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**DEPARTMENT OF ENVIRONMENTAL PROTECTION
SITE REMEDIATION PROGRAM**

Administrative Requirements for the Remediation of Contaminated Sites and Technical Requirements for Site Remediation

Proposed Amendments: N.J.A.C. 7:1-5.7; 7:14B-1.4, 1.6, 1.7, 2.1 through 2.4, 2.6, 2.7, 3.5, 3.7, 5.1, 5.4 through 5.9, 6.5, 6.7, 7.1 through 7.4, 8.1, 8.3, 9.1, 9.2, 9.4, 9.5, 10.1, 10.3, 10.4, 10.6, 12.1, 12.3, 13.1, 13.2, 13.4, 13.8, 13.10, 12.4, 15.1, 16.9; 7:26B-1.4, 1.5, 1.8, 1.10, 1.11, 2.1, 3.2, 5.3, 5.4, 5.7, 5.9, 8.1 and Appendix C; and 7:26C-1.1 through 1.18, 2.1, 2.2, 2.4, 3.2, 3.3, 4.1, through 4.7, 5.1 through 5.13, 6.2, through 6.4, 7.1, 7.2, 7.4 through 7.10, 10.4, 10.6, and Appendix C

Proposed Repeals: N.J.A.C. 7:14B-1.8, 3.6, 3.8, 8.2, 8.4 through 8.8, 9.3, 12.3, 14; 7:26B-1.7, 1.9, 3.3, 3.4, 4, 5.1, 5.2, 5.5, 5.6, 5.8, 6, 7, 8.2 through 8.4; 7:26C-2.3, 2.5, 7.3; and 7:26E

Proposed New Rules: N.J.A.C. 7:26B-1.12, 3.3, 3.4; 7:26C-1.7, 1.8, 4.2, 4.5, 7.2, 7.3, 7.5, 14, 15, 16, Appendix B and D; and 7:26E

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

Authority: N.J.S.A. 13:1K-6 et seq., 58:23-11 et seq., 58:10A-21 et seq., 58:10B-1 et seq., 58:10C-1 et seq.

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

DEP Docket Number: 12-11-07

Proposal Number: PRN 2011- _____

A public hearing concerning this proposal will be held on September 13, 2011 9:00 a.m.

at:

New Jersey Department of Environmental Protection

First Floor Hearing Room

401 East State Street

Trenton, New Jersey

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Directions to the hearing room may be found at the Department's website,

<http://www.state.nj.us/dep/where.htm>.

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

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

Janis Hoagland, Esq.
Attn.: DEP Docket No. 12-11-07
Office of Legal Affairs
Mail Code 401-04L
Department of Environmental Protection
401 East State Street, 4th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on CD or DVD as well as on paper. Submittal of a CD or DVD is not a requirement. Submittals on CD or DVD must not be access-restricted (locked or read-only) in order to facilitate the Department's use of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used.

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Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

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

The agency proposal follows:

Summary

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

I. Background

The Department is proposing amendments, repeals, and new rules (the Final Rules) to implement P.L. 2009, c. 60 (the Act). The Act includes the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and related amendments to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act (Spill Act), 58:23-11 et seq., the Underground Storage of Hazardous Substances Act (UST Act), N.J.S.A. 58:10A-21 et seq., and the Brownfield and Contaminated Site Remediation Act (Brownfield Act), N.J.S.A. 58:10B-1 et seq.

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SRRA established a new paradigm for the remediation of contaminated sites in New Jersey, including the requirement that a person responsible for conducting the remediation employ a licensed site remediation professional (an LSRP) to supervise the remediation. SRRA provides for a three year phase-in period from May 7, 2009, the effective date of the Act, during which ongoing remediation projects may continue either under Department oversight or under the supervision of an LSRP (all remediation projects begun after November 4, 2009, the effective date of the rules specially adopted to implement SRRA, must proceed under the supervision of an LSRP from inception). However, as of May 7, 2012, all remediation projects must be supervised by an LSRP, and the Department's oversight role will be considerably curtailed.

The Department is implementing the requirements of SRRA, in three phases: (1) the special adoption of Interim Rules, including the replacement of the former Oversight of the Remediation of Contaminated Sites rules with the new Administrative Requirements for the Remediation of Contaminated Sites (ARRCS rules), N.J.A.C. 7:26C, and amending 14 other rules related to site remediation, all of which was effective on November 4, 2009 (see 41 N.J.R. 4467(a) (December 7, 2009) for the special adoption); (2) the readoption of the Interim Rules with minor amendments to continue the Interim Rules in effect while the Department continues to phase in the new site remediation paradigm (see 43 N.J.R. 1077(a) (May 2, 2011) for the readoption proposal); and (3) this proposal of major amendments, repeals and new rules (the Final Rules), through which the Department will fully implement the new site remediation paradigm.

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The Interim ARRCs rules now in effect establish the criteria for determining whether a person responsible for conducting the remediation must conduct remediation under the supervision of an LSRP (new projects), may continue under the traditional remediation paradigm in effect prior to November 4, 2009 (ongoing projects), or for ongoing projects, may opt to remediate the site under the supervision of an LSRP. The ARRCs rules also establish timeframes by which certain phases of remediation must be completed. Fees to be paid and funding sources to be established by the person responsible for conducting the remediation are also codified in the ARRCs rules, along with how to obtain funding for remediation projects through various grants and funds, and how to obtain a permit for the remedial action phase of remediation. The documents that are issued by the Department and the LSRP that signify that the remediation has been completed are also codified in the ARRCs rules.

The Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E, work in tandem with the ARRCs rules; the ARRCs rules contain the administrative requirements and the Technical Requirements prescribe how site remediation projects are to be conducted. All remediation, including remediation that is triggered by an event listed in the Industrial Site Recovery Act (ISRA) Rules, N.J.A.C. 7:26B, and remediation being conducted pursuant to the Underground Storage Tanks (UST) rules, N.J.A.C. 7:14B, must proceed pursuant to the ARRCs rules and the Technical Requirements.

The Department is proposing to amend the ARRCs rules, the UST rules and the ISRA Rules to remove all provisions related to the phase-in period. The Department is also proposing

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to recodify from the ISRA Rules and the UST rules to the ARRCs rules all administrative requirements. The Department is also proposing to add to the ARRCs rules mandatory timeframes by which the remedial investigation must be completed and the remedial action must be implemented (the Technical Requirements and ARRCs currently have regulatory and mandatory timeframes, respectively, for submitting the initial receptor evaluation, the preliminary assessment and site investigation, investigating and remediating light non-aqueous phase liquids and addressing impacted receptors where an immediate environmental concern situation is identified).

Additionally, the Department is proposing to repeal and replace the Technical Requirements with new Technical Requirements that are performance-based and that therefore will allow more flexibility in addressing contamination and potential exposure pathways while continuing to ensure that remediation is conducted in such a way that the results are protective of human health and the environment. The process aspects of the existing Technical Requirements are updated and revised, and many of these requirements appear as a new series of technical guidance documents that contain the Department's direction concerning how to achieve the performance-based goals that the Department is proposing to codify in the new Technical Requirements. Although the guidance documents are not the subject of this rulemaking, they are available for download from the Department's website.

The Department is also proposing a minor amendment to the Discharges of Petroleum and Other Hazardous Substances (DPHS) rules, N.J.A.C. 7:1E. The DPHS rules currently allow

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the person responsible for a discharge to respond to a discharge by complying with either the facility's approved discharge cleanup and removal (DCR) plan or the ARRCs rules. The Department proposes to amend this provision to instead require compliance with both the DCR plan and the ARRCs rules. Each has different objectives and requirements, and each is necessary to protect the public health and safety and the environment when a discharge occurs.

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

Except in certain particular instances where the form is so specific that the Department anticipates that the name of the form will not need to be changed in the future, the Department also proposes amendments to delete the specific form names that remain in the rules, and instead to direct the person responsible for conducting the remediation to the Department's website address www.nj.gov/dep/srp/srra/forms. As mentioned in the proposal and adoption through which the Department revised portions of the rules to this end (see 42 N.J.R. 2297(a) (October 4, 2010) for the proposal and 43 N.J.R. 389(c) (February 22, 2011) for the adoption), and in the proposal to readopt the Interim Rules, 43 N.J.R. 1077(a) (May 2, 2011), the Department recognizes that the names of the various forms may change over time, forms may become obsolete, and new forms may be required. The Department does not want to have to amend rules each time a form name changes. Directing the person responsible for conducting the remediation to the website allows the Department greater flexibility to make such changes in the future. To

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ensure that the person responsible for conducting the remediation chooses the correct form, the Department has included on its website a table that lists each form by using a name that indicates the subject of the form and a citation to the rule to which the form pertains. Also included on this table are the version number of the form and the date that the form was last updated, and a link to the downloadable version of that form. This table on the website is updated appropriately as form names change, and forms are added or removed, and alerts concerning form updates appear at the top of the table.

Finally, since the Spill Act contains the affirmative obligation to remediate a contaminated site and it is the statutory underpinning for all of the remediation requirements in the ARRCs rules, the Technical Requirements, the UST rules and the ISRA rules, the Department is citing the Spill Act as authority for all of the chapters affected by this rule proposal. Additionally, to ensure that the statutory authorities are comprehensive for each chapter, and in order to facilitate implementation of the new site remediation program, the Department is citing each statutory authority in its entirety rather than by specific provisions.

II. Proposed Amendments to the Discharges of Petroleum and Other Hazardous Substances (DPHS) rules, N.J.A.C. 7:1E

The Discharges of Petroleum and Other Hazardous Substances (DPHS) Rules, N.J.A.C. 7:1E, are one set of rules through which the Department implements the Spill Act. These rules set stringent standards for discharge prevention and emergency response requirements for

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facilities storing or handling hazardous substances. The rules set forth procedures to be followed in the event of a discharge of a hazardous substance. They also set forth certain registration, reporting, design, and maintenance requirements for owners and operators of major facilities and transmission pipelines that handle hazardous substances. Additionally, they establish civil administrative penalties and grace period applicability for certain violations of the Spill Act and the DPHS Rules and the procedures for requesting an adjudicatory hearing. They also establish the manner in which information obtained from regulated facilities is to be asserted, determined and maintained as confidential. Appendix A contains the list of hazardous substances, and Appendix B contains forms to be used to demonstrate financial responsibility.

N.J.A.C. 7:1E-5 prescribes how to report a discharge of a hazardous substance and a malfunction of a discharge detection system, and how to respond to discharges of hazardous substances. These rules currently allow at N.J.A.C. 7:1E-5.7(a)2 the person responsible for a discharge to respond to a discharge by either following the facility's approved discharge cleanup and removal (DCR) plan or remediating the discharge pursuant to the ARRCs rules. The Department proposes to amend this provision to instead require compliance with both the DCR plan and the ARRCs rules. Although both rules address the remediation of a discharge, the ARRCs rules also require the person responsible for conducting the remediation to use the services of a LSRP and to comply with the regulatory timeframes contained in the Technical Requirements and the mandatory timeframes contained in the ARRCs rules.

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III. Proposed Amendments to the Underground Storage Tanks (UST) Rules - N.J.A.C.

7:14B

The Underground Storage Tanks rules (UST rules), N.J.A.C. 7:14B, regulate registration, construction, operation, maintenance and closure of underground storage tanks (USTs), and the remediation of leaking USTs.

The Act amended the Brownfield and Contaminated Site Remediation Act (Brownfield Act) at N.J.S.A. 58:10B-1.3b to require that all persons responsible for conducting the remediation of a contaminated site utilize the services of an LSRP. The Act also prohibits the use of a certified subsurface evaluator for the remediation of a discharge from an underground storage tank that is regulated under the UST rules. See N.J.S.A. 58:10C-15a. However, the Act provides that either a certified subsurface evaluator or an LSRP may supervise the remediation of a discharge from an unregulated heating oil tank. N.J.S.A. 58:10C-15b.

The Department proposes to amend the UST rules to incorporate the requirement to hire an LSRP to supervise remediation of discharges from regulated USTs, to delete provisions that provide for Department review or supervision of remediation, since review and supervision of remediation is now within the purview of the LSRP, and to substitute specific remediation requirements with broader requirements to remediate pursuant to the ARRCs rules and the Technical Requirements.

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A. Amendments concerning use of subsurface evaluators

After May 2012, work conducted on regulated underground storage tanks relating to the remediation of a discharge pursuant to N.J.A.C. 7:14B-7.2(b), 7:14B-7.4, 7:14B-8 or 7:14B-9.5 must be performed and certified by an LSRP, and not by a subsurface evaluator. The Department will not accept work conducted pursuant to N.J.A.C. 7:14B-7.2(b), 7:14B-7.4, 7:14B-8 or 7:14B-9.5 by a subsurface evaluator after the effective date of these rule amendments. Accordingly, the Department proposes amendments throughout the rule text that will make the rules consistent with this new paradigm. First, the Department proposes to amend N.J.A.C. 7:14B-1.7, Certifications, to require at N.J.A.C. 7:14B-1.7(d) that the owner or operator of the UST system submit the certification contained in this subsection with any permit application submitted in accordance with N.J.A.C. 7:14B-10.3(b)9, and to require that this certification be signed by an LSRP, rather than a subsurface evaluator. The Department also proposes to repeal the other subsurface evaluator certification requirements at N.J.A.C. 7:14B-1.7(g) and (h), because they are no longer applicable.

Second, as of May 2012, it will no longer be necessary to draw a regulatory distinction between UST discharges that may be remediated under the supervision of a subsurface evaluator versus an LSRP. Therefore, the Department proposes to repeal and reserve N.J.A.C. 7:14B-1.8 concerning general requirements. The Department also proposes to repeal N.J.A.C. 7:14B-9.1(e), 9.2(d), and 9.3 because these provisions concern when a subsurface evaluator must be involved in the regulated activity. The Department also proposes to amend N.J.A.C. 7:14B-

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10.3(b)9. This provision applies to an owner or operator of an UST system who chooses to use external leak detection methods such as vapor or product monitoring points to monitor the system for discharges. The use of these types of monitoring points requires a remediation professional to assess subsurface conditions at the UST system in order to determine if the conditions for vapor or ground water monitoring are appropriate and the correct placement of these monitoring points. In the past, this assessment was performed by a certified subsurface evaluator. After May 2012, SRRA precludes a subsurface evaluator from doing any work related to a regulated UST system. Thus, the Department is proposing to amend N.J.A.C. 7:14B-10.3(b)9 to substitute licensed site remediation professional for certified subsurface evaluator.

Third, the failure to hire an LSRP to conduct the remediation of a discharge from the underground storage tank system is proposed as an additional reason for the denial of the issuance and for the revocation of a Registration Certificate, at proposed new N.J.A.C. 7:14B-2.7(a)4 and (b)6, respectively. N.J.A.C. 7:14B-2.7(a) and (b) are reworded to provide that any of the actions listed therein on the part of the owner or operator will result in the denial of or issuance of or revocation of a facility's registration.

Fourth, the Department proposes to modify the provision for confirmed discharge reporting at N.J.A.C. 7:14B-7.3(a) to reflect the involvement of the LSRP or his or her representatives, and to replace the phrase "subsurface evaluation" with "remediation" with respect to the LSRP's function.

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Fifth, the Department proposes to amend N.J.A.C. 7:14B-13, concerning certification of individuals and business firms who provide services on underground storage tanks. Proposed new N.J.A.C. 7:14B-13.1(a)2, the amendments to N.J.A.C. 7:14B-13.1(d), proposed new N.J.A.C. 7:14B-13.1(g), and the amendments to N.J.A.C. 7:14B-13.1(m) and 13.2(b)3 require the use of an LSRP to remediate UST sites. The Department proposes to amend the title of N.J.A.C. 7:14B-13.1 to add “and services,” and to add a cross reference to the list of services (codified at N.J.A.C. 7:14B-13.2(a)) to which the subchapter applies at N.J.A.C. 7:14B-13.1(a) 1, (e)1 and 2, (f), and (l), and at N.J.A.C. 7:14B-13.4(b). The Department proposes to delete reference to “subsurface evaluation” at N.J.A.C. 7:14B-13.2(a)4, and to repeal N.J.A.C. 7:14B-13.2(b)5 and 13.4(a)7, which pertain to subsurface evaluators. At N.J.A.C. 7:14B-13.10(a)6, the Department proposes to add SRRA to the list of statutes pursuant to which the Department may deny, suspend, revoke, or refuse to renew a certification issued under this chapter.

Last, the Department proposes to replace “and” with “or” at N.J.A.C. 7:14B-16.2(e)1, because it is not necessary that an individual be certified, work for a certified firm and be supervised by a certified individual. If the individual is certified to work on unregulated heating oil tanks, that individual may work on his or her own, without the need for additional supervision.

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B. Department Review/Fees

Since the Department will no longer be reviewing UST system closure plans, site investigation reports, the initial remedial investigation report or other reports, the fees for review of these plans and reports, codified in N.J.A.C. 7:14B-3.5(c) through (e), are proposed for repeal. In their place, the Department proposes at new N.J.A.C. 7:14B-3.5(c) to require payment of a \$450 permit fee, and at new N.J.A.C. 7:14B-3.5(f)1 and 2, fee payment instructions. As companion amendments, the Department proposes at new N.J.A.C. 7:14B-10.3(b)10 and at existing N.J.A.C. 7:14B-10.6(b) to cross-reference the fee submittal requirements at N.J.A.C. 7:14B-3.5. Additionally, the Department proposes to delete from N.J.A.C. 7:14B-3.5(a) and (b) references to reports or submittals to the Department, and to also delete from N.J.A.C. 7:14B-3.5(a) the requirement to pay fees pursuant to the ARRCs rules.

Proposed new N.J.A.C. 7:14B-3.5(d) provides that the Department shall not pro-rate any fees or charges required by this chapter. Additionally, since the ARRCs rules at N.J.A.C. 7:26C-4 govern payment of oversight costs, the Department proposes at new N.J.A.C. 7:14B-3.5(e) and as an amendment to 7:14B-9.5(b) to require the owner or operator of an underground storage tank facility to pay fees pursuant to the ARRCs rules at N.J.A.C. 7:26C-4. The Department also proposes to repeal N.J.A.C. 7:14B-3.6, Payment for Department services, and N.J.A.C. 7:14B-3.8, Oversight cost review, as no longer necessary.

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The Department proposes to delete N.J.A.C. 7:14B-9.2(c), which allowed the owner or operator to submit a closure plan to the Department for review, because the Department will no longer review closure plans. Instead, these plans will be developed and implemented by the LSRP. Proposed new N.J.A.C. 7:14B-9.2(c) requires that underground storage tanks containing hazardous waste must be closed pursuant to the Hazardous Waste rules, N.J.A.C. 7:26G, if the tank is regulated pursuant to those rules. An underground storage tank that contains hazardous substances would be subject to the Federal regulations at 40 CFR Part 264, which are incorporated by reference in the Hazardous Waste rules at N.J.A.C. 7:26G-8. The Federal regulations do not allow closure of an UST containing hazardous waste by an LSRP.

Proposed new N.J.A.C. 7:14B-9.2(d) through (f) set forth specific tank closure requirements, requirements for the abandonment in place of a tank, and tanks that are located under a permanent structure, respectively. At proposed new N.J.A.C. 7:14B-9.2(d), the Department is proposing to incorporate by reference the American Petroleum Institute's "Practice for the Abandonment or Removal of Used Underground Service Tanks," in publication at the time the tank is to be closed (available from the American Petroleum Institute, 1220 L Street Northwest, Washington, DC 20005). This document contains the Institute's practices for UST abandonment or removal. These requirements are currently codified in the Technical Requirements at N.J.A.C. 7:26E-6.3(b), the repeal of which is discussed more fully below.

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C. Amendments to comport the UST rules with the ARRCs rules and the Technical Requirements

At N.J.A.C. 7:14B-1.6, the Department proposes to add a definition of the term "remediation" or "remediate" with a cross reference to the definition of this same term in the Technical Requirements; to amend the definition of "Commissioner" by adding the phrase "New Jersey" before the word Department and to add "or his or her authorized representative;" to amend the definition of "contaminant" by adding the phrase "contamination or" at the beginning of the definition; and to amend the definitions of "contaminant," "remedial action," "remedial investigation," and "site investigation" to reference the Technical Requirements at N.J.A.C. 7:26E-1.8 in order to make these definitions consistent with the definitions of these terms as they appear in the Technical Requirements.

The Department proposes to replace the existing confidentiality claim provision at N.J.A.C. 7:14B-3.7 with a provision that directs any person who wishes to assert a confidentiality claim concerning information that person has submitted to the Department to follow the procedures set forth in proposed new N.J.A.C. 7:26C-15 of the ARRCs rules, discussed below.

The UST general operating requirements are codified at N.J.A.C. 7:14B-5. The Department proposes to amend N.J.A.C. 7:14B-5.1(a) and (c) to delete the words "spills and overfills," and add at N.J.A.C. 7:14B-5.1(c) the phrase "discharge from the underground storage

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tank system," to clarify that any discharge, not just discharges caused by spills and overfills, must be investigated and reported to the Department, and to require that reporting be made pursuant to the ARRCS rules.

At N.J.A.C. 7:14B-5.5(a), the Department proposes to not only require that the owner or operator prepare a release response plan, but to also require that this plan be updated as necessary to reflect changes made to the facility and applicable changes to the rules governing release response plans, and at N.J.A.C. 7:14B-5.5(a)3, that the plan include the name of the LSRP, not the corrective action contractor. The Department also proposes to add the title of N.J.A.C. 7:26C, namely the ARRCS rules, at N.J.A.C. 7:14B-5.5(a)4, and reference the entire ARRCS chapter rather than only Subchapter 2.

The Department proposes to amend N.J.A.C. 7:14B-5.5(b) to specify that it is the owner or operator who must ensure that the release response plan is available for on site inspection. The Department also proposes to amend N.J.A.C. 7:14B-5.5(c) to add that any release response plan must be in compliance with the Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E, as well as the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

N.J.A.C. 7:14B-7 pertains to release reporting and investigation, and N.J.A.C. 7:14B-7.2 contains the requirements concerning investigating suspected releases from UST systems. Proposed new N.J.A.C. 7:14B-7.2(a)6 requires the owner or operator to employ an LSRP to

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collect a soil and/or groundwater sample in the immediate area when there is a photoionization detector reading above 50 units. A reading of greater than 50 units with a photoionization detector is a strong indicator that a discharge has occurred and that additional soil or ground water sampling is needed in that area.

The Department also proposes to amend N.J.A.C. 7:14B-7.3(c) to delete the reference to taking remedial action as set forth in N.J.A.C. 7:14B-8 when a discharge is confirmed, because many of the remedial requirements are being deleted from N.J.A.C. 7:14B-8. Upon the effective date of these amendments, the owner or operator will be required to remediate any confirmed discharge from the underground storage tank system in accordance with this chapter and the ARRCs rules, and the Department proposes to amend N.J.A.C. 7:14B-7.3(c) to so reflect. The Department also proposes to require at N.J.A.C. 7:14B-7.3(a)3 that the results from a closure plan be implemented, rather than conducted.

N.J.A.C. 7:14B-7.4 concerns the investigation of unknown sources of contamination. These requirements are triggered when, for example, the Department makes the owner or operator aware of a condition, such as the presence of a contaminant not from the owner's or operator's UST, that would prompt the need for an "unknown source investigation." The owner or operator may also become aware of the need for this type of investigation when a discharge of a substance is discovered in the vicinity of the facility, the facility stores the same type of substance, and there is no other known source of this substance.

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Pursuant to existing N.J.A.C. 7:14B-7.4, the owner or operator of the facility is required to perform an unknown source investigation at the facility by conducting a site investigation, which includes hiring an LSRP to collect soil and/or ground water samples. While N.J.A.C. 7:14B-7.1 requires a suspected release investigation, the outcome of the suspected release investigation for the substances stored at the facility based upon N.J.A.C. 7:14B-7.2 could be ruled conclusive (meaning that no obvious system checks identified a discharge) by the owner or operator of the facility, even while the source of known contamination in the vicinity of the facility remained unknown. If a suspected release investigation is ruled "conclusive" by the facility owner or operator, but there is contamination in the environment that is of the same type as substances stored at the facility, no additional action may be taken by the facility owner or operator and an unchecked release may continue. An "unknown source investigation" differs from a "site investigation" in two distinct ways. First, the unknown source investigation is required to be conducted and a report submitted to the Department within 90 days of the facility owner or operator receiving information triggering this investigation. However, the site investigation is due within one year after the applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2. The Department requires the shorter timeframe for the unknown source investigation to ensure that the ongoing release is halted. Second, unlike a site investigation, which is targeted to specific areas of concern, the unknown source investigation could first look at the entire facility rather than a specific area of concern to determine if contamination is migrating from the site and then, if contamination is found, focus on individual areas of concern.

