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## **ENVIRONMENTAL PROTECTION**

### **SITE REMEDIATION PROGRAM**

#### **Notification of the Remediation of Contaminated Sites and Public Outreach**

Proposed Amendments: N.J.A.C. 7:26C-10.4 and 7:26E-1.4, 1.11, 3.7, 4.1, 5.1, 8.2

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:1D-1 et seq., 13:1D-9, 13:1D-125 through 133; 13:1E-1 et seq., 13:1K-6 et seq, 58:10-23.11 et seq., 58:10-23.11a et seq., 58:10A-1 et seq; 58:10A-21 et seq; 58:10B-1 et seq;

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

DEP Docket No:

Proposal Number: PRN 2007-\_\_\_\_\_

A public hearing concerning this proposal will be held on

Date: September 7, 2007

Time: 10 AM

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, NJ 08625

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number: \_\_\_\_\_

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Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street  
P.O. Box 402  
Trenton, New Jersey 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone presenting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. 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 document can be viewed or downloaded from the Department's web page at [www.state.nj.us/dep/srp/regs](http://www.state.nj.us/dep/srp/regs). The agency proposal follows.

### **Summary**

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

The Department proposes amendments to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.4 (Technical Rules) in order to establish a more proactive approach to public notice and outreach during the remediation of contaminated sites. These proposed amendments reflect both the recommendations of the Public Participation Task Force convened by the Department in Spring 2005 to recommend rule amendments on this topic and the recent amendments to the Brownfield and Contaminated Site Remediation Act (the Brownfield Act) at N.J.S.A. 58:10B-24.1-24.5 that specifically address public participation.

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In the Spring of 2005, the Department's Public Participation Task Force hosted a series of roundtable meetings that included members of the environmental justice community, environmental and civic organizations, health officers and local officials, and industry representatives and various associations. The purpose of the roundtable meetings was to gather public input on improving public participation in the remediation of contaminated sites in New Jersey. The task force concluded that early, two-way communication with residents, business owners and local officials affected by remediation activities can be critical to a successful investigation and cleanup. This may be especially true when future uses of the property being remediated include public recreation or residential development. With an effective outreach strategy, the parties responsible for the remediation can anticipate the needs and concerns of the community and address them proactively. Effective outreach creates a forum to share information and raise and address community concerns about the site early in the remediation process. This effort can save time and money and build critical community support.

In September 2005, the Department posted a draft of the Task Force's proposed recommendations on its web site and invited public comment. The Department received numerous comments from a wide variety of interested parties. In the interim, the Department posted "Encouraging Public Notification in Site Remediation" on the Site Remediation and Waste Management (SRWM) web site to provide guidance and to encourage parties to incorporate public outreach as part of their current remediation work. See <http://www.nj.gov/dep/srp/community/guidance/pnsrguide.htm>. Generally, environmental groups urged the Department to require notification earlier in the remediation process and allow the public to have input into the remedy selection process. Industry groups and environmental consulting firms conveyed their concerns that notification requirements would be costly and would slow down the remediation process.

In the meantime, on August 2, 2006, the Legislature amended the Brownfield Act by adding N.J.S.A. 58:10B-24.1-24.5. These amendments require the person responsible for

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conducting remediation of a contaminated site to provide notification under certain circumstances. The amendments require that, upon initiation of the remedial action phase of the remediation of a contaminated site, any person who is responsible for conducting a remediation of a contaminated site provide written notification describing the activities that are to take place at the contaminated site to the clerk of the municipality where the site is located. Note that remediation projects involving leaking residential underground storage tanks used to store heating oil for on-site consumption in a one-to-four family residential building or remediation projects involving an emergency response action are specifically exempted from this notice requirement. See N.J.S.A. 58:10B-24.1a and b.

The amendments further provide that, upon request of a municipality, any person who is responsible for conducting a remediation of a contaminated site shall submit a copy of a remedial action workplan and any updates or status reports pursuant to the Industrial Site Recovery Act, (N.J.S.A. 13:1K-6 et seq.), the Brownfield Act, or the Spill Compensation and Control Act, (N.J.S.A. 58:10-23.11 et seq.) to the clerk of the municipality wherein the contaminated site is located at the same time as the workplan is submitted to the Department. See N.J.S.A. 58:10B-24.2.

The amendments direct the Department to undertake rulemaking pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to establish that a person who is responsible for conducting the remediation of a contaminated site be responsible for notifying the public of that remediation. See N.J.S.A. 58:10B-24.3a. The amendments specify that the notification rules shall require any person who is responsible for conducting a remediation of a contaminated site to provide written notification to any local property owners and tenants who reside within 200 feet of the contaminated site.

The amendments further direct that “the notification shall summarize site conditions and provide information about actions being taken to remediate the site and may require written notification or the posting of a sign visible to the public which shall be located on the boundaries of the contaminated site.” See N.J.S.A. 58:10B-24.3b. The Department interprets this phrase to

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require the person who is responsible for conducting the remediation to either send written notification to any local property owners and tenants within 200 feet of the contaminated site or to post a sign that is visible to the public. The Department understands that the sponsor of the amendments intends to propose further amendments to clarify these specific notification requirements and that the Department's interpretation comports with the anticipated clarification of the legislation.

The proposed notification requirements include the submittal of a sensitive population and resource checklist and providing public notification by posting signs or by sending notification letters. Preparation and submission of the sensitive population and resource checklist and the posting of a sign are triggered by the initiation of field activities associated with the remedial investigation phase or the initiation of a single phase remediation. If the person responsible for conducting the remediation chooses to use notification letters to comply with the notification requirements, letters are required at the initiation of the remedial investigation phase, the initiation of the remedial action phase and every two years thereafter until the remediation is completed and documented with the Department's No Further Action with a Covenant Not to Sue letter.

Compliance with the notification requirements will be required, whether or not the remediation is being conducted with the Department's oversight, and whether or not it is being conducted voluntarily, consistent with the general requirement that anyone remediating a contaminated site in New Jersey is required to comply with the Technical Rules, N.J.A.C. 7:26E. If the person responsible for conducting the remediation seeks a No Further Action with a Covenant Not to Sue letter from the Department, documentation of compliance with the notification requirements will be required as part of remediation reports that are submitted for the Department's review. Failure to comply with the notification requirements will trigger penalties pursuant to the Oversight Rules, N.J.A.C. 7:26C.

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While helping increase public awareness of contaminated properties and their remediation, the proposed amendments do not affect the remedial action selection process for any site. This is because the Brownfield Act requires the person responsible for conducting a remediation to select the remedial action. The person conducting the remediation may elect to use residential use or nonresidential use remediation standards and may employ the use of institutional and/or engineering controls as part of the remedy. The Department oversees remediations to ensure that remediations are protective and conducted in compliance with the Department's remediation regulations.

The proposed amendments will not change the Department's current practices regarding the reporting of indoor air and potable well sample results to potentially impacted parties. The Department will continue to report these data directly to the owners and tenants of the properties that are sampled during the course of a remediation.

The proposed amendments represent the minimum technical requirements. If the Department determines that the proposed public outreach requirements would not fulfill a particular community's needs or expectations, then the Department may require additional notification, outreach or education on a site-specific basis.

## **Summary of Proposed Amendments**

### **Oversight Rules**

The Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C (Oversight Rules), among other things, set forth penalties for violations of the Technical Rules. As discussed more fully below, the Department proposes amending the Technical Rules at N.J.A.C. 7:26E-1.4, Notification, to establish new notification requirements.

Accordingly, the Department proposes deleting from the penalty table codified in the Oversight Rules at N.J.A.C. 7:26C-10.4(c) all violations and penalties of the Technical Rules that pertain to N.J.A.C. 7:26E-1.4 and replacing them with new violations and penalties that

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correspond to the proposed new Technical Rule amendments at N.J.A.C. 7:26E-1.4, discussed more fully below. The Department also proposes adding new entries to the penalty table for violations of proposed new N.J.A.C. 7:26E-1.11, also discussed more fully below, that replace the existing penalty for a violation of that section.

In August 2006, the Department adopted amendments to N.J.A.C. 7:26C-10.4, Civil administrative penalty determination, to reflect the requirements of the Grace Period Law, N.J.S.A. 13:1D-125 et seq. (See 37 N.J.R. 2923(a) (August 15, 2005) for the proposal and 38 N.J.R. 3821(a) (September 18, 2006) for the adoption.) The adopted rules established the framework for the implementation of the Grace Period Law for purposes of imposing penalties for violations of the regulations implemented by the Site Remediation program. Based upon the same criteria, the Department is proposing to amend the penalty provisions to designate violations of the proposed new rules as minor or non-minor and establish compliance grace periods for those violations identified as minor.

In applying the criteria, the Department has designated most of the violations listed in the proposed table at N.J.A.C. 7:26C-10.4(c)2 as minor. However, several violations do not qualify as minor and are therefore designated as non-minor. For example, the Department has designated as non-minor the violations of requirements under the Technical Rules to notify the Department's Environmental Action Hotline when contamination is identified that has been caused by a discharge that is not already known to the Department or the presence of immediate environmental concern (see definition at N.J.A.C. 7:26E-4.8) conditions pursuant to N.J.A.C. 7:26E-1.4(b)1 and 2. The Department also proposes designating as non-minor violations wherein the notification required by the Technical Rules at N.J.A.C. 7:26E-1.4 is not provided at all (see, for example N.J.A.C. 7:26E-1.4(g)). Violations related to the failure to provide notification undermine the program's goal to ensure that the public and local governments are informed about the remediation of contaminated sites in their communities.

However, where a person responsible for conducting the remediation provides notification that is deficient in some way, the person will be penalized for only the specific

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deficiencies, most of which qualify for grace period treatment. Accordingly, if a person who sends a notification letter pursuant to N.J.A.C. 7:26E-1.4 but, for example, sends the letter by other than certified mail, or sends a letter that does not contain all of the information required by N.J.A.C. 7:26E-1.4(k)5, the Department would afford a grace period to correct the violation.

### **Technical Rules**

The Technical Rules are codified at N.J.A.C. 7:26E. As mentioned above, existing notice requirements are codified at N.J.A.C. 7:26E-1.4. The Department is proposing to amend the section heading of N.J.A.C. 7:26E-1.4, Notification, to add “and Public Outreach” to reflect the proposed addition of new public outreach requirements.

