the Department issues grants to local, regional, State, and interstate agencies as well as to nonprofit organizations to, for example, develop or monitor best management practices to control stormwater. Under Section 6217(g) of the Coastal Zone Management Act Reauthorization and Amendments of 1990 (CZARA), P.L. 101-508, the U.S. Environmental Protection Agency (EPA) has published "Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters" (CZARA 6217(g) Guidance). States may opt to participate or not

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

participate in the overall coastal zone management program, with no penalty for non-participation other than the loss of Federal grants for this program. No mandatory Federal standards or requirements for nonpoint sources pollution control are imposed. The CZARA 6217(g) Guidance includes management measures for stormwater runoff and nonpoint source pollution control from land development as well as many other source types. The Department has developed a coastal zone management program, including a component addressing coastal nonpoint pollution control. The Stormwater Management rules at N.J.A.C. 7:8 are one means by which the Department implements its nonpoint pollution control program.

The Department has determined that the rules proposed for re-adoption that prohibit recharge of stormwater that is inconsistent with an approved remedial action workplan or landfill closure plan (as opposed to only plans approved by the Department) do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Rather, these amendments take into account that, with the adoption of the ARRC rules, there will be plans that are approved by both the Department and by LSRPs, thus making the two sets of rules consistent with each other. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C

The GWQS provide the basis for protection of ground water quality in New Jersey by establishing constituent standards for ground water pollutants. These constituent standards are applicable to the development of effluent limitations and discharge requirements pursuant to the NJPDES rules, N.J.A.C. 7:14A; to the development of minimum ground water remediation standards pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and to other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State. The authority for setting these standards comes solely from New Jersey law and has no Federal counterpart. The GWQS are 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

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Federal law, Federal standards or Federal requirements. The GWQS do not contain any standards or requirements that exceed those required by Federal law. The GWQS provides the associated ground water standards that are relevant to the New Jersey Underground Injection Control program, RCRA D, and RCRA C ground water monitoring programs at 40 CFR 144 through 146, 258 and 264. These Federal programs are implemented through the NJPDES program.

New Jersey Pollutant Discharge Elimination System (NJPDES) Rules, N.J.A.C. 7:14A

The NJPDES rules are developed partly under the National Pollutant Discharge Elimination System as authorized by the Federal Clean Water Act (including surface water and sludge management programs), under the underground injection control (UIC) program as authorized under the Federal Safe Drinking Water Act, and under ground water monitoring and corrective action portions of the municipal solid waste landfill and hazardous waste programs as authorized under the Resource Conservation and Recovery Act (RCRA).

The authority for regulating the types of discharges to ground water covered by Subchapter 7 comes primarily from State statutes including N.J.S.A. 58:10A-1 et seq., and has no Federal counterpart (except in regard to injection wells as discussed below). N.J.A.C. 7:14A-7 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 (except as discussed below).

Some of the units regulated under N.J.A.C. 7:14A-7 are injection wells that are also regulated under N.J.A.C. 7:14A-8. An underground injection control (UIC) permit issued in accordance with N.J.A.C. 7:14A-8 is a discharge to ground water (DGW) permit that is also subject to certain provisions of N.J.A.C. 7:14A-7. In addition, injection wells are regulated under USEPA rules for the Federal Underground Injection Control Program created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§300(f) et seq.). These USEPA rules are found mainly at 40 CFR Parts 144 through 148. To the extent that some N.J.A.C.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:14A-7 provisions regulate injection wells, N.J.A.C. 7:14A-7 might be considered one of the means by which the Department participates in the UIC program established under Federal law. However, all NJPDES rule provisions that impose standards or requirements specific to injection wells are found in N.J.A.C. 7:14A-8 rather than in N.J.A.C. 7:14A-7. To the extent that some N.J.A.C. 7:14A-7 provisions affect injection wells, those provisions implement Federal UIC mandates; they do not exceed them.

Underground Storage Tank (UST) Rules, N.J.A.C. 7:14B

Although there is a Federal Underground Storage Tank program pursuant to 42 U.S.C. §§ 6991 et seq., which regulates the operation, closure and upgrade of regulated underground storage tanks, there are no provisions in the Federal statute or regulations requiring a certification program for contractors performing services on underground storage tanks. The Federal rules at 40 CFR 280.20(e) encourage states to certify individuals to perform services on regulated underground storage tank systems.

N.J.A.C. 7:14B-1.7 contains certification statements to be signed by tank owners and consultants upon submission of documents to the Department. There is no Federal counterpart to this requirement. However, requiring certification does not increase any costs associated with the operation of an UST.

N.J.A.C. 7:14B-1.8, which requires an owner or operator of an underground storage tank to conduct all site investigation and tank closure activities required in the UST rules in accordance with the ARRCs rules at N.J.A.C. 7:26C-2.4, including using the services of an LSRP, has no Federal counterpart. Accordingly, as discussed above in connection with the amendments to the DPOHS rules, to the extent that the Federal regulations do not require the use of an LSRP, the addition of the requirement to comply with the ARRCs rules may be perceived as making the UST rules more stringent than their Federal counterpart. However, as discussed above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of an LSRP will increase or decrease the cost of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

remediation because no meaningful information is yet available regarding the cost of using an LSRP.