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The proposed new Technical Requirements at N.J.A.C. 7:26E-3 set forth the requirements for conducting site investigations that can be utilized in determining if a UST site is a source of contamination. Accordingly, the Department proposes to amend N.J.A.C. 7:14B-7.4 to delete the phrase, "a site investigation of the underground storage tank system(s)" and to add the phrase, "an unknown source investigation." When the UST owner or operator has information that indicates that the UST facility may be the source of contamination, the Department is proposing to require the submission of an unknown source investigation report to the Department within 90 days, rather than within the 1-year timeframe that applies to site investigation reports pursuant to proposed N.J.A.C. 7:26E-3.15. In some instances, the UST owner or operator may become aware that the site may be the source of contamination as part of a Department-initiated, priority unknown source investigation. An unknown source investigation requires that site investigation activities be undertaken promptly. While the UST owner or operator must comply with the requirements at N.J.A.C. 14B-7.3 (confirmed discharges), complying with this requirement and demonstrating the current tank system alone is not leaking will not be an acceptable outcome as part of an unknown source investigation. Soil and/or ground water samples are necessary in evaluating these situations. Accordingly, the Department proposes that an unknown source investigation report be prepared in accordance with the Technical Requirements at N.J.A.C. 7:26E-3.14. The Department proposes to define an "unknown source investigation" at N.J.A.C. 7:14B-1.6 as an investigation involving the collection of soil and/or ground water samples to verify that a facility is a source of a discharge.

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The Department proposes delete the word "activities" from the title of Subchapter 8, which contains the requirements for the remediation of discharges from underground storage tank systems, because the term "remediation" reflects all activities related to the remediation of a contaminated site.

The Department proposes to rename N.J.A.C. 7:14B-8.1 from "Immediate corrective action requirements and procedures" to "Responses to leaks and discharges," to better reflect the requirements of this section. The Department also proposes to recodify from N.J.A.C. 7:14B-8.8, which is proposed to be repealed, to proposed new N.J.A.C. 7:14B-8.1(a) the steps to be taken when the owner or operator determines that a hazardous substance has leaked into the interstitial space created by the secondary containment system, with amendments that make these provisions easier to understand. Proposed new N.J.A.C. 7:14B-8.1(a) requires the owner or operator who has confirmed that a leak has occurred into the interstitial space created by the secondary containment system to determine the source of the leak, properly remove all hazardous substances from the underground storage tank system, and repair, replace or close the underground storage tank system in accordance with the requirements of this chapter. The proposed new rule requires the owner or operator to prepare a written report to be maintained on-site, in which is documented the remedial actions taken regarding the interstitial leak, within 30 days after identifying the leak. Since it is important to catch leaks while they are contained within the secondary containment system and before they become a discharge, the Department proposes to place these requirements at the beginning of this section.

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Once the leak results in a discharge, the discharge must be remediated in accordance with the ARRCs rules and the Technical Requirements. Accordingly, the Department proposes to recodify N.J.A.C. 7:14B-8.1(a) as (b), with amendments that clarify the requirements concerning actions to be taken once a discharge has been detected, including the new requirement at N.J.A.C. 7:14B-8.1(b)4 that the discharge be remediated pursuant to the ARRCs rules and the Technical Requirements, and replacing "mitigate the effects of" with "remediate" at N.J.A.C. 7:14B-8.1(b)4 to make it clear that discharges are to be remediated and not just mitigated.

Additionally, since all of the requirements for discharge remediation are proposed to be codified in the Technical Requirements, N.J.A.C. 7:26E, the Department proposes to repeal and reserve those sections of Subchapter 8 of the UST rules that pertain to remediation of discharges from underground storage tanks, including N.J.A.C. 7:14B-8.2 Discharge remediation requirements, 8.4 Implementation of the remedial action requirements, 8.5 Remedial action reports, 8.6 Applicable remediation standards, and 8.7 Health and safety requirements. As a consequence of these repeals, the Department proposes to delete the definitions of "monitor well" and "officer" from N.J.A.C. 7:14B-1.6 because these terms will no longer be used in the UST rules.

Similarly, since reporting requirements are also proposed to be codified in the Technical Requirements, the Department proposes to delete from N.J.A.C. 7:14B-8.3, Reporting requirements, all reporting requirements except those at N.J.A.C. 7:14B-8.3(b) which pertain to tanks that are subject to Federal requirements, 40 CFR Part 280. The Department also proposes

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to change the title of N.J.A.C. 7:14B-8.3 to reflect that, as amended, this section will contain only one reporting requirement.

Subchapter 9 pertains to out-of-service UST systems and to the closure of USTs. At N.J.A.C. 7:14B-9.1(a)2, and (c)1 and 2, 9.4(a)2 and 9.5(a) and (b), the Department proposes to include the appropriate reference to the ARRCs rules and the Technical Requirements. At N.J.A.C. 7:14B-9.1(c)1 and 9.4(a)2, and 9.5(a), the Department proposes to require that a site investigation report must be submitted pursuant to the ARRCs rules at N.J.A.C. 7:26C-2.3 and the Technical Requirements at N.J.A.C. 7:26E-3.14, within the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-3.3. At N.J.A.C. 7:14B-9.1(c)1, the Department proposes to add the requirement that the site investigation must be performed by an LSRP in accordance with the Technical Requirements. Additionally, the Department proposes to amend N.J.A.C. 7:14B-9.5(b) to require that the site investigation report include the Facility Identification Number and the specific tank number(s) for the underground storage tank systems being closed. The tank number is referenced on the Underground Storage Tanks Registration certificate. The Department also proposes to delete the references to deadlines by which activities must be conducted, including all of N.J.A.C. 7:14B-9.4(a)3, and portions of N.J.A.C. 7:14B-9.5(a), because submissions are not to be made to the Department except as required in the ARRCs rules.

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The Department proposes to repeal and reserve N.J.A.C. 7:14B-12.3, Liability for compliance, because the UST Act and SRRA speak to liability for compliance, and restating this in the rules is unnecessary.

The Department proposes to repeal and reserve N.J.A.C. 7:14B-14, Confidentiality, because proposed new N.J.A.C. 7:26C-15 of the ARRCs rules pertains to confidentiality claims.

N.J.A.C. 7:14B-15 sets forth the financial responsibility requirements for owners and operators of underground storage tanks. N.J.A.C. 7:14B-15.1(g) relieves the owner or operator of the obligation to provide financial responsibility assurance when either the Department issues a no further action letter (see N.J.A.C. 7:14B-15.1(g)1) or that third party damage claims have been resolved (see N.J.A.C. 7:14B-15.1(g)2). The Department proposes to amend N.J.A.C. 7:14B-15.1(g)1 to substitute for the issuance of a no further action letter the concept of either the Department or an LSRP issuing a final remediation document (either a no further action letter issued by the Department or a response action outcome issued by an LSRP). However, financial assurance may be required pursuant to a remedial action permit issued under N.J.A.C. 7:26C-7.7.

D. Other Proposed Amendments

Since the terms “owner” and “operator” are defined at N.J.A.C. 7:14B-1.6 to mean owners and operators of underground storage tank systems, it is redundant to include the phrase “of an underground storage tank system” or “facility” or any variation of this phrase in the UST

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rules, unless this phrase provides context to the rule provision. Accordingly, the Department proposes amending the following to refer only to the owner or operator: N.J.A.C. 7:14B-2.1(a) through (d), 2.2(a) and (c) through (f), 2.3(b), 2.4(a), 2.6(a), 3.1, 3.2(a) and (c), 5.1(a), 5.4(a) and (a)6, 5.4(b), 5.5(a), 5.8, 6.7(a), (c), (d), (f) and (i), 7.1(a), 7.2(a), 7.3(a), (c) and (d), 7.4, 8.1(a)(to be recodified as (b)), 9.1(a) and (c), 9.2(a), 9.5(a), 10.1(f), 10.6(b), 10.8(b)4, 13.1(d) and (f), and 15.1(a), (c) and (e).

At N.J.A.C. 7:14B-2.2(b), the Department proposes to update the address to which all registration and certification forms must be submitted, and to cross-reference this provision in the following provisions that require submissions to the Department: proposed new N.J.A.C. 7:14B-3.5(c)2, and existing N.J.A.C. 7:14B-5.6(d), 6.7(g), 10.3(a), 10.4(b), 13.8(b) and 16.9(b).

The Department proposes to delete the phrase "at a minimum" from N.J.A.C. 7:14B-2.2(d), (e) and (f) because no information other than that which is specified at N.J.A.C. 7:14B-2.2(d), (e) and (f) is required to be submitted with the New Jersey Underground Storage Tank Facility Certification Questionnaire.

The Department proposes to add new N.J.A.C. 7:14B-2.2(d)1, requiring the owner or operator to include the facility name and location on the New Jersey Underground Storage Tank Facility Certification Questionnaire, and to recodify N.J.A.C. 7:14B-2.2(d)1 through 5 as (d)2 through 6.

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The Department proposes to repeal N.J.A.C. 7:14B-2.4(d). This provision was originally intended to ensure that owners and operators maintain any required financial responsibility until the issuance of the final remediation document. The Department has determined that keeping those facilities where tanks have been removed as "pending" in the Department's database until remediation is complete is not necessary, because the financial responsibility requirements with respect to remediation are adequately set forth at N.J.A.C. 7:14B-15.1(g). Since remediation could take years, the Department prefers to close the registration database record when the tanks are removed. Doing so does not alter the obligation of the owner and operator to maintain financial responsibility pursuant to subchapter 15.

The Department proposes to amend N.J.A.C. 7:14B-5.7(a)5 to clarify that the owner or operator must allow the Department access to conduct any activity associated with remediation at the site, not just sampling.

The Department proposes to amend N.J.A.C. 7:14B-5.9(b) to prohibit the introduction of hazardous substances into a regulated UST that is not properly registered, including where any registration has been revoked or denied.

Subchapter 6 contains the requirements for release detection. The Department proposes to amend N.J.A.C. 7:14B-6.5(a)6vi to require that the continuous monitoring devices or manual methods used for release detection for tanks must be able to detect the presence of at least one-eighth of an inch of "free-phase non-aqueous phase liquid" on top of the ground water in the

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monitoring wells, rather than detection of “free product.” Additionally, at N.J.A.C. 7:14B-1.6, the Department proposes to replace the definition of “free product” with the definition of “free-phase non-aqueous phase liquid,” which means a separate phase liquid material, present in concentrations greater than a contaminant's residual saturation point. The definition of free product in the Technical Requirements at N.J.A.C 7:26E includes liquids, semi-solids, and solids, while “free-phase non-aqueous phase liquid,” includes only liquids. The free-phase non-aqueous phase liquid of a particular contaminant floats on top of the ground water, and this is the phase of the contaminant that the leak detection system must be designed to measure in order to determine whether a tank is leaking.

At proposed new N.J.A.C. 7:14B-7.1(b), the Department proposes to forbid the introduction of product into any UST undergoing a suspected release investigation, and at proposed new N.J.A.C. 7:14B-7.3(f), to forbid the introduction of any hazardous substances into an UST system that is known to be leaking or discharging hazardous substances, except in accordance with the applicable provisions concerning responding to leaks and discharges at N.J.A.C. 7:14B-8.1 (which allow the short term continued use of a leaking UST under certain prescribed circumstances).

N.J.A.C. 7:14B-9.2 pertains to closure requirements for underground storage tank systems containing hazardous substances that are not hazardous wastes, and N.J.A.C. 7:14B-9.3 lists closure requirements for underground storage tank systems containing hazardous wastes. The Department proposes to combine the requirements of these two sections into one section,

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N.J.A.C. 7:14B-9.2, to title this section “Closure requirements for underground storage tank systems,” and to delete the phrase “of an underground storage tank system containing hazardous substances which are not hazardous wastes” from N.J.A.C. 7:14B-9.2(a) because this phrase is no longer applicable. N.J.A.C. 7:14B-9.3 is proposed to be repealed and reserved.

At proposed new N.J.A.C. 7:14B-9.2(a)2, the Department proposes to require that notification of tank closure be effectuated through the Department’s online portal. Accordingly, the Department proposes to replace N.J.A.C. 7:14B-9.2(a)1 with the requirement currently codified at N.J.A.C. 7:14B-9.2(a)4 that the facility be registered with the Department prior to initiating closure. However, the Department is not carrying over from N.J.A.C. 7:14B-9.2(a)4 the requirement that the facility be registered at least 60 calendar days prior to the date of tank closure. Instead, the Department proposes to add the prohibition against closing a tank at an unregistered facility. Additionally, since the Department is proposing that closure notification proceed on line, the Department proposes to shorten the timeframe within which notification of tank closure is required, from at least 30 days to at least 14 days prior to closure (see proposed new N.J.A.C. 7:14B-9.2(a)2). The Department anticipates that the use of the online service will expedite the closure of the tanks and make the reporting of tank closures more timely and accurate.

The Department proposes to recodify the list of information that is to be included on the closure notification from N.J.A.C. 7:14B-9.2(a)1i through v, to N.J.A.C. 7:14B-9.2(a)2i through

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v, with amendments to correct grammar and sense, and to delete references to subsurface evaluation.

Once the owner or operator properly completes and submits the online closure notification form, an approval will be automatically generated for printing and use by the owner or operator. Accordingly, proposed new N.J.A.C. 7:14B-9.2(a)3 requires the owner or operator to provide a copy of that approval to the applicable municipal and county health departments at least 14 calendar days prior to the anticipated closure date, and to the applicable local authority with the application for a local demolition permit.

The Department proposes to recodify the requirement that the owner or operator comply with all applicable requirements of the New Jersey Uniform Construction Code, N.J.A.C. 5:23, from N.J.A.C. 7:14B-9.2(a)2 to proposed new N.J.A.C. 7:14B-9.2(a)4, and to require that remediation be conducted pursuant to the ARRCs rules at proposed new N.J.A.C. 7:14B-9.2(a)5.

N.J.A.C. 7:14B-9.2(b) contains requirements that are specific to underground storage tanks containing hazardous substances that are not hazardous wastes and those containing hazardous waste that are exempt from the requirements of the New Jersey Hazardous Waste Regulations. The Department proposes to delete from N.J.A.C. 7:14B-9.2(b) the phrase “develop and” so that the rule now plainly requires the owner or operator to implement a closure plan, to delete reference to “work plan” so that the rule requires that it is a site investigation that is to be implemented, and to replace the cross reference to the Technical Requirements at

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N.J.A.C. 7:26E-6.3(b) with a cross reference to proposed new N.J.A.C. 7:14B-9.2(d) through (f), as applicable.

The Department proposes to repeal N.J.A.C. 7:14B-9.2(c), concerning submittal of closure plans for Departmental review, since the Department will no longer be reviewing closure plans. In its place, the Department proposes to add a requirement that underground storage tanks containing hazardous waste must be closed in accordance with the Hazardous Waste Regulations at N.J.A.C. 7:26G.

The Department also proposes to replace obsolete N.J.A.C. 7:14B-9.2(d) (as previously discussed) with proposed new N.J.A.C. 7:14B-9.2(d), which sets forth the procedures that the owner or operator is required to follow when closing any type of tank. However, the owner or operator must follow the requirements set forth at proposed new N.J.A.C. 7:14B-9.2(e) where the tank is to be abandoned in place. Additionally, proposed new N.J.A.C. 7:14B-9.2(f) provides instructions for closing an underground storage tank that is located under a permanent structure or that is physically inaccessible, or where a licensed New Jersey professional engineer certifies that sampling pursuant to the requirements for site investigations in the Technical Requirements at N.J.A.C. 7:26E-3.3 will cause damage to the structure. In those instances, the owner or operator may use an alternate method of tank closure, provided the method used is documented pursuant to the Technical Requirements at N.J.A.C. 7:26E-1.7, which establishes standards for variances from those rules.

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At N.J.A.C. 7:14B-9.5(c), the Department proposes to break out the record retention requirements that apply to closed UST systems into two paragraphs for clarity. The first paragraph would require that records be permanently maintained, and the second would require that records be made available to local, State or Federal representatives upon request.

N.J.A.C. 7:14B-12 pertains to penalties, remedies, and administrative hearing procedures. The Department proposes to delete N.J.A.C. 7:14B-12.1 in its entirety, and to incorporate the relevant requirements into new N.J.A.C. 7:14B-12.1(a), (b) and (c). This reorganization will help to more clearly establish when the Department may deny or revoke an owner's or operator's registration or permit for an underground tank system, deny or revoke an individual's or business's certification to perform work on underground storage tanks obtained pursuant to N.J.A.C. 7:14B-13 and 16, and order compliance with the State Act or regulatory provision violated. When the owner or operator violates N.J.A.C. 7:14B-1, General Requirements, 3, Fees, or 7 through 11, which concern release reporting and remediation, the Department may assess a civil administrative penalty pursuant to the ARRCS rules at N.J.A.C. 7:26C-9. If the owner or operator violates any requirement of the State Act or N.J.A.C. 7:14B-2, 4, 5, 6 or 15, all of which concern tank registration and operation, the Department may assess a civil administrative penalty pursuant to the Water Pollution Control Act rules at N.J.A.C. 7:14-8. If an individual or business certified pursuant to N.J.A.C. 7:14B-13 or 16 has failed to comply with any requirement of the State Act or N.J.A.C. 7:14B-1, 3, 7 through 11, the Department may deny, suspend, revoke or refuse to renew a certification pursuant to N.J.A.C. 7:14B-13.10 and 16.11, as applicable, order

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compliance with the State Act or regulatory provision violated, and assess a civil administrative penalty pursuant to the ARRCs rules.

N.J.A.C. 14B-12.2 pertains to the procedures for requesting hearings after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption. The Department proposes to amend N.J.A.C. 14B-12.2(a) to clarify the process by which an adjudicatory hearing to contest a denial or revocation of a registration, or a permit may be requested, including separating existing N.J.A.C. 14B-12.2(a) into N.J.A.C. 14B-12.2(a) and new N.J.A.C. 14B-12.2(b).

The Department proposes at new N.J.A.C. 14B-12.2(b) to add the fax number and the email address to the list of information that the person requesting an adjudicatory hearing must include in his or her request. In addition, the person must include the date the person received the Department's notice, a copy of the Department's notification, and an admission or denial of each of the findings of fact, or a statement of insufficient knowledge, with specific reference to contested conditions and suggested revised or alternative conditions, and a clear statement as to whether the requester is willing to negotiate a settlement with the Department. This information is necessary for the Department to properly respond to the hearing request. The Department also proposes that the hearing request be submitted to the Department's Bureau of Case Assignment and Initial Notice at the address indicated at N.J.A.C. 7:14B-2.2(b) and to the Department's Office of Legal Affairs at the address indicated at proposed new N.J.A.C. 14B-12.2(b).

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N.J.A.C. 7:14B-12.4(b) contains various provisions concerning the nature and duration of violations, and provides that the violator shall have 20 days from receipt of notice within which to deliver to the Department a written request for a hearing. The Department proposes to add a sentence that directs a requester to submit the hearing request to the Department at the address at N.J.A.C. 7:14B-12.2(a), discussed above, and to include all of the information specified at N.J.A.C. 7:14B-12.2(b), also discussed above.

The Department also proposes to correct errors in grammar and syntax in the definition of hazardous substances at N.J.A.C. 7:14B-1.6, and at N.J.A.C. 7:14B-2.1(b) through (f), 2.2(a) through (c) and (f), 2.7(b) and 2.7(b)1 through 5, 5.5(b) and (c), 8.1(b)2i and ii, 9.1(a) and 10.3(b)8.

IV. Proposed Amendments to the Industrial Site Recovery Act (ISRA) Rules,

N.J.A.C. 7:26B

A. ISRA before it was amended through the Act

The Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., requires the owner or operator of an industrial establishment to notify the Department within five days of the occurrence of one of three ISRA-triggering events, each of which is defined in ISRA at N.J.S.A. 13:1K-8: closing operations, transferring ownership or operations, or changing ownership. ISRA also places an affirmative obligation on the owner or operator of the industrial

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establishment to remediate the industrial establishment in accordance with criteria, procedures and time schedules established by the Department (N.J.S.A. 13:K-9a and b(1)).

A facility is an industrial establishment if it is a place of business or real property at which such business is conducted, and the business engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground, unless otherwise provided, and has a Standard Industrial Classification number listed in the definition of “industrial establishment” at N.J.S.A. 13:1K-8 (subsequently converted to North American Industry Classification System (NAICS) codes, as listed in the ISRA Rules at Appendix C).

Prior to the amendments to ISRA promulgated as a part of the Act, ISRA at N.J.S.A. 13:1K-9c prohibited the transfer of ownership or operations of an industrial establishment without the Department’s approval of a negative declaration or a remedial action workplan, or compliance with one of nine alternate compliance options. A negative declaration is a certification by an owner or operator that there has been no discharge of hazardous substances or of hazardous wastes on the site, or that any such discharge on the site or migrating from the site has been remediated in accordance with any applicable remediation regulations. A remedial action workplan is a document in which the owner or operator details those actions to be taken or that have been taken to ensure that any discharge is remediated in compliance with the applicable remediation standards.

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ISRA at N.J.S.A. 13:1K-9c also provided that owners or operators who had not completed a remedial action workplan were prohibited from transferring ownership and operations prior to completion of the remediation unless they entered into a remediation agreement with the Department, in which the remediation obligations and timetables necessary to complete the remediation were set forth with specificity.

Upon approval of one of the following alternate compliance options, the owner or operator of an industrial establishment was not required to conduct any further remediation of part or all of an industrial establishment:

- Expedited review - where the entire industrial establishment has been satisfactorily remediated and no further discharges have occurred;
- Area of concern waiver - which exempts from further remediation areas of concern at an industrial establishment that have been satisfactorily remediated;
- Limited site review - where the owner or operator is authorized to remediate only those area(s) of concern where a discharge, subsequent to a prior remediation, has occurred; and
- Minimal environmental concern waiver - where remedial activities have proceeded to the remedial investigation phase and data collected during those activities reveals that there are no more than two areas of concern, both of which can be remediated within six months and the owner or operator has established a remediation funding source.

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Additionally, Department approval of an application to proceed under one of the following alternate compliance options allowed a transaction to proceed prior to the completion of remediation of the industrial establishment:

- Remediation in progress waiver - where remediation of prior discharges is ongoing, there are no new discharges, and a remediation funding source is in place;
- Underground storage tank waiver - where the only areas of concern are from regulated underground storage tanks; or
- Remedial action deferral - where remediation may be deferred where the use of the industrial establishment will be the same on both sides of the transaction.

An owner or operator who had *de minimis* quantities of hazardous substances at an industrial establishment was exempt from complying with ISRA upon approval by the Department of a *de minimis* quantity exemption application.

Additionally, the owner or operator could also apply for a certificate of limited conveyance when only that portion of the industrial establishment is to be conveyed, conditioned upon the remediation of that portion of the industrial establishment prior to consummation of the transaction.

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B. ISRA as amended by the Act

Under the Act's amendments to ISRA at N.J.S.A. 13:1K-9c, the owner or operator of an industrial establishment continues to be prohibited from transferring ownership or operations until a remedial action workplan has been submitted to the Department, but Department review and approval of the remedial action workplan is no longer a prerequisite to consummation of the transaction. This is because ISRA as amended provides that a transaction may proceed if the remedial action workplan is certified and submitted by an LSRP.

ISRA as amended also provides that the LSRP may file a response action outcome with the Department upon the completion of any remediation of an industrial establishment in accordance with the Brownfield Act and under the supervision of an LSRP. The response action outcome is the equivalent of a no further action determination previously issued by the Department, and under the ISRA amendments, transactions may now proceed upon the issuance by the LSRP of a response action outcome.

Additionally, an owner or operator will no longer be required to submit a negative declaration. Rather, the owner or operator's LSRP will submit a response action outcome with the requisite accompanying reports that support the LSRP's professional judgment that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or migrating from the site has been remediated in accordance with any applicable remediation regulations.