N.J.A.C. 7:26E-1.4(a) requires the person responsible for conducting the remediation (other than remediation of areas of concern that consist of residential home heating oil underground storage tanks) to notify the Department and the municipal clerk of each municipality in which the site is located or both, under specified circumstances. N.J.A.C. 7:26E-1.4(a)1 requires that the Department be notified prior to the initiation of any sampling activities at a contaminated site where that site is not already known to the Department. N.J.A.C. 7:26E-1.4(a)2 requires that the municipal clerk of each municipality in which the site is located be notified 45 days prior to the submission of a remedial action selection report or the finalization of engineering design plans for the selected remedial action for sites where Department pre-approval is not required or sought. N.J.A.C. 7:26E-1.4(a)3 requires that the Department and the municipal clerk of each municipality in which the site is located be notified 45 calendar days prior to the implementation of the remedial action when Department pre-approval of the remedial action workplan is not required.

The Department proposes deleting N.J.A.C. 7:26E-1.4(a) in its entirety because the Department has found that this provision is frequently misinterpreted by the regulated community. Although N.J.A.C. 7:26E-1.4(a)1 only pertains to sampling at contaminated sites, the Department receives notice of sampling at sites that are not necessarily contaminated but are being sampled for other purposes, as well as sites being sampled as part of a remediation.

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Preliminary assessment sampling activities are conducted at hundreds of potentially contaminated sites across the State every day to determine whether a site is, in fact, contaminated. Additionally, the Department has evaluated the information submitted by the regulated community pursuant to N.J.A.C. 7:26E-1.4(a)2 and 3 and has discussed these requirements with municipal officials. As a result of these evaluations and discussions, the Department has determined that changes to these requirements are needed to provide local governments with more information about remediation activity at known contaminated sites earlier in the remediation process.

Accordingly, the Department proposes replacing N.J.A.C. 7:26E-1.4(a) with a new provision that would require any person responsible for a discharge to notify the Department immediately after a discharge commences in accordance with the Discharge of Petroleum and Other Hazardous Substances (DPHS) rules at N.J.A.C. 7:1E-5.3. The Department proposes to cross reference the DPHS rules' notification requirement in the Technical Rules at N.J.A.C. 7:26E-1.4(a) to clarify that all of the notification requirements that relate to the discharge of hazardous substances must be followed immediately after a discharge commences. The Department believes that cross-referencing the DPHS discharge reporting requirements in the notice provisions of the Technical Rules will help remind persons responsible for a discharge of their obligation to immediately notify the Department of the discharge. This provision relates to the reporting of discharges as they occur, and therefore differs from the notification requirements being recodified at proposed new N.J.A.C. 7:26E-1.4(b)1 and 2, discussed below.

The Department proposes to add a new provision at N.J.A.C. 7:26E-1.4(b)1 that requires the person responsible for conducting the remediation to immediately notify the assigned Department case manager or the Department's hotline when contamination is identified that has been caused by a discharge that is not already known to the Department.

At proposed new N.J.A.C. 7:26E-1.4(b)2, the Department proposes to recodify the requirement that it be notified of an immediate environmental concern (IEC) condition from N.J.A.C. 7:26E-1.4(b). An IEC is "a condition which poses an acute threat to human health or a

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direct threat to the drinking water of the State . . . .” See N.J.A.C. 7:26E-1.8. Note that the Department proposes to recodify those portions of N.J.A.C. 7:26E-1.4(b) concerning interim response actions to stabilize the IEC condition to N.J.A.C. 7:26E-1.11, Bias for Action, with amendments that are discussed in more detail below.

The Department proposes recodifying N.J.A.C. 7:26E-1.4(c) at proposed new subsection (p) with minor amendments. Subparagraph (c) provides that none of the notification requirements are intended to satisfy the public participation requirements applicable to sites subject to the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq. and the National Contingency Plan (NCP), 40 C.F.R. Part 300. Recodifying this subparagraph towards the end of the section makes it clear that the proposed new notification requirements also do not satisfy CERCLA and NCP public notification requirements.

In place of existing N.J.A.C. 7:26E-1.4(c), the Department proposes recodifying N.J.A.C. 7:26E-1.4(h) with grammatical clarifications. N.J.A.C. 7:26E-1.4(h) concerns notification of the Department of discharges that migrate off site. Since proposed new subsections (a) and (b) also prescribe how and when to notify the Department, it is contextually clearer to group all of these requirements in sequential paragraphs.

The Department proposes to delete N.J.A.C. 7:26E-1.4(d) in favor of new requirements for written notification and reporting that are discussed further below.

The Department also proposes to delete N.J.A.C. 7:26E-1.4(e), concerning the Department’s address to which notification is to be mailed, in favor of new address information that is to be codified elsewhere in the proposed new rules.

The Department proposes to codify the requirements for public notification at proposed new N.J.A.C. 7:26E-1.4(d) through (o). Proposed new subsection (d) requires the person responsible for conducting the remediation to provide a copy of the remedial action workplan

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and any updates or status reports to the municipality in which the site is located. This provision implements the provision of the Brownfields Act at N.J.S.A. 58:10B-24.1.

Subsection (e) establishes the notification requirements for the 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 or the person responsible for conducting an emergency response action. The persons conducting these types of remediations are required to notify Department of discharges to the environment consistent with (a) through (c). In addition, in instances where contamination leaves the property, the person responsible for conducting the remediation is required to comply with proposed new N.J.A.C. 7:26E-1.4(l), as discussed more fully below. Home heating oil tank remediations and emergency response actions are often completed in a single phase of limited duration and it would be impractical to require the person responsible for conducting the remediation to comply with additional requirements in a case with a comparatively short turn around time period. The amendments to the Brownfields Act specifically exempt these remediations from these additional requirements and the exemption at proposed new subsection (e) comports the rules with the statute.

The Department proposes to also exclude emergency response cases from the requirement to notify the municipality upon initiation of the remedial action phase of the site remediation pursuant to subsection (d), to identify sensitive populations and resources pursuant to subsection (f), and to comply with the public notification provisions of subsections (g) through (i). Emergency response actions represent the SRWM's highest priority for immediate public health protection and the Department follows a strict communication process to quickly notify and inform key local officials. After the emergency is addressed, but where the response requires on-going Departmental oversight, the incident converts by operation of the Spill Act to a case that becomes subject to the further requirements of the Technical Rules. At that point, the case would no longer be treated as an emergency response action, and would become subject to these proposed new public notification rules.

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Proposed new N.J.A.C. 7:26E-1.4(f) sets forth the requirements for identifying sensitive populations and resources located within 200 feet of the site boundary, recording this information, and submitting this information to the Department, the local municipality, and the local health official. The Department anticipates that this information will be a valuable tool in helping the Department and local officials evaluate the real and perceived risks associated with the proximity of sensitive populations and resources to contamination at the site. Whether these risks are scientifically based or are perceived, they can pose an obstacle to site remediation. For example, administrators of grade schools, child care facilities and parks are often faced with making decisions based not only on scientific risk, but also on the perception of risk. Ensuring that sensitive populations and resources are identified and that the appropriate entities are notified can reduce the perception of risk. When administrators are informed, they are more able to provide information and address concerns of the people who use their facilities.

The populations and resources that are to be identified are set forth at proposed new N.J.A.C. 7:26E-1.4(f)1, and include residences, potable wells, public and private schools that teach students in any of the grades kindergarten through twelve, child care centers, public parks and playgrounds, surface water, and Tier 1 well head protection areas. The Department will provide a Sensitive Population and Resource Checklist (Checklist) on which sensitive populations and resources are to be recorded. The Checklist will be posted on the Department's web site at <http://www.nj.gov/dep/srp/community>. These populations and resources must be identified no later than two weeks prior to either the initiation of field activities associated with the remedial investigation of a multiphase remediation or initiating a single phase remediation.

The person responsible for conducting the remediation shall identify, pursuant to proposed new N.J.A.C. 7:26E-1.4(f)2, whether the site is located in a municipality where a Environmental Justice Petition neighborhood has been designated by either EPA or the New Jersey Environmental Justice Task Force. Information about Environmental Justice Petition neighborhoods is available on the Department's web site at [www.nj.gov/dep/ej](http://www.nj.gov/dep/ej).

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The person responsible for conducting the remediation shall also determine, pursuant to proposed new N.J.A.C. 7:26E-1.4(f)3, whether non-English speaking people inhabit the residences, attend of the schools or child care centers, or use of the parks, playgrounds, surface water or potable wells identified in the sensitive population and resources Checklist. This information is also to be recorded on the Checklist.

The person responsible for conducting the remediation shall, pursuant to proposed new N.J.A.C. 7:26E-1.4(f)4, prepare a scaled map that shows the location of the site and the location of each sensitive population and resource. The map may be submitted either in hard copy or electronically, although the Department prefers the electronic version. Additionally, if submitted electronically, the electronic map should be compatible with the “New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey’s Future: Mapping and Digital Data Standards.” The Department’s web site provides user guidance and links to internet mapping applications and data downloads at [www.state.nj.us/dep/GIS/newmapping.htm](http://www.state.nj.us/dep/GIS/newmapping.htm).

At N.J.A.C. 7:26E-1.4(f)5, the Department is proposing to require the person responsible for conducting the remediation to send the sensitive population and resource Checklist and map to the Department’s assigned case manager and Office of Community Relations, to the municipal clerk of each municipality in which the site is located, and to the local health official (as designated by the municipality or county). Submittal of a completed sensitive population and resource Checklist is required two weeks prior to either the initiation of field activities associated with the remedial investigation or the initiation of a single phase remedial action.

The August 2006 amendments to the Brownfields Act provide two options for public notification, codified at proposed new N.J.A.C. 7:26E-1.4(g): the posting of a sign at the site or the sending of periodic notification letters to owners and tenants within 200 feet of the site boundary. Regardless of the form that the public notice takes, notice must be in English. Additionally, where the person responsible for conducting the remediation determines that a language other than English is predominantly spoken in the area within 200 feet of the

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contaminated site, notice must also be provided in that language (see proposed new N.J.A.C. 7:26E-1.4(g)1). Proposed new N.J.A.C. 7:26E-1.4(g)2 provides that the person responsible for conducting the remediation may change the form of notification from a sign to periodic letters or change from notification letters to a sign at any time, with prior Departmental approval.