**Financial Assistance Programs for Environmental Infrastructure Facilities
(FAPEIF) Rules, N.J.A.C. 7:22**

The FAPEIF rules proposed for re adoption do not exceed the standards imposed by Federal law. The Federal government provides monies to the State in the form of capitalization grants under the Environmental Infrastructure Financing Program, which is administered pursuant to the rules contained within N.J.A.C. 7:22. Federal regulations have been adopted at 40 CFR Part 35, Subpart K, which establish requirements applicable to States for the implementation and management of State Revolving Funds (SRF). The regulations define eligible activities of the SRF and the types of projects that the SRF can finance, establish requirements that apply to recipients of SRF assistance, specify capitalization grant agreement requirements, environmental review requirements and financial requirements (including cash draw procedures, annual reports, audits and others). Extensive policy documents have also been issued by the US Environmental Protection Agency with respect to the SRF program including the "Initial Guidance for State Revolving Funds (January 1988)," which better defines the applicability of the project-level requirements, and elaborates on other Federal laws that impact the SRF program. Other requirements applicable to SRF recipients are also included as conditions to the award of the Federal capitalization grant agreements. N.J.A.C. 7:22 is designed to achieve conformance with these Federal requirements and to protect the use of public funds to ensure the self-perpetuating nature of the SRF. The Department is proposing to readopt updates to those portions of the FAPEIF rules concerning disclosure of whether a site is being remediated to cross reference the Administrative Requirements for the Remediation of Contaminated Sites rules. The requirement that disclosure be made, however, is not changing.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Industrial Site Recovery Act (ISRA) Rules, N.J.A.C. 7:26B

The ISRA rules do not contain any standards or requirements that exceed those imposed by Federal law. ISRA was not enacted under the authority of, or in order to implement, comply with, or participate in, a program established under Federal law. Moreover, the ISRA rules do not incorporate Federal law, standards or requirements.

ISRA does, however, contain several references to remediation programs established by Federal law. These references grant equivalent status to those remediations performed under Federal law for the purpose of determining an owner or operator's compliance requirements pursuant to ISRA. The references to Federal law in these rules are not the type of references that require further analysis pursuant to Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq., because they are incidental to the administration of the ISRA program. In fact, the inclusion of equivalent Federal approvals in these rules promotes the policy objectives outlined in Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. Therefore, the Department has determined that the proposed readoption of the prior adopted amendments to the ISRA rules do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rules, N.J.A.C. 7:26C

The ARRCS rules proposed for readoption with amendments do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the ARRCS rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 CFR Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site, with or without Department oversight.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Therefore, there are no Federal provisions with which to compare the provisions of the ARRCs rules. Based on this analysis, the Department has determined that the rules proposed for readoption with amendments do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Remediation Standards, N.J.A.C. 7:26D

The Remediation Standards, N.J.A.C. 7:26D, are adopted under the authority of the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Each of these State statutes refers to or incorporates Federal law, Federal standards or Federal requirements. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department compared the requirements of the Remediation Standards proposed for readoption to the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) 42 U.S.C. §§9601 et seq., the Resource Conservation and Recovery Act (RCRA) of 1980; 42 U.S.C. §§6901 and 6991 et seq., and the Federal Safe Drinking Water regulations 40 U.S.C. §§141, 142 and 143.

The Department has determined that the rules proposed for readoption do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Technical Requirements for Site Remediation, N.J.A.C. 7:26E

The Technical Requirements for Site Remediation (Technical Requirements) were promulgated under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Underground Storage of Hazardous

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Substances Act, N.J.S.A. 58:10A-21 et seq., and these State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department has compared the Technical Requirements proposed for readoption with the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§9601 et seq., and the Resource Conservation and Recovery Act (RCRA) of 1980, 42 U.S.C. §§6901 and 6991 et seq.

The Department has determined that, with the exception of the provisions that are described in the following paragraphs, the amendments to the Technical Requirements proposed for readoption do not require any specific action that is more stringent than any requirement of comparable Federal rules. The implementing regulations for the Federal laws listed above provide only generic procedural requirements on how to investigate and remediate contaminated sites. For example, the National Contingency Plan (NCP), 40 CFR 300, the implementing regulations for CERCLA, provides possible options for conducting the remedial investigation, but the NCP does not detail the minimum steps that must be taken before an area of concern can be considered to have been adequately evaluated.

The Department is proposing to readopt several amendments to the Technical Requirements that differentiate requirements for a site that is being remediated with an LSRP from sites that are being remediated without an LSRP, and to establish regulatory timeframes for the completion and submission of the receptor evaluation, and the submission of a preliminary assessment/site investigation report. As discussed in the Federal Standards Analysis for the ARRCs rules above, the Department has determined that the rules that establish the LSRP program do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required. However, the establishment of regulatory timeframes for the completion of certain remediation work is more stringent than equivalent Federal programs. Like the Federal remediation programs, the Department allowed the remediation of contaminated sites to be

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

conducted on site specific schedules. The Department has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. As described in the section concerning the DPOHS rules above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of an LSRP will increase or decrease the cost of the remediation because no meaningful information is available yet regarding the cost of using an LSRP. However, the Department believes that there will be an overall cost savings associated with the timeframes. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated, which often adds to the overall cost of remediation. If the remediation of contaminated sites is completed in a timelier manner, such sites can be put to better use and often may generate more taxes for local and state government.