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Where a remediation has not reached the remedial action workplan stage, the transaction is no longer dependent upon the owner or operator entering into a remediation agreement with the Department. Instead, the transaction may proceed upon the submittal to the Department by the LSRP of a remediation certification. The remediation certification is similar to the remediation agreement in that both require: (1) an estimate of the cost of the remediation; (2) a certification of the statutory liability of the owner or operator to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the Department in regulation and consistent with all applicable laws (without being construed as an admission of liability or an imposition of liability on the owner or operator under the Spill Act); (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation; (4) a certification that the owner or operator is subject to ISRA; and (5) evidence of the payment of all applicable fees required by the Department (compare N.J.S.A. 13:1K-9e paragraph 1 with paragraph 2). However, in the case of the remediation certification, the LSRP prepares and certifies the estimate of the cost of the remediation, and certifies as to the statutory liability of the owner or operator. Department approval of the remediation certification, including approval of the cost estimate, is not required.

Additionally, the Department interprets SRRA to make the expedited review, limited site review and area of concern review alternate compliance options of ISRA unnecessary. Pursuant to ISRA, the person responsible for conducting the remediation is allowed to submit a certification that they performed a preliminary assessment or a site investigation according to

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which they verified that no new discharges had occurred since the most recent no further action letter was issued by the Department. However, under SRRA, the end result of the expedited review, limited site review and area of concern review alternate compliance options is necessarily a response action outcome, because the LSRP has the authority to approve a response action outcome as soon as the preliminary assessment is complete. Accordingly, since the LSRP issues the response action outcome, Department approval under any of these alternate compliance options is not necessary.

The Department has also determined that under SRRA, Department approval of a minimum environmental concern waiver is also unnecessary. The purpose of the minimum environmental concern waiver was to defer submission for Department approval of a remedial action workplan. However, the application for the waiver required that it be accompanied by a complete preliminary assessment report, a complete site investigation report, a complete remedial investigation report, the establishment of a remediation funding source and a certification by the person responsible for conducting the remediation that remediation would be completed in six months or less. The submittal by the LSRP of a remediation certification at the completion of the remedial investigation would accomplish the same thing in less time.

Moreover, the Department has determined that the remedial action workplan deferral alternate compliance option is inconsistent with the affirmative obligation to remediate under SRRA. Authorizing the closure or transfer of operations without the preparation, approval and implementation of a remedial action workplan for the industrial establishment, where the

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industrial establishment is to be subject to substantially the same use as its current use, means that remediation may be deferred indefinitely, and this conflicts with the requirements of SRRA to timely remediate contaminated sites.

However, the Department has determined that the remaining four alternate compliance options are not affected by SRRA. Accordingly, the Department is proposing to continue to require Department approval of transactions that are to proceed under a remediation in progress waiver, regulated underground storage tank waiver, a certificate of limited conveyance, or a *de minimis* quantity exemption.

C. Proposed Amendments to the ISRA Rules

1. Department review and approval vs. LSRP certification

The Department proposes to delete from the definitions section at N.J.A.C. 7:26B-1.4 the definition of “negative declaration,” because the Department is proposing to eliminate the use of negative declarations. The Department proposes to amend the definition of “remediation certification” to reflect the Department’s proposal to eliminate the use of negative declarations and to add that the issuance of a final remediation document or an LSRP’s certification of a remedial action workplan are necessary prerequisites to the transfer of ownership or operations of an industrial establishment.

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The Department also proposes to delete N.J.A.C. 7:26B-1.5(b) and (c) because submissions requirements are codified in the ARRCs rules. The Department also proposes to delete the cross references to the UST rules and the ISRA rules and the address to which a form is to be submitted, in favor of a new cross reference to the ARRCs rules at N.J.A.C. 7:26C-1.6. The Department also proposes to add the word “form” to N.J.A.C. 7:26B-1.6 because forms must be certified pursuant to the ARRCs rules.

The Department proposes to repeal and reserve N.J.A.C. 7:26B-1.7 because this section, which describes the Department’s review and determination of deficiencies or issuance of approvals, is no longer relevant. Rather, where the Department must review a submission, the review process germane to that specific provision is proposed to be codified in that provision, as will be discussed more fully below.

The Department proposes to delete N.J.A.C. 7:26B-1.8(a), concerning Department issuance of a no further action letter. The Department also proposes to recodify N.J.A.C. 7:26B-1.8(b) and (c) as (a) and (b), and to delete from the list of circumstances under which an owner or operator may transfer or cease operations, the Department’s approval of a minimal environmental concern review application and a remedial action workplan deferral. The Department also proposes to delete the reference to no further action letters in the title of N.J.A.C. 7:26B-1.8.

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At N.J.A.C. 7:26B-1.10(b)1 and 2, the Department is proposing to delete the reference to a no further action letter, and to Department approval of a remedial action workplan, respectively.

The Department proposes renaming Subchapter 3 as, “Notification and Remediation Requirements,” and collapsing existing N.J.A.C. 7:26B-3.3 and 3.4 into N.J.A.C. 7:26B-3.2, Notification Requirements, with proposed amendments and repeals. The proposed amendments to N.J.A.C. 7:26B-3.2(a) direct that the completed General Information Notice no longer be submitted in accordance with N.J.A.C. 7:26B-3.3(a) but rather in accordance with N.J.A.C. 7:26B-3.2(b), delete the extraneous “to the Department” and “transactional,” and substitute “listed” for “provided,” as more grammatically correct.

For reasons discussed below, the Department proposes to recodify existing N.J.A.C. 7:26B-3.2(b) at proposed new N.J.A.C. 7:26B-3.3(a) with an amendment that requires that remediation is to be conducted in accordance with the procedures in the ARRCs rules when any of the events in N.J.A.C. 7:26B-3.2(a) occur. Consequently, the Department proposes to repeal and reserve Subchapter 6, Remediation Procedures.

The Department proposes to recodify at N.J.A.C. 7:26B-3.2(b) existing N.J.A.C. 7:26B-3.3(a) with amendments that require an owner or operator who is required to submit a General Information Notice to use a form available from the Department’s website, that revise the information that is to be provided on that form so that each requirement is easier to understand

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and to delete the requirement to submit a schedule for submission of documents to the Department, and that repeal N.J.A.C. 7:26B-3.3(b), (c) and (d), concerning supplementing information that has been submitted for Department review with the General Information Notice, and Departmental review of the notice, since Department review is no longer required. The Department also proposes to recodify N.J.A.C. 7:26B-3.4(a) and (b), concerning revising or withdrawing a general information notice, at N.J.A.C. 7:26B-3.2(c) and (d), with no change in text. Proposed new N.J.A.C. 7:26B-3.2(e) requires the owner or operator to submit an amendment to the General Information Notice pursuant to N.J.A.C. 7:26B-3.2(b) for each event, pursuant to N.J.A.C. 7:26B-3.2(a), that occurs subsequent to the submittal of the General Information Notice, but prior to the issuance of either a final remediation document, or the certification of a remedial action workplan by an LSRP.

The Department proposes codifying all remediation requirements at new N.J.A.C. 7:26B-3.3, Remediation Requirements. As discussed above, proposed new N.J.A.C. 7:26B-3.3(a) is a recodification of existing N.J.A.C. 7:26B-3.2(b). Additionally, the Department proposes to recodify and consolidate at new N.J.A.C. 7:26B-3.3(b) existing N.J.A.C. 7:26B-4.1 and 4.2, concerning remediation being conducted pursuant to a remediation agreement or remediation agreement amendment prior to November 4, 2009. The Department is also proposing that N.J.A.C. 7:26B-3.3(b) apply to both the owner or operator and any other person who entered into a remediation agreement with the Department prior to November 4, 2009, and to require that these people remediate in accordance with this chapter (the ISRA rules), in addition to the ARRCs rules and the remediation agreement or certification. N.J.A.C. 7:26B-4.3, which

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contains the requirements for remediation certifications, is proposed to be recodified as new N.J.A.C. 7:26B-3.3(c), with corrections to referenced citations.

Additionally, since the ARRCs rules at N.J.A.C. 7:26C-4 govern payment of fees and oversight costs, the Department proposes to repeal N.J.A.C. 7:26B-8.2, Oversight costs, N.J.A.C. 7:26B-8.3, Oversight cost review, and N.J.A.C. 7:26B-8.4, Payment of fees.

2. Alternate Compliance Options

For the reasons discussed earlier in the summary of the ISRA rules regarding ISRA as amended by the Act, the Department proposes to repeal in their entirety the following alternate compliance options: N.J.A.C. 7:26B-5.1, Expedited review; N.J.A.C. 7:26B-5.2, Area of concern review; N.J.A.C. 7:26B-5.5, Limited site review; N.J.A.C. 7:26B-5.6, Minimal environmental concern review and N.J.A.C. 7:26B-5.8, Remedial Action workplan deferral.

The Department is proposing to still require owners or operators to apply for Department approval to proceed pursuant to four of the alternate compliance options, namely, the regulated underground storage tank waiver at N.J.A.C. 7:26B-5.3, the remediation in progress waiver at N.J.A.C. 7:26B-5.4, the certificate of limited conveyance at N.J.A.C. 7:26B-5.7, and the *de minimis* quantity exemption, at N.J.A.C. 7:26B-5.9. Unlike the alternate compliance options being deleted, approval of these alternate compliance options is not in the form of a no further action letter. For each of these waivers, except the application for a certificate of limited

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conveyance, the Department proposes to amend the rules to require that an applicant for any of these waivers submit an ISRA Alternate Compliance Option Application, available from the Department's website. See proposed amendments to N.J.A.C. 7:26B-5.3(c), 5.4(c), and 5.9(e)1.

Additionally, as proposed for amendment, N.J.A.C. 7:26B-5.3(b) would allow the owner or operator to close operations or transfer ownership or operations upon approval of an underground storage tank waiver application prior to the issuance of a final remediation document, instead of prior to Department approval of a remedial action work plan, and without the submittal of a remediation certification, instead of without the approval of a remediation agreement.

The Department also proposes to add cross-references to N.J.A.C. 7:26C and 7:26E to N.J.A.C. 7:26B-5.3(c)3, as rules with which the owner or operator must certify that he or she is in compliance.

The Department proposes to replace existing N.J.A.C. 7:26B-5.3(e) with new N.J.A.C. 7:26B-5.3(e). Like existing subsection (e), proposed new subsection (e) continues to require Departmental approval of a regulated underground storage tank waiver application before closure of operations or transfer of ownership, but the proposed amendments would require remediation to be conducted in accordance with the ARRCs rules (rather than the ISRA rules and the Technical Requirements) if the Department disapproves of the application.

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As proposed for amendment, N.J.A.C. 7:26B-5.4(b) provides that the Department's approval of a remediation in progress waiver application authorizes the closure or transfer of operations prior to the issuance of a final remediation document or prior to a LSRP's certification of a remedial action workplan and without the submittal of a remediation certification, instead of prior to obtaining approval from the Department of a remedial action workplan, a negative declaration or remediation agreement. Additionally, proposed new N.J.A.C. 7:26B-5.4(c)2 would require that a preliminary assessment report, and as applicable, a site investigation report, that demonstrates no discharges occurred or any that occurred were remediated, would accompany the application. The Department proposes to recodify existing N.J.A.C. 7:26B-5.3(c)2 at N.J.A.C. 7:26B-5.4(c)3 with amendments clarifying that it is the property occupied by the industrial establishment for which the waiver is sought and that is being remediated by a prior owner or operator that is germane. Existing N.J.A.C. 7:26B-5.4(c)3 is proposed for repeal because all certification requirements are proposed to be codified in the ARRCs rules.

The Department also proposes replacing existing N.J.A.C. 7:26B-5.4(d) with a new provision that allows the owner or operator to close operations or transfer ownership upon receipt of the Department's approval of the remediation in progress waiver application, and that requires the owner or operator to remediate the site pursuant to the ARRCs rules at N.J.A.C. 7:26C (under the supervision of an LSRP) where the Department disapproves the application.

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As proposed for amendment, the scope of the authorization for a limited conveyance at N.J.A.C. 7:26B-5.7(b) would change from authorization to transfer a portion of an industrial establishment without conducting a remediation of the entire industrial establishment where the Department issues a no further action letter or approves a remedial action workplan or remediation agreement for the subject portion of the industrial establishment, to authorization to remediate only the portion of the industrial establishment that is to be conveyed. ISRA at N.J.S.A. 13:1K-11.8c specifies that the amount that would be allowed to be conveyed would be up to one third the total appraised value of the real property of the industrial establishment, and the proposed amendments to N.J.A.C. 7:26B-5.7(b) set this out with specificity. Additionally, the proposed amendments would predicate this authorization upon the LSRP's issuance of a remedial action outcome or certification of a remediation certification for the portion of the industrial establishment. At N.J.A.C. 7:26B-5.7(c), the Department proposes to state that the application form is available on the Department's website, and to recodify from subchapter 8 of the ISRA Rules the fee of \$600, and to delete the cross reference to subchapter 8 of the ISRA Rules. The Department also proposes to amend N.J.A.C. 7:26B-5.7(f) to require that, upon the Department's disapproval of the limited conveyance application, the owner or operator shall remediate the industrial establishment in accordance with the ISRA Rules and the ARRCs rules, and to delete the requirement that remediation be conducted in accordance with the ISRA statute as unnecessary.

The Department proposes to amend N.J.A.C. 7:26B-5.9(a) to substitute "substantive requirements" for "provisions" to describe the aspects of the ISRA rules from which the owner

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or operator is exempted, to add the statement that an owner or operator is not exempt from any requirement in any other law or regulation to remediate a discharge, and to delete the reference to compliance with the fee provisions of N.J.A.C. 7:26B-8.1. The Department proposes to reword N.J.A.C. 7:26B-5.9(e) to clarify that the owner or operator who wishes to apply for a *de minimis* quantity exemption may do so by submitting a form that is available from the Department's website, and to include the application fee of \$300 currently set forth at N.J.A.C. 7:28B-8.1. Finally, the Department proposes to delete from N.J.A.C. 7:26B-5.9(f) the requirement that the Department review the application in accordance with N.J.A.C. 7:26B-1.7 because that provision is proposed for repeal, and to add the affirmative obligation to remediate the industrial establishment in accordance with the ISRA Rules and the ARRCs rules if the Department disapproves the application.

3. Proposed amendments to the definitions

At N.J.A.C. 7:26B-1.4, the Department proposes delete the cross references to N.J.A.C. 7:26B-2.2 from the definitions of "Change in ownership," "Controlling interest," and "Corporate reorganization not substantially affecting ownership," and as a related amendment, from N.J.A.C. 7:26B-2.1(a). N.J.A.C. 7:26B-2.2 was repealed in a prior rulemaking and is now reserved.

The Department proposes to amend the definition of "Closing operations" to remove the reference to N.J.A.C. 7:26B-2.4, because N.J.A.C. 7:26B-2.4 governs when the Department will

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modify the Appendix C list of NAICS codes, which would not affect the meaning of “closing operation” as used in these rules.

The Department proposes to amend the definition of “industrial establishment” by replacing the phrase “lease properties” with the phrase “properties with two or more leased spaces.” A lessor is, by definition, an operator of an industrial establishment, but the property may be occupied by one or more lessors. Accordingly, the Department proposes to specify in the definition of “industrial establishment” that, where the property is leased to a single tenant, the industrial establishment includes all of the blocks and lots upon which the business is conducted, including contiguous blocks controlled by the lessor. However, where a leased property has two or more leased spaces, the industrial establishment includes the leasehold and all mechanisms related to the industrial establishment’s hazardous substances and wastes, regardless of location relative to the leasehold.

The Department proposes to amend the definitions of “Preliminary assessment,” “Remedial investigation,” “Remediation or remediate,” “Site investigation,” and “Unrestricted use remedial action,” to more generally cross-reference the definitions of these terms in N.J.A.C. 7:26E, and to make the phrasing of these definitions consistent.

The Department proposes to delete the definitions of “restricted use standard” and “unrestricted use standard” as these refer to definitions in the Technical Requirements that are not included in the proposed new Technical Requirements.

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4. Civil Penalties

N.J.A.C. 7:26B-1.11 concerns civil penalties. N.J.A.C. 7:26B-1.11(a) currently provides that any person who gives false information or who fails to comply with the provisions of ISRA is liable for a civil penalty of not more than \$25,000. However, this provision is outdated, because in 2007, the Legislature amended ISRA to replace N.J.S.A. 13:1K-13 with new penalty provisions at N.J.A.C. 13:1K-13.1 that authorize a civil penalty of up to \$25,000 for the first offense and not more than \$50,000 for each subsequent offense. See N.J.S.A. 13:1K-13.1d. Accordingly, the Department is proposing to amend N.J.A.C. 7:26B-1.11(a) to comport this penalty provision with N.J.S.A. 13:1K-13.1d.

The Department is proposing to amend N.J.A.C. 7:26B-1.11(b) to delete the phrase “to remediate contamination,” because the Department may assess a civil administrative penalty for any violation of this chapter, including administrative requirements.

5. Fees

The Department proposes to amend N.J.A.C. 7:26B-8.1 to delete all fee and oversight cost requirements and to instead require that fees and oversight costs be paid as required by the ARRCs rules at N.J.A.C. 7:26C-4 and the ISRA rules. All remediation related fees, except the specific fees for applying for a certificate of limited conveyance (see the ISRA rules at N.J.A.C.

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7:26B-5.7(c)9) and for an application for a *de minimis* quantity exemption (see the ISRA rules at N.J.A.C 7:26B-5.9(e)2), are codified in the ARRCs rules at Subchapter 4.

6. NAICS Codes in Appendix C

The definition of “industrial establishment” in ISRA at N.J.S.A. 13:1K-8 provides that, pursuant to the Administrative Procedure Act, the Department may exempt certain sub-groups or classes of operations within those sub-groups, upon a finding that the operations of the industrial establishment do not pose a threat to public safety or the environment. Based on over 25 years of experience in the implementation of ISRA, the Department has determined that certain industries that meet these statutory criteria should be deleted from the list of industries in Appendix C.

The industries proposed for elimination from Appendix C fall into several general categories. Approximately half of the industries proposed for deletion from Appendix C fall within the “Needle Trades.” These industries primarily cut and sew textiles into apparel products (Subsector 315) or textile products other than apparel (Subsector 314). These industries use minimal quantities of hazardous substances, typically limited only to lubricants such as needle oil.

The remaining industries proposed for elimination span a broad spectrum of economic activity. Again, the Department believes for various reasons that these industries do not pose a

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threat to public safety or the environment. The operations of a farrier or the wholesale distribution of tobacco products clearly meet the statutory criteria for elimination. Similarly, power generation from hydroelectric (NAICS Industry 221111) and solar, wind and waves (NAICS Industry 221119) should not be regulated under ISRA because these industrial categories are not ones in which the owner or operator would be engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground. Other activities such as logging or the production of table salt by the evaporation of sea water are not significant business activities in New Jersey.

The inclusion of several industries in existing Appendix C is the result of changes in business practices and technology over time, coupled with the replacement in 2004 of the Standard Industrial Classification system (SIC codes) with the North American Industrial Classification System (NAICS codes) (see 36 N.J.R. 4298(c)). Business to business electronic markets (425110) and internet publishing and broadcasting (516) pose no threat to public safety or the environment and should therefore not be included in Appendix C. In addition, various types of repair shops (811) are proposed for elimination from Appendix C. These shops are typically small operations that use minimal quantities of hazardous substances.

The proposed deletion of NAICS code 446110, pharmacies and drug stores, and 446120, cosmetics, beauty supplies and perfume stores from Appendix C, necessitates the deletion of the cross reference to these industries' NAICS codes at N.J.A.C. 7:26B-5.9(d), which concerns

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applying for the *de minimis* quantity exemption. Since the Department proposes that these industries no longer be subject to ISRA, there is no need for them to apply for the *de minimis* quantity exemption that is the subject of N.J.A.C. 7:26B-5.9.

The Department proposes to add one new code, NAICS number 493, which is described in the North American Industrial Classification System (NAICS) coding system, published by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002-502024), as “Warehousing,” but limited to “establishments storing raw materials for other establishments of the same enterprise.” The Department has determined that it previously had authority to regulate this activity pursuant to the “Auxiliary Establishment” provisions of the SIC system of classification. This addition is thus necessary to comply with the statutory requirement of N.J.S.A. 13:1D-139 that, with the conversion from SIC codes to NAICS codes, the generally equivalent universe of industrial establishments continue to be subject to the ISRA rules.

The Department is also proposing to update some of the descriptions of the industries included in Appendix C so that those descriptions match the most current version of the North American Industrial Classification System (NAICS) coding system, published by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002-502024).

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7. Other miscellaneous amendments

The Department proposes to repeal N.J.A.C. 7:26B-1.9, which requires the owner or operator to expressly consent in writing to allow entry to the industrial establishment by the Department. The proposed ARRCs rules at N.J.A.C. 7:26C-1.8 address right of entry and inspection. Additionally, the Department proposes to amend N.J.A.C. 7:26B-1.10(b)4 to correct the reference to N.J.A.C. 7:26B-1.8(c).

Proposed new N.J.A.C. 7:26B-1.12, confidentiality claims, cross-references the new confidentiality claims procedure that the Department is proposing to add to the ARRCs rules at N.J.A.C. 7:26C-15. Accordingly, the Department proposes to delete N.J.A.C. 7:26B-7, Protection of Confidential Information, in its entirety as extraneous.

Proposed new N.J.A.C. 7:26B-3.4(a) describes the requirement to establish a remediation funding source. This proposed amendment expands upon existing N.J.A.C. 7:26B-6.4, which the Department proposes to repeal, by specifying when the remediation funding source must be established and by acknowledging that a remediation agreement or remediation agreement amendment may include specific requirements with regard to the establishment of a remediation funding source.

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

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A. Background

The ARRCs rules, N.J.A.C. 7:26C, are the rules according to which the Department administers the Site Remediation Program, and they are the primary mechanism through which the Department implements SRRA and the related amendments to other statutes in the Act.

As mentioned briefly above, on November 4, 2009, the Department replaced the Oversight of the Remediation of Contaminated Sites rules with the ARRCs rules through a special adoption, and also amended other rules as necessary to implement SRRA (collectively, the Interim Rules). The Interim Rules were published in the New Jersey Register on December 7, 2009, at 41 N.J.R. 4467(a). Pursuant to SRRA at N.J.S.A. 58:10C-29, the Interim Rules became effective on November 4, 2009, upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4), for a period not to exceed 18 months, unless proposed and readopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B. The Interim Rules were scheduled to expire on May 4, 2011. This expiration date was extended by 180 days to October 31, 2011 pursuant to N.J.S.A. 52:14B-5.1c, by the timely filing of the notice of proposal to readopt the Interim Rules (see 43 N.J.R. 1077 (May 2, 2011)). The comment period on that proposal closes on July 1, 2011.

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While the proposal to readopt the Interim Rules included minor amendments to the ARRCs rules, the Department determined that it would be this proposal in which it would propose the substantive amendments to fully implement the new site remediation paradigm. The Brownfield Act as amended at N.J.S.A. 58:10B-1.3 provides that the Department must implement the new site remediation paradigm no later than 36 months after the date of enactment of the Act. The Act was enacted on May 7, 2009. Accordingly, by May 7, 2012, all persons responsible for conducting remediation are required to utilize the services of an LSRP to direct or oversee the remediation, and to proceed with remediation without obtaining the Department's preapproval.

However, SRRRA provided for a phase-in period, namely from November 4, 2009, the effective date of the Interim Rules, to May 7, 2012. During the phase-in period, N.J.S.A. 58:10B-1.3 directed that the person responsible for conducting the remediation who initiated remediation on or after the effective date of the Interim Rules to conduct site remediation under the supervision of an LSRP. The person responsible for conducting the remediation who initiated remediation prior to the effective date of the Interim Rules was able to choose to continue to conduct the remediation of a site under the traditional paradigm without an LSRP until May of 2012, or was able to choose to hire an LSRP to supervise remediation under the new paradigm.

Accordingly, the ARRCs rules as currently codified establish the criteria for determining whether a remediation project must be conducted under the supervision of an LSRP (new

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projects) or may transition from proceeding under direct Department oversight to proceeding under the supervision of an LSRP (ongoing projects). The ARRCS rules also establish timeframes by which certain phases of remediation must be completed. Fees to be paid and funding sources to be established by the person responsible for conducting the remediation are also codified in the ARRCS rules, along with how to obtain funding for remediation projects through various grants and funds, and how to obtain a permit for the remedial action phase of remediation. The documents that are issued by the Department and the LSRP that signify that the remediation has been completed are also codified in the ARRCS rules.

The Department now proposes to amend the ARRCS rules to, among other things, repeal any rules that are related to the phase in period, because, on and after May 7, 2012, all sites must be remediated under the supervision of an LSRP. Details of the proposed amendments follow.

1. Proposed amendments to Subchapter 1

Subchapter 1, General Information, concerns the administrative requirements for remediating contaminated sites, including to whom the rules apply and where and how to submit forms and other documents.