Proposed new N.J.A.C. 7:26E-1.4(h) sets forth the specific requirements for the posting of signs. Proposed new N.J.A.C. 7:26E-1.4(h)1 requires that a minimum of one sign shall be posted so that it is clearly visible to the public.

Proposed new N.J.A.C. 7:26E-1.4(h)2 specifies when the sign must be posted. The Department carefully considered when public notice should be required during the remediation process. The Department chose to require the first public notification at the onset of the remedial investigation phase. The Technical Rules define remedial investigation as “actions to investigate contamination and the problems presented by a discharge. The requirements of a remedial investigation are set forth at N.J.A.C. 7:26E-4.” The remedial investigation phase is preceded by the preliminary assessment, the first phase in the process of identifying areas of concern pursuant to N.J.A.C. 7:26E-3, and the site investigation phase, which involves the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. See definition of site investigation at N.J.A.C. 7:26E-1.8. A site investigation is based on information collected during the preliminary assessment, and is conducted in accordance with N.J.A.C. 7:26E-3. The purpose of a site investigation is to determine if any contaminants are present at the site, or, as necessary, have emanated or are emanating from the site above any of the applicable unrestricted use remediation standards, or if no further remediation is required. N.J.A.C. 7:26E-3.3(a). Thus, it is not until after the completion of the site investigation that there is sufficient information about the type and location of contamination to provide the public with meaningful notification. At the initiation of the remedial investigation, the person responsible for conducting the remediation will have sufficient information to inform the public about the type of contamination and the media affected at the site. It is at this point in the remediation that potential impacts may arise as community issues,

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which makes it an ideal time to establish a dialogue between the community and the remediating party.

Accordingly, proposed new N.J.A.C. 7:26E-1.4(h)2 requires that the sign must be posted no later than two weeks prior to the initiation of any field activities associated with the remedial investigation or the initiation of a single phase remediation at the site, or for sites undergoing remediation as of the effective date of these rules, no later than the effective date of these rules plus one year. Providing notification two weeks prior to field activities will allow the public sufficient opportunity to voice their questions and concerns to the person responsible for conducting the remediation. This will allow the person responsible for conducting the remediation to adequately answer the community's questions and address the community concerns. By providing public notification prior to commencing field activities, the community will also have the facts, thereby avoiding speculation and undue concern that may arise when remediation work begins at a site. Providing a one year "phase-in" period for sites currently undergoing remediation will afford the person responsible for conducting the remediation time to come into compliance with these proposed new rules.

The Department proposes at N.J.A.C. 7:26E-1.4(h)3, to require that the sign remain posted and be maintained so that it is legible at all times, until such time as the Department issues a No Further Action and Covenant Not to Sue letter under the Oversight Rules at N.J.A.C. 7:26C.

Proposed new N.J.A.C. 7:26E-1.4(h)4 sets forth the criteria for sign size and content, including the requirements that the sign must be at least two feet by three feet in size and must be readable by the public from the street or sidewalk. The sign must include the following wording: "Environmental Investigation/Cleanup in Progress at This Site." The sign must also include the following wording: "For Further Information Contact ...," and must include the telephone numbers for the person responsible for conducting the remediation and the Department's Office of Community Relations (which can found on the Department's website), so that any interested

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party may obtain additional information about the remediation. The sign must also include the date that the sign is posted.

Although not required in the proposed new rules, the Department suggests that the person responsible for conducting the remediation should designate a point of contact to handle public inquiries. The objective in assigning an individual as a point of contact is to act as a primary liaison between the community and the person responsible for conducting the remediation and to ensure prompt, accurate and consistent responses and information dissemination about the site. To enable citizens to get the latest information available, the person responsible for conducting the remediation should consider providing a toll-free “800 number.”

Proposed new N.J.A.C. 7:26E-1.4(h)5 establishes requirements for the person responsible for conducting the remediation to document that the sign was posted in compliance with this section. The Department proposes that digital and print photograph of the sign, showing its location and content, be sent with the site information specified at N.J.A.C. 7:26E-1.4(i)4 (discussed below) to the assigned case manager, the Department’s Office of Community Relations, the municipal clerk of each municipality in which the site is located, and the local health official. If a case manager for the site has not been assigned, the photograph must be included as a part of the remedial investigation report or remedial action report that are prepared in accordance with other provisions of the Technical Rules.

The Department is aware that the posting of any sign can be a sensitive issue for some municipal officials. The Department proposes at N.J.A.C. 7:26E-1.4(h)6 that the person responsible for conducting the remediation comply with all local laws and requirements relevant to the posting of signs. If municipal laws and requirements prohibit the posting of signs that would satisfy the notification requirements of these rules, the person responsible for conducting the remediation would be required to send notification letters pursuant to N.J.A.C. 7:26E-1.4i.

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Instead of posting a sign pursuant to the provisions of subsection (h) discussed above, the person responsible for conducting the remediation may choose to provide notification by sending letters. If this option is exercised, the requirements of proposed new N.J.A.C. 7:26E-1.4(i) apply. N.J.A.C. 7:26E-1.4(i)1 establishes requires that notification letters must be sent no later than two weeks prior to the initiation of any field activities associated with the remedial investigation or the initiation of a single phase remediation at the site, or for sites undergoing remediation as of the effective date of these rules, no later than the effective date of these rules plus one year. Providing public notification prior to the initiation of field activities should foster dialogue between the community and the person responsible for conducting the remediation and may help avoid speculation that may arise when remediation work begins at a site. Providing a one year “phase-in” period for sites currently undergoing remediation will afford the person responsible for conducting the remediation time to come into compliance with these proposed new rules.

Proposed new N.J.A.C. 7:26E-1.4(i)2 requires that additional notification letters be sent every two years after the initiation of the remedial action until a No Further Action and Covenant Not to Sue Letter is issued by the Department, or on a schedule approved by the Department. These letters must reflect the current condition and the progress of the remediation. This provision ensures that the municipality and the local property owners/tenants remain informed throughout the course of a multi-year remediation project.

The Department proposes at N.J.A.C. 7:26E-1.4(i)3 to require the person responsible for conducting the remediation to send notification letters to property owners and tenants located within 200 feet of the site and to school and daycare administrators that are identified on the Sensitive Population and Resource Checklist prepared pursuant to proposed new N.J.A.C. 7:26E-1.4(f). The notification must be sent by certified mail so that an accurate record of recipients can be made. N.J.A.C. 7:26E-1.4(i)3i specifies that the list of owners of all real property should be derived from the current municipal tax duplicate that may be obtained from each affected municipality. The current municipal tax duplicate will provide a complete and accurate list of property owners within 200 feet of sites.

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The Department is aware that it may be difficult to identify all the tenants located within 200 feet of a site, particularly when large housing complexes are adjacent to the site. In enforcing this provision, the Department intends to exercise its enforcement discretion where individual tenants cannot be identified to allow the person responsible for conducting the remediation to notify tenants by mailing notices without using certified mail, and to address these notices to “Current Occupant” or “Current Resident.”

Proposed new N.J.A.C. 7:26E-1.4(i)4 provides that notification letters must include the name and address of the site; the tax block(s) and lot(s); the Department’s Preferred ID number (which can be found in the most recent edition of the “Department’s Known Contaminated Sites in New Jersey” list, <http://www.nj.gov/dep/srp/kcs-nj/>), the EPA site identification number or the number provided by the Department’s hotline; a statement that contamination has been identified; a brief description of the type of contamination in common language; the affected environmental media and actions being taken at the site; contact information for the party conducting the remediation and the Department’s Office of Community Relations; and a statement that the person responsible for conducting the remediation will provide a copy of all environmental reports to the municipality upon the municipality’s request.

Notification letters may also provide an opportunity to report on planned remediation activities at a contaminated site and help residents more clearly understand the remediation process. A model letter is available at <http://www.nj.gov/dep/srp/community>. The person conducting the remediation may expand the language in the model letter to best fit the individual site and the community’s needs. For example, the notification letter can include information about the intended reuse of the property. Notification letters can also describe timeframes, and/or hours and types of site activities. For example, the generation of dust during site activities is a common public concern. If notification letters included language describing planned dust suppression methods, residents’ concerns could be addressed before site work begins. As is the

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case with notification signs, the Department suggests that the party conducting the remediation designate a point of contact to handle public inquiries.

The Department is proposing at new N.J.A.C. 7:26E-1.4(i)5 to require the person responsible for conducting the remediation to submit an electronic and a paper copy of the notification letter and a list of the recipients to the Department's assigned case manager, the Department's Office of Community Relations, the municipal clerk of each municipality in which the site is located and the designated local health officer. If a case manager for the site has not been assigned, the copy of the notification letter and the recipient list must be included as a part of the remedial investigation report or remedial action report prepared in accordance with other provisions of the Technical Rules.

The Department proposes new N.J.A.C. 7:27E-1.4(j) to establish additional notification requirements that are applicable when the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements or construct the engineering controls approved by the Department in the remedial action workplan or the landfill closure plan. The Department has included these additional notification requirements to ensure that local property owners and tenants, and local and county governments are aware of the proposed additional fill activity. This notice shall be sent to the property owners and tenants with 200 feet of the site boundaries, the mayor of each municipality where the site located, the county designated solid waste coordinator, and the assigned case manager. A description of the proposed activity must be provided and the notice must also include a description of the proposed use of contaminated material at the site, the concentrations of the contaminants in the material, the amount of material proposed to be brought on to the site, the controls designed to reduce or eliminate exposure to the contamination, and a tentative schedule for the activity (see proposed new N.J.A.C. 7:26E-1.4(j)2).