The Department is proposing to readopt with amendment the requirements for the person responsible for conducting remediation to submit information on reporting forms or submit technical reports with cover forms that will be provided by the Department. Because there are no equivalent requirements for the Federal remediation programs, this is considered a more stringent requirement. The Department has developed these forms as a part of the LSRP program and will allow the Department to more quickly and efficiently enter information about the person that is conducting remediation, and technical and administrative information about contaminated sites into its databases. The use of forms will help ensure that technical reports are delivered to the proper section within the Site Remediation Program so that they can be reviewed as effectively as possible. Again, as described above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of an LSRP will increase or decrease the cost of the remediation because no meaningful information is available yet regarding the cost of using an LSRP.

The Department is working toward the submission of the majority of site remediation related information electronically so that the Site Remediation Program can be run as efficiently

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

as possible and so that that same information can be easily shared with the public, Federal and local governments and any other interested person.

Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38

The Highlands Act and Planning Act (Highlands Act) delineates a contiguous area in the northwest portion of the State of New Jersey as the "Highlands Region" based on common physical and geographic features. It further divides the Region into two parts: the preservation area and the planning area. The Highlands Act mandates that the Department's rules provide enhanced environmental standards for development in the preservation area to protect its important water, ecological and cultural resources. By inference, the planning area is deemed to have fewer critical resources and may be more suitable for development.

The enhanced standards in the preservation area apply to all aspects of potential development. They include strict limitations on obtaining new sources of potable water and constructing new wastewater facilities, and preclude development in areas containing statutorily-identified, environmentally sensitive features. Further, the Highlands Act rules require a comprehensive analysis of the environmental impact of all project components.

A comprehensive regional approach to regulation is not common in Federal environmental regulation. The Federal Environmental Protection Agency (EPA) establishes one set of standards nationwide and then requires individual states to establish their own, comparable standards. States often retain the ability to devise more stringent or regional standards if appropriate. There is no requirement to apply all Federal standards to a single site in a comprehensive manner. That is, certain aspects of a proposed development may comply with a standard and be approved while other aspects may not comply and may be denied. There are no comprehensive Federal standards that apply specifically to the Highlands Region like the State rules proposed for readoption herein. Therefore, there is no basis for comparison between these rules in their entirety and any one specific Federal regulation. While some of the individual standards comprising a Highlands preservation area approval do have comparable Federal

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

regulations, the Department has determined that the Highlands Act Rules proposed for readoption with amendments do not amend any provision that has a comparable Federal Regulation. No further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Rules for the Review Zone of the Delaware and Raritan Canal State Park, N.J.A.C. 7:45

There are no current, analogous Federal requirements for the regulation of a State Park as a recreation area, source of potable water and as an historic district; however, the Federal Clean Water Act does concern stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act, 33 U.S.C. §§1251 et seq., requires permits under Section 402 of that Act (33 U.S.C. §1342) for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the NJPDES rules, N.J.A.C. 7:14A, rather than in Rules for the Review Zone of the Delaware and Raritan Canal State Park. Accordingly, the within rules do not conflict with, and are not more stringent than, the Federal Clean Water Act. Therefore, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

Jobs Impact

The rules proposed for readoption with amendments may have both positive and negative impacts on jobs in New Jersey. Implementation of the Interim Rules has required certain individuals to obtain the services of an LSRP. This has created a demand for more people who are licensed to remediate contaminated sites. In addition to LSRPs, the remediation of contaminated sites requires the hiring of people skilled in fields such as laboratory analysis and environmental technology. However, if an environmental consultant does not meet the qualifications to become an LSRP, the consultant's job prospects may be adversely affected. However, a non-LSRP environmental consultant may continue to consult for his or her clients, as long as that person does not provide any certifications that must be provided only by an LSRP.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has determined that the rules proposed for readoption with amendments impact State agriculture only when a discharge occurs on a farm. The presence of leaking underground storage tanks and storage areas for pesticides and fertilizers are sources of contamination on some farms. A discharge of a hazardous substance at a farm has the same potential to harm human health and the environment as a discharge at any other type of site, and thus must be remediated in accordance with all environmental statutes and rules. Accordingly, this proposed readoption with amendments may have an impact on the agricultural community in New Jersey, to the extent that a farmer is required to remediate the contamination from a source on his or her farm. However, this impact would be the same as the impact to any small business that is a Spill Act responsible party. See the Regulatory Flexibility Analysis for an analysis of the impact of the proposed readoption on small businesses.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and employ fewer than 100 full time employees. The rules proposed for readoption with amendments apply to any party remediating a contaminated site, including owners and operators of small businesses, and therefore, these businesses will be affected by these rules. Examples of small businesses to which the rules apply include independent gasoline service stations, dry cleaners, and consulting firms that employ LSRPs.

The various compliance requirements and associated costs are discussed in the summary, Economic Impact and Federal Standards Analysis above.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

If a party initiated remediation on or after November 4, 2009, the ARRCS rules at N.J.A.C. 7:26C-2.4 require that party to hire an LSRP to remediate the site. This requirement applies uniformly to both small and large businesses. The cost of hiring the LSRP can range from approximately \$145 to \$200 per hour. The number of hours that an LSRP will work on a case also varies, depending on the complexity of the remediation. In addition, parties remediating sites pursuant to the ARRCS rules are required to pay remediation fees and/or Department oversight costs pursuant to N.J.A.C. 7:26C-4. These costs range from \$450 for a site with one area of concern, such as a discharge from an underground storage tank system with only soil contamination, to over \$10,000 for a site with several areas of concern and ground water contamination.