In addition to the amendments described with particularity below, the Department proposes to include in Subchapter 1 the public notification requirements currently codified in the Technical Requirements at N.J.A.C. 7:26E-1.4 in the ARRCS rules at new N.J.A.C. 7:26C-1.7,

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and the right of entry and inspection requirements that are currently codified in the ISRA rules at N.J.A.C. 7:26B-9 in the ARRCs rules at new N.J.A.C. 7:26C-1.8. Accordingly, the Department proposes to amend the list of sections at N.J.A.C. 7:26C-1.1(a) by updating the title of section 1.4, to include new N.J.A.C. 7:26C-1.7 and 1.8 on the list, and to update the cross references to N.J.A.C. 7:26C-1.7, 1.8, 1.9 and 1.10.

The general requirements that apply to the remediation of all sites appear at N.J.A.C. 7:26C-1.2. Since SRRA at N.J.S.A. 58:10C-14c sets forth with specificity the hierarchy of statutes, rules and guidance that an LSRP must follow when determining whether the remediation being conducted is protective of public health, safety and the environment, the Department proposes to replace N.J.A.C. 7:26C-1.2(a) with this hierarchy. Although it is the LSRP who is remediating the site, it is the person responsible for conducting the remediation who bears the ultimate responsibility for ensuring that the site is remediated so that it is protective.

The Department is proposing to delete N.J.A.C. 7:26C-1.2(b), which requires the person responsible for conducting the remediation to notify the Department, because the Department is proposing notification requirements at new N.J.A.C. 7:26C-1.7.

The Department is proposing to add the following new definitions to N.J.A.C. 7:26C-1.3: “brownfield development area,” “environmentally sensitive natural resource,” “green remediation,” “ground water classification exception area,” “linear construction project,”

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“permittee,” “State fiscal year,” “statutory permittee,” and “technical guidance,” because these terms are used in various provisions proposed to be added to these rules.

The Department is proposing amendments to the following existing definitions to make these definitions more precise and easier to understand: “immediate environmental concern” and “regulated tank system.”

The Department is also proposing to revise the definitions of “deed notice,” “innovative remedial action technology,” “remediation costs,” and “sanitary landfill.” The Department is proposing to redefine “deed notice” as a document that follows the template found N.J.A.C. 7:26C, Appendix D. The proposed new definition of “innovative remedial action technology” includes a new or alternative method, procedure or process that does not have a substantial operational record; an innovative remedial action technology with a substantial operational record in one field could be considered innovative if it is proposed for a new or different environmental problem. The proposed amendments to the definition of “remediation costs” add a list of activities whose costs meet the definition, including costs incurred by a certified public accountant or an independent auditor and certain legal costs, to the extent that they are directly supporting the remediation. The Department proposes to replace the existing definition of “sanitary landfill” with a cross reference to the definition in the Solid Waste rules at N.J.A.C. 7:26-1.4.

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The Department is proposing to delete the definitions of “restricted use standard” and “unrestricted use standard,” as these refer to their definitions in the Technical Requirements, but the definitions are not included in the proposed new Technical Requirements. The Department also proposes to delete the definition of “underground storage tank” because the ARRCS rules as proposed for amendment do not contain provisions concerning these types of tanks.

The Department is proposing to amend the title of N.J.A.C. 7:26C-1.4 to “Applicability and exemptions” to reflect that the section as proposed to be amended specifies to whom the ARRCS rules apply in addition to who is exempt from the chapter.

Proposed new N.J.A.C. 7:26C-1.4(a) sets forth to whom the ARRCS rules apply. The Department proposes to include in this list each person who has a legally binding document with the Department for remediation such as an administrative or judicial order; is an owner or operator of an underground storage tank facility liable for its remediation pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.; an owner or operator of an industrial establishment liable for its remediation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; a person who is in any way responsible for a discharge of a hazardous substance at a site pursuant to the Spill Act; a person who is otherwise responsible for the remediation of a site and is notified by the Department that they are required to conduct remediation after the Department has rescinded a no further action letter or invalidated a response action outcome; and any other person who is responsible for remediating a site pursuant to the Spill Act at N.J.S.A. 58:10-23.11g, which establishes Spill Act liability.

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Proposed new N.J.A.C. 7:26C-1.4(b) provides that if more than one person is responsible for conducting the remediation of a contaminated site, each person is jointly and severally liable for compliance with the ARRCs rules. This provision codifies the provisions in the Spill Act at N.J.S.A. 58:10-23.11g.c which provides for joint and several liability for remediation of discharges of hazardous substances at contaminated sites.

The Department is proposing to recodify N.J.A.C. 7:26C-1.4(a), which lists to whom the chapter does not apply, as N.J.A.C. 7:26C-1.4(c). N.J.A.C. 7:26C-1.4(c)1 provides that the Chapter does not apply to any person who is conducting due diligence in accordance with the Brownfield Act at N.J.S.A. 58:10B-1.3d(2). The Department proposes to amend N.J.A.C. 7:26C-1.4(c)1 to limit this exemption to persons conducting due diligence, as long as that person is not subject to the ARRCs rules by virtue of the list at N.J.A.C. 7:26C-1.4(a).

The Department proposes to add the word “sanitary” before the word “landfill” at N.J.A.C. 7:26C-1.4(c)2 to clarify that the exemption for a person remediating a landfill applies to a person remediating a sanitary landfill and not to a person remediating an area containing illegally dumped materials. The remediation of a sanitary landfill is governed by the closure and post closure requirements set forth in the Solid Waste rules, N.J.A.C. 7:26. Remediation of illegally dumped or discarded materials is governed by the ARRCs rules.

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The Department is proposing to delete N.J.A.C. 7:26C-1.4(c)3, which exempts from the ARRCs rules those persons responding to a discharge pursuant to a discharge prevention, containment, and countermeasures (DPCC) plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility. The Discharges of Petroleum and Other Hazardous Substances (DPHS) rules, N.J.A.C. 7:1E, require an owner or operator of a major facility to prepare and implement a DPCC plan, by which the owner or operator undertakes advanced planning concerning addressing discharges at the facility. However, all discharges must also be remediated pursuant to the ARRCs rules, notwithstanding the fact that a facility owner or operator has a DPCC plan in place.

The Department is proposing to recodify N.J.A.C. 7:26C-1.4(c)5 as N.J.A.C. 7:26C-1.4(d) to set provisions relating to unregulated underground heating oil tanks apart from other types of sites. These sites are primarily associated with private residences. In addition, the Department is proposing to add language to this provision that clarifies that the person responsible for conducting the remediation of an unregulated underground heating oil tank does not have to use an LSRP and is not subject to the mandatory timeframes outlined in the ARRCs rules at N.J.A.C. 7:26C-3.

The Department is proposing to recodify N.J.A.C. 7:26C-1.4(b) as N.J.A.C. 7:26C-1.4(e), and to add to N.J.A.C. 7:26C-1.4(e)1 two new paragraphs that provide that the exemption from using an LSRP or to submit documents to the Department when there is a petroleum surface spill of less than 100 gallons that does not reach the waters of the State only applies if the date and

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volume of the spill are specifically documented by the person responsible for conducting the remediation and the contamination is remediated within 90 days after the occurrence of the spill. This exemption only applies to small, sudden discharges of a hazardous substances such as when there is a truck accident on a highway resulting in a gasoline spill. These spills are generally contained and remediated quickly.

The Department proposes to add new N.J.A.C. 7:26C-1.4(f), and also proposes two companion amendments at N.J.A.C. 7:26C-3.3(a) and N.J.A.C. 7:26C-4.3(a)7. The Spill Act at N.J.S.A. 58:10-23.11g.d(4) exempts government entities from joint and several liability where the governmental entity involuntarily acquires title to a site by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property. An example would be a municipality that has acquired a site through condemnation and has not otherwise contributed to any discharge on the property. Typically, municipalities may have in their possession a portfolio of sites, but often lack the revenue to remediate any or all of these properties. However, as monies become available, these municipalities often tackle a part of the remediation, then stop when funds run dry, only to resume later when funding becomes available. Although any remediation that is conducted by these parties must be conducted pursuant to the ARRCS rules and the Technical Requirements (see N.J.A.C. 7:26C-1.4(a)6), they should not be required to pay annual remediation fees during years in which their budgets do not contain monies for remediation, nor should they be bound by the requirement to conduct the remediation within the mandatory timeframes in the ARRCS rules.

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Accordingly, proposed new N.J.A.C. 7:26C-1.4(f) exempts from the requirement to pay the initial annual remediation fee and subsequent annual remediation fees any governmental entity that is not liable under the Spill Act at N.J.S.A. 58:10-23.11g.d(4). Instead, the Department proposes to require the governmental entity to pay annual remediation fees pursuant to new N.J.A.C. 7:26C-4.3(a)7, that is, only for a year in which they actually conducted remediation. The Department is also proposing to amend N.J.A.C. 7:26C-3.3(a), concerning who must meet the mandatory timeframes by adding the phrase “who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 5,” such that only those parties characterized by N.J.A.C. 7:26C-1.4(a)1 through 5 are required to meet the mandatory remediation timeframes in N.J.A.C. 7:26C-3.3.

The Department is proposing to delete the cross references to N.J.A.C. 7:26C-2.3(b) and 2.4 in N.J.A.C. 7:26C-1.5(a) as these provisions were adopted to address sites for which the person responsible for conducting the remediation either chose or was required to remediate in accordance with the LSRP paradigm during the three year transition period established in the Brownfield Act at N.J.S.A. 58:10B-1.3c(3).

The Department is proposing to amend N.J.A.C. 7:26C-1.5(a)2 by replacing the word “the” before each reference to person with the word “that.” The Department’s interaction with the regulated community concerning implementation of the Interim Rules has shown that these proposed amendments are necessary to clarify that it is the specific person who is working with

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an LSRP to remediate a site that is required to ensure that the required forms are certified by an LSRP.

The Department proposes to repeal N.J.A.C. 7:26C-1.5(b), which contains the certification requirements for persons responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a), and to recodify N.J.A.C. 7:26C-1.5(c), (d), and (e) as N.J.A.C. 7:26C-1.5(b), (c), and (d) with amendments that rewrite these subsections in the active voice. N.J.A.C. 7:26C-2.3(a) pertains to sites being remediated pursuant to the traditional remediation paradigm, which will be phased out pursuant to the Brownfield Act at N.J.S.A. 58:10B-1.3c.(3), thus N.J.A.C. 7:26C-1.5(b) is no longer relevant.

The requirements for forms and submissions are codified at N.J.A.C. 7:26C-1.6. The Department proposes to replace N.J.A.C. 7:26C-1.6(b) with new N.J.A.C. 7:26C-1.6(b). Currently, the ARRCs rules at N.J.A.C. 7:26C-1.6(b) and the Technical Requirements at N.J.A.C. 7:26E-1.9(d) contain requirements for how a person responsible for conducting the remediation must make submissions to the Department. Since these requirements are administrative in nature, it is appropriate to combine and consolidate these requirements in the ARRCs rules at new N.J.A.C. 7:26C-1.6(b).

Accordingly, proposed new N.J.A.C. 7:26C-1.6(b)1 requires that all forms, applications, documents, laboratory data deliverables and maps be submitted as an electronic copy on compact disk (CD) in Adobe portable document format (PDF) or in a format determined by the

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Department, in keeping with the Department's goal of moving towards electronic-only document and data deliverables. The Department proposes to require one electronic copy instead of the three copies required in the existing rule; stakeholders have indicated that the requirement for three electronic copies was redundant and unnecessary, notwithstanding the statutory requirement for three electronic copies. N.J.A.C. 7:26C-1.6(b)1ii exempts from the electronic-only deliverable requirement large format maps, which is necessary due to the difficulty in viewing maps larger than 11x17 inches electronically, and the Department's limited ability to print maps larger than 11x17 inches for review.

Proposed new N.J.A.C. 7:26C-1.6(b)2 codifies the general requirements currently codified at N.J.A.C. 7:26E-1.9(d)5, and requires the person responsible for conducting the remediation to submit one electronic copy of all full laboratory data deliverables on CD in PDF or a format determined by the Department, and one paper copy of all full laboratory deliverables for potable water, vapor intrusion, polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans, and hexavalent chromium soil sample results. The Department proposes to amend the language from "indoor air" to "vapor intrusion (sub-slab, indoor, and ambient)" to clarify that all of the data collected during a vapor intrusion investigation must be submitted. Finally, the Department proposes to still require one paper copy to assist the Department in performing the quality assurance/quality control review of these submittals.

Also in proposed new N.J.A.C. 7:26C-1.6(b)2, the Department proposes to modify the term "dioxin" to "polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans

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(PCDDs/PCDFs),” as these terms are used interchangeably. Additionally, the methods being used analyze for the PCDDs/PCDFs, not just dioxin; for all intents and purposes, this represents a clarification, not a change in the requirements. Lastly, full laboratory deliverables are required for hexavalent, rather than total, chromium analyses. The Department proposes to require full data deliverables for hexavalent chromium because hexavalent chromium analyses may be prone to errors due to unintended oxidation/reduction reactions.

Proposed new N.J.A.C. 7:26C-1.6(b)3 requires the person responsible for conducting the remediation to submit all sampling data electronically in a summary table using the format outlined in the Department’s Electronic Data Interchange Manual in effect as of the date the report is submitted; the Manual is available on the Department’s website. This provision is based on N.J.A.C. 7:26E-1.9(d)3. In addition, the Department proposes to except from this requirement persons who file with the Department a final remediation document for an unrestricted use remedial action, if that document is filed within one year of the date of the discharge. The Department considers a discharge for which remediation is completed within one year to be likely associated with a specific discharge event, such as a surface spill. These events almost always result in a rapid, uncomplicated remediation, and therefore, it is not necessary for the Department to receive and review detailed reports on these types of incidents.

Proposed new N.J.A.C. 7:26C-1.6(b)4 is based on N.J.A.C. 7:26E-1.9(d)4, which requires the submission of a paper copy of all required maps and an electronic copy of all geographic information system (GIS) compatible electronic maps using the Department’s GIS

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guidance. The Department proposes to eliminate the existing requirement for submission of a paper copy of the map, because new N.J.A.C. 7:26C-1.6(b)1 provides the requirements for the submission of maps as described above.

The Department proposes to replace N.J.A.C. 7:26C-1.6(c) with new text that requires that within 90 days after the date that the Department informs the public in the New Jersey Register that an electronic application is available as a service on NJDEP Online, all forms, applications or documents required by this chapter or the Technical Requirements are to be submitted electronically.

The Department proposes to recodify the existing notification and public outreach requirements currently codified in the Technical Requirements at N.J.A.C. 7:26E-1.4 to new N.J.A.C. 7:26C-1.7, and to reorganize and otherwise amend those provisions as described below.

The Department proposes to recodify the requirement that a person responsible for a discharge to notify the Department of the discharge from N.J.A.C. 7:26E-1.4(a) to new N.J.A.C. 7:26C-1.7(a) with no changes from the existing text.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(b) and (c) as N.J.A.C. 7:26C-1.7(b) and (c), respectively, with amendments that repeal the requirement to notify the assigned Department case manager when contamination is identified that has been caused by a discharge that is not already known to the Department, or when immediate environmental concern

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conditions are identified at a contaminated site, or when contaminated has migrated onto the site from another site. Once these proposed new rules become effective, the Department anticipates that there will be very few cases assigned to case managers. The requirement for the person to notify the hotline at 1-877 WARNDEP or 1-877-927-6337 remains.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(d), which lists the events that trigger the obligation of a person responsible for conducting the remediation to notify the Department, as new N.J.A.C. 7:26C-1.7(d) with no changes in the text.

Proposed new N.J.A.C. 7:26C-1.7(e) requires the person responsible for conducting the remediation to provide the notification, fact sheet, and any updates in English, and where the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, in the predominant non-English language. This proposed new provision is a consolidation of the requirements currently found in N.J.A.C. 7:26E-1.4(h)1 and N.J.A.C. 7:26E-1.4(l)3.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(j)4vi as N.J.A.C. 7:26C-1.7(f), and to require that the person responsible for conducting the remediation include contact information for that person and the name and telephone number for the LSRP of record for the site in the notification, fact sheet, and any updates to either of these documents. However, contact information for the Department's Office of Community Relations will no longer be

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required. Under the new remediation paradigm, sites will be remediated with the oversight of an LSRP, and not the Department. Consequently, the LSRP will be in a better position than the Department to respond to inquiries from the public than Community Relations. However, the Department will continue to include contact information for Department's Office of Community Relations to be used for public notifications concerning cases where the Department is conducting remediation using public funds.

Proposed new N.J.A.C. 7:26C-1.7(g) is a recodification of the requirements currently codified at N.J.A.C. 7:26E-1.4(i)5 and (j)5, and requires the person responsible for conducting the remediation to document compliance with the notification requirements by submitting one copy of all notifications and list of recipients, one copy of the display advertisement or a photograph of the notification sign required, along with the appropriate form, in the subsequent applicable remedial phase report. The currently codified requirement to submit documentation of compliance with the notification requirements as a stand alone document notwithstanding, the Department is currently accepting documentation of compliance with the subsequent applicable remedial phase report, and these amendments comport the rule to this current practice.

The Department proposes to condense N.J.A.C. 7:26E-1.4(h) through (j), concerning the manner by which the person responsible for conducting the remediation shall provide public notice, at proposed new N.J.A.C. 7:26C-1.7(h). In addition to combining and restating some provisions of N.J.A.C. 7:26E-1.4(i) and (j), the Department proposes to delete several of the requirements contained in these subsections. For example, the Department proposes to no longer

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specify the exact dimensions of the notification sign, or the exact content and method of mailing notification letters, or to require the person responsible for conducting the remediation to notify the school administrator, because the school administrators receive the letter along with other property owners located within 200 feet of the contaminated site. Rather, it will be incumbent upon the person responsible for conducting the remediation and the LSRP to determine how best to convey site conditions, to design notification letters that are appropriate for the site, and determine the most efficient manner to distribute the letters throughout the community.

The Department also proposes to eliminate the requirements currently codified at N.J.A.C. 7:26E-1.4(h)2, which allow the person responsible for conducting the remediation to change the form of notification, because notice by sign or notification letter is acceptable to the Department when complying with the notification provisions.

The Department also proposes to delete from N.J.A.C. 7:26E-1.4(i)5, as recodified at N.J.A.C. 7:26C-1.7(h), the requirement that site information be submitted to the Department in addition to the photograph of the sign, because public inquiries will be directed to the person responsible for conducting the remediation and the LSRP and not the Department. The Department also proposes to delete the specific requirements associated with the preparation and distribution of notification letters from N.J.A.C. 7:26E-1.4(j).

At new N.J.A.C. 7:26C-1.7(h)1, the Department proposes to require the person responsible for conducting the remediation to provide site specific information and documents

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related to the remediation activities at a site or area of concern, including information pertaining to field sampling activities, when requested by the Department. Proposed new N.J.A.C. 7:26C-1.7(h)2 sets forth to whom notification is to be provided, on what schedule, and in what form.

The Department proposes to expand the list of recipients to whom notification is to be sent at N.J.A.C. 7:26C-1.4(h)2iii to now include the municipal clerk, as well as the local and county health departments, to be consistent with the requirements of the Brownfield Act at N.J.S.A. 58:10B-24.2.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(f) at N.J.A.C. 7:26C-1.7(i), which requires the person responsible for conducting the remediation to provide a copy of the remedial action workplan and any updates or status reports, and a copy of the site health and safety plan to the clerk of the municipality, county health department, and local health agency in which the site is located, when requested. The Department proposes to additionally require the person responsible for conducting the remediation to provide a copy of the health and safety plan, as well as the remedial action workplan and any updates or status reports to the to the clerk of the municipality, county health department, and local health agency for the municipality and county in which the site is located, when requested, pursuant to the Brownfield Act at N.J.S.A. 58:10B-24.2.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(g) as N.J.A.C. 7:26C-1.7(j). Pursuant to this provision, a person responsible for conducting the remediation of a discharge

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from any unregulated heating oil tank system, and the person responsible for conducting an emergency response action is only required to notify the Department of the occurrence of a discharge, immediate environmental concern condition, or contamination migrating onto his or her site from another site. No other provisions of N.J.A.C. 7:26C-1.7 must be followed because remediation of these types of discharges can be accomplished quickly, obviating the need for further notice.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(k) which concerns the person responsible for conducting the remediation bringing contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation, at N.J.A.C. 7:26C-1.7(k) with the following amendments.

The Department proposes at N.J.A.C. 7:26C-1.7(k) to no longer specify the content requirements of the notification letter. Rather, the Department proposes to only codify general requirements concerning the content of the notification, such as the type and concentrations of contaminants in the fill material, the proposed use of the fill and the controls designed to reduce or eliminate exposure. In addition, the Department is proposing to expand the list of recipients to whom the notification is to be sent to include the municipal clerk as well as the local and county health departments, pursuant to the Brownfield Act at N.J.S.A. 58:10B-24.2.

The Department proposes to recodify the requirements for the person responsible for conducting the remediation to prepare, distribute and publish a fact sheet if contamination

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migrates off site in any environmental medium from N.J.A.C. 7:26E-1.4(l) to N.J.A.C. 7:26C-1.7(l). However, the Department proposes to no longer specify the information to be included in the fact sheets or the method of mailing. The required information is explained in the instructions for completing the fact sheet, which are available from the Department.

Additionally, instead of requiring the person responsible for conducting the remediation to publish the full fact sheet as a display advertisement, the Department is proposing at N.J.A.C. 7:26C-1.7(l)3 to allow the person responsible for conducting the remediation the option of downloading a template from the Department's website, www.nj.gov/dep/srp/srra/guidance, which can be adapted to the particular site, and that can be submitted for publication. Since the template is an abridged version of the fact sheet, publication costs should be reduced.

The Department proposes new provisions concerning updated fact sheet requirements depending on whether the impacted medium is soil or ground water at N.J.A.C. 7:26C-1.7(l)4 and 5. These provisions are based on the requirements at N.J.A.C. 7:26E-1.4(l)6 and (m), but the Department is proposing to streamline these requirements to reduce redundancy and to allow an LSRP to use professional judgment in determining the best way to update the fact sheets and to disseminate this information.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(n) as N.J.A.C. 7:26C-1.7(m); this provision exempts the person responsible for conducting the remediation from the requirements at N.J.A.C. 7:26C-1.7(l) if the contamination that migrates off site onto an adjacent

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property is limited to historic fill. Since historic fill is generally a regional issue, it is likely that neighboring properties also contain the same fill as the property being remediated, and notification of neighbors would be unnecessary. Note that this exemption only applies when the contamination migrating offsite is from historic fill, and not from onsite discharges.

The Department proposes to condense N.J.A.C. 7:26E-1.4(o) and (p) at proposed new N.J.A.C. 7:26C-1.7(n). This new provision allows the person responsible for conducting the remediation to implement an alternative public notification and outreach plan if that plan is prepared by an LSRP, and the plan is substantially equivalent to the public notification otherwise required at N.J.A.C. 7:26C-1.7(g), (h) and (l). Implementing an alternative plan is not permissible, however, if the remediation is under direct Department oversight pursuant to N.J.A.C. 7:26C-14. Department pre-approval of an alternative plan is no longer needed. These proposed new rules are designed to allow remediating parties and their LSRPs to be able to design the public notification and outreach plan that best fits the community's needs and is most appropriate for site-specific conditions.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(q) as N.J.A.C. 7:26C-1.7(o). This provision requires the person responsible for conducting the remediation to conduct additional public outreach if the Department determines that additional outreach is needed due to site-specific circumstances, or when the Department determines that there is substantial public interest in remediation activities concerning a contaminated site. The Department proposes to amend the language to simplify and clarify the process by which the Department may determine

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that there is substantial public interest in remediation activities at a contaminated site. The requirement for identifying people eligible to sign a petition now simply states that people who live or work within 200 feet of the site boundary or extent of contamination, whichever is greater, may sign the petition. Proposed new N.J.A.C. 7:26C-1.7(o) would also require the Department to notify the person responsible for conducting the remediation of its determination to require additional public outreach and to post a notice of its determination on the Department's website. The provision to allow the Department to make a finding of substantial public interest based on a written request from a municipal official has been deleted to be consistent with the requirements at N.J.A.C. 7:26C-10 concerning Technical Assistance Grants. Additionally, since the Department has not received a written request from a municipal official for the Department to make a finding of substantial public interest since the Interim Rules were adopted in November of 2009, the Department has concluded that this provision is unnecessary.