The Department proposes at N.J.A.C. 7:26E-1.4(k) to require the person responsible for conducting the remediation to conduct enhanced public outreach in the form of a fact sheet if

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contamination has migrated from the boundary of the contaminated site. N.J.A.C. 7:26E-1.4(k)1i requires that the person responsible for conducting the remediation prepare, distribute and publish a fact sheet within two weeks of the discovery of the discovery that contamination has migrated off the site. At sites where contamination has migrated off the site prior to the effective date of this rule N.J.A.C. 7:26E-1.4(k)1ii requires the preparation distribution and publication of a fact sheet no later than the effective date of this rule plus one year. However, if the off-site contamination has affected only one adjoining property and the affected contaminated medium is limited to soil, or if the off-site contamination affects only historic fill, the person responsible for conducting the remediation is excepted from these requirements, but must comply with proposed new N.J.A.C. 7:26E-1.4(l) or (m), respectively. These proposed new subsections are discussed more fully below. Excepted from this requirement are persons conducting the remediation of either an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential dwelling or who are conducting an emergency response action.

The Department is proposing N.J.A.C. 7:26E-1.4(k)1 and 2 to establish that the person responsible for conducting the remediation send a fact sheet within two weeks after it is determined that contamination has migrated from the property and that the fact sheet must be updated at the completion of the remedial investigation. It is appropriate to provide information to the public soon after contamination is discovered off the property and at the end of the remedial investigation when contamination has been fully delineated. Proposed new N.J.A.C. 7:26E-1.4(k)3 requires that fact sheets and any updates must be sent by certified mail to all property owners and tenants within 200 feet of the site.

N.J.A.C. 7:26E-1.4(k)4 requires that the fact sheet and any updates be in English, and, where applicable as determined from the Sensitive Population and Resource Checklist, in the non-English language of neighborhood in which the contaminated site is located.

N.J.A.C. 7:26E-1.4(k)5 sets forth the information that must be included in the fact sheet, including the name and address of the site, tax block and lot, the site identification number, a

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description of the commercial and industrial history of the site based on information gathered during the preliminary assessment conducted pursuant to N.J.A.C. 7:26E-3.1(c), and a description of contamination including the media affected, the contaminant concentrations, the applicable remediation standards, the extent of contamination, the date that the contamination was identified, and the source of the contamination, if known. The fact sheet must also include a list of online resources for information about the contaminants. Contaminant information is available from the United States Environmental Protection Agency's website at <http://www.epa.gov/superfund/health/index.htm>. The Agency for Toxic Substances and Disease Registry also has a series of summaries about hazardous substances, available at <http://www.atsdr.cdc.gov/toxfaq.html>. The fact sheet must also describe the actions performed to minimize the impact to the public, the date on which the fact sheet was prepared and contact information for the person responsible for conducting the remediation and the Department's Office of Community Relations at the address provided at proposed new N.J.A.C. 7:26E-1.4(f)5ii.

Proposed new N.J.A.C. 7:26E-1.4(k)6 requires the person responsible for conducting the remediation to publish the fact sheet as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site within four weeks of the discovery of off-site contamination. A copy of the fact sheet, a list of persons to whom it was distributed and a copy of the display advertisement must also be submitted to the Department's case manager, the Department's Office of Community relations, the municipal clerk of each municipality in which the site is located, and the designated health official. If a case manager for the site has not been assigned, a copy of the fact sheet, recipient list and display advertisement shall be submitted to the Department as a part of the remedial investigation report or remedial action report.

Proposed new N.J.A.C. 7:26E-1.4(k)7 requires the person responsible for conducting the remediation to conduct additional notification within four weeks after the horizontal and vertical extent of contamination has been determined pursuant to N.J.A.C. 7:26E-4.1. This additional

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notification is proposed because full delineation of contamination can take some time to complete. For example, ground water contamination in complex bedrock geologic formations can take months and even years to complete. Proposed new N.J.A.C. 7:26E-1.4(k)7 requires the person responsible for conducting the remediation to republish the fact sheet as a display advertisement within four weeks after the extent of contamination is determined. The fact sheet will reflect updated information based on current site conditions. Again, a copy of the fact sheet, a list of persons to whom it was distributed and a copy of the display advertisement must also be submitted to the DEP case manager, the Department's Office of Community relations and the municipal clerk of each municipality in which the site is located. If a case manager for the site has not been assigned, a copy of the fact sheet, recipient list and display advertisement shall be submitted to the Department as a part of the remedial investigation report or remedial action report.

At proposed new N.J.A.C. 7:26E-1.4(l), the Department proposes to limit the notification requirements at N.J.A.C. 7:26E-1.4(k) when soil contamination has migrated off the site onto only one adjoining property. The impacts from this sort of contamination are generally limited. The Department believes that in these instances, it is effective and appropriate to require the person responsible for conducting the remediation to notify in writing only the affected property owner and/or tenant.

Proposed new N.J.A.C. 7:26E-1.4(m) excepts the person responsible for conducting the remediation from the notification requirements at N.J.A.C. 7:26E-1.4(k) when off-site contamination is limited to historic fill. This exception is consistent with N.J.A.C. 7:26E-4.6(b)2iii, which provides that off-site delineation of historic fill material is not required.

The Department proposes at N.J.A.C. 7:26E-1.4(n)1 and 2 to allow the person responsible for conducting the remediation to propose an alternative public notification plan when the remediation is being conducted with the Department's oversight. The alternative plan must be submitted to the Department case manager and the Office of Community Relations for the Department's approval prior to implementation. The Department recognizes that there will

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be instances where the party responsible for conducting the remediation has already established a dialogue with the affected community through various outreach strategies or may wish to propose alternative notification strategies that meet the intent of the proposed regulations. For example, it may, under certain circumstances, be appropriate to communicate with the public via electronic mail because it is quicker and more efficient than conventional mail. The person responsible for conducting the remediation may wish to use electronic mail to send information to community groups, newspapers, or to an electronic bulletin board. Other alternative notification plans could provide key resources for searching and listing site-specific information on the internet. Pending Departmental approval, information such as site updates and remediation reports could also be posted on the internet. The internet could be used effectively to educate the public, highlight a major remediation event or milestone, or publicize a public meeting or event.

The Department proposes at N.J.A.C. 7:26E-1.4(o) to require the person responsible for conducting the remediation to conduct additional public outreach if the Department determines that additional outreach is needed or when there is substantial public interest in remediation activities concerning a site. The Department will determine that there is substantial public interest concerning the remediation of a particular site, pursuant to proposed new N.J.A.C. 7:26E-1.4(o)1, when it receives a petition containing the signatures of 25 or more people that live or work within 200 feet of the site, if contamination has not migrated from the property of the discharge. If contamination has migrated from the property, substantial public interest will be demonstrated when the Department receives a petition containing the signatures of 25 or more people that live or work within 200 feet of the extent of the contamination. In addition, substantial public interest may be demonstrated when the Department receives a written request for additional public outreach from a municipal official, such as a mayor or chairperson of an environmental commission, or a designated health official.

When the Department determines that there is substantial public interest, the Department will notify the person responsible for conducting the remediation and the Department will post a summary of this determination on its web site pursuant to proposed new N.J.A.C. 7:26E-1.4(o)2.

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The Department proposes at N.J.A.C. 7:26E-1.4(o)3 to require the person responsible for conducting the remediation to develop and implement additional public notice based on the expressed needs of the community, including hosting a public information session or meeting to update the community on the progress of the remediation and address community questions and concerns, publishing a notice containing basic information about the site in the local paper of record or establishing a local information repository. Additional public notice may also include establishing a local information repository. An information repository may be established at a local library or city hall where citizens can review copies of the reports and other documents that are submitted to the Department.

Although not required, in addition to a local repository, the Department encourages the establishment of electronic document repositories on the internet. The use of websites can be a very effective method for disseminating technical information and they can be linked to municipal websites to ensure easy public access. In this time of ever-expanding use of electronic communications, the Department also recommends the development of an e-mail distribution system to provide the community with remediation updates. The Department also recognizes that many New Jersey residents do not have access to e-mail and therefore does not presume that e-mail communication would supplant the notification requirements of this section. The Office of Community Relations can post links through its web site, which is fast becoming a familiar starting point for citizens interested in learning more about remediation activities in their communities. The Department's website at [www.nj.gov/dep/srp/community](http://www.nj.gov/dep/srp/community) under "Site Highlights" contains illustrations of links.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(c) as N.J.A.C. 7:26E-1.4(p) with minor changes in the text to clarify the requirements therein.

The Department proposes to recodify the notification requirements for sites that are located within the Pinelands at N.J.A.C. 7:26E-1.4(f) and (g) as N.J.A.C. 7:26E-1.4(q)1 through 4, with minor revisions to the text that clarify the requirements contained therein.

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### **Bias for Action**

The Department proposes to recodify several requirements for IEC response from N.J.A.C. 7:26E-1.4(b) to N.J.A.C. 7:26E-1.11(b), Bias for Action. The notification requirements related to IEC conditions will remain in the notification section at proposed new N.J.A.C. 7:26E-1.4(b)2.

Existing N.J.A.C. 7:26E-1.11 contains a general statement that the person responsible for conducting the remediation must stabilize contamination as a first priority. The Department proposes to amend this section to clarify the requirements associated with site stabilization and provide more detailed requirements when IEC conditions are identified at a site. The Department proposes rewording N.J.A.C. 7:26E-1.11(a) for clarity. The Department proposes to add a new N.J.A.C. 7:26E-1.11(b) to require the person responsible for conducting the remediation to implement interim response actions when IEC conditions are identified. The proposed amendments reflect the current practices when IEC conditions are identified at a site. Specifically, the person responsible for conducting the remediation is required to immediately notify the Department pursuant to proposed new N.J.A.C. 7:26E-1.4(a) and (b) as appropriate, immediately stabilize the IEC condition, and when potable water sources have been impacted by contamination at levels above ground water remediation standards, the person responsible for conducting the remediation must provide safe drinking water using appropriate treatment or by provide an alternate water supply. In addition, the Department is proposing to add a reporting requirement at N.J.A.C. 7:26E-1.11(c) to ensure that interim response actions are fully documented and reviewed by the Department.

### **Miscellaneous Technical Rule Amendments**

N.J.A.C. 7:26E-3 contains the requirements for conducting the preliminary assessment and site investigation. The Department proposes to amend N.J.A.C. 7:26E-3.7(g)5 to correct the cross-references to N.J.A.C. 7:26E-1.4(b).