The record retention provisions of the ARRCS rules at N.J.A.C. 7:26C-2.5 apply to large industries and small businesses alike. These provisions require the person responsible for conducting the remediation to maintain and preserve data and information concerning remediation of a contaminated site such as technical records, and raw sampling and monitoring data. In addition, the rules require the person to submit three electronic copies of all records required to be maintained to the Department at the time of the issuance of a final remediation document indicating that the site has been remediated in compliance with applicable environmental rules and statutes. Since a discharge of a hazardous substance endangers public health, safety and welfare, and cannot be correlated to the size of the business, there is no differentiation in the requirements by the size of a business, and the rules do not exempt small businesses from all or part of the reporting, recordkeeping or other compliance requirements.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

rulemaking to determine the nature and extent of the impact of the rules proposed for readoption with amendments on smart growth and the implementation of the State Plan.

The rules proposed for readoption with amendments support the principles of smart growth by promoting efficient and timely cleanups of contaminated sites by replacing Department oversight of remediation with private sector remediation services. The elimination of Department oversight and preapproval prior to the cleanup proceeding will eliminate the delays that the parties responsible for conducting remediation have historically experienced and will serve to facilitate smart growth initiatives. Finally, the timeframes included in the rules will serve to hasten cleanup, returning sites to beneficial reuse more quickly.

While the rules proposed for readoption with amendments do not negatively impact the achievement of smart growth, there is one area in which the rules involve land use policies. The rules reflect statutory requirements at N.J.S.A. 58:10B-12g that direct the Department to require either the achievement of an unrestricted use remedial action or the implementation of an acceptable presumptive remedy at sites where the property will be used for residential development or as a school or childcare center.

Department records indicate that contaminated sites are generally concentrated in urban areas, a legacy of the State's industrial history. These rules are consistent with the goals and objectives of the State Plan, which focuses on capitalizing on urban infrastructure to enhance "livability" (such as easing transportation woes related to suburban sprawl and conservation of farmland, forests and environmentally sensitive areas). Hence, the redevelopment of contaminated sites in urban areas is key to success in implementing the State Plan. The rules proposed for readoption with amendments aid this effort in two ways. First, the rules establish clear remediation goals for when a site's end use will be residential, or a school or childcare center. Second, the rules reference the Department's Presumptive Remedy Guidance as a means to achieve a protective remedy, acceptable even when implemented without the Department's involvement, in situations where the site will be used for residential, or schools or childcare centers. In addition, the State Plan proffers concepts of social equity and environmental justice

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

as aspects of sustainability. As housing and schools will undoubtedly occupy redeveloped contaminated sites, the proposed rules support these goals by requiring the implementation of a remedy that meets the unrestricted use standards or implementation of a protective presumptive remedy. Parties who, consistent with the State Plan, develop former contaminated sites for use as housing, schools and childcare centers are required by these rules to utilize the most protective remedies.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated this rulemaking to determine the impact, if any, on the affordability of housing. The Department has determined that the rules will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. While the requirement to implement an unrestricted remedy or use of a presumptive remedy may slightly increase the cost of remediation at a site where the end-use will be housing, cost savings will be realized by the elimination of Department oversight and the availability of guidance for the design of the presumptive remedy.

Smart Growth Development Impact

Pursuant to N.J.S.A. 52:14B-4(a), as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated this rulemaking to determine the impact, if any, on the availability of affordable housing and on new construction in Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. As indicated in the Housing Affordability Impact statement above, the scope of the rules proposed for readoption is minimal in terms of their relationship to housing. While the requirement to implement an unrestricted remedy or use of a presumptive remedy may slightly increase the cost of remediation at a site where the end-use will be housing, cost savings will be realized by the elimination of Department oversight and the availability of guidance for the design of the presumptive remedy. Moreover, the Department does not anticipate that these rules will provide

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

either an incentive or a disincentive to remediate sites to an unrestricted use standard beyond the incentives to so remediate under the existing rules. Lastly, the rules do not regulate the production of housing;. Accordingly, there is an extreme unlikelihood that the rules will evoke a change in housing production, including new construction within Planning areas 1 or 2, or within designated centers.

Full text of the special adopted amendments and new rules may be found in the December 7, 2009 issue of the New Jersey Register at 41 N.J.R. 4467(a), as corrected through the three notices of administrative correction published in the April 19, 2010 New Jersey Register at 42 N.J.R. 778(a), the August 16, 2010 New Jersey Register at 42 N.J.R. 1862(a) and the November 1, 2010 New Jersey Register at 42 N.J.R. 2620(a), and as amended effective February 22, 2011 as proposed in the October 4, 2010 New Jersey Register at 42 N.J.R. 2297(a) and adopted in the February 22, 2011 New Jersey Register at 43 N.J.R. 389(c). Copies of these notices are posted on the Department's website at <http://www.nj.gov/dep/rules> and may be obtained from the Office of Administrative Law, PO Box 049, Trenton, NJ 08625-0049, (609) 689-4015.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 14B. UNDERGROUND STORAGE TANKS

SUBCHAPTER 8. REMEDIATION ACTIVITIES

7:14B-8.3 Reporting requirements

(a) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) For all confirmed releases from an underground storage tank subject to regulation at 40 CFR Part 280, the owner or operator shall report to the Department the source and cause of the confirmed release on a [Confirmed Discharge Notification] form [available from] , **found on** the [Department] **Department's website** at <http://www.nj.gov/dep/srp/srra/forms> in accordance with the timeframe applicable for submittal of the site investigation or remedial investigation report, regardless of whether the remediation is being conducted pursuant to N.J.A.C. 7:14B-1.8(a)1 or 2.