The Department proposes to recodify N.J.A.C. 7:26E-1.4(r) at proposed new N.J.A.C. 7:26C-1.7(p). This provision exempts the person responsible for conducting the remediation from the requirements at N.J.A.C. 7:26C-1.7(b) through (o) if that person is in compliance with 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) regulations, 40 CFR Part 300. Sites subject to CERCLA are required to fulfill Federal public participation requirements that are different from those required by N.J.A.C. 7:26C-1.7.

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The Department proposes to recodify the document submittal requirements that apply to sites within the jurisdiction of the Pinelands Commission from N.J.A.C. 7:26E-1.4(s) to proposed N.J.A.C. 7:26C-1.7(q) with no changes.

Proposed new N.J.A.C. 7:26C-1.8, entitled “Right of entry and inspection,” captures the essence of N.J.A.C. 7:26B-1.9 of the ISRA rules. Since the provisions are administrative requirements that are applicable to all persons responsible for conducting the remediation regardless of the regulatory program under which the site is being remediated, it is more appropriate for these requirements to be codified in the General Requirements subsection of the ARRCs rules.

The Department is proposing to recodify N.J.A.C. 7:26C-1.7, Liberal construction and N.J.A.C. 7:26C-1.8, Severability, as N.J.A.C. 7:26C-1.9 and 1.10, respectively, with no changes to the text.

2. Proposed amendments to Subchapter 2

Subchapter 2 contains obligations of a person responsible for conducting the remediation of a site, including when that obligation is triggered and the administrative obligations that the person has when remediating the site.

Upon adoption of these amendments and new rules, all persons responsible for conducting remediation will be required to follow the LSRP remediation paradigm regardless of

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when remediation was initiated. The Department proposes to repeal several subsections that contain requirements that are no longer applicable under the LSRP paradigm. The Department is proposing to amend N.J.A.C. 7:26C-2.1(a)1 and 2 to comport these provisions with the content of proposed new N.J.A.C. 7:26C-2.2 and 2.3, respectively, and to repeal N.J.A.C. 7:26C-2.1(a)3 and 4 as inapplicable, because it is proposing to amend N.J.A.C. 7:26C-2.2 to contain all of the criteria for determining when a person initiates remediation, and to repeal N.J.A.C. 7:26C-2.5, which contains record retention requirements.

The Department is proposing to replace N.J.A.C. 7:26C-2.2, Criteria for determining when a person has initiated remediation, with a new N.J.A.C. 7:26C-2.2, Criteria for determining when a person is required to remediate a site. As of May 2012, all sites must be remediated using an LSRP, so therefore it is no longer necessary to determine when remediation at a site was initiated.

The requirements in proposed new N.J.A.C. 7:26C-2.2(a) describe the triggering events for when a person responsible for conducting the remediation has to remediate a site in accordance with the ARRCs rules. The seven triggering events are as follows: 1) a person is in any way responsible for the discharge of a hazardous substance pursuant to the Spill Act, N.J.S.A. 58:10.23-11g; 2) an owner or operator of a regulated underground storage tank system determines that there has been a known or suspected discharge from the system, undertakes closure of the UST system, or is required to conduct an unknown source investigation; 3) any of the events described in the ISRA rules occurs; 4) the person discovers a discharge on property

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that the person owns; 5) a no further action letter is rescinded or a response action outcome is invalidated; 6) the Department determines that additional remediation is needed after the Department issued a remedial action permit; or 7) the person is subject to a judicial or administrative order, a judicial consent judgment, an administrative consent order, a memorandum of understanding, a remediation agreement, or any other oversight document. The intent of this proposed new section is to clarify when a person is bound by the requirements of the ARRCs rules to encourage compliance with the rules.

The Department proposes to repeal and replace N.J.A.C. 7:26C-2.3 with recodified and amended N.J.A.C. 7:26C-2.4 as N.J.A.C. 7:26C-2.3, under an amended title, "Requirements for the person responsible for conducting the remediation."

At recodified N.J.A.C. 7:26C-2.3(a), the Department proposes to delete the reference to November 4, 2009, since that date is no longer applicable in determining if the requirements apply. Rather, the Department is proposing to cross reference the criteria that trigger responsibility for compliance with the chapter at N.J.A.C. 7:26C-2.2(a).

Recodified N.J.A.C. 7:26C-2.3(a)1 requires the person responsible for conducting the remediation to hire an LSRP. The Department is proposing to exempt from the requirement to hire an LSRP the following Federal sites that are listed at proposed new N.J.A.C. 7:26C-2.3(a)1i through iii: 1) a site that is being remediated to satisfy the obligations of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., is on the Government

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Performance and Results Act (GPRA) 2020 list of priority sites (see 40 U.S.C. §§ 11101 et seq. for the GPRA; for more information on RCRA/GPRA sites, see <http://www.epa.gov/region4/waste/rcra/gpragoalsrp.htm>), and the U.S. Environmental Protection Agency (EPA) is the lead agency for the remediation; 2) the site is on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, and the U.S. EPA is the lead agency for the remediation; or 3) the site is located at a Federal facility. After consulting with the EPA, the Department is proposing to exempt persons responsible for conducting the remediation of these sites from the requirement to use an LSRP because for these Federal lead sites EPA has the primary authority to ensure that the sites are remediated in accordance with Federal requirements. EPA does not have a program licensing remediation professionals so that they could “stand in the shoes” of the Federal government in determining compliance with Federal requirements, and thus the EPA would not accept a decision made by an LSRP that a site was remediated pursuant to Federal requirements. In addition, these sites are being remediated pursuant to terms included in Federal enforcement documents to which the State is not party. To require a person responsible for conducting the remediation of these sites to also adhere to the LSRP program would unnecessarily place an additional layer of State regulatory requirements on top of the Federal requirements.

Recodified N.J.A.C. 7:26C-2.3(a)2, as proposed to be amended, requires the person responsible for conducting the remediation to notify the Department of the name and contact information of the LSRP hired to conduct the remediation and of the scope of the remediation, within 45 days after the occurrence of one of the triggering events listed in the subsequent

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subparagraphs. The Department also proposes to replace the events currently listed at N.J.A.C. 7:26C-2.4(a)2i through iii with a new list of triggering events at N.J.A.C. 7:26C-2.3(a)2i through iv. According to this new list, the Department must be notified of the hiring of an LSRP within 45 days of May 7, 2012 if the earliest event listed at N.J.A.C. 7:26C-2.2(a) (concerning the applicability of the ARRCs rules to a person responsible for conducting the remediation) occurred prior to November 4, 2009, within 45 days of the date of the occurrence of the earliest event listed at N.J.A.C. 7:26C-2.2(a) if that event occurred between November 4, 2009 and May 7, 2012 and within 45 days of the date of the earliest event listed at N.J.A.C. 7:26C-2.2(a) if that event occurs after May 7, 2012. Additionally, when a person responsible for conducting remediation dismisses an LSRP prior to the issuance of a response action outcome, that person must notify the Department on the appropriate form within 45 days of hiring a replacement LSRP.

N.J.A.C. 7:26C-2.4(a)3, to be recodified at N.J.A.C. 7:26C-2.3(a)3, requires the person responsible for conducting the remediation to conduct the remediation of the discharge. The Department proposes to delete the phrase “of a discharge” because it is redundant; it is not necessary to conduct remediation absent a discharge.

Additionally, the Department is proposing to delete reference the Department’s direct oversight from recodified N.J.A.C. 7:26C-2.3(a)3i. As currently worded, the person responsible for conducting the remediation is required to conduct the remediation without prior Department approval, except where the site is being remediated with direct oversight. However, the

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Department has determined that additional exceptions to the requirement to proceed with the remediation without Department approval are warranted, and all of these exceptions are listed at proposed new N.J.A.C. 7:26C-2.3(a)3i(1) through (5). The Department developed the additional exceptions based on situations where the person responsible for conducting the remediation of the site is under direct oversight (N.J.A.C. 7:26C-2.3(a)3i(1) and (2)), an LSRP is not supervising remediation at a site (e.g., Federal facilities) (N.J.A.C. 7:26C-2.3(a)3i(3)), or there are environmental conditions at the site which could pose a grave risk to public health and the environment such as when the site is suspected or known to be contaminated with anthropogenic radionuclide contamination of any media, or the implementation of an engineered response action where there exists an immediate environmental concern (N.J.A.C. 7:26C-2.3(a)3i(4) and (5)). The Department is including anthropogenic radionuclide contamination of any media as this type of contamination is unique, and determining appropriate remedial actions and acceptable standards is complex. Therefore, the Site Remediation Program defers on these issues to the Department's Radiation Protection Program. The Department is including implementation of an engineered response action pursuant to N.J.A.C. 7:26E-1.11(a)6 if an immediate environmental concern exists because it is imperative that the Department be aware of what is occurring at areas of immediate environmental concern, especially as relates to protecting the impacted receptor(s) (i.e., implementing the engineered response action). One of the purposes of the Site Remediation Reform Act is to allow the Department to focus its limited resources on the highest-priority sites; the Department considers immediate environmental concerns to be such sites.

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The Department is proposing to replace the phrase “all applicable statutes, and rules and guidance” in recodified N.J.A.C. 7:26C-2.3(a)3ii with a cross reference to proposed new N.J.A.C. 7:26C-1.2(a) because proposed new N.J.A.C. 7:26C-1.2(a) contains the requirement that a person responsible for conducting the remediation of a site comply with all applicable statutes, rules and guidance.

The Department is proposing to delete the phrase “and guidance” from recodified N.J.A.C. 7:26C-2.3(a)7 because all of the document submission requirements are to be codified in the rules and the Department is not including document submission requirements in its guidance documents.

Proposed new N.J.A.C. 7:26C-2.3(b) requires a person responsible for conducting the remediation who had been doing so without an LSRP prior to May 7, 2012, to comply with N.J.A.C. 7:26C-2.3(a) discussed above if, subsequent to May 7, 2012, the person is required to hire an LSRP.

The Department proposes to repeal N.J.A.C. 7:26C-2.5, which contains record retention provisions for a person responsible for conducting the remediation. The Site Remediation Reform Act at N.J.S.A. 58:10C-20 requires that records be maintained. However, this statutory provision applies to LSRPs and not to persons responsible for conducting the remediation. Since the ARRCs rules govern persons responsible for conducting the remediation only, it is not appropriate to include record retention requirements applicable to LSRPs in these rules under the

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new paradigm. During the transition period between when the Interim Rules were adopted on November 4, 2009 and the full implementation of the LSRP program, the provision was necessary to ensure that records were being maintained by persons remediating contaminated sites without an LSRP. However, upon the effective date of these rules, when all persons will be required to remediate sites using an LSRP, record retention will be the responsibility of the LSRP. Moreover, the ARRCs rules at N.J.A.C. 7:26C-6.2(b)2ii discussed below require the LSRP to submit an electronic copy of all documents and supporting information with each response action outcome filed with the Department. Since the LSRP will be providing a copy of all of the documents to the Department, there is no need for the rules to also place this burden on the person responsible for conducting the remediation. Once the Department has an electronic copy, there is no need for anyone else to also retain these records.

3. Proposed amendments to Subchapter 3

Subchapter 3 contains the requirements concerning remediation timeframes and extension requests. These provisions include the requirement for the person responsible for conducting the remediation to comply with the regulatory timeframes established in the UST rules, the ISRA Rules, and the Technical Requirements; the mandatory timeframes for the remediation milestones required by the Technical Requirements; the criteria for determining an expedited site specific remediation timeframe; and the provisions for requesting and receiving an extension of these timeframes.

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N.J.A.C. 7:26C-3.2(c) provides that a request for an extension of a regulatory timeframe is deemed approved unless the Department notifies the requester in writing that the extension request is denied. Proposed new N.J.A.C. 7:26C-3.2(c)1 provides that if the Department denies an extension request, the Department will not include the period of time between the date the Department received the request and the date the Department denies the request when determining whether the person responsible for conducting the remediation is in compliance with a remediation timeframe. The Department recognizes that a period of time will elapse during the Department's extension request review, and that during that period, the person responsible for conducting the remediation would be operating under the assumption that the request is deemed approved. By the time the person receives the denial letter from the Department, the person may have been out of compliance with the regulatory timeframe, and may become subject to penalties that may have accrued during that period. Proposed new N.J.A.C. 7:26C-3.2(c)1 addresses this concern.

N.J.A.C. 7:26C-3.3 addresses mandatory timeframes. The Department is proposing to reword N.J.A.C. 7:26C-3.3(a)4 to make this provision consistent with the regulatory language being proposed in the Technical Requirements at N.J.A.C 7:26E-1.10. The Department proposes to no longer require that a light non-aqueous phase liquid (LNAPL) free product interim remedial measure be installed, that operational monitoring be initiated and that an interim remedial measures report be submitted. Rather, the Department proposes to require that the person responsible for conducting the remediation complete a remedial investigation for delineation of LNAPL to ensure that the interim remedial measure for LNAPL addresses the full

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extent of the LNAPL plume. In addition, in order to ensure that the LNAPL plume is stabilized and not migrating, the person responsible for conducting the remediation is required to initiate implementation of the interim remedial measure, and to initiate monitoring along with the interim remedial measure. These proposed amendments allow the person responsible for conducting the remediation more flexibility in implementing an appropriate interim remedial measure. The term “free product” has also been removed to be consistent with N.J.A.C. 7:26E-1.10 since this requirement is focused only on light non-aqueous phase liquid and not the broader “free product” as defined in N.J.A.C. 7:26E.

Proposed new N.J.A.C. 7:26C-3.3(a)5 and 6 establish the mandatory timeframes for the completion of the remedial investigation and remedial action of a site, respectively, as required by SRRRA at N.J.S.A. 58:10C-28a(5). As discussed in this proposal in the summary section pertaining to the proposed new Technical Requirements, the regulatory timeframes for the remedial investigation are proposed to be included in the Technical Requirements at N.J.A.C. 7:26E-4.10, and for the remedial action at N.J.A.C. 7:26E-5.9. The Department proposes setting the mandatory timeframes in the ARRCS rules at N.J.A.C. 7:26C-3.3(a)5 and 6 at a date that falls two years after the regulatory timeframes for these remediation phases.

The consequences for failing to meet the mandatory timeframes are that, pursuant to SRRRA at N.J.S.A. 58:10C-27, the person responsible for conducting the remediation may no longer exercise any autonomy in decision making; the control of the remediation exercised by the person and the person’s LSRP becomes placed with the Department because the Department

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is required by SRRA to undertake direct oversight of the remediation at the site. Under direct oversight, the person and the LSRP must conduct the remediation as the Department directs, conduct and submit a feasibility study to the Department, implement the Department selected remedial action, establish and maintain a remediation funding source in the amount of the estimated cost of the remediation, ensure that all submissions made by the LSRP concerning the remediation are submitted to the person and the Department simultaneously, and implement a Department approved public participation plan.

The Department recognizes that the remedial investigation and remedial action are the most complex and time consuming phases of the remediation, and that the length of time that is required to finish the remedial investigation and remedial action can vary significantly, depending on site specific attributes such as the size of the site, the number of contaminated areas of concern at the site, the impacted media (i.e., soils, ground water, surface water, indoor air), the types of contaminants found at the site, and the complexity of the geology of the site. Information concerning these site attributes is rarely known at the beginning of the remedial investigation. Rather, it is typically gathered as the remedial investigation progresses. For example, during the course of conducting a remedial investigation, a person may find that ground water contamination initially thought to be confined to one aquifer has actually migrated to additional aquifers. This newly discovered information often requires the person to reassess the plan for conducting the remedial investigation and adds significant time to completing the remedial investigation.

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Accordingly, in establishing the mandatory timeframes for the remedial investigation and remedial action, the Department sought to strike a balance between allowing a person responsible for conducting the remediation enough time to effectively delineate the entire extent of contamination at or emanating from the site and to plan for and implement a remedial action at the site that is protective of public health and the environment, while simultaneously encouraging these remediation phases to be completed expeditiously, so as to limit long term exposure to contaminants. Based on its twenty-plus years of experience in overseeing the remedial investigation and remedial action of sites pursuant to the Technical Requirements, the Department has determined that allowing two years for a person who has missed a regulatory deadline as established in the Technical Requirements for Site Remediation to meet the mandatory deadline achieves that balance.

4. Proposed amendments to Subchapter 4

The fees and oversight costs are codified at N.J.A.C. 7:26C-4. Included are the annual remediation fee, which all parties engaged in the remediation of a site must pay to the Department, and the remedial action permit fee that parties remediating a site using a restricted or limited restricted use remedial action must pay to the Department to obtain and maintain necessary remedial action permits. As proposed to be amended, the subchapter also contains the formula the Department proposes to use to calculate the oversight costs that a person required to remediate a site with Department oversight must pay to the Department. Finally, the subchapter includes proposed procedures for a person to request that the Department determine if the

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applicable remediation costs have exceeded 7.5 percent of the total remediation costs for the site (the Brownfield Act at N.J.S.A. 58:10B-2.1 caps oversight costs and fees at 7.5 percent of the total remediation cost of a site).

N.J.A.C. 7:26C-4.1(a), Scope, contains a list that cross references each requirement contained in the subchapter. The Department proposes to include at proposed new N.J.A.C. 7:26C-4.1(a)1 and 4 cross references to proposed new N.J.A.C. 7:26C-4.2 and 4.5, concerning the formulas the Department will use to calculate the base annual remediation fees and the remedial action permit fees, respectively; and proposed new N.J.A.C. 7:26C-4.9, which contains the procedures for a person to request that fees and costs be capped at 7.5 percent. The Department also proposes to recodify N.J.A.C. 7:26C-4.2(a)1, 2 and 3 as 2, 3 and 5 respectively, and N.J.A.C. 7:26C-4.2(a)4 through 6 as 6 through 8.

Proposed new N.J.A.C. 7:26C-4.2, Annual remediation fee formula, contains the formula the Department proposes to use to calculate the base annual remediation fees, which are set forth at proposed new N.J.A.C. 7:26C-4.3. The Department proposes to offset the costs of operating the Site Remediation Reform Act program with monies generated from the collection of the annual remediation fee. The Department proposes to recalculate the annual remediation fee each year to ensure that fees assessed cover but do not exceed Department costs to run the program.

Proposed new N.J.A.C. 7:26C-4.2(a) requires the Department to calculate the annual remediation fee in accordance with the provisions described in N.J.A.C. 7:26C-4.2(b) and to

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assess the fees in accordance with N.J.A.C. 7:26C-4.3. The annual remediation fee is the fee that the Department collects to offset the costs of administering the SRRRA program. This fee is the sum of the area of concern fee and the contaminated media fee. The area of concern fee that is due from the person responsible for conducting the remediation is based upon the number of areas of concern at the particular site, and the total contaminated media fee that is due from the person responsible for conducting the remediation is based on the number of contaminated media (ground water, sediment, and ground water contaminated above a Surface Water Quality Standard that is migrating into surface water) at the site. As remediation progresses, such that areas of concern and/or contaminated media are remediated, the annual remediation fee will necessarily decrease for the site.

Proposed new N.J.A.C. 7:26C-4.2(b) requires the Department to calculate annual remediation fees every year for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year, using the formula described in N.J.A.C. 7:26C-4.2(b)1 through 4.

The Department proposes to determine the total revenue that must be generated to cover the costs of administering the Site Remediation Reform Act, and then generate revenue to cover sixty-five percent of those costs by charging contaminated area of concern fees and to cover thirty-five percent of those costs by charging contaminated media fees. See proposed N.J.A.C. 7:26C-4.2(b)2. In arriving at this allocation, the Department was mindful of the \$400 fee it charges to homeowners for Department review of remediation documents concerning discharges

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from unregulated underground storage tanks promulgated at N.J.A.C. 7:26C-4.3(a)3 (proposed to be recodified at N.J.A.C. 7:26C-4.4(a)1). The Department determined that no fee charged to the regulated community should be lower than the fee the Department charges homeowners. The Department found that by offsetting 65 percent of the SRRA budget with areas of concern fees, the base fee unit would be \$450. Offsetting the remaining 35 percent of the SRRA budget with contaminated media fees resulted in a fee of \$1,400 for each impacted medium. The Department has determined that the resulting two to one ratio is fair and is in proportion to the higher threat to public health, safety and the environment posed by contaminated media.

Once the Department has determined the amount of revenue that must be generated by the total contaminated area of concern fees and the total contaminated media fees, the Department proposes to determine the base contaminated area of concern fee and the contaminated media fee. The Department proposes to calculate the base contaminated area of concern fee by first determining the total number of areas of concern reported by persons responsible for conducting the remediation in the previous year (see proposed new N.J.A.C. 7:26C-4.2(b)3), and then dividing that number into the total contaminated area of concern fees that must be generated, as calculated pursuant to proposed new N.J.A.C. 7:26C-4.2(b)2 (see proposed new N.J.A.C. 7:26C-4.2(b)3i). However, where that number is, in the Department's opinion, underreported, such that the resultant fee that would be calculated would be artificially high, the Department retains the discretion to estimate the total number of areas of concern based on information in the Department's databases regarding the number of sites undergoing remediation in the previous year (see proposed new N.J.A.C. 7:26C-4.2(b)3ii).

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Proposed new N.J.A.C. 7:26C-4.2(b)4i through iv lists the categories of contaminated areas of concern fees and sets forth the method the Department proposes to use to calculate the contaminated areas of concern fee for each category. Sites subject to Category 1 fees are described at proposed N.J.A.C. 7:26C-4.2(b)4i, and are defined as sites with zero or one contaminated areas of concern with no contaminated regulated USTs, the site only contains historic fill (i.e., no other areas of concern), or the number of contaminated areas of concern has not been determined based on the information known at the time the fee is to be calculated (for example, the preliminary assessment or site investigation has not been completed). The Department proposes to set the fee for Category 1 as the base annual remediation fee.

Category 2 fees are described at proposed new N.J.A.C. 7:26C-4.2(b)4ii, and are defined as sites with two through 10 contaminated areas of concern or if the site being remediated has any number of contaminated regulated underground storage tank system areas, excluding unregulated heating oil tanks, provided there are no other contaminated areas of concern at the site. For example, if the site contains 15 regulated underground storage tank system areas and these were the only areas of concern at the site, the person would be subject to Category 2 fees. However, if this same site also had one other type of area of concern at the site, the Department would consider the number of areas of concern at this site as 16, and the person would be subject to Category 3 fees. The Department proposes to set the fee for Category 2 as twice the base fee.

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Sites subject to Category 3 fees are described at proposed new N.J.A.C. 7:26C-4.2(b)4iii, and are defined as sites with 11 through 20 contaminated areas of concern, 11 through 20 contaminated areas of concern at least one of which is a contaminated regulated underground storage tank area of concern, or if the site contains one or more sanitary landfills. The Department proposes to set the fee for Category 3 as 11 times the base fee.

Sites subject to Category 4 fees are described at proposed new N.J.A.C. 7:26C-4.2(b)4iv, and are defined as sites with more than 20 areas of concern or there are more than 20 areas of concern, at least one of which is a contaminated regulated UST area of concern. The Department proposes to set the fee for Category 4 as 22 times the base fee.

Proposed new N.J.A.C. 7:26C-4.2(b)5 sets forth the method the Department proposes to use to calculate the contaminated media fee for each of the three contaminated media categories. As with the contaminated area of concern fee calculated pursuant to N.J.A.C. 7:26C-4.2(b)3, the Department proposes to calculate the base contaminated media fee by first determining the total number of contaminated media reported by persons responsible for conducting the remediation in the previous calendar year (see proposed new N.J.A.C. 7:26C-4.2(b)5), and then dividing that number into the total contaminated media fees that must be generated, as calculated pursuant to proposed new N.J.A.C. 7:26C-4.2(b)2 (see proposed new N.J.A.C. 7:26C-4.2(b)5i). However, where that number is, in the Department's opinion, underreported, such that the resultant fee that would be calculated would be artificially high, the Department retains the discretion to estimate the total number of contaminated media based on information in the Department's databases

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regarding the number of sites undergoing remediation in the previous year (see proposed new N.J.A.C. 7:26C-4.2(b)5ii). The three categories of contaminated media, proposed at new N.J.A.C. 7:26C-4.2(b)6, are contaminated ground water, contaminated sediment, and contaminated ground water contaminated above a Surface Water Quality Standard that is migrating into surface water.

Proposed new N.J.A.C. 7:26C-4.2(c) provides that the Department will prepare an Annual Site Remediation Reform Act Program Fee Calculation Report that details the factors used to calculate each fee. Beginning March 2013, the Department will publish a notice in the New Jersey Register that includes a summary of the report, the Site Remediation Reform Act program budget, the numbers of contaminated areas of concern and contaminated media used to calculate each fee, the base contaminated area of concern fee and the fee for each of the four contaminated area of concern categories, and the contaminated media fee that shall be in effect for the following State fiscal year. The Department will also make this report available on its website at www.nj.gov/dep/srp/fees.