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N.J.A.C. 7:26E-4 contains the requirements for remedial investigations. The Department proposes to add a cross-reference to the notification requirements of N.J.A.C. 7:26E-1.4 to proposed new N.J.A.C. 7:26E-4.1(c). The addition of this cross-reference is intended to remind the person responsible for conducting the remediation that notification is required at the initiation of the remedial investigation.

N.J.A.C. 7:26E-5 concerns remedial action selection. The Department proposes to delete the phrase “to the local government” and “(a)” from N.J.A.C. 7:26E-5.1(c)4i. The reference to the local government is not needed because proposed new N.J.A.C. 7:26E-1.4 covers notification of municipal officials.

N.J.A.C. 7:26E-8 contains the requirements for engineering and institutional controls. The Department proposes to delete the cross-reference to N.J.A.C. 7:26C-1.4(e) from N.J.A.C. 7:26E-8.2(i) and to add the address for the Department’s Case Assignment Section, the address to which requests should be sent to remove or modify a remedial action that includes an engineering and/or institutional control and to which a memoranda of agreement application should be sent.

### **Social Impact**

The Department believes that the proposed amendments to the Technical Rules and the Oversight Rules will have positive social impact. Frequently, members of the public and local government representatives express their frustration to Department representatives regarding lack of understandable and accessible information about contaminated sites in their communities. These rules represent a significant step towards making available to the public information about the presence of contaminated sites and the actions that are being taken at those sites to mitigate risks to human health and the environment.

It is important that the first point of contact for the community be the person responsible for conducting the remediation. The Department believes that the person responsible for

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conducting the remediation has a responsibility to inform concerned people in their communities about conditions and activities at the site. By requiring the person responsible for conducting the remediation to either post signs or send notification letters to local residents and officials, the Department ensures that those people potentially impacted by the remediation will know how to get more information.

The proposed amendments to the Oversight Rules will have a positive social impact by outlining specific procedures for the enforcement of the proposed new notification requirements in the Technical Rules. The proposed amendments to the Oversight Rules will encourage compliance with the proposed new Technical Rule requirements.

### **Economic Impact**

There are costs and benefits to notification and enhanced public outreach that cannot be measured purely in dollars. The costs for notification and public outreach are relatively easy to derive, but the benefits are more difficult to quantify.

The proposed amendments to the Technical Rules will increase the cost of conducting remediation of a contaminated site in New Jersey. The additional cost will vary based on several factors including, but not limited to, how the person responsible for conducting the remediation chooses to conduct notification, whether contamination migrates off site and whether some form of enhanced public outreach is requested by a community. A description of costs associated with the proposed rule amendments is provided below.

The person responsible for conducting the remediation will incur costs associated with the completion and submission of a Sensitive Population and Resource Checklist pursuant to N.J.A.C. 7:26E-1.4(f). However, costs related to this provision are projected to be minimal because the majority of this information is generally obtained during the preliminary assessment phase and thus should already be available to the person responsible for conducting the

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remediation. Additional costs will be incurred in the development of sensitive population and resource maps and with copying and mailing. The Department estimates that the cost of completing a Sensitive Population and Resource Checklist can range from \$25 if no sensitive populations or resources are identified within 200 feet of the site boundary, to several hundred or several thousand dollars to create electronic maps when several sensitive populations and/or resources are identified.

Proposed N.J.A.C. 7:26E-1.4(g) allows the person responsible for conducting the remediation to choose to comply with the public notification requirements by posting a notification sign pursuant to subsection (h) or by sending notification letters pursuant to subsection (i). The Department anticipates that using a sign to comply with this notification provision will generally cost less than sending notification letters. The Department estimates that a 2-foot by 3-foot sign containing the required information will cost from \$200 to \$400, while the cost of writing and sending notification letters could be \$500 to \$1,000, depending on the number of people that need to be contacted and the length of the remediation. For example, for a site for which the remedial investigation followed by a remedial action takes ten years to complete, the Department will require the person responsible for conducting the remediation to send notification letters six different times. Each time, the letter needs to be updated to reflect current conditions and progress of the remediation, and the list of recipients needs to be updated to reflect any changes that have occurred.

In addition to the cost of a sign or sending notification letters will be the costs associated with answering inquiries about the remediation from individual members of the public and local government representatives. The cost of responding to inquiries will vary greatly depending on the number and type of questions that are asked.

The cost of notification requirements at N.J.A.C. 7:26E-1.4(j), triggered when excess fill is proposed to be brought to the site, is consistent with the cost of notification letters pursuant to (i), discussed above.

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If it is determined that contamination has migrated off site, the person responsible for conducting the remediation is required to conduct additional public outreach pursuant to N.J.A.C. 7:26E-1.4(k). Costs associated with the conduct of additional public outreach could vary widely. The cost to prepare a fact sheet could range from \$200 to \$2,000 depending on the amount of information that the person responsible for conducting the remediation needs to convey. Fact sheets should be clearly and simply written in plain English and in other languages appropriate to the area, to convey site conditions and provide an explanation of risks associated with the site. Costs to distribute to persons located within 200 feet of the site boundary will be minimal but will vary depending on the number of people affected.

In addition to preparing a fact sheet, when it is determined that contamination has migrated off the property that is the site of the discharge, the person responsible for conducting the remediation must publish the fact sheet as a display advertisement containing basic information about the site and the off-site conditions in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site. The cost of a display advertisement would include the cost of preparing the information for the advertisement, preparing the copy and the publication of the ad which could range from \$500 to \$2,000 depending on the size of the ad and the cost charged by the particular newspaper to run the ad.

The Department will allow, pursuant to proposed new N.J.A.C. 7:26E-1.4(n), the person responsible for conducting the remediation to submit an alternative plan to the assigned case manager and Department's Office of Community Relations for the Department's prior approval. The Department anticipates that parties may opt to use of websites or the distribution of periodic newsletters. The cost of alternative plans could range from \$1,000 to \$5,000, or more.

Costs associated with requests for additional public outreach pursuant to N.J.A.C. 7:26E-1.4(o) will vary depending on the number and type of notices. The options include hosting an information session, publishing a notice containing basic site information in a local newspaper or establishing a local information repository. The cost of a public information session could range from \$2,000 to \$5,000 dollars and could include the cost of publicizing the session, materials

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needed to convey technical information and cost of travel and time of personnel to set up and conduct the information session and to follow up after the session. The cost of a display ad would include the cost of preparing the information for the ad, preparing the copy and the publication of the ad which could range from \$500 to \$2,000 depending on the size of the ad and the cost charged by the particular newspaper to run the ad. The cost of establishing a local information repository would be nominal and would include copying and mailing costs.

If the person responsible for conducting the remediation determines that there is a need to distribute public notices in languages other than English, additional costs for translation and providing both English and non-English notices would be incurred. Translation costs could range from \$200 to several thousand dollars, depending on the type of notices used to comply with the provisions of N.J.A.C. 7:25E-1.4.

For those who do not comply with the notification provisions, the proposed civil administrative penalty rules will have a negative economic impact. However, the majority of the violations are classified as minor, and the person responsible for conducting the remediation at a site will have at least 30 days and as many as 180 days (if the initial grace period is extended) to achieve compliance, without being assessed a penalty. The extent of the economic impact will depend primarily upon the nature of the violation, the violator's conduct and compliance history, and the extent of any remedial or preventive measures that the violator has taken.

The benefits of the proposed amendments to the Technical Rules are less quantifiable. The Department anticipates that there will be fewer delays caused by local concerns about the contaminated site and the remedial action chosen. Public outreach will serve to better inform local municipal officials and the public about contaminated sites and the efforts being taken to remediate them. Local municipal officials and citizens will have the facts at their disposal to help them make decisions regarding the current and future uses of the site and of surrounding properties. Community leaders will also be able to use these facts to help them determine an appropriate and timely response to contamination that may have migrated off site and will be better able to coordinate response actions with the Department and local authorities.

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### **Environmental Impact**

The proposed amendments do not change the environmental protection conditions established in the Technical Rules or in the Oversight Rules, but may result in the remediation of sites in a timelier manner. The Department realizes that public participation can either expedite or protract the remediation of a contaminated site. It is believed the benefits of this enhanced public notification far outweigh the costs, and the exchange generated by a more proactive public notification system will lead to more effective and efficient outcomes. In the Department's experience, early two-way communication with residents, business owners and local officials potentially affected by a remediation can be critical to a successful investigation and cleanup. This may be especially true when future uses include public recreation or housing. With an effective outreach strategy, the person responsible for conducting the remediation can anticipate the needs and concerns of the community and deal with them proactively; the remediation can be accomplished more quickly, thus providing a positive impact to the environment.

### **Federal Standards Statement**

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

The Technical Rules and the Oversight Rules are 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 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. In addition, the EPA has delegated its Underground Storage Tank program to New Jersey pursuant to 40 C.F.R. 280. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and

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Executive Order No. 27, the Department has compared these proposed amendments 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., and the Resource Conservation and Recovery Act (RCRA) of 1980 as amended, 42 U.S.C. §§ 6901 et seq.

The Department has determined that these proposed amendments do not require any specific action that is more stringent than any requirement of comparable Federal regulations. The implementing regulations for the Federal laws listed above provide specific requirements for public notice and outreach for the remediation of contaminated sites under the authority of the National Contingency Plan (NCP) regulations codified at 40 C.F.R. 300. The implementing regulations for CERCLA, require the development of a Community Involvement Plan which forms the foundation for the Community Involvement Program. For CERCLA sites, the lead agency conducting the remediation is required prepare and implement community relations activities prior to commencing field work for the remedial investigation and include, at a minimum, community interviews, public meetings and a local repository for information. The rules proposed herein are not more stringent than the Federal requirements and specifically state that they are not intended to satisfy the Federal requirements. Therefore, no Federal standards analysis is needed for these proposed amendments.

The Department has conducted an analysis of the new civil administrative penalty provisions in the proposed rules and has determined that they do not exceed any standard or requirement imposed by Federal law. The grace period provisions in the proposed rules are consistent with Federal law and Federal penalty assessment guidance. Accordingly, no Federal Standard Analysis is required with regard to the amendment of the rules to include a grace period.