(c)-(l) (No change.)

CHAPTER 7:26B. INDUSTRIAL SITE RECOVERY ACT RULES

7:26B-1.8 No further action letter and ISRA authorization

(a) (No change.)

(b) An owner or operator is authorized to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, without, or prior to the issuance of, a final remediation document in the following circumstances:

1. – 6. (No change.)

6. The Department's approval of a [deminimus] **de minimis** quantity exemption pursuant to N.J.A.C. 7:26B-5.9.

7:26B-3.3 General information notice

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), on a [General Information Notice] form [available from], **found on** the [Department] **Department's website** at <http://www.nj.gov/dep/srp/srra/forms>, which is certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided on the form, which includes the following:

1. - 14. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) - (d) (No change.)

7:26B-4.3 Remediation certification

(a) An owner or operator of an industrial establishment who wishes to transfer ownership or operations of the industrial establishment prior to completion of all applicable requirements of ISRA and this chapter shall submit to the Department a completed [Remediation Certification] form [available from the Department on its] **found on the Department's** website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. - 4. (No change.)

7:26B-5.1 Expedited review

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) [and] **for which** the Department received the General Information Notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.

(b) – (d) (No change.)

CHAPTER 26C. ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 2. OBLIGATIONS OF THE PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION OF A CONTAMINATED SITE

7:26C-2.3 Requirements for a person who initiated remediation prior to November 4, 2009

(a) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) Any person who initiated remediation prior to November 4, 2009 may elect to perform the remediation pursuant to N.J.A.C. 7:26C-2.4:

1. By submitting a request to the Department, on a [Request to Proceed Without Department Pre-Approvals] form [available from], **found on** the [Department on its] **Department's** website at www.nj.gov/dep/srp/srra/forms, and the Department determines that all outstanding fees and costs not contested have been paid and approves that request;

2. - 3. (No change.)

7:26C-2.4 Requirements for a person who initiated remediation on or after November 4, 2009

(a) Any person who initiates remediation on or after November 4, 2009 shall:

1. (No change.)

2. Notify the Department, on a [Licensed Site Remediation Professional Notification of Retention or Dismissal] form [available from the Department on its], **found on the Department's** website at www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation. The person shall submit this notification within 45 days after the date:

i. - iii. (No change.)

3. - 9. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.2 Annual remediation fee for a person initiating remediation on or after November 4, 2009

(a) Except as provided in (h) below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4 shall submit the applicable annual remediation fee to the Department pursuant to this section.

1. - 3. (No change.)

4. The person responsible for conducting the remediation shall submit the first annual remediation fee and a completed [Annual Remediation Fee Reporting] form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the address noted on the form upon the earliest of the following:

i. - iv. (No change.)

5. (No change.)

(b) (No change.)

(c) The person responsible for conducting the remediation that receives an RAO for a contaminated area of concern may submit a new [Annual Remediation Fee Reporting] form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the address noted on the form**, 90 days prior to the annual remediation fee anniversary date.

(d) The person responsible for conducting the remediation that discovers an additional contaminated area of concern shall submit a new [Annual Remediation Fee Reporting] form

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

found on the Department's website at www.nj.gov/dep/srp/srra/forms 90 days prior to the annual remediation fee anniversary date.

(e) - (h) (No change.)

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE

7:26C-5.8 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall complete and submit to the Department a [Self-guarantee Remediation Funding Source Form available]**form, found** on the Department's website at www.nj.gov/dep/srp/srra/forms that contains the following information:

(1) - (5) (No change.)

(b) - (d) (No change.)

7:26C-5.10 Remediation cost review

(a) The person responsible for conducting the remediation shall submit to the Department 365 days after the date that that person is required to submit a remediation funding source pursuant to N.J.A.C. 7:26C-5.2(h), and annually thereafter on the same calendar day, a detailed cost review on a [Remediation Cost Review Form available]**form, found** on the Department's website at www.nj.gov/dep/srp/srra/forms, that is certified by the person responsible for conducting the remediation and by the licensed site remediation professional if applicable, that includes the following:

1. - 3. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26C-5.11 Changes in the remediation funding source amount or type and return of the remediation funding source

(a) A person required to establish a remediation funding source pursuant to this subchapter who wishes to decrease the amount of the remediation funding source shall submit a [Remediation Cost Review Form, available] **form, found** on the Department's website at www.nj.gov/dep/srp/srra/forms, that provides a revised estimate of the cost of the remediation and that indicates why that cost is less than previously estimated.

(b) The person required to establish a remediation funding source pursuant to this subchapter may reduce the amount of the remediation funding source to the amount of the estimate submitted to the Department pursuant to (a) above upon either:

1. (No change.)

2. Submission to the Department of a [Remediation Cost Review Form] **form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, pursuant to (a) above, but only if that submission includes a certification by the licensed site remediation professional justifying the revised cost estimate.

(c) - (d) (No change.)

(e) The person responsible for conducting remediation that is required to establish a remediation funding source pursuant to this subchapter may at any time submit a written request to the Department on a [Remediation Cost Review Form, available] **form, found** on the Department's website at www.nj.gov/dep/srp/srra/forms, to substitute another type of remediation funding source specified in this subchapter for the existing remediation funding source. The Department shall return the original remediation funding source documents after such proof is provided that an acceptable alternate mechanism has been established.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(f) (No change.)