The Department proposes to recodify N.J.A.C. 7:26C-4.2 as N.J.A.C. 7:26C-4.3 and to amend the title by deleting the phrase “for a person initiating remediation on or after November 4, 2009” because, upon the effective date of these amendments and new rules, the distinction between initiating remediation before or after November 4, 2009 will be unnecessary.

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The Department proposes to amend recodified N.J.A.C. 7:26C-4.3(a)1 to require the person responsible for conducting the remediation to use the description of the categories found in N.J.A.C. 7:26C-4.2(b)4 in determining the applicable area of concern category and the description of the contaminated media found at N.J.A.C. 7:26C-4.2(b)6 in determining the number of contaminated media at the site.

The Department proposes to replace N.J.A.C. 7:26C-4.2(a)2 and 3, which set forth category fees and impacted media fees, with new N.J.A.C. 7:26C-4.3(a)2. This paragraph will establish the proposed new area of concern Category fees and contaminated media fees that will remain in effect until the Department publishes its Annual Site Remediation Reform Act Program Budget Fee Calculation Report required by new N.J.A.C. 7:26C-4.2(c). The proposed fees for contaminated areas of concern, by category, are \$450 for Category 1, \$900 for Category 2, \$5,000 for Category 3, and \$9,500 for Category 4. The proposed fee for each contaminated medium is \$1,400. The Department proposes that the person responsible for conducting the remediation calculate the annual remediation fee due pursuant to N.J.A.C. 7:26C-4.3(a)2 by multiplying the number of contaminated media by \$1,400 and adding that dollar amount to the applicable category fee.

Each person responsible for conducting the remediation is responsible for paying the first annual remediation fee pursuant to N.J.A.C. 7:26C-4.2(a)4, proposed to be recodified as N.J.A.C. 7:26C-4.3(a)3. As proposed to be recodified, N.J.A.C. 7:26C-4.3(a)3 lists the events that trigger the requirement to submit the first annual remediation fee, and state by what day the

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first annual remediation fee is due to the Department, depending upon the event described. The Department proposes to amend N.J.A.C. 7:26C-4.3(a)3iv by changing the date by which the person responsible for conducting the remediation is required to submit the first annual remediation fee from within 270 days after any event listed at N.J.A.C. 7:26C-2.2(b) to 45 days after submitting the notification to the Department that the person hired an LSRP as required pursuant to proposed N.J.A.C. 7:26C-2.3(a)2. The Department proposes to delete the reference to N.J.A.C. 7:26C-2.2(b), which contains the criteria to determine if the person initiated remediation on or after November 4, 2009, because the Department proposes to delete that section, as explained above.

Proposed new N.J.A.C. 7:26C-4.3(a)4 sets forth the requirements for submitting the first annual remediation fee for persons responsible for conducting the remediation who had been conducting remediation prior to May 7, 2012 without an LSRP, and who will continue to conduct remediation after May 7, 2012 under the LSRP remediation paradigm. The Department proposes to require persons responsible for conducting the remediation under these circumstances to pay their annual remediation fee by June 20, 2012. The Department proposes June 20, 2012 as the due date for the first annual remediation fee, because this is the date that falls 45 days from the May 7, 2012 date that the person responsible for conducting the remediation is required to hire an LSRP.

The Department proposes to require that the anniversary dates for the payment of the second and subsequent annual remediation fees be staggered throughout the year based on the

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county in which the site is located. There are approximately 13,500 sites that are currently being remediated under the traditional remediation paradigm. The Department is concerned that if the anniversary date for all of these sites were to be the same date, then the procedure of creating, mailing, and processing this volume of invoices would be very labor intensive, and likely would overburden the Department's billing infrastructure. Staggering the anniversary date for the annual remediation fee allows the Department to better balance and be more efficient in its invoicing process. In order to determine the grouping of the counties, the Department inventoried the number of known contaminated sites in each county and then grouped the counties such that there would be approximately the same number of sites in each group, and the number of payments that the Department would be required to process would be approximately equal in each quarter of the year.

The Department then calculated the amount due for the first annual remediation fee as a prorated amount based on when the second annual remediation fee is due. The amounts due for each set of counties are listed in lines 1 through 4 of proposed Table 4-1 (see N.J.A.C. 7:26C-4.3(a)4i). For example, Hudson County is one of the counties set forth at line 1 of Table 4-1. For a site located in Hudson County, the due date for the second annual remediation fee is September 1, 2012. That person's first annual remediation fee, due on June 20, 2012, is the full annual remediation fee plus 25 percent, which represents the three months until the second annual remediation fee is due.

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Proposed new N.J.A.C. 7:26C-4.3(a)4ii(1) provides the date that the second annual remediation fee is due to the Department. As with the first annual remediation fee, the date is determined by the county in which the site is located, as indicated for each set of counties listed in lines 1 through 4 of proposed Table 4-1. Using the example from above, the anniversary date for the second annual remediation fee for a site located in Hudson County is September 1, 2012; all subsequent annual remediation fees would be due on September 1 of each following year. Proposed new N.J.A.C. 7:26C-4.3(a)4ii(2) provides that the amount due for the second annual remediation fee and all subsequent annual remediation fees is the full annual remediation fee as indicated in line 4 of Table 4-1, irrespective of the county in which the site is located.

Proposed new N.J.A.C. 7:26C-4.3(a)4iii provides that if a site is located in more than one county, the date that the annual remediation fee is due shall be based on the county that first appears in Table 4-1, and proposed new N.J.A.C. 7:26C-4.3(a)4iv describes the meaning of the data in each column in Table 4-1.

The Department proposes to recodify N.J.A.C. 7:26C-4.2(a)5 as N.J.A.C. 7:26C-4.3(a)5. This provision states that for each subsequent year, the person responsible for conducting the remediation is to pay the annual remediation fees either on the anniversary date of the first year that the annual remediation fee was submitted pursuant to (a)3, or on the month and day indicated in Column IX of Table 4-1.

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Proposed new N.J.A.C. 7:26C-4.3(a)6 provides that if a person responsible for conducting the remediation does not timely submit the initial annual remediation fee as required by N.J.A.C. 7:26C- 4.3(a)3 or 4 and has not submitted any information to the Department as to the number of areas of concern or contaminated media at the site so that the Department cannot calculate what the annual remediation fee should be pursuant to N.J.A.C. 7:26C-4.3(a)2, the Department shall bill the person the applicable Category 2 fee, as that fee may be amended annually pursuant to N.J.A.C. 7:26C-4.2(c), and published in the annual Site Remediation Reform Act Fee Calculation Report. The applicable Category 2 fee is based on Department data, which indicate that as of December 1, 2010, the majority of cases being remediated with an LSRP (830 of approximately 1,500 cases) are regulated underground storage tank system cases, which are assigned to Category 2. Proposed N.J.A.C. 7:26C-4.3(a)6 further provides if the person fails to provide the information to the Department needed to calculate the annual remediation fee for more than the first year, the Department may assess the fee based on the difference between the calculated fee and the \$900 fee once the person does provide the information.

Note that proposed new N.J.A.C. 7:26C-4.3(a)7 was described earlier in this summary in connection with proposed new N.J.A.C. 7:26C-1.4(f).

N.J.A.C. 7:26C-4.3(b) prohibits the person responsible for conducting the remediation from combining contaminated areas of concern or contaminated media for purposes of determining the amount of the annual remediation fee. The Department proposes to add the

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phrase “except as provided in (c) below” to this provision because the Department is proposing at new N.J.A.C. 7:26C-4.3(c) to except from the method of determining the annual remediation fee public entities and non-profit organizations. The Department recognizes the importance of the remediation of brownfield sites so that these underutilized properties can be remediated and returned to productive use, thus producing both jobs and tax revenues. The Department also recognizes that the funding of the remediation of a brownfield development area by a public or a non-profit entity is often challenging. Thus, in order to encourage redevelopment of brownfield sites by these groups, the Department proposes to allow the public or non-profit entity to consider the entire brownfield development area as a single site when calculating the annual remediation fee pursuant to N.J.A.C. 7:26C-4.3(a)2 (as may be amended pursuant to N.J.A.C. 7:26C-4.2(c), discussed above), regardless of how many individual sites are contained within the brownfield development area. In addition, the Department proposes that the total contaminated media fee shall be calculated by determining the number of individual contaminated media listed at N.J.A.C. 7:26C-4.2(b)4i through iii that are present across the entire brownfield development area, rather than for each site within the brownfield development area.

The Department proposes to recodify N.J.A.C. 7:26C-4.2(c) as N.J.A.C. 7:26C-4.3(d). In addition, the Department proposes to replace the acronym “RAO” with “response action outcome,” and to clarify that the subsection applies where the person responsible for conducting the remediation receives a response action outcome for one or more areas of concern or contaminated media, but other contaminated areas of concern contaminated media remain at the site. In that instance, the person responsible for conducting the remediation may request an

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adjusted annual remediation fee by submitting a new annual remediation fee form, found on the Department's website, at least 90 days prior to the annual remediation fee anniversary date. This subsection provides the mechanism by which a person responsible for conducting the remediation may reduce the fee to be paid to the Department as areas of concern and contaminated media are remediated.

The counterpart to recodified N.J.A.C. 7:26C-4.3(d) is existing N.J.A.C. 7:26C-4.3(d), which the Department proposes to recodify as N.J.A.C. 7:26C-4.3(e), and which requires a person responsible for conducting the remediation who discovers any additional areas of concern or contaminated media to submit a new annual remediation fee form 90 days prior to the annual remediation fee anniversary date. The Department proposes to amend this subsection to provide that the form may be found on the Department's website, and that the form is due at least 90 days prior to the annual remediation fee anniversary date. Additionally, the Department proposes to newly require that, if the Department determines that additional contaminated areas of concern are present at the site, the Department shall increase the next annual remediation fee, but only if the new total number of contaminated areas of concern changes the fee category. The Department also proposes to newly require that if the Department determines that additional contaminated areas of concern are present at the site, the Department shall increase the next annual remediation fee for each additional contaminated medium listed at N.J.A.C. 7:26C-4.2(b)6.

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The Department proposes to amend N.J.A.C. 7:26C-4.3(f) to clarify that if a person responsible for conducting the remediation has more than one area of concern at the site being remediated, the person must continue to pay the annual remediation fee until the person has filed a final remediation document for all of the areas of concern and contaminated media at the site.

The Department proposes to recodify N.J.A.C. 7:26C-4.2(f) as N.J.A.C. 7:26C-4.3(g) and N.J.A.C. 7:26C-4.2(g) as N.J.A.C. 7:26C-4.3(h), and to rearrange the phrases in these provisions for sense. Recodified N.J.A.C. 7:26C-4.2(g) requires the person responsible for conducting the remediation to pay both the annual remediation fee and the Department's oversight costs in situations where a portion or condition of the remediation becomes subject to direct oversight pursuant to SRRA at N.J.S.A. 58:10C-27. The proposed amendments to recodified N.J.A.C. 7:26C-4.3(h) require that where an entire site becomes subject to direct oversight, the person responsible for conducting the remediation must pay both the annual fee and the Department's oversight costs until the person submits its next remedial phase document. Thereafter, the person will be responsible for paying only the Department's oversight costs.

The Department proposes to recodify N.J.A.C. 7:26C-4.3, Individual review fees, as N.J.A.C. 7:26C-4.4, and to add "document" to the title of this section to make it clear that these fees are to offset the Department's cost of reviewing the listed documents. Additionally, the Department proposes to delete the individual document review fees for the preliminary assessment report and the site investigation report at existing N.J.A.C. 7:26C-4.3(a)1 and 2 respectively, since the Department will no longer be reviewing these reports under the LSRP

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remediation paradigm, and to recodify the fees for remedial action reports for unregulated heating oil tank systems from N.J.A.C. 7:26C-4.3(a)3 to N.J.A.C. 7:26C-4.4(a)1 with no change in text.

The Department proposes to recodify N.J.A.C. 7:26C-4.3(a)4 as N.J.A.C. 7:26C-4.4(a)3, and to add new N.J.A.C. 7:26C-4.4(a)2 in which the Department proposes to add a fee of \$100 for the re-issuance of a no further action letter for an unregulated underground storage tank system. The fee will only be charged when incorrect information was provided to the Department on the UHOT Questionnaire, and it is necessary for the Department to reissue the no further action letter.

The Department also proposes to recodify N.J.A.C. 7:26C-4.3(a)5 as N.J.A.C. 7:26C-4.4(a)4, and to repeal from (a)4 the phrase “response action outcome or child care center” such that the fee only pertains to child care center renewal certifications because a separate fee is not required for the submission of a response action outcome.

In addition, the Department also proposes to add a new N.J.A.C. 7:26C-4.4(a)5 requiring payment of a fee of \$500 for the review of a confidentiality claim. This fee was originally promulgated in both the Industrial Site Recovery Act Rules and the Underground Storage Tank rules at N.J.A.C. 7:26B-8.1(a)2 and 7:14B-3.7, respectively; the Department proposes to delete the fee from those two rules and incorporate it into these rules as it is administrative in nature, and all administrative requirements are being recodified in the ARRCS rules.

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The Department proposes to amend the language at recodified N.J.A.C. 7:26C-4.4(c) to reflect that the requirements to pay an individual document review fee for review of a discharge to ground water proposal applies to all sites, not just those with unregulated heating oil tank systems. The Department proposes to recodify N.J.A.C. 7:26C-4.3(c)2 as N.J.A.C. 7:26C-4.4(d), requiring the payment of a \$400 fee for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3; this fee only applies to unregulated heating oil tank systems, and therefore is no longer included in (c), which applies to all sites. Lastly, the Department proposes to delete N.J.A.C. 7:26C-4.3(c)3 which requires a person responsible for conducting the remediation to pay all applicable fees pursuant to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, as the only applicable fee associated with a New Jersey Pollutant Discharge Elimination System permit are accounted for by the \$400 fee in proposed new N.J.A.C. 7:26C-4.4(c).

Proposed new N.J.A.C. 7:26C-4.5, "Remedial action permit fee formula," contains the formula the Department proposes to use to calculate the remedial action permit fees, and the fees themselves are proposed to be codified at new N.J.A.C. 7:26C-4.6. The Department proposes to use revenues generated from the collection of remedial action permit fees to offset the costs it will incur to implement the remedial action permit program. As is the case with the annual remediation fee, the Department proposes to recalculate the annual remedial action permit fee each year to ensure that fees assessed cover but do not exceed Department costs to run the program.

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Proposed new N.J.A.C. 7:26C-4.5(a) requires the Department to calculate the annual remedial action permit fee for the remedial action permit types and activities listed at N.J.A.C. 7:26C-4.5(b) in accordance with the provisions described in N.J.A.C. 7:26C-4.5(c).

Proposed new N.J.A.C. 7:26C-4.5(b) requires the Department to calculate the annual remedial action permit fees each year for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year for the remedial action permit types and activities listed at N.J.A.C. 7:26C-4.2(b)1 and 2, respectively.

Proposed new N.J.A.C. 7:26C-4.5(c) requires the Department to determine the annual remedial action permit fee by calculating the average number of hours required to administer each type of remedial action permit, and to then multiply that average number of hours by the remedial action permit program staff hourly rate as derived pursuant to proposed new N.J.A.C. 7:26C-4.5(d). This provision is similar to other rules in which the Department has codified a standard formula to be used for fixed fee calculations in other programs (see, for example, the Solid Waste rules at N.J.A.C. 7:26-4).

Proposed new N.J.A.C. 7:26C-4.5(e) requires the Department to also include in the Annual Site Remediation Reform Act Program Fee Calculation Report that it proposes to prepare and publish pursuant to proposed new N.J.A.C. 7:26C-4.2(c), the factors the Department used to calculate the fee for each type of remedial action permit for the following State fiscal year. As

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provided at N.J.A.C. 7:26C-4.2(c), a notice will appear in the March New Jersey Register that includes a summary of the report, the hourly rate and the task hours used to calculate each fee that shall be in effect for the following State fiscal year.

The Department proposes recodifying N.J.A.C. 7:26C-4.4, “Remedial action permit fees” as N.J.A.C. 7:26C-4.6, and N.J.A.C. 7:26C-4.5, “Oversight costs” as N.J.A.C. 7:26C-4.7 as a result of the addition of proposed new N.J.A.C. 7:26C-4.2 and 4.5.

The Department proposes to amend recodified N.J.A.C. 7:26C-4.6(a) so that the subsection would provide that the remedial action permit fees promulgated are in effect only until the Department publishes the first Annual Site Remediation Reform Act Program Fee Calculation Report required by proposed N.J.A.C. 7:26C-4.5(e). The Department also proposes to adjust the fees currently codified for the listed permits, and to add a new column of permit fees for ground water remedial action permits that are part of an active ground water remediation system.

The Department also proposes to replace recodified N.J.A.C. 7:26C-4.6(b), concerning the amount of the annual remedial action permit fee with a new subsection (b) that requires the permittee to pay the annual remedial action permit fee on the anniversary date of the Department issuing the remedial action permit, that lists the annual remedial action permit fees that the Department proposes to charge for each listed remedial action permit type until the first day of the State fiscal year following the Department’s publication of the first Annual Site Remediation

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Program Fee Calculation Report, and that requires that the permittee pay the adjusted fees in amounts set forth in the Report once the Report is published.

Recodified N.J.A.C. 7:26C-4.7 sets forth the requirements concerning the assessment and payment of oversight costs. The Department proposes to amend recodified N.J.A.C. 7:26C-4.7(a)1 through 3 which describe the circumstances when a person responsible for conducting the remediation has to pay the Department's oversight costs. The Department proposes to amend recodified N.J.A.C. 7:26C-4.7(a)1 by separating this requirement into (a)1 and new (a)2. The Department proposes to further amend recodified N.J.A.C. 7:26C-4.7(a)1 by making the reference to recodified N.J.A.C. 7:26C-2.3 more specific so that it applies only to those sites being remediated pursuant N.J.A.C. 7:26C-2.3(a)3i. The Department proposes to further amend new N.J.A.C. 7:26C-4.7(a)2 for clarity. Lastly, the Department proposes to delete N.J.A.C. 7:26C-4.7(a)3 and replace it with a new N.J.A.C. 7:26C-4.7(a)3, which states that sites being remediated under the provisions of N.J.A.C. 7:26C-4.3(i)1 or 2 are also required to pay oversight costs; existing N.J.A.C. 7:26C-4.7(a)3 refers to sites which initiated remediation prior to November 4, 2009, and is being deleted as this distinction is no longer relevant. The citation to N.J.A.C. 7:26C-4.3(i)1 or 2 refers to the fact that the person responsible for conducting the remediation does not have to pay an annual remediation fee for a site to which a full-time case manager is assigned and for sites where a child care center is being remediated; instead, the person responsible for conducting the remediation will be responsible for paying oversight costs.

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The Department proposes to replace N.J.A.C. 7:26C-4.7(e) which details how Department oversight costs are calculated, with proposed new N.J.A.C. 7:26C-4.7(e), which contains the proposed new, simplified oversight cost formula. The Department's oversight costs represent the Department's cost to review and process documents in cases where a Department case manager has been assigned. These documents are submitted by a person responsible for conducting the remediation who is neither paying an annual remediation fee nor an individual document review fee for the Department's time in implementing the LSRP program. The oversight costs are comprised of the Department's direct program costs plus its indirect program costs, plus expenses. The Department proposes to reformat the way the existing formula is presented and explained in recodified N.J.A.C. 7:26C-4.7(e) in such a way as is consistent with the way the new remedial action permit fee formula is presented in proposed N.J.A.C. 7:26C-4.5. However, the components of the formula generally remain the same, with the following exceptions.

- Existing N.J.A.C. 7:26C-4.5(e) presents two formulas, one for the person responsible for conducting the remediation of a site who (a) is remediating a site which is their primary residence or (b) signs and submits the Developer Certification found in chapter Appendix A, and one for all other persons remediating sites. As explained in more detail below, persons responsible for conducting the remediation of discharged substances at their primary residence or who sign the Developer Certification are exempt from paying the Department's indirect program costs. Therefore the formula is different than the one for all other persons. In order to emphasize that there are two different formulas, the Department proposes to reformat recodified

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N.J.A.C. 7:26C-4.7(e) by moving the formula for persons remediating discharged substances at their primary residence or signing the Developer Certification as a new N.J.A.C. 7:26C-4.7(f) and presenting it as an exemption to the Department's oversight cost calculation in N.J.A.C. 7:26C-4.7(e).

- The Department proposes to format the formula presented in proposed new N.J.A.C. 7:26C-4.7(e) as first showing the abbreviations for the components of the formula, followed by the explanation of what the abbreviations stand for and then the specifics of what the components of the formula mean. The oversight cost formula is presented as $OC=DPC+IPC+E$. The text goes on to explain that OC stands for oversight costs, DPC stands for direct program costs, IPC stands for indirect program costs, and E stands for expenses.
- Both DPC and IPC are calculated values. The descriptions of these two terms, as well as the terms used to calculate them, that are included in the rule text, are recodifications of the existing language, and either are not amended or have minor amendments for clarification.
- CH is the number of coded hours, which represents the sum of hours each Departmental employee has coded to the site specific job number. The Department proposes to amend the explanation of this term by replacing the word "will" in the last sentence of the

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paragraph with the word “shall” to emphasize that the Department is bound to include the actual coded hours when determining the coded hours.

- HSR is the hourly salary rate, which is each employee’s annual salary divided by 1,820 which is the number of working hours in a year. The Department proposes to amend the explanation of this term by specifying that the number of working hours in a year is equal to 1,820.
- SAR is the salary additive rate, which represents the prorated percentage of charges attributable to Departmental employees’ reimbursable “down time” salary expenses. The Department proposes to amend the explanation of this term by adding the words “emergency or” between “holiday time” and “early closing” to clarify that if the Department closes because of an emergency, that is considered reimbursable “down time.”
- The final component of the oversight cost formula is E which is expenses, a component that is not defined at currently codified N.J.A.C. 7:26C-4.7(e). Expenses include non-salary direct costs specific to the site such as sampling, analytical, equipment or supply costs, contractor expenses, and overtime hours billed by the Department’s Emergency Response unit that is on call 24 hours a day, seven days a week to respond to emergencies called in to the Department’s hotline.

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Proposed new N.J.A.C. 7:26C-4.7(f)1 exempts a person who is responsible for conducting the remediation from paying the Department's indirect program costs if that person is conducting the remediation of discharged substances at their primary residence, to implement the exemption found in the Brownfield Act at N.J.S.A. 58:10B-2.1c. Proposed new N.J.A.C. 7:26C-4.7(f)2 provides a prospective exemption from paying indirect program costs for persons who complete and submit the Developer Certification form found in Appendix A of the ARRCs rules, and the Department determines that the person meets the statutory exemption. The Developer Certification contains the provisions of the Brownfield Act at N.J.S.A. 58:10B-2.1b which exempts a person who has a defense to liability for remediating a site pursuant to the Spill Act at N.J.S.A. 58:10-23.11 g.d from paying the Department's indirect program costs as part of his or her oversight costs.

The Department proposes to include the procedure for obtaining the exemption from paying indirect program costs at new N.J.A.C. 7:26C-4.7(f)2i and ii. In proposed new N.J.A.C. 7:26C-4.7(f)2ii, the Department is including a sentence that clarifies that the person responsible for conducting the remediation is not eligible for being reimbursed for indirect costs incurred prior to the submittal of the Developer Certification. This clarification is needed because the Department is not able to recalculate oversight costs retrospectively by deleting the indirect program costs from oversight costs already paid, and then issuing refunds to persons who paid their oversight costs including the indirect program cost.

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Proposed new N.J.A.C. 7:26C-4.7(g) contains the requirements for applying for an exemption from the requirement to pay indirect program costs. Pursuant to this proposed new provision, the person is required to submit an executed Developer Certification, found in ARCS Appendix A in which the person certifies that the person is neither the owner or operator of an industrial establishment, nor a person who has any Spill Act liability.

Proposed new N.J.A.C. 7:26C-4.7(h) provides how the Department will calculate the oversight costs for a person who qualifies for the statutory exemption.