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### **Jobs Impact**

The proposed amendments to the Technical Rules and the Oversight Rules are anticipated to have a minor impact upon jobs within the State. It is likely that some jobs will be created because some parties that are responsible for remediating contaminated sites may elect to hire workers that specialize in community relations, including the preparation of notices and reports for local repositories, and to run public meetings. The Department is unable to estimate the number of jobs that will be generated in response to these requirements.

One of the proposed public outreach options involves the posting of signs at contaminated sites at the initiation of the remedial investigation. The cost to create and post notification signs could range from \$200 to \$800 per sign. Because the Department cannot estimate the number of sites where this option will be chosen, it is not possible to determine the number of jobs that may result from this outreach option.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed this proposal and determined that it will have little impact upon the agriculture industry. The proposed amendments to the Technical Rules will impact State agriculture only when a discharge occurs and impacts a farm. While the public outreach requirements are the same for agricultural sites as for non-agricultural sites, the Department believes the costs associated with these proposed requirements will be minimal for remediation work conducted on agricultural properties; their generally rural location means that there could be fewer neighbors within the 200 foot boundary than would be found in urban settings.

If there is any effect of the proposed amendments to the Oversight Rules upon members of the agricultural industry, it is anticipated that such effect will be the same as others who are non-compliant with the new provisions of N.J.A.C. 7:26E-1.4.

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### **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 that employ fewer than 100 full time employees.

The proposed amendments to N.J.A.C. 7:26E-1.4 impose additional reporting, recordkeeping, and compliance requirements upon the regulated community over those that currently exist. Small businesses may elect to hire consultants that specialize in community relations to comply with these rules. Consultants may be hired to write notification letters, prepare reports for local repositories, and to run public meetings when needed, and this may result in additional costs to persons responsible for remediating a site, including those persons who are small business owners. In developing this proposal, the Department has reviewed the proposed amendments to determine if these rules could be designed to minimize the burden on small businesses. During this review the Department balanced the need to protect human health and the environment and determined that to reduce the requirements on small businesses would result in an unacceptable negative impact to human health and the environment. The Department believes that it is just as important to have public notification requirements for small businesses as it is for larger businesses. Many small businesses are located in and around residential and commercial communities throughout the State. Remedial actions associated with small businesses may be very visible; as such, these activities often cause concern to people who live and work nearby. For this reason, the Department believes that it is important to have the same public notification requirements for small businesses as for any other party that is required to conduct remediation in New Jersey.

The establishment of grace periods will allow a person responsible for a violation to avoid penalties if the violation is corrected within the time provided, regardless of the violator's status as a small business. It is therefore anticipated that the rules will encourage violators to achieve compliance in a timely fashion. In the event that a person responsible for a violation

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elects not to comply with the grace period conditions, the Department will pursue the enforcement action in accordance with its current enforcement procedures.

### **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 rulemaking to determine the nature and extent of the proposed rules' impact on smart growth and the implementation of the State Plan. The proposed amendments to the Oversight Rules and the Technical Rules do not involve land use policies or infrastructure development and therefore do not impact the achievement of smart growth. In addition, the proposed amendments are consistent with the goals and objectives of the State Development and Redevelopment Plan. The proposed amendments and new rules are intended to facilitate and encourage the timely remediation of sites while informing impacted communities of remediation activities. Timely remediation, particularly in urban areas, effectuates the goals of the Brownfields Act and the State Plan by facilitating the reuse of underutilized sites.

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

## **CHAPTER 26C**

### **DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED SITES SUBCHAPTER 10. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS**

#### **7:26C-10.4 Civil administrative penalty determination**

(a) through (b) (No change.)

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(c) 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.

\* \* \*

<b><u>2. The Technical Requirements for Site Remediation N.J.A.C 7:26E</u></b>				
<b><u>Subchapter &amp; Violation</u></b>	<b><u>Citation</u></b>	<b><u>Type of Violation</u></b>	<b><u>Grace Period (Days)</u></b>	<b><u>Base Penalty</u></b>
1	General Information			
	[Failure to notify Department of any sampling activities prior to initiation.	7:26E-1.4(a)1	NM	\$8,000
	Failure to notify municipal clerk prior to specific activities.	7:26E-1.4(a)2	NM	\$8,000
	Failure to notify Department and municipal clerk prior to specific field activities.	7:26E-1.4(a)3	NM	\$8,000
	Failure to immediately notify Department of IEC conditions.	7:26E-1.4(b)	NM	\$8,000
	Failure to immediately initiate stabilization of IEC conditions.	7:26E-1.4(b)	NM	\$20,000
	Failure to notify Department and municipal clerk prior to interim response actions to be conducted in response to IEC conditions.	7:26E-1.4(b)	NM	\$8,000

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	Failure to include all the required information in the written notification.	7:26E-1.4(d)	M	30	\$3,000
	Failure to make submissions to, and/or get approvals from, Pinelands Commission.	7:26E-1.4(f)	M	30	\$4,000
	Failure to notify the Department of contaminant migration from an off site source.	7:26E-1.4(h)	M	30	\$3,000]
	<u>Failure to immediately notify the Department of contamination that is caused by a discharge that is not already known to the Department.</u>	<u>7:26E-1.4(b)1</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to immediately notify Department of immediate environmental concern conditions.</u>	<u>7:26E-1.4(b)2</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to notify the Department of contamination that has migrated onto the site.</u>	<u>7:26E-1.4(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to provide a copy of the remedial action workplan or updates or status reports if requested by the municipality.</u>	<u>7:26E-1.4(d)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to identify and document sensitive populations and resources.</u>	<u>7:26E-1.4(f)1</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to determine whether the site is located in the same municipality as an Environmental Justice neighborhood.</u>	<u>7:26E-1.4(f)2</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to determine whether any non-English speaking people inhabit or use each residential area, school, child care facility, park, playground, surface water and potable</u>	<u>7:26E-1.4(f)3</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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	<u>wells.</u>				
	<u>Failure to generate a sensitive population and resource map.</u>	<u>7:26E-1.4(f)4</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit a Sensitive Population and Resource Checklist as required.</u>	<u>7:26E-1.4(f)5</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to provide public notice of remediation activities at the site using either a sign or notification letters.</u>	<u>7:26E-1.4(g)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to post a sign two weeks prior to the initiation of field activities for the remedial investigation or single phase remediation.</u>	<u>7:26E-1.4(h)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to maintain a sign as required.</u>	<u>7:26E-1.4(h)3</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to ensure that the sign is of the proper size, is legible and contains the proper information.</u>	<u>7:26E-1.4(h)4</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit a photograph of the sign as required.</u>	<u>7:26E-1.4(h)5</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to provide public notice by sending letters as required.</u>	<u>7:26E-1.4(i)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to send additional notification of excess fill material as required.</u>	<u>7:26E-1.4(j)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to send fact sheet as required.</u>	<u>7:26E-1.4(k)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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	<u>Failure to publish fact sheet as display advertisement in local newspaper.</u>	<u>7:26E-1.4(k)6</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit copy of fact sheet and display advertisement as required.</u>	<u>7:26E-1.4(k)6</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to publish an updated fact sheet as display advertisement in local newspaper.</u>	<u>7:26E-1.4(k)7</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit copy of an updated fact sheet and display advertisement as required.</u>	<u>7:26E-1.4(k)7</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to conduct notification to the owner of the affected adjoining property as required.</u>	<u>7:26E-1.4(l)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to conduct additional public outreach when the Department determined there is substantial public interest.</u>	<u>7:26E-1.4(o)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to make submissions to, and/or get approvals from, Pinelands Commission.</u>	<u>7:26E-1.4(q)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	***				
	[Failure to contain and/or stabilize contaminants in all media to prevent receptor exposure or contaminant migration as a first priority.	7:26E-1.11	NM		\$20,000]
	<u>Failure to implement an interim response action to contain or stabilize contamination.</u>	<u>7:26E-1.11(a)</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to conduct interim response action for Immediate Environmental Concern condition.</u>	<u>7:26E-1.11(b)</u>	<u>NM</u>		<u>\$20,000</u>

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<u>Failure to submit written documentation of all interim response action to the Department.</u>	<u>7:26E-1.11(c)</u>	<u>NM</u>		<u>\$20,000</u>
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2. through 8. (No change.)

## CHAPTER 26E

### TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

#### SUBCHAPTER 1. GENERAL REQUIREMENTS

##### **7:26E-1.4 Notification and Public Outreach**

(a) [The person responsible for conducting the remediation, excluding remediations of areas of concern that consist of underground storage tanks storing heating oil for on-site consumption in a one to four family residential building, shall notify the following persons in writing:

1. The Department, prior to the initiation of any sampling activities at a contaminated site which is not already known to the Department pursuant to either a Department regulatory reporting requirement or Department oversight of the remediation;

2. The municipal clerk of each municipality in which the site is located, if the site is not RCRA or CERCLA subject, 45 calendar days prior to:

i. The submission of the remedial action selection report to the Department pursuant to N.J.A.C. 7:26E-5.2; or

ii. The finalization of the engineering design plans for the selected remedial action of sites being remediated where Department pre-approval of a remedial action workplan is not required or sought; and

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3. The Department, and the municipal clerk of each municipality in which the site is located, 45 calendar days prior to the implementation of the remedial action when Department pre-approval of the remedial action workplan is not required unless written notification has otherwise been provided.] Immediately after a discharge commences, any person or persons responsible for a discharge who knows or should reasonably know of a discharge shall immediately notify the Department by following the requirements of the Discharge of Petroleum and Other Hazardous Substances rules at N.J.A.C. 7:1E-5.3.