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.2 Response action outcomes

(a) (No change.)

(b) The licensed site remediation professional shall:

1. (No change.)

2. File each response action outcome with the Department:

i. With a [Response Action Outcome] form [available from]**found, on the** [Department]**Department's website** at www.nj.gov/dep/srp/srra/forms, when the licensed site remediation professional issues the response action outcome to the person who has conducted the remediation; and

ii. (No change.)

(c) - (g) (No change.)

SUBCHAPTER 7. REMEDIAL ACTION PERMITS

7:26C-7.2 Permittees of remedial action permits

(a) Each of the following persons shall comply with this subchapter, including any applicable remedial action permit the Department issues pursuant to this subchapter:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

1. The permittees for a remedial action permit include, without limitation, each of the following statutory permittees:

i. (No change.)

ii. Each owner and operator of an industrial establishment who is liable for the remediation pursuant to Industrial Site [Remediation]**Recovery** Act, N.J.S.A. 13:1K-6 et seq.; and

iii. (No change.)

2. (No change.)

(b) If [there is] more than one person **is** responsible for compliance with a remedial action permit pursuant to (a) above, each such person, as a co-permittee, is jointly and severally liable for:

1. – 4. (No change.)

7:26C-7.3 Remedial action permits

(a) The Department will issue a remedial action permit pursuant to this subchapter whenever the Department receives, after January 15, 2010, any of the following as part of a remedial action:

1. A copy of a deed notice stamped as being properly recorded and a completed [Soil Remedial Permit Application Form available from the Department]**form, found on the Department's website** at www.nj.gov/dep/srp/srra/forms; and

2. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26C-7.8 Transfer of a remedial action permit

(a) (No change.)

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit by providing the following information on [the Remedial Action Permit Form] **a form** appropriate for the specific remedial action permit, [available from the Department]**found on the Department's website** at www.nj.gov/dep/srp/srra/forms:

1. - 5. (No change.)

(c) (No change.)

7:26C-7.9 Modification of specific requirements in a remedial action permit

(a) (No change.)

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after any of the following, by submitting a completed [Remedial Action Permit Form] **form** appropriate for the specific remedial action permit, [available from the Department on its]**found on the Department's website** at www.nj.gov/dep/srp/srra/forms, which includes the following:

1. - 5. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(c) To request modification of any remedial action permit pursuant to (b) above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit modification to the Department as follows:

1. The [Remedial Action Permit Form] **form** appropriate for the specific remedial action permit, [available from the Department on its] **found on the Department's** website at www.nj.gov/dep/srp/srra/forms, which includes:

i.-ii. (No change.)

2. - 3. (No change.)

7:26C-7.10 Termination of a remedial action permit

(a) (No change.)

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the [Remedial Action Permit Form] **form** appropriate for the specific remedial action permit, [available from] **found on** the [Department on its] **Department's** website at www.nj.gov/dep/srp/srra/forms, the following:

1. - 6. (No change.)

(c) (No change.)

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

(a) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
...				
<u>Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C</u>				
...				
4 Fees and Oversight Costs				
...				
Failure to submit a new [Annual Remediation Fee Reporting Form]form within the required timeframe prior to the annual remediation fee anniversary date, when additional contaminated areas of concern/media are discovered.	7:26C-4.2(d)	NM		\$4,000
...				
<u>Technical Requirements for Site Remediation N.J.A.C. 7:26E</u>				
...				
3 Preliminary Assessment and Site Investigation				
...				

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
<p>Failure of a person who is required to submit an Industrial Site [Remediation]Recovery Act [general information notice] General Information Notice, pursuant to N.J.A.C. 7:26B-3 within the required timeframe.</p> <p>...</p>	7:26E-3.1(e)	NM		\$8,000
<p>6 Remedial Action</p> <p>...</p>				
<p>Failure to include a completed [classification exception area (CEA)/Well Restriction Area (WRA) Fact Sheet Form] fact sheet form as part of an application for a ground water remedial action permit.</p> <p>...</p>	7:26E-6.3(h)	M	30	\$4,000
<p>8 Engineering and Institutional Controls</p> <p>...</p>				
<p>Failure to submit a completed [CEA/Well Restriction Area (WRA) Fact Sheet Form] fact sheet form, and the required information.</p> <p>...</p>	7:26E-8.3(b)	M	30	\$4,000

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to prepare a biennial certification report and/or [a remedial action protectiveness certification] applicable form that includes the information listed at N.J.A.C. 7:26E-8.5(b)1 through 10.	7:26E-8.5(b)	NM		\$8,000
...				

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.5 Application for technical assistance grant

(a) An applicant for a technical assistance grant shall submit an application, on a [Technical Assistance Grant Form available from the Department]**form, found on the Department’s website** at www.nj.gov/dep/srp/srra/community/, which includes the following information:

1. - 3. (No change.)

(b) - (c) (No change.)

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

7:26C-11.2 Application for loans and grants

(a) A person or public entity as defined pursuant to N.J.S.A. 58:10B-1 may apply for financial assistance from the Hazardous Discharge Site Remediation Fund by submitting a completed [Hazardous Discharge Site Remediation Fund Application Form available from the Department]**form, found on the Department’s website** at www.nj.gov/dep/srp/srra/forms and by following the Hazardous Discharge Site Remediation Fund Application Guidance.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

CHAPTER 26D. REMEDIATION STANDARDS

7:26D-7.4. Alternative soil remediation standards application and approval process

(a) The person responsible for conducting the remediation may seek Department approval for an alternative soil remediation standard based on the criteria in N.J.A.C. 7:26D-7.3(a) and (b) by submitting the completed application on a [Alternative Soil Remediation Standard Application] form [provided by the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, in accordance with (b) below.