The Department proposes recodifying N.J.A.C. 7:26C-4.6 “Oversight cost review” as N.J.A.C. 7:26C-4.8. Proposed new N.J.A.C. 7:26C-4.8(b)4 states that the Department will deny an oversight cost review if the request is submitted more than 30 days after the billing date indicated on the oversight cost invoice that person received from the Department. This proposed new rule is necessary to ensure that requests are evaluated close in time to when the bill is sent to the person responsible for conducting the remediation. It has been the Department's experience that some persons responsible for conducting the remediation wait until such time as they choose to contest an enforcement action to contest the amount of oversight costs and that may occur years after the billing date. The proposed new rule is designed to ensure that a billing correction can be made when costs were incurred.

The Department proposes recodifying N.J.A.C. 7:26C-4.7 “Payment of fees and oversight costs” as N.J.A.C. 7:26C-4.9. The text of the section remains unchanged.

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The Department proposes new N.J.A.C. 7:26C-4.10 “Seven and one-half percent of the cost of remediation” which contains the procedures for a person to request that the Department determine if the applicable remediation costs have exceeded 7.5 percent of the total remediation costs for the site. The Brownfield Act at N.J.S.A. 58:10B-2.1d placed a cap on what the Department may charge in oversight costs and fees at 7.5 percent of the total remediation cost of a site.

Proposed new N.J.A.C. 7:26C-4.10(a) requires that a person responsible for conducting the remediation who wants to apply to the Department to determine whether the oversight costs have exceeded 7.5 percent must follow the procedures outlined in this section to do so. Proposed new N.J.A.C. 7:26C-4.10(b) provides the deadline by which a person responsible for conducting the remediation may make the request. Proposed new N.J.A.C. 7:26C-4.10(c) describes the information the person has to submit to the Department. Proposed new N.J.A.C. 7:26C-4.10(d) describes the conditions under which the Department will approve the request.

Proposed new N.J.A.C. 7:26C-4.10(e) which describes the process the Department will follow in reviewing and acting on the request, including that the Department will recalculate fees and provide the person with either a credit or rebate if it determines that the person’s remediation costs exceeded the 7.5 percent cap.

5. Proposed amendments to Subchapter 5

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With certain exceptions, the Brownfield Act at N.J.S.A. 58:10B-3a requires persons responsible for conducting the remediation to establish and maintain a remediation funding source (RFS) in the amount necessary to pay the estimated cost of the required remediation, and to provide to the Department satisfactory documentation that the requirement has been met. The Brownfield Act at N.J.S.A. 58:10B-3b through f provides for the specific types of funding sources that may be established, and provides that the remediation funding source may be used to pay for the actual cost of the remediation. N.J.S.A. 58:10B-3b.

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

The requirements for establishing and maintaining a remediation funding source are codified in the ARRCs rules at N.J.A.C. 7:26C-5, and the requirements for establishing and maintaining financial assurance are codified in the ARRCs rules at N.J.A.C. 7:26C-7. The Department is proposing to codify all requirements concerning financial responsibilities in

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subchapter 5 for ease of reference. Accordingly, the Department proposes to reference financial assurance in the title of N.J.A.C. 7:26C-5 and, where appropriate in the following provisions:

N.J.A.C. 7:26C-5.1(a)1 through 7, the title of N.J.A.C. 7:26C-5.2, and to 5.2(c) (to be recodified at (e)), 5.2(d), (e) and (h) (to be recodified at (f), (g) and (l) respectively), the title of N.J.A.C. 7:26C-5.3, N.J.A.C. 7:26C-5.4(a) and (b), N.J.A.C. 7:26C-5.6(a) and (b), N.J.A.C. 7:26C-5.7(a), the title of N.J.A.C. 7:26C-5.11, and to 5.11(a) through (c) and (e) (to be recodified as (d)), the title of N.J.A.C. 7:26C-5.12 and 5.12(a) and (c), and N.J.A.C. 7:26C-5.13(a) through (d).

The Department is proposing to amend N.J.A.C. 7:26C-5.1(a)3 to clarify that N.J.A.C. 7:26C-5.4 through 5.9 include the requirements related to each of the financial mechanisms available as remediation funding sources or financial assurance.

Persons who are not required to establish a remediation funding source are listed at N.J.A.C. 7:26C-5.2(b). N.J.A.C. 7:26C-5.2(b)3 provides that a person who implements an unrestricted use remedial action or a limited restricted use remedial action for all of part of a remedial action is exempt. The Department proposes to add the phrase “in a timely manner” to help encourage expeditious remediation at these sites.

The Brownfield Act at N.J.S.A. 58:10B-3 sets forth who must establish and maintain a remediation funding source, and proposed new N.J.A.C. 7:26C-5.2(c) and (d) implement that provision. Proposed new N.J.A.C. 7:26C-5.2(c) requires a responsible person to establish and maintain financial assurance pursuant to this subchapter, and proposed new N.J.A.C. 7:26C-

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5.2(d) excepts the owner or operator of a small business (defined at N.J.A.C. 7:26C-1.3), and those entities listed at N.J.A.C. 7:26C-5.2(b)4 through 7 (a government entity, a person who undertakes a remediation at their primary or secondary residence, the owner or operator of a licensed child care center who performs a remediation at the licensed child care center, and the person responsible for conducting a remediation at a public, private or charter school) from the requirement to establish financial assurance pursuant to this subchapter. These proposed new requirements necessitate the recodification of N.J.A.C. 7:26C-5.2(c) through (f) as N.J.A.C. 7:26C-5.2(e) through (h), with amendments discussed elsewhere in this part of the summary.

The Department proposes to amend N.J.A.C. 7:26C-5.2(c)1, proposed to be recodified as N.J.A.C. 7:26C-5.2(e)1 by deleting references to the Department and to replace “final remediation document” with “response action outcome.” These proposed amendments change this provision to now require that a remediation funding source must be maintained until the LSRP issues an unrestricted use or limited restricted use response action outcome for the site because the Department will no longer be overseeing most remediations.

Proposed new N.J.A.C 7:26C-5.2(e)2 requires that financial assurance must be maintained until the Department either transfers the remedial action permit pursuant to N.J.A.C. 7:26C-7.11 (transfer of a remedial action permit to a new owner, operator or tenant), or terminates the remedial action permit pursuant to N.J.A.C. 7:26C-7.13.

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At recodified N.J.A.C. 7:26C-5.2(h), the Department proposes to replace “instruments” with “financial mechanisms” because “financial mechanisms” more accurately describes the types of remediation funding sources of which the responsible person may avail him or herself.

The Department is proposing to recodify N.J.A.C. 7:26C-5.2(f)5 and 6 as N.J.A.C. 7:26C-5.2(h)6 and 5, respectively so that the list of financial mechanisms is codified in a more logical order. The first five financial mechanisms are instruments issued by a financial institution, while the sixth mechanism, the self-guarantee, is not. Additionally, proposed new N.J.A.C. 7:26C-5.2(j) provides that a person may use any combination of financial mechanisms listed at N.J.A.C. 7:26C-5.2(h)1 through 5 to satisfy financial assurance requirements. Note that a self-guarantee, listed at recodified N.J.A.C. 7:26C-5.2(h)6, is specifically excluded and may not be used to satisfy the financial assurance requirements, because a self guarantee lacks the institutional backing of the other listed instruments.

The Department is proposing to recodify N.J.A.C. 7:26C-5.2(g) as N.J.A.C. 7:26C-5.2(k), and to clarify that it is the person responsible for conducting the remediation who must establish a remediation trust fund when the remediation is subject to direct oversight. The Department also proposes to provide that, notwithstanding N.J.A.C. 7:26C-5.5(h) or (j), which give the person responsible for conducting the remediation flexibility in choosing which financial mechanism to use to establish a remediation funding source or financial assurance, respectively, the person must establish and maintain a remediation trust fund when that person becomes subject to direct oversight.

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The Department is proposing to recodify N.J.A.C. 7:26C-5.2(h) as N.J.A.C. 7:26C-5.2(l) and to reword the provision in such a way as to break out at proposed new N.J.A.C. 7:26C-5.2(l)3i and ii regarding when the remediation trust fund must be established. Proposed new N.J.A.C. 7:26C-5.2(l)3i requires the establishment of the remediation trust fund upon the occurrence of any of the events on the list of direct oversight triggering events at N.J.A.C. 7:26C-14.2, and proposed new N.J.A.C. 7:26C-5.2(l)3ii requires the establishment of the remediation trust fund upon receipt of notice from the Department that the site is being placed under direct oversight at the Department's discretion, pursuant to proposed new N.J.A.C. 7:26C-14.3(c), discussed more fully below.

Proposed new N.J.A.C. 7:26C-5.2(l)4 requires the person responsible for conducting the remediation to submit evidence of financial assurance with the remedial action permit application. Remedial action permit application requirements are to be codified at proposed new N.J.A.C. 7:26C-7.5, discussed more fully below.

N.J.A.C 7:26C-5.3 concerns how to determine the amount of the remediation funding source, and as amended, the amount of the financial assurance. The Department is proposing to amend N.J.A.C 7:26C-5.3(a)1 to require that operation, maintenance and inspection costs of any engineering controls that are to be implemented as part of a remedial action need to be included in the calculation of the amount of the remediation funding source and to delete the language that currently requires that these costs be excluded. As a companion amendment, the Department is

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proposing to amend the existing text at N.J.A.C 7:26C-5.10(a)2 by deleting the word “excluding” and replacing it with the word “including.” The Department has determined that operation and maintenance costs of any engineering controls to be implemented as part of a remedial action are an integral part of the cost of remediation. As a result of this, the Department has proposed in this rule to include operation and maintenance costs of engineering controls as part of the remediation funding source, should said funds need to be used to complete the remedial action at a site.

However, once the person responsible for conducting the remediation is at the phase of the remediation where a remedial action permit is required, proposed new N.J.A.C. 7:26C-5.3(b) provides that the amount of the remediation funding source may be reduced by an amount equal to the costs to operate, maintain and inspect the engineering controls, when a remedial action permit application, complete with evidence of financial assurance, is submitted to the Department. This is because the amount by which the financial assurance is reduced is required to be posted as a part of the remedial action permit application pursuant to N.J.A.C. 7:26C-5.2.

Proposed new N.J.A.C. 7:26C-5.3(c) requires that the financial assurance amount must be in an amount that is equal to or greater than the full cost to operate, maintain and inspect the engineering controls that are a part of any remedial action over the life of the permit. The financial assurance amount is to be estimated at the time the person submits the complete remedial action permit application.

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The Department is proposing to recodify N.J.A.C. 7:26C-5.3(b) as N.J.A.C. 7:26C-5.3(d) with no change in text.

Proposed new N.J.A.C. 7:26C-5.3(e) provides that if the permittee on a remedial action permit is a residential condominium association, the financial assurance requirements may be met by the submission of an annual budget approved by the governing body of the condominium association that reflects the amount dedicated to the operation, maintenance and inspection of the engineering controls which is equal to the annual estimated amount required.

Remediation trust fund requirements are codified at N.J.A.C. 7:26C-5.4. The Department proposes to delete “agreement” at N.J.A.C. 7:26C-5.4(a) as extraneous.

The proposed amendments to N.J.A.C 7:26C-5.4(a)4i simplify the text so that it more clearly provides that for any remediation that is subject to direct Department oversight, the Department must approve the disbursement of monies from the trust fund. Similarly, the proposed amendments to N.J.A.C 7:26C-5.4(a)4ii more clearly state that for remediations not subject to direct Department oversight, the LSRP must approve the disbursement of monies from the trust fund.

Requirements for self-guarantee remediation funding sources are codified at N.J.A.C. 7:26C-5.8. The Department proposes to amend N.J.A.C. 7:26C-5.8(a)4, concerning audited financial statements and to N.J.A.C 7:26C-5.8(c), concerning statements of assets and liabilities

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of special purpose entities in response to stakeholders who pointed out to the Department that the American Institute of Certified Public Accountants establishes auditing standards for non-publicly traded stock companies, while the Public Company Accounting Oversight Board establishes auditing standards for publicly traded stock companies. The Department is also proposing at 7:26C-5.8(a)4 to now require that financial statements be submitted for the preceding fiscal year that ended closest to the date of the self guarantee statement, and to include a non-exclusive list of statements that are to be submitted.

N.J.A.C. 7:26C-5.9 sets forth who must pay the remediation funding source surcharge and how and when the surcharge must be paid. Pursuant to this subchapter, a person responsible for conducting the remediation who establishes a remediation funding source using a remediation trust fund, an environmental insurance policy, a line of credit, or a letter of credit must pay a surcharge in an amount equal to one percent of the amount of the remediation funding source. The Department is proposing to amend N.J.A.C 7:26C-5.9(b)2 to require that the annual surcharge be paid either on the anniversary date that the surcharge was first paid or within 30 days after receipt of an invoice from the Department, whichever date occurs sooner.

Proposed new N.J.A.C. 7:26C-5.9(c) provides that the remediation funding source surcharge is not applicable to the financial assurance established for a remedial action permit.

N.J.A.C 7:26C-5.10 contains the requirements for submitting a remediation cost review in which the person responsible for conducting the remediation indicates how monies from the

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remediation funding source were spent during the 365 days after the date the person was required to establish the remediation funding source. The list of items that must be submitted to the Department as a part of the remediation cost review are codified at N.J.A.C. 7:26C-5.10(a). The Department is proposing to amend N.J.A.C 7:26C-5.10(a)1 and 2 by deleting the word “detailed.” The regulated community was confused as to what “detailed” meant. The Department has determined that the word “detailed” does not provide any added meaning to this paragraph.

At N.J.A.C 7:26C-5.10(a)2, the Department is proposing to delete “as part of a remedial action permit pursuant to N.J.A.C. 7:26C-7” as the phrase does not provide any needed information relative to determining the cost to complete the remediation. Finally, the Department is adding “and the Department’s fees and oversight costs pursuant to N.J.A.C. 7:26C-5.3.” Pursuant to N.J.A.C. 7:26C-5.3(a)1, Department fees and oversight costs are part of the remediation funding source, because the Department’s fees and oversight costs are part of the cost of remediation.

Proposed new N.J.A.C. 7:26C-5.10(b) sets forth the financial reporting requirements for a person responsible for conducting the remediation who is subject to a remedial action permit, including the requirements to summarize all monies spent to date, estimate the remaining costs to comply with the remedial action permit, and explain any changes from the most recently submitted cost review.

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N.J.A.C. 7:26C-5.11 governs how to make changes in the remediation funding source amount or type and how to have the remediation funding source returned. As amended, this section will also contain similar requirements for financial assurance.

The Department is proposing to amend N.J.A.C 7:26C-5.11(a) to require that the request to reduce the amount of the financial mechanism be certified by the person responsible for conducting the remediation and by the LSRP. This certification requirement is currently codified at N.J.A.C. 7:26C-5.11(b)2, and the Department proposes to recodify it from N.J.A.C. 7:26C-5.11(b)2 to N.J.A.C. 7:26C-5.11(a).

N.J.A.C. 7:26C-5.11(b) states when the person responsible for conducting the remediation may reduce the amount of the remediation funding source, and as amended, the financial assurance. The Department is proposing to amend N.J.A.C 7:26C-5.11(b)1 to provide that Department approval of a request to reduce the amount of the remediation funding source is only required for cases where the person responsible for conducting the remediation is subject to direct oversight. The Department is proposing a similar amendment to N.J.A.C. 7:26C-5.11(c)2, concerning increases in remediation funding sources.

The Department proposes to delete N.J.A.C. 7:26C-5.11(d), and to recodify N.J.A.C. 7:26C-5.11(e) as new N.J.A.C. 7:26C-5.11(d) with an amendment that replaces “remediation funding source” with “financial mechanism” to indicate that this section applies to both remediation funding source and financial assurance.

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The Department is proposing to replace N.J.A.C. 7:26C-5.11(f) with new N.J.A.C. 7:26C-5.11(e), which also contains the timing for the Department to return the remediation funding source and adds to that, the requirements for returning the financial assurance.

N.J.A.C 7:26C-5.12 contains the requirements governing disbursements from the remediation funding source, and, as proposed to be amended, disbursements from the financial assurance. At N.J.A.C 7:26C-5.12(a), the Department is proposing to replace “those persons subject to the Department’s direct oversight pursuant to N.J.S.A. 58:10-C-27” with “as provided in (b) below.” Subsection (b) deals with persons subject to the Department’s direct oversight. The Department is proposing to delete “responsible for conducting the remediation,” because a person other than a person responsible for conducting the remediation may be required to establish and maintain a remediation funding source or financial assurance. The Department is proposing to add “letter of credit” to the list of acceptable financial mechanisms. The Department is proposing to delete the phrase “may be submitted to the Department, or directly to the provider of the remediation funding source with a copy provided to the Department if the information specified in (a)2i through iv below is prepared and certified by an LSRP if applicable, and . . .” and instead, to add “to the provider, with a copy to the Department,” since the Department will no longer review or approve disbursements from financial mechanisms for cases that are not under direct oversight.

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The Department is proposing to delete from N.J.A.C 7:26C-5.12(a)1 “and status of the remediation” because that information is not necessary for purposes of requesting a disbursement.

The Department is proposing to amend N.J.A.C 7:26C-5.12(a)2 to reflect that the Department will no longer be approving disbursements requests for sites that are not in direct oversight. Instead, the only information needed is the actual amount of the disbursement request.

The Department is proposing to amend N.J.A.C 7:26C-5.12(a)3 by deleting “if applicable,” because LSRPs will be required to certify that disbursements from funding mechanisms represent actual remediation costs. The Department is proposing to delete the phrase “and does not include legal fees,” because the Department proposes to amend the definition of “remediation costs” to include certain types of legal fees.

N.J.A.C 7:26C-5.12(b) pertains to situations where the Department would be approving the disbursement request. Since the only time the Department will be approving a disbursement is when a site is under direct Department oversight, the Department proposes to amend N.J.A.C. 7:26C-5.12(b) to so reflect.

N.J.A.C. 7:26C-5.12(b)1 and 2 detail how the Department would respond to a disbursement request. N.J.A.C. 7:26C-5.12(b)1 is still germane to situations where the site is subject to direct oversight. However, N.J.A.C 7:26C-5.12(b)2, which states the Department

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could respond to a disbursement request by stating that although the information submitted on the form is complete, remediation costs that had neither been approved by the Department nor certified by an LSRP were included, is not required, as it is implicit in N.J.A.C 7:26C-5.12(b)1 that the Department will only approve disbursement of funds equal to the actual remediation cost. Accordingly, the Department proposes to delete N.J.A.C. 7:26C-5.12(b)2, and recodify N.J.A.C. 7:26C-5.12(b)3 as (b)2, with an amendment that provides that the Department may respond by indicating that the disbursement is not approved. Additionally, the Department proposes adding the phrase “the Department shall include” before “a list of the missing information . . .” for sense.

The Department is proposing to add to N.J.A.C 7:26C-5.12(c) the requirement that the LSRP also provide the Department with notice of the disbursement to indicate that both the person responsible for conducting the remediation and the LSRP are required to notify the Department of disbursements from financial mechanisms, and the amount of the remaining remediation funding source or financial assurance on a form available on the Department’s website.

N.J.A.C 7:26C-5.13 sets forth the consequences for failing to perform the remediation. The Department is proposing to amend N.J.A.C. 7:26C-5.13(a) and (c) to no longer allow the person to have 30 days after receipt of a notice that the person has failed to perform the remediation as required to perform any obligation not performed. The timeframe is being deleted to allow the Department to immediately avail itself of any monies remaining in the

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remediation funding source so that it may resume remediation activities at the site as soon as possible.

6. Proposed amendments to Subchapter 6

The rules concerning final remediation documents, including response action outcomes issued by the LSRP and no further action letters issued by the Department, are codified at N.J.A.C. 7:26C-6. Response action outcome rules are codified at N.J.A.C. 7:26C-6.2. The Department is proposing to combine N.J.A.C. 7:26C-6.2(a) and the first line of existing (a)1. This recodification makes it clear that the LSRP always issues a response action outcome to the person who has conducted the remediation, and that the paragraphs codified within N.J.A.C. 7:26C-6.2(a) modify the requirement that the LSRP issues a response action outcome to the person who has conducted the remediation.

The Department proposes to include the remainder of N.J.A.C. 7:26C-6.2(a)1 as new N.J.A.C. 7:26C-6.2(a)1, and to replace the cross reference to all applicable statutes, rules, and guidance with a cross reference to N.J.A.C. 7:26C-6.2(c), (f) and (g) to clarify and simplify the rule text. The Department also proposes to amend N.J.A.C. 7:26C-6.2(a)3 to clarify that the response action outcome shall only be issued after the person responsible for conducting the remediation has paid all fees and oversight costs to the Department, and to replace “discharge” with “contamination” at N.J.A.C. 7:26C-6.2(a)4.

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At N.J.A.C 7:26C-6.2(b)1, the Department proposes to require the LSRP to not only prepare but also to issue the response action outcome, and at N.J.A.C 7:26C-6.2(b)1i, the Department proposes to clarify that the response action outcome is to be prepared and issued pursuant to the requirements of the section. At N.J.A.C 7:26C-6.2(b)1ii, the Department proposes to require that the response action outcome be prepared not according to Department guidance, but rather using the Model Response Action Outcome document, which the Department proposes to codify in new Appendix D of this chapter, and that the applicable inserts be included.

The Department is proposing to require at N.J.A.C 7:26C-6.2(b)2 that the LSRP file the response action outcome with the Department within 30 days after issuing the response action outcome to the person responsible for conducting the remediation.

The Department is proposing to amend N.J.A.C. 7:26C-6.2(b)2ii to specify that only one copy of the required information needs to be submitted, rather than three copies. The Department has also determined that it does not normally need to have a copy of contractual agreements between the LSRP and its client. However, the Department, on a case specific basis, may want to review and is therefore proposing new text by which it reserves its right to request copies of contractual documents.

At N.J.A.C 7:26C-6.2(c), the Department proposes to replace paragraphs one through four with a cross reference to N.J.A.C. 7:26C-1.2(a) because, as discussed above, the Department

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proposes to codify the hierarchy of statutory and regulatory documents upon which the LSRP is to base his or her opinion when issuing a response action outcome at N.J.A.C. 7:26C-1.2(a).

The Department is proposing to amend N.J.A.C 7:26C-6.2(e) to cross reference proposed new N.J.A.C 7:26C-6.4(e), because as discussed further below, proposed new N.J.A.C 7:26C-6.4(e)1 through 3 list the actions the LSRP is to take to amend the response action outcome to address all deficiencies identified by the Department during its inspection and review process.

The Department is proposing to amend N.J.A.C. 7:26C-6.2(g) to specify that the LSRP is only to issue the response action outcome after he or she has determined that the remediation has been completed pursuant to N.J.A.C. 7:26C-1.2 (by reference to N.J.A.C. 7:26C-6.2(c), which so requires), rather than the Technical Requirements.

The Department is proposing to amend N.J.A.C. 7:26C-6.2(g)1ii to delete the extraneous language concerning engineering and institutional controls; a remedial action permit is only needed when engineering and institutional controls are utilized as a part of the remedial action.

At N.J.A.C. 7:26C-6.2(g)2i, the Department proposes to replace “quality” with “remediation” and to replace the specific requirements of N.J.A.C. 7:26C-6.2(g)2ii and N.J.A.C. 7:26C-6.2(g)2iii with a reference at N.J.A.C. 7:26C-6.2(g)2ii to a ground water remedial action permit pursuant to N.J.A.C. 7:26C-7. These proposed amendments make it clear that the remediation is completed only once soil and ground water have been remediated to the

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remediation standard, or the Department has issued the applicable soil or ground water remedial action permit.

N.J.A.C. 7:26C-6.3 contains the rules that concern no further action letters. The Department proposes to delete N.J.A.C. 7:26C-6.3(a)2 because it will no longer apply after May 7, 2012, and to collapse N.J.A.C. 7:26C-6.3(a) and (a)1, so that the rule provides that the Department will issue no further action letters only for remediations of unregulated heating oil tanks. This is because response action outcomes are to be issued for all other remediations.

N.J.A.C. 7:26C-6.4 pertains to the modification, rescission and invalidation of a final remediation document. The Department is proposing to replace N.J.A.C. 7:26C-6.4(a), which states that the Department may rescind a no further action letter or invalidate a response action outcome under certain circumstances, with the affirmative statement that a remedial action is not protective of the public health, safety and the environment when any of the circumstances listed at N.J.A.C. 7:26C-6.4(a)1 through 12 occur.