(b) [Whenever immediate environmental concern conditions are identified, the] The person responsible for conducting the remediation shall immediately notify the assigned Department case manager, or the hotline [(] at 1-877 WARNDP or 1-877-927-6337) if [no case manager is assigned] a case manager for the site has not been assigned or the case manager is unavailable[. Stabilization of the immediate environmental concern condition shall be initiated immediately under Department oversight pursuant to N.J.A.C. 7:26C. If an interim response action in response to an immediate environmental concern is to be conducted, the person responsible for conducting the action shall immediately notify the Department and the municipal clerk of each municipality in which the site is located of the intent to conduct the interim response action. If the remediation is being conducted in response to an emergency situation the notifications to the Department required pursuant to (a) above will be satisfied through compliance with N.J.A.C. 7:1E.] when:

1. Contamination is identified that has been caused by a discharge that is not already known to the Department; or

2. Immediate environmental concern conditions are identified at a contaminated site.

(c) [The notifications to the municipal clerk pursuant to (a) and (b) above are not intended to satisfy the public participation requirements applicable to sites being investigated or remediated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. and the National Contingency Plan, 40 C.F.R. Part 300.] The person

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responsible for conducting the remediation shall notify the Department pursuant to this subsection if that person determines that contamination migrated onto the site from another site. The person responsible for conducting the remediation shall notify the assigned case manager, or if a case manager for the site has not been assigned, the hotline at 1-877 WARNDEP or 1-877-927-6337.

[(d) The notifications pursuant to (a) above shall be in writing and shall include the following information:

1. The name and address of the person responsible for implementing the remedial action or interim response action;
2. The name of the site;
3. The valid EPA site identification number or the Department's Program Interest Number (Preferred ID) most recent to the action. If neither number is available, the number provided by the Department's hotline may be substituted (1-877 WARNDEP or 1-877-927-6337);
4. The street address of the site;
5. The lot and block of the site;
6. A brief description of the current use and occupancy of the site;
7. The nature of the sampling activities or remedial action to be performed;
8. The anticipated start date of the sampling activities or remedial action;
9. The location of the site in a GIS-compatible format (that is, latitude and longitude or State Plane Coordinates); and
10. A copy of any declaration of environmental restriction or similar document, which identified any engineering and institutional controls associated with the remedial action.

(e) The information required to be sent to the Department pursuant to (a) above shall be submitted to the assigned case manager or, if no case manager has been assigned, to the following address:

Division of Remediation Support  
P.O. Box 434

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Trenton, NJ 08625-0434  
Attention: Case Assignment Section]

(d) The person responsible for conducting the remediation shall provide a copy of the remedial action workplan and any updates or status reports to the municipality in which the site is located, when requested by the municipality.

(e) The 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 or the person responsible for conducting an emergency response action shall comply with the notification requirements of (a) through (c) above and (l) below only.

(f) Except as provided in (e) above, the person responsible for conducting the remediation shall identify sensitive populations and resources located within 200 feet of the site boundary as follows:

1. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multiphase remediation or initiating a single phase remediation, identify all of the following sensitive populations and resources that are located within 200 feet of the site boundary and record this information on the Sensitive Population and Resource Checklist provided by the Department at <http://www.nj.gov/dep/srp/community>:

i. Residences;

ii. Potable wells;

iii. Public and private schools that teach students in any of the grades kindergarten through twelve;

iv. Child care facilities;

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v. Public parks and playgrounds;

vi. Surface water;

vii. Tier 1 well-head protection areas. This information is available at [www.state.nj.us/dep/njgs/geodata/dgs02-2md.htm](http://www.state.nj.us/dep/njgs/geodata/dgs02-2md.htm);

2. Determine if the site is located in a municipality where an Environmental Justice Petition neighborhood has been designated by either EPA or the New Jersey Environmental Justice Task Force. This information is available at [www.nj.gov/dep/ej](http://www.nj.gov/dep/ej);

3. Determine whether non-English speaking people inhabit any of the residences, attend any of the schools or child care centers, or use any of the parks, playgrounds, surface water or potable wells identified in (f)1 above, and record this information on the Sensitive Population and Resource Checklist pursuant to (f)1 above;

4. Generate a scaled map, in hard copy or electronic form, that shows the location of the site and the location of each sensitive population and resource identified pursuant to (f)1 above. The Department prefers electronic maps and it prefers that electronic maps be compatible with the New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards" outlined in N.J.A.C. 7:1D, Appendix A. The Department's website at <http://www.state.nj.us/dep/GIS/newmapping.htm> provides user guidance and links to internet mapping applications and data downloads; and

5. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multi-phase remediation or initiating a single phase remediation, submit a paper copy and an electronic copy (disk or CD) of the completed Sensitive Population and Resource Checklist and the map generated pursuant to (f)4, above, to the following:

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i. The Department case manager. If a case manager for the site has not been assigned, a copy of the Sensitive Population and Resource Checklist shall be submitted as part of the remedial investigation report or remedial action report required by this chapter. The submission to the Department shall include documentation that the Checklist and map was sent to the municipal clerk and the designated health official;

ii. The DEP Office of Community Relations at the following address:

Division of Remediation Support  
New Jersey Department of Environmental Protection  
401 East State Street, 6<sup>th</sup> Floor  
P.O. Box 413  
Trenton, NJ 08625-0413  
Attention: Office of Community Relations

iii. The clerk of each municipality in which the site is located; and

iv. The designated local health official.

(g) Except as provided in (e) above, the person responsible for conducting the remediation shall provide public notice, either by posting a sign pursuant to (h) below or by sending periodic notification letters pursuant to (i) below, as follows:

1. All public notices, whether in the form of a sign or a notification letter, shall be in English. Additionally, where, pursuant to (f) above, the person responsible for conducting the remediation determines that non-English speaking persons reside in or utilize the area within 200 feet of the site boundary, notice shall also be provided in the non-English language; and

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2. With prior Departmental approval, the person responsible for conducting the remediation may, at any time, change the form of notification pursuant to this subsection from posting a sign pursuant to (h) below to sending periodic notification letters pursuant to (i) below, or from sending notification letters pursuant to (i) below to posting a sign pursuant to (h), below.

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

1. A minimum of one sign shall be posted so that it is clearly visible to the public;

2. The sign shall be posted as follows:

i. No later than two weeks prior to either initiating field activities associated with a remedial investigation of a multi-phase remediation or initiating a single phase remediation; or

ii. For sites where the remedial investigation or single phase remediation was initiated prior to [Effective date of this rule], no later than [Effective date of this rule plus 1 YEAR];

3. The sign shall remain posted and shall be maintained so that it is legible at all times, until such time as the Department issues a No Further Action and Covenant Not to Sue letter pursuant to N.J.A.C. 7:26C;

4. The sign shall be at least two feet by three feet in size and shall include the following wording, printed in font that is of sufficient size to be readable from the street or sidewalk:

i. "Environmental Investigation/Cleanup In Progress at This Site;"

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ii. “For Further Information Contact...,” followed by the telephone number for the person responsible for conducting the remediation and the telephone number for Department’s Office of Community Relations, which is posted on the Department’s website at [www.state.nj.us/dep](http://www.state.nj.us/dep); and

iii. “Posted on,” followed by the date the sign was posted;

5. Within two weeks after the sign is posted, the person responsible for conducting the remediation shall submit the site information required at (i)4 below, and a photograph of the sign showing its location and content in both electronic/digital format and in hard copy to:

i. The assigned case manager. If a case manager for the site has not been assigned, include a copy of the photograph as part of the remedial investigation report or remedial action report required by this chapter;

ii. The Department’s Office of Community Relations at the address provided in (f)5ii above;

iii. The municipal clerk of each municipality in which the site is located; and

iv. The designated local health official; and

6. The person responsible for conducting the remediation shall comply with all local laws and requirements relevant to the posting of signs.

(i) If the person responsible for conducting the remediation chooses to provide public notice by sending notification letters, the following shall apply:

1. Notification letters shall be sent:

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i. No later than two weeks prior to either initiating field activities associated with a remedial investigation of a multi-phase remediation or initiating a single phase remediation; or

ii. For sites where the remedial investigation or single phase remediation was initiated prior to [Effective date of this rule], no later than [Effective date of this rule plus 1 YEAR].

2. Additional notification letters that reflect the current condition and progress of the remediation shall be sent every two years after the initiation of the single phase remediation or the remedial action until a No Further Action and Covenant Not to Sue letter is issued by the Department pursuant to N.J.A.C. 7:26C, or on a schedule approved by the Department.

3. The notices prepared pursuant to (i)1 and 2 above shall be sent to the following persons by certified mail:

i. Each owner of all real property, as shown on the current municipal tax duplicate, and tenants of those properties, located within 200 feet of the site boundary; and

ii. The administrator of each school and child care facility identified in the sensitive population and resource checklist required pursuant to (f) above.

4. The notice shall include the following site information:

i. Name and address of the site;

ii. Tax block(s) and lot(s);

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at

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<http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the number provided by the Department's hotline may be substituted 1-877 WARNDEP or 1-877-927-6337;

iv. A statement that contamination has been identified;

v. A brief description of the type of contamination in common language, the affected environmental media and action(s) being taken at the site;

vi. Contact information for the person responsible for conducting the remediation and for the Department's Office of Community Relations; and

vii. A statement that the person responsible for conducting the remediation will provide a copy of all environmental reports to the municipality upon the municipality's request.

5. Each time notification letters are sent, the person responsible for conducting the remediation shall submit an electronic copy and a paper copy of one notification letter and list of recipients to the following:

i. The assigned case manager. If a case manager for the site has not been assigned, include a copy of the notification letter and list of recipients as part of the remedial investigation report or remedial action report required by this chapter;

ii. The Department's Office of Community Relations at the address provided in (f)5ii, above;

iii. The municipal clerk of each municipality in which the site is located; and

iv. The designated local health official.

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(j) If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements or to construct the engineering controls approved by the Department in either a remedial action workplan pursuant to N.J.A.C. 7:26C-8 or a landfill closure plan pursuant to N.J.A.C. 7:26-2A.9, the person shall:

1. Send a notification letter to each of the following persons by certified mail:

i. Each owner of real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary;

ii. The mayor of each municipality where the site located;

iii. The county designated solid waste coordinator;

iv. The designated local health official; and

v. The assigned case manager. If a case manager for the site has not been assigned, to the Department's Office of Community Relations at the address provided in (f)5ii, above; and

2. Include the following in the additional notification:

i. A description of the proposed use of contaminated material at the site;

ii. The concentrations of contaminants in the material;

iii. The amount of material proposed to be brought on to the site;

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iv. The controls designed to reduce or eliminate exposure to the contamination; and

v. A tentative schedule for the activity.