(b) – (c) (No change.)

CHAPTER 26E. TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.4 Notification and public outreach

(a) - (c) (No change.)

(d) The person responsible for conducting the remediation shall notify the Department in writing, on [the Confirmed Discharge Notification] a form [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, within five days after the occurrence of any of the following events:

1. - 2. (No change.)

(e) The person responsible for conducting the remediation shall notify the Department prior to conducting potable well sampling, and indoor air or sub-slab soil gas sampling, pursuant to N.J.A.C. 7:26E-1.17 and 1.18, respectively. The person shall notify the Department, on a

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

[Potable Well/Indoor Air Sampling Notification] form [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, at the time that that person contacts property owners or tenants for the purpose of gaining access to conduct sampling, but no later than seven days prior to the scheduled sampling date.

(f) - (h) (No change.)

(i) If the person responsible for conducting the remediation chooses to provide public notice by posting a sign, the following shall apply:

1. - 4. (No change.)

5. Within 14 days after the sign is posted, the person responsible for conducting the remediation shall submit the site information required at (j)4 below, and a photograph of the sign showing its location and content in both electronic/digital format and in hard copy with a [Public Notification and Outreach] form [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms** to:

i. - iv. (No change.)

6. (No change.)

(j) - (s) (No change.)

SUBCHAPTER 2. QUALITY ASSURANCE AFOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(a) The person responsible for conducting the remediation shall ensure that the following quality assurance procedures are followed for all sampling and laboratory analysis activities.

1. Laboratories performing analyses shall conform to the following:

i. through vi. (No change.)

vii. For any field analytical method, the laboratory or individual conducting the analysis shall be certified for the parameter or category of parameters for field analytical methods for which the Department provides certification. If the Department does not provide certification for a field analytical method, the laboratory or person shall obtain a site-specific certification for the field analytical method from [by] the Department's Office of Quality Assurance;

2. through 18. (No change.)

(b) through (e) (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.1 Preliminary Assessments

(a) - (d) (No change.)

(e) If no potentially contaminated areas of concern are identified during the preliminary assessment, no further remediation is required at the site except that the person who is required to submit an Industrial Site [Remediation]**Recovery** Act [general information notice] **General Information Notice** pursuant to N.J.A.C. 7:26B-3 shall submit a preliminary assessment report with a [preliminary assessment] form [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**:

1. - 2. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26E-3.13 Site investigation report

(a) - (c) (No change.)

(d) The site investigation report shall also include the following legible maps and diagrams:

1. - 4. (No change.)

5. A [groundwater] **ground water** elevation contour map and a Contour Map Reporting Form set forth in Appendix G, incorporated herein by reference, for each aquifer for which [groundwater] **ground water** flow was determined. Each map shall indicate the direction of [groundwater] **ground water** flow relative to site features, and include a north arrow and bar scale.

(e) - (h) (No change.)

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.6 Remedial investigation of landfills and historic fill material

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of a landfill as follows:

1. - 4. (No change.)

5. Conduct ground water and leachate sampling pursuant to N.J.A.C. 7:26E-3.7 and as follows:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

i. Determine ground water flow direction and submit [a Ground Water Contour Map Reporting] a form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**;

ii.-vii. (No change.)

(b) (No change.)

7:26E-4.8 Remedial investigation report

(a) The remedial investigation report shall comply with all requirements in N.J.A.C. 7:26E-3.13 (site investigation report) and in addition shall present and discuss any additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the remedial investigation workplan as outlined in N.J.A.C. 7:26E-4.2. The remedial investigation report shall be accompanied by a [Remedial Investigation Report] form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, and be presented in a format that corresponds to the outline of this section.

(b) - (c) (No change.)

(d) - (e) (No change.)

(f) The person responsible for conducting the remediation shall submit an updated receptor evaluation pursuant to N.J.A.C. 7:26E-1.15 on a [Receptor Evaluation] form [provided by the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**.

(g) (No change.)

SUBCHAPTER 5. REMEDIAL ACTION SELECTION

7:26E-5.1 Remedial action selection

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(a) through (h) (No change.)

(i) If new construction of, or a change in use to, a residence, a school, or child care center will occur at a site that is undergoing remediation, under the circumstances listed in (i)1 below, the person responsible for conducting the remediation shall select a remedial action from the list of remedial actions in (i)2 below.

1. (No change.)

2. List of remedial actions[;]:

i. through iii. (No change.)

(j) through (k) (No change.)

7:26E-5.2 Remedial action selection report

(a) The person responsible for conducting the remediation shall prepare and submit a remedial action selection report with the remedial action workplan and [the Remedial Action Workplan] a form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, except as provided in (c) below.

(b) - (c) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

SUBCHAPTER 6. REMEDIAL ACTION

7:26E-6.2 Remedial action workplan

(a) The person responsible for conducting the remediation shall prepare and submit a remedial action workplan in a format that corresponds directly to the outline of this section with a [Remedial Action Workplan] form [available from the Department with a Remedial Action Workplan form], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**. The workplan shall include:

1. - 19. (No change.)

(b) - (d) (No change.)

7:26E-6.3 Specific remedial action requirements

(a) - (g) (No change.)

(h) The person responsible for conducting the remediation subject to (e) and (g) above shall apply for a ground water remedial action permit by submitting the following to the Department with the monitoring plan pursuant to (e) and (g) above:

1. A completed [Ground Water Remedial Action Permit] form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**;

2. A completed [CEA/Well Restriction Area (WRA) Permit Fact Sheet] **fact sheet** form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**; and

3. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26E-6.7 Remedial action report

(a) The person responsible for conducting the remediation shall prepare a remedial action report and **shall submit the remedial action report** [with a Remedial Action Report form,] in a format that corresponds directly to the outline of this section, **and with a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, when the remedial action is completed, except as noted in (e) below.

(b) The person responsible for conducting the remediation shall include the following in the remedial action report:

1. - 6. (No change.)

7. A copy of a deed notice, stamped "Filed" if applicable pursuant to N.J.A.C. 7:26E-8.2(d), along with a [Remedial Action Permit] form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms** and a remedial action permit application fee pursuant to N.J.A.C. 7:26C-4.4; and

8. (No change.)

(c) - (e) (No change.)

(f) The person responsible for conducting the remediation shall submit an updated receptor evaluation pursuant to N.J.A.C. 7:26E-1.15(d) on a [Receptor Evaluation] form [provided by the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**.

(g) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

SUBCHAPTER 7. PERMIT IDENTIFICATION, PERMIT APPLICATION SCHEDULE AND
DISCHARGE TO GROUND WATER PROPOSALS

7:26E-7.2 Requirements for discharge to ground water proposals

(a) (No change.)

(b) The person responsible for conducting the remediation shall submit a DGW proposal with a form [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms** to the address provided on the form. The person shall include a detailed description of the following with the DGW proposal:

1. - 9. (No change.)

(c) Except as provided in (f) below, the person responsible for conducting the remediation shall:

1. Prior to publication of the public notice, submit a draft public notice, using the model in chapter Appendix H, to the address provided on the form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, for the Department's approval;

2. - 4. (No change.)

(d) - (f) (No change.)

SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS

7:26E-8.3 Ground water classification exception areas

(a) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) The person responsible for conducting the remediation shall submit to the Department a completed [CEA/Well Restriction Area (WRA) Permit Fact Sheet] **fact sheet form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, and the following information:

1. - 2. (No change.)

3. The following maps and a cross section, as paper copies and in the electronic formats indicated in this paragraph, consistent with Department GIS guidance found on the Department's web site, using data for the most mobile and persistent contaminants from the most recent 24 months:

i. - iv. (No change.)

v. A map in both electronic pdf format and GIS compatible format, separate or combined with a map required pursuant to (b)3iii above, showing the location of any area(s) of concern that caused the ground water contamination and the location and name/number of each downgradient monitoring well(s) closest to the area(s) of concern. The North American Industry Classification System (NAICS) code for the operations that caused the contamination, if known, shall be indicated on the [CEA/WRA Fact Sheet Form] **fact sheet form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, and the attribute table for the GIS map;

4. (No change.)

5. Notification, using the [CEA/WRA Fact Sheet Form] **fact sheet form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, that certified letters, return receipt requested, have been sent informing the following persons of the need to establish the ground water CEA and a list of the names and addresses of those persons, based on the proposed boundaries of the CEA:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

i. - vii. (No change.)

(c) - (e) (No change.)

7:26E-8.4 Monitoring, maintenance, and biennial certification - who has obligation and when

(a) - (b) (No change.)

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control as part of a remediation shall submit to the Department a certification, pursuant to this section and consistent with N.J.A.C. 7:26E-1.5 on a [Remedial Action Protectiveness Certification] form [provided by the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, according to the following schedule:

1. - 3. (No change.)

(d) - (e) (No change.)

7:26E-8.5 Monitoring, maintenance, and biennial certification--requirements for deed notices and declarations of environmental restrictions

(a) (No change.)

(b) The persons responsible for monitoring the protectiveness of a remedial action shall prepare a biennial certification report along with a [Remedial Action Protectiveness Certification] form, [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, which includes the following information:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

1. - 10. (No change.)

(c) The persons responsible for monitoring the protectiveness of a remedial action shall:

1. (No change.)

2. Include with the certification a written monitoring report pursuant to (b) above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department with a [Remedial Action Protectiveness Certification] form [available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**; and

3. (No change.)

(d) (No change.)

7:26E-8.6 Monitoring, maintenance, and biennial certification--specific requirements for ground water classification exception areas

(a) - (b) (No change.)

(c) The persons responsible for evaluating the protectiveness of a remedial action that includes a ground water classification exception area shall prepare a [Biennial Certification Report using the] form[, available from the Department], **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, that includes the following:

1. - 14. (No change.)

(d) (No change.)

APPENDIX H

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 2, 2011 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

MODEL PUBLIC NOTICE FOR A DGW PROPOSAL

* * *

Brief description of the proposed discharge: [Include a description of the site including the remedial action, type of discharge (e.g., treated ground water or in situ bioremediation), discharge unit (e.g., injection well, overland flow, lagoon, etc.) and treatment proposed and the name of and description of the formation receiving the {discharger} **discharge**]. A copy of this public notice {have} **has** been sent to the Municipal Clerk and designated local health official for [Municipality, county or region].

* * *

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of this proposed readoption with amendments. I hereby authorize the proposal of this readoption with amendments.

Date: _____

Bob Martin, Commissioner
Department of Environmental Protection