(k) Except as provided in (e) above and (l) and (m) below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute and publish a fact sheet as follows:

1. The fact sheet shall be prepared and distributed:

i. Within two weeks after the discovery that contamination has migrated off site; or

ii. For sites where contamination has migrated off site prior to the [Effective date of this rule], no later than [Effective date of this rule plus 1 YEAR]; and

2. The fact sheet shall be updated and redistributed with the relevant information regarding the extent of the contamination at the completion of the remedial investigation, when the extent of contamination has been determined.

3. The fact sheet and any updates shall be distributed by certified mail, to each owner of all real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary;

4. The fact sheet and any updates shall be in English. Additionally, where, pursuant to (f) above, the person responsible for conducting the remediation determines that non-English speaking persons reside in or utilize the area within 200 feet of the site boundary, the fact sheet and any updates shall also be provided in the non-English language;

5. The fact sheet shall include the following information:

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i. Name and address of the site;

ii. Tax block(s) and lot(s);

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the number provided by the Department's hotline may be substituted 1-877 WARNDEP or 1-877-927-6337;

iv. A description of the commercial and industrial history of the site based on information gathered during the preliminary assessment conducted pursuant to N.J.A.C. 7:26E-3.1(c);

v. A description of contamination including:

(1) The contaminants of concern;

(2) The affected environmental media;

(3) Contaminant concentrations;

(4) The remediation standard applicable to each contaminant;

(5) The extent of contamination,

(6) The date contamination was identified;

(7) The source of contamination; and

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(8) A list of online resources for information about the contaminants.

vi. A description of the actions performed to minimize the impact to the public;

vii. Date that the fact sheet was prepared;

viii. Contact information for the person responsible for conducting the remediation;  
and

ix. Contact information for the Department's Office of Community Relations, at the address provided in (f)5ii above;

6. Within four weeks of the discovery of off-site contamination, the person responsible for conducting the remediation shall:

i. Publish the fact sheet prepared pursuant to (k) above as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site; and

ii. Submit a copy of the fact sheet, a list of persons to whom the fact sheet was mailed pursuant to (k)3 above, and a copy of the display advertisement to:

(1) The assigned case manager. If a case manager for the site has not been assigned, include a copy of the fact sheet, list of recipients and a copy of the display advertisement as part of the remedial investigation report or remedial action report required by this chapter;

(2) The Department's Office of Community Relations at the address provided in (f)5ii, above;

(3) The municipal clerk of each municipality in which the site is located; and

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(4) The designated health official.

7. Within four weeks after the horizontal and vertical extent of contamination has been determined pursuant to N.J.A.C. 7:26E-4.1, the person responsible for conducting the remediation shall:

i. Publish an updated fact sheet prepared pursuant to (k)2 above, as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site; and

ii. Submit a copy of the fact sheet, a list of persons to whom the fact sheet was mailed pursuant to (k)3 above, and a copy of the display advertisement to:

(1) The assigned case manager. If a case manager for the site has not been assigned, include a copy of the fact sheet, list of recipients and a copy of the display advertisement as part of the remedial investigation report or remedial action report required by this chapter;

(2) The Department's Office of Community Relations at the address provided in (f)5ii, above;

(3) The municipal clerk of each municipality in which the site is located; and

(4) The designated local health official.

(l) If the contamination has only affected one adjoining property and the affected contaminated medium is limited to the soil, the person responsible for conducting the remediation shall notify only that adjoining property owner and tenant in writing via certified mail. The notice shall describe the nature and extent of the contamination.

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(m) If contamination migrates off site and the affected media is limited to historic fill, the person responsible for conducting the remediation is exempt from the requirements of (k) above.

(n) The person responsible for conducting the remediation who is performing the remediation with the Department's oversight in accordance with N.J.A.C. 7:26C may propose a plan for public notice and outreach as an alternative to (h) or (i) above. The alternative plan shall be submitted to the assigned case manager and Department's Office of Community Relations at the address in (f)5ii above for the Department's review.

1. If the Department determines that the application is complete and that the proposed alternative plan provides adequate public notice, the Department will provide the person responsible for conducting the remediation with a written approval of the alternative plan; or

2. If the Department determines that the application is deficient, the Department will provide written comments to the person responsible for conducting the remediation describing the deficiencies in the application, in which case the person may submit a revised application addressing the deficiencies to the Department.

(o) The person responsible for conducting the remediation shall conduct additional public outreach if the Department determines that additional outreach is needed, or when the Department determines that there is substantial public interest in remediation activities concerning a contaminated site.

1. The Department may determine that there is substantial public interest when it receives:

i. A petition containing the signatures of 25 or more people who live or work within 200 feet of the site, if contamination has not migrated off site;

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ii. A petition containing the signatures of 25 people that live or work within 200 feet of the extent of contamination, if contamination has migrated from the site boundary; or

iii. A written request by a municipal official, such as the Mayor or the chairperson of an environmental commission, or a designated local health official.

2. When the Department determines that there is substantial public interest, the Department shall notify the person responsible for conducting the remediation and post a summary of this determination on the Department's web site at [www.state.nj.us/dep](http://www.state.nj.us/dep); and

3. The person responsible for conducting the remediation shall develop and implement additional public outreach based on the needs expressed by the community. The outreach may include the following:

i. Publicizing and hosting an information session or public meeting;

ii. Publishing a notice containing basic information about the site in the local paper of record; or

iii. Establishing a local information repository.

(p) The notifications required pursuant to this section are not intended to satisfy the public participation requirements applicable to sites subject to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., and the National Contingency Plan regulations, 40 C.F.R. Part 300.

[(f)] (q) The person responsible for remediating a contaminated site located within the jurisdiction of the Pinelands Commission as defined pursuant to N.J.S.A. 13:18A-1 et seq. shall:

1. (No change);

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2. Submit, for approval, a copy of the remedial design and construction documents [along with] and a completed Pinelands application to the Pinelands Commission prior to implementing a remedial action; and

3. Not [begin] commence any construction activity at the site until the [activity has been approved pursuant to the provisions of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50) including any Memorandum of Agreement entered into between the Department and the] Pinelands Commission [.] approves the remediation in writing; and

[(g)] 4. [The] Send the information required [to be sent] pursuant to this subsection to the Pinelands Commission [pursuant to (f)1 and 2 above shall be submitted to] at the following address:

The Pinelands Commission  
P.O. Box 7  
15 Springfield Road  
New Lisbon, NJ 08064

[(h) The person responsible for conducting the remediation shall notify the Department pursuant to this subsection if that person determined that contamination migrated onto their site from another site. The person responsible for conducting the remediation shall notify their assigned case manager, or if they are not assigned a case manager, the Department hotline at 1-877 WARNDEP or 1-877-927-6337.]

#### **7:26E-1.11 Bias for Action**

(a) As a first priority [during remediation], the person responsible for conducting the remediation shall implement an interim response action to contain or stabilize contaminants in all

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media [should be contained and/or stabilized] to prevent contaminant migration and exposure [to] of receptors [and to prevent further movements of contaminants through any pathway].

(b) If an immediate environmental concern (IEC) condition is identified at a site, the person responsible for conducting the remediation shall conduct the following interim response actions:

1. Notify the Department pursuant to N.J.A.C. 7:26E-1.4(a) and (b) as appropriate;

2. Immediately stabilize the IEC condition with Department oversight pursuant to N.J.A.C. 7:26C; and

3. When potable water sources have been impacted by contamination at levels above the ground water remediation standards at N.J.A.C. 7:26E-1.13(b), treat the contaminated drinking water to a point at which the contaminant levels do not exceed the ground water remediation standards, or provide an alternative water supply.

(c) The person responsible for conducting the remediation shall submit written documentation to the Department of all interim response actions conducted in compliance with (a) or (b) above within 14 days of initiating each such action.

### **SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION**

7:26E-3.7 Site investigation - ground water

(a) through (f) (No change.)

(g) To support a claim that all or part of groundwater contamination detected in onsite groundwater samples is caused by background groundwater contamination, a background groundwater investigation shall be conducted as follows:

1. through 4. (No change.)

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5. The person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4[(g)](c) if that person determines, pursuant to [(g)4] (c)4 above, that ground water contamination exists upgradient of the site. The person responsible for conducting the remediation shall notify their assigned case manager, or if they are not assigned a case manager, the Department hotline at (1-877 WARNDEP or 1-877-927-6337).

#### **SUBCHAPTER 4. REMEDIAL INVESTIGATIONS**

##### **7:26E-4.1 Remedial investigation requirements**

(a) through (b) (No change.)

(c) The person responsible for conducting the remedial investigation shall conduct notification and public outreach pursuant to N.J.A.C. 7:26E-1.4.

#### **SUBCHAPTER 5. REMEDIAL ACTION SELECTION**

##### **7:26E-5.1 Remedial action selection**

(a) through (b) (No change.)

(c) A person responsible for conducting a remediation for a site shall select a remedial action that reduces or eliminates exposure to contaminants above the applicable remediation standard. In determining the appropriate remedial action that will reduce or eliminate exposure to contaminants above the applicable remediation standard, the person responsible for conducting the remediation shall select, develop, and implement a remedial action that is based on the following factors:

1. through 3. (No change.)

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4. The potential impacts of the proposed remedial action on the local community, including, without limitation:

i. The potential impacts to the community identified by the responses that the person responsible for conducting the remediation receives from the notices provided [to the local government] in accordance with N.J.A.C. 7:26E-1.4[(a)]; and

ii. (No change.)

5. (No change.)

(d) through (f) (No change.)

## **SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS**

### **7:26E-8.2 Deed notice requirements**

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

(i) Any person may submit a written request along with the memorandum of agreement application, at the address provided [at N.J.A.C. 7:26C-1.4(e)] in (5) below, to remove or modify a remedial action that includes an engineering and/or institutional control. The person shall submit a copy of the existing deed notice or declaration of environmental restrictions stamped "filed" and the reason for the removal or modification based on the following:

1. through 4. (No change.)

#### **5. Division of Remediation Support**

Department of Environmental Protection

401 East State Street

P.O. Box 434

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Trenton, NJ 08625-0434

Attention: Case Assignment Section.

(j) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement addressing the requirements of Executive Order No. 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize the proposal.

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Date

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Lisa P. Jackson, Commissioner

Department of Environmental Protection