At N.J.A.C. 7:26C-6.4(a)2 the Department proposes to replace “conduct” with “complete” to clarify the intent of this paragraph. The Department also proposes to repeal N.J.A.C. 7:26C-6.4(a)6. In its place, the Department proposes new N.J.A.C. 7:26C-6.4(a)6 through 11, which set forth additional circumstances pursuant to which a remedial action can be considered not protective of the public health, safety and the environment. The Department is proposing to recodify N.J.A.C. 7:26C-6.4(a)7 as N.J.A.C. 7:26C-6.4(a)12 with no change in text.

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The Department is proposing to amend N.J.A.C. 7:26C-6.4(b) to place the affirmative obligation on the LSRP to rescind his or her response action outcome, as opposed to providing when the Department may invalidate a response action outcome. The Since the affirmative obligation to rescind the response action outcome is proposed to be placed with the LSRP, the two statutory criteria of when the Department may rescind a response action outcome, namely when the person responsible for conducting the remediation has implemented a remedial action that will render the property unusable for future redevelopment or recreational use, or when the person responsible for conducting the remediation failed to implement a presumptive remedy or alternative presumptive remedy, are no longer relevant. Accordingly, the Department also proposes to replace N.J.A.C. 7:26C-6.4(b)1 and 2 with new N.J.A.C. 7:26C-6.4(b)1 and 2, which set forth the circumstances according to which the LSRP must rescind his or her response action outcome. These circumstances are when the remedial action is not protective of the public health, safety, and the environment, and when the person responsible for conducting the remediation implemented a remedial action that renders the property unusable for future redevelopment or recreational use.

The Department proposes to recodify N.J.A.C. 7:26C-6.4(c) as (d), and to propose a new N.J.A.C. 7:26C-6.4(c), which sets forth the circumstances under which the Department will invalidate a response action outcome or rescind a no further action letter.

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Proposed new N.J.A.C 7:26C-6.4(e) requires an LSRP to withdraw and reissue a response action outcome upon a finding by either that LSRP or the Department that the response action outcome was not prepared according to Subchapter 6. It also requires at proposed new N.J.A.C. 7:26C-6.4(e)1 and 2 that, within 14 days, the LSRP is to amend the response action outcome to correct any errors that are administrative in nature, and to reissue the amended response action outcome, respectively.

G. Proposed amendments for Subchapter 7

N.J.A.C. 7:26C-7 pertains to the administrative requirements for obtaining a remedial action permit in those circumstances when the remedial action includes a deed notice or a classification exception area. The Department proposes to recodify the provisions describing the deed notice and the classification exception area requirements and the biennial certifications for these institutional controls from the existing Technical Requirements at N.J.A.C. 7:26E-8 to the ARRCs rules at N.J.A.C. 7:26C-7. By combining these provisions, all of the requirements for the institutional controls would be codified in a single subchapter, thus making it easier to locate all requirements that pertain to these institutional controls. Accordingly, the Department proposes to change the title of Subchapter 7 to “Deed Notices, Ground Water Classification Exception Areas and Remedial Action Permits.”

N.J.A.C. 7:26C-7.1 details the purpose and scope of Subchapter 7. The Department proposes to replace the bulk of N.J.A.C. 7:26C-7.1(a) with a new statement that the purpose of

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the subchapter is to establish the administrative requirements for using a deed notice or a ground water classification area as an institutional control, and for a remedial action permit that establishes the regulatory mechanism for operating, maintaining and monitoring the effectiveness of certain remedial actions and for submitting a biennial certification of the continued protectiveness of a remedial action that includes an engineering or institutional control. As a part of this new purpose statement, the Department proposes to recodify existing N.J.A.C. 7:26C-7.1(b)1i through iii as N.J.A.C. 7:26C-7.1(a)3i through iii.

The Department proposes to add a new N.J.A.C. 7:26C-7.1(b)1 and (b)2, which explain that the requirements for establishing a deed notice are found at proposed new N.J.A.C. 7:26C-7.2 and the requirements for establishing a ground water classification area are found at proposed new N.J.A.C. 7:26C-7.3, respectively. The Department also proposes to add a new N.J.A.C. 7:26C-7.1(b)4, which explains that the requirements for applying for a remedial action permit are found at proposed new N.J.A.C. 7:26C-7.5. Proposed new N.J.A.C. 7:26C-7.1(b)5 explains that the rules concerning the remedial permit application schedule are found at proposed new N.J.A.C. 7:26C-7.6.

The Department proposes to recodify N.J.A.C. 7:26C-7.1(b)2 and 3 as (b)3 and 4, and existing (b)4 through 10 as (b)6 through 12, with amendments that update cross references and the text that describes the purpose of each of the rule sections.

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Proposed new N.J.A.C. 7:26C-7.1(d) requires any person who chooses to redevelop or change the use of real property in a manner inconsistent with a remedial action that includes an engineering or institutional control, or to conduct additional remediation or other activities that would result in the need to file a new deed notice or to replace a declaration of environmental restrictions associated with the real property, to comply with subchapter 7.

Proposed new N.J.A.C. 7:26C-7.2 sets forth the administrative requirements for using a deed notice in a remedial action. As stated above, it is the Department's intent to consolidate all of the administrative activities related to the use of institutional controls in one set of regulations. These requirements are currently found in the Technical Requirements at N.J.A.C. 7:26E-8.2.

Proposed new N.J.A.C. 7:26C-7.2(a) requires that the person responsible for conducting the remediation who is implementing a remedial action that requires a deed notice to prepare a deed notice that is worded exactly as the model document found in proposed new Appendix B (except as updated for site-specific information as indicated in the model document) and which includes copies of all maps in the specified format.

Proposed new N.J.A.C. 7:26C-7.2(b) instructs the person responsible for conducting the remediation concerning what to do with the deed notice once it is prepared. Many of these requirements are currently codified in the Technical Requirements at N.J.A.C. 7:26E-8.2(c), which are proposed for repeal, as described elsewhere in this summary.

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If a deed exists for the property on which the remediation is conducted, the person responsible for conducting the remediation is required to cause the owner of the property to record the deed notice in each county in which the property is located (see proposed new N.J.A.C. 7:26C-7.2(b)1).

In some instances, however, such as where State or Federal entities or the U.S. Department of Defense are occupying the property, or for local, county or State roadways, there may not exist a deed to which a deed notice may be attached. In those instances, proposed new N.J.A.C. 7:26C-7.2(b)2 provides that the person responsible for conducting the remediation is to prepare a notice in lieu of a deed notice that conforms with the format set forth in proposed new N.J.A.C. 7:26C-7.2(a), and submit copies of the notice in lieu of deed notice to the officials as set forth at proposed new N.J.A.C. 7:26C-7.2(b)2i through iii. Proposed new N.J.A.C. 7:26C-7.2(b)3 requires the person responsible for conducting the remediation to also provide a copy of the recorded deed notice or notice in lieu of deed notice to the listed entities.

Proposed new N.J.A.C. 7:26C-7.3 codifies the administrative requirements that are specific to using a ground water classification exception area in a remedial action. A ground water classification exception area can only be established and removed by the Department. However, the decision as to whether to establish the ground water exception area is made based on information submitted to the Department by the person responsible for conducting the remediation. Accordingly, proposed new N.J.A.C. 7:26C-7.3(a) outlines the information to be

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submitted to the Department on the CEA/Well Restriction Area (WRA) Fact Sheet form and related attachments. Most of these requirements are currently codified at N.J.A.C. 7:26E-8.3.

Details concerning the additional information that must accompany the CEA/Well Restriction Area (WRA) Fact Sheet are outlined in proposed new N.J.A.C. 7:26C-7.3(b) and details concerning the map and cross sections that must accompany the CEA/Well Restriction Area (WRA) Fact Sheet are outlined in proposed new N.J.A.C. 7:26C-7.3(c).

Proposed new N.J.A.C. 7:26C-7.3(d) requires the person responsible for conducting the remediation to notify local officials and property owners of the intent to establish a ground water classification exception area by mailing a copy of the CEA/Well Restriction Area (WRA) Fact Sheet to those officials and property owners via certified mail.

Proposed new N.J.A.C. 7:26C-7.3(e) requires the Department to establish the classification exception area based on the information provided in N.J.A.C. 7:26C-7.3(b) and (c), and to post on the Department's website a final CEA/Well Restriction Area (WRA) Fact Sheet that contains the effective date of the establishment of the ground water classification exception area and the date by which the Department anticipates that the ground water classification exception area will end. These requirements are currently codified at N.J.A.C. 7:26E- 8.3(c).

Proposed new N.J.A.C. 7:26C-7.3(f) provides that the Department may revise or reestablish a ground water classification exception area at any time based on revised data, and

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that the Department shall post an updated CEA/Well Restriction Area (WRA) Fact Sheet if the ground water classification exception area is revised. These requirements are currently codified at N.J.A.C. 7:26E-8.3(d).

Proposed new N.J.A.C. 7:26C-7.3(g) provides that the Department will remove a ground water classification exception area based upon ground water data collected pursuant to N.J.A.C. 7:26C-7.9(f) that indicate that the concentrations of contaminants in the ground water are at or below all of the ground water quality standards. These requirements are currently codified at N.J.A.C. 7:26E-8.3(e).

Proposed new N.J.A.C. 7:26C-7.3(h) dovetails with the Technical Requirements at N.J.A.C. 7:26E-5.4(b) that provides that a ground water classification exception area established for historic fill material pursuant to N.J.A.C. 7:26E-4.7(b) shall remain effective indefinitely, but a ground water remedial action permit is not required for the ground water classification exception area.

The Department proposes to recodify N.J.A.C. 7:26C-7.2, "Permittees of remedial action permits" as N.J.A.C. 7:26C-7.4 and to amend the language in N.J.A.C. 7:26C-7.4(a) to acknowledge that the sections of this subchapter that apply to remedial action permits are N.J.A.C. 7:26C-7.4 through 7.13.

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Since the criteria for determining when a person is required to remediate a site are to be codified at proposed new N.J.A.C. 7:26C-2.2, the Department proposes to replace the list of persons who must comply with the requirements concerning remedial action permits currently codified at N.J.A.C. 7:26C-7.2(a)1 and 2, with a cross reference to N.J.A.C. 7:26C-2.2 at proposed new N.J.A.C. 7:26C-7.4(a)1 and “a statutory permittee” at (a)2. A “statutory permittee” is proposed to be defined as a person who subsequently becomes an owner, operator, or tenant of a site for which the Department has issued a remedial action permit pursuant to this chapter; provided however, that the Department may terminate a person's status as a statutory permittee if that person follows the applicable procedures in this chapter.

The Department proposes to repeal N.J.A.C. 7:26C-7.3, Remedial action permits, and to replace those requirements with proposed new N.J.A.C. 7:26C-7.5, Application for a remedial action permit. Proposed new N.J.A.C. 7:26C-7.5(a) describes when the person responsible for conducting a remediation must apply for a remedial action permit.

Each permit application must be accompanied by information that is specific to the type of permit for which the person responsible for conducting the remediation is applying. Accordingly, the Department proposes to list the information that the person responsible for conducting the remediation must submit to the Department when applying for a remedial action permit for a soil remedial action that includes an engineering or institutional control at proposed new N.J.A.C. 7:26C-7.5(b), for a ground water remedial action that includes monitored natural attenuation at proposed new N.J.A.C. 7:26C-7.5(c), and for a remedial action permit for a ground

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water remedial action that includes an active ground water remediation system at proposed new N.J.A.C. 7:26C-7.5(d).

Proposed new N.J.A.C. 7:26C-7.6, Remedial action permit application schedule, sets forth when an application for remedial action permits is to be submitted. Proposed new N.J.A.C. 7:26C-7.6(a) requires that the person responsible for conducting the remediation who is implementing an existing engineering or institutional control (by virtue of the fact that the person is submitting biennial certifications to the Department of the continued protectiveness of that control) must apply for a remedial action permit within two years of the last biennial certification, but in no case later than May 7, 2014.

Proposed new N.J.A.C. 7:26C-7.6(b) sets forth when a remedial action permit application is to be submitted for all other cases. A soil remedial action permit must be applied for within 30 days of complying with proposed new N.J.A.C. 7:26C-7.2(b) concerning deed notices, described above, or June 7, 2012, whichever is later. For a natural attenuation ground water remedial action permit, the application is to be submitted with the remedial action report that demonstrates natural attenuation is effective. For an active ground water remediation system, an application is to be submitted with the remedial action report that demonstrates the remediation system is operating and functioning as designed.

The Department proposes to recodify N.J.A.C. 7:26C-7.4 as N.J.A.C. 7:26C-7.7. This section sets forth the general conditions applicable to all remedial action permits.

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The Department proposes to repeal N.J.A.C. 7:26C-7.4(a), and in its place, to recodify N.J.A.C. 7:26C-7.4(b) as N.J.A.C. 7:26C-7.7(a). NJAC 7:26C-7.4(a) concerns obligations of remedial action permittees. These requirements have been folded into N.J.A.C. 7:26C-7.2, recodified as N.J.A.C. 7:26C-7.4, discussed earlier in the summary. At recodified N.J.A.C. 7:26C-7.7(a)1, the Department proposes to reorganize the text for clarity and to rename the biennial certification as “remedial action protectiveness certification” at N.J.A.C. 7:26C-7.7(a)1 and (a)2. Additionally, the Department proposes to replace the requirement that the remedial action protectiveness certification be submitted every two years following the anniversary of the date of any of the listed events with the requirement that the certification be submitted biennially on a form available from the Department’s website as required by this subchapter and the remedial action permit.

Proposed new N.J.A.C. 7:26C-7.7(b) requires a permittee to comply with all conditions in the remedial action permit.

The Department proposes to recodify N.J.A.C. 7:26C-7.5 as N.J.A.C. 7:26C-7.8. This section sets forth the specific conditions applicable to soil remedial action permits.

The Department proposes to amend N.J.A.C. 7:26C-7.8(a) to state that each permittee of a soil remedial action permit shall comply with all of the requirements listed therein. It also

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states that a protectiveness evaluation and certification are required biennially. This provision is based upon existing N.J.A.C. 7:26C-7.5(a).

The Department proposes to recodify the existing biennial certification requirements for deed notices found in the Technical Requirements at N.J.A.C. 7:26E-8.5(a) through (d), as N.J.A.C. 7:26C-7.8(b) through (d). Proposed new N.J.A.C. 7:26C-7.8(b) requires the permittee to determine the protectiveness of the soil remedial action by determining whether there have been changes in zoning and land use; inspecting the site; comparing New Jersey laws, remediation standards and other regulations to see whether these have changed since the last evaluation; and evaluating records.

Proposed new N.J.A.C. 7:26C-7.8(c) requires the permittee to submit the results of the soil remedial action protectiveness certification to the Department biennially, as well as to various government entities, property owners, and each permittee. Proposed new N.J.A.C. 7:26C-7.8(d) requires the permittee to certify to the Department that the deed notice or declaration of environmental restrictions is being properly maintained and that the soil remedial action remains protective of human health and the environment. If the permittee cannot so certify, the permittee is required to ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary, modifying the remedial action, proposing a revision to the deed notice, and applying for a modification of the soil remedial action permit. Proposed new N.J.A.C. 7:26C-7.8(e) requires the permittee to submit both an electronic and paper copy of the remedial action protectiveness certification and form. Similar

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provisions are proposed at N.J.A.C. 7:26C-7.9(d) and (e) concerning ground water remedial action protectiveness certifications discussed below.

The Department proposes to recodify N.J.A.C. 7:26C-7.6 as N.J.A.C. 7:26C-7.9. This section sets forth the specific conditions applicable to ground water remedial action permits. The Department proposes to amend N.J.A.C. 7:26C-7.6(a), recodified as N.J.A.C. 7:26C-7.9(a), to replace the phrase “permittees of a ground water remedial action permit” with “permittee” and to add the phrase “all of the following concerning the ground water remedial action,” including the ground water monitoring reporting requirements for the site at N.J.A.C. 7:26C-7.9(a)2. Proposed new N.J.A.C. 7:26C-7.9(a)3 also requires the permittee to adhere with the ground water monitoring plan and schedules required in N.J.A.C. 7:26C-7.5(c)4 or 7.5(d)5. The Department proposes to recodify N.J.A.C. 7:26C-7.9(a)3 through 5 as 4 through 6 with no change to the text of 4 or 6, and to amend N.J.A.C. 7:26C-7.9(a)5 to replace the cross reference to the biennial certification rules with a cross reference to the remedial action protectiveness evaluation rules in this section.

Similar to proposed new N.J.A.C. 7:26C-7.8(b) concerning soils, proposed new N.J.A.C. 7:26C-7.9(b) requires the permittee to determine the protectiveness of the ground water remedial action. The determination is to be based upon any ground water monitoring data collected as part of the ground water remedial action; comparing New Jersey laws, remediation standards and other regulations to see whether these have changed since the last evaluation; determining whether there have been any planned changes in the 25-year water use planning horizon;

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identifying any changes in ground water use; inspecting all ground water monitoring wells associated with the ground water classification exception area; identifying any land use disturbances that may intercept the water table and cause a contaminated discharge to surface water; determine whether any proposed changes in ground water use influence the protectiveness of the remedial action; determine whether it is necessary to reevaluate the fate and transport modeling; determine whether there have been any changes in property use that increase the risk of vapor intrusion; assessing ground water quality; and determining, based on all of this information, whether the classification exception area can be removed or the permittee must reevaluate the fate and transport of the contaminants in ground water and, as necessary modify both the classification exception area/well restriction area and the ground water remedial action permit.

Proposed new N.J.A.C. 7:26C-7.9(c) requires the permittee to submit the results of the remedial action protectiveness determination in a certification to the Department biennially, as well as to various government entities, property owners that will be within the footprint of the ground water classification exception area, and all other permittees listed on the permit.

Proposed new N.J.A.C. 7:26C-7.9(d) requires the permittee to certify that the ground water CEA is being properly maintained and continues to be protective of the public health and safety and the environment. However, if the permittee cannot so certify, the proposed provision goes on to require that the permittee modify the remedial action and apply for a modification of the ground water remedial action permit, and when changes in property use would increase the

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risk of vapor intrusion from volatile organic compounds, the permittee must conduct public outreach and apply for a permit modification that would address the vapor intrusion risk.

Proposed new N.J.A.C. 7:26C-7.9(e) contains requirements for the submittal of the biennial remedial action protectiveness certification for the ground water remedial action.

Proposed new N.J.A.C. 7:26C-7.9(f) lays out the steps to follow to determine whether a ground water classification area may be lifted or if it must stay in place and the remedial action modified to address the ongoing ground water contamination.

The Department proposes to recodify N.J.A.C. 7:26C-7.7 concerning financial assurance for remedial action permits that include engineering controls as N.J.A.C. 7:26C-7.10.

The Department proposes to replace the phrase “permittees for a remedial action permit for” with “permittee implementing” in N.J.A.C. 7:26C-7.10(a) to clarify to whom these requirements apply. The Department proposes to amend N.J.A.C. 7:26C-7.10(a)1 to require that the remedial cost information is to be submitted to the Department biennially. It also clarifies that the Department requires the cost estimates for each remedial action at the site.

The Department proposes to delete the phrase "the remediation funding source options established in" from and to replace the references to N.J.A.C. 7:26C-5.4, 5.5, 5.6, and 5.7 with a reference to N.J.A.C. 7:26C-5.2(e) in N.J.A.C. 7:26C-7.10(a)2 which contains the requirements

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for estimating financial assurance. The Department also proposes to delete the last phrase of N.J.A.C. 7:26C-7.10(a)2i that requires that the cost estimate be based on applicable guidance published by the Department because the mechanism for estimating the amount of the financial assurance is proposed to be codified at N.J.A.C. 7:26C-5.3.

The Department proposes to recodify N.J.A.C. 7:26C-7.10(b) through (f) as (c) through (g), and to propose a new N.J.A.C. 7:26C-7.10(b) that requires that if more than one permittee is required to establish financial assurance, the financial assurance must still be established in the full amount, even if one permittee is exempt from the financial assurance requirements pursuant to recodified N.J.A.C. 7:26C-7.10(c).

The Department proposes to recodify N.J.A.C. 7:26C-7.8, which sets forth the requirements governing transfer a remedial action permit, as N.J.A.C. 7:26C-7.11.

The Department proposes to recodify N.J.A.C. 7:26C-7.9, which sets forth the requirements for modifying specific requirements in a remedial action permit, as N.J.A.C. 7:26C-7.12. N.J.A.C. 7:26C-7.12(b) requires a permittee to apply for a remedial action permit modification within 30 days of any of the events listed at N.J.A.C. 7:26C-7.12(b)1 through 5. The Department proposes to add “the occurrence of” for clarity and to delete the specific name of the form.

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The Department proposes to simplify N.J.A.C. 7:26C-7.12(b)1 by substituting “determination” for the phrase “statement that the permittee has completed a protectiveness evaluation required in its permit and has determined,” and deleting the phrase “which includes the following.”

The Department proposes to amend N.J.A.C. 7:26C-7.12(b)2 to clarify that a permit modification is necessary when a determination is made that the classification exception area or the monitoring parameters set forth in the permit need to be modified.

The Department proposes to add “or institutional” N.J.A.C. 7:26C-7.12(c)3 to clarify that a permit modification is needed when changes have been made to either the engineering or institutional controls, and, since both deed notices and notices in lieu of deed notices can be used, to modify the last phrase in this provision to so reflect.

Proposed new N.J.A.C. 7:26C-7.12(c)4 requires a permit modification if the person responsible for conducting the remediation modified the remedial action.

The Department also proposes to recodify existing N.J.A.C. 7:26C-7.12(c)4 as (c)5, and to add “a determination that the” to N.J.A.C. 7:26C-7.12(c)5 to clarify that a permit modification is needed when it is determined that the lot and block designation for the property have been revised.

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The Department proposes to recodify N.J.A.C. 7:26C-7.12(c)5 as (c)6, and to amend the text to only require a permit modification upon a permittee change of address.

The Department proposes to recodify N.J.A.C. 7:26C-7.10, which sets forth the requirements for the termination of a remedial action permit, as N.J.A.C. 7:26C-7.13, with an amendment to N.J.A.C. 7:26C-7.13(b) that deletes the specific form name.

7. Proposed amendments to Subchapter 9

Subchapter 9 contains the rules concerning enforcement of the rules that pertain to site remediation. N.J.A.C. 7:26C-9.5 governs civil administrative penalty determinations, and includes penalties and grace periods, where applicable, for violations of the Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E, the UST rules, N.J.A.C. 7:14B, the ISRA Rules, N.J.A.C. 7:26B, ARRCs, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E.

Pursuant to the Grace Period Law, N.J.S.A. 13:1D-125 et seq., the Department is required to designate, through rulemaking, certain types of violations of rules authorized by sixteen environmental statutes, as minor or non-minor violations. Under the Grace Period Law, any person responsible for a minor violation is afforded a period of time (a grace period) by the Department to correct the violation. If the minor violation is corrected as required, then the Department cannot assess a penalty. In those cases where a violation is not corrected within the

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grace period, the Department may assess a penalty in accordance with its statutory authority including, but not limited to, the assessment of penalties as may be appropriate within the exercise of the Department's traditional, judicially recognized enforcement discretion.

The Grace Period Law does not affect the Department's enforcement authority, including the exercise of enforcement discretion, to treat a violation as non-minor. In those situations where a violation is designated as minor in this subchapter, but in fact the specific violation as it occurred does not fulfill all the statutory requirements for a minor violation (N.J.S.A. 13:1D-129(b)), the Department reserves its discretion to treat the violation as non-minor.

In determining whether a particular violation or category of violations is minor, the Department must apply the following criteria, as set forth in the Grace Period Law at N.J.S.A. 13:1D-129(b):

(1) The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

(2) The violation poses minimal risk to the public health, safety and natural resources;

(3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;

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(4) The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department;

(5) In the case of a permit violation, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency responsible for a violation of the same requirement of the same permit within the preceding 12 month period;

(6) In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period;

(7) In the case of any violation, the person responsible for the violation has not been identified by the Department or a local agency as responsible for the same or substantially similar violation at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

(8) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the period of time prescribed by the Department.

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The Grace Period Law also requires the Department to establish the length of the grace period, which may be no fewer than 30 days or more than 90 days (unless extended by the Department), based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance.

Of the criteria provided by the Grace Period Law, only criteria (2), (3) and (8), as listed above, may pertain to all violations of a particular regulatory requirement. Therefore, the Department determined that violations that pose minimal risk to public health, safety, and natural resources, do not undermine or impair the goals of the program, and can be corrected within a designated grace period would be designated in these rules as minor.

The additional statutory criteria, (1), (4), (5), (6) and (7), regarding respectively, the intent of the violator, the duration of the violation, and whether it is a repeat offense, are fact-specific for each violation and must be considered on a case-by-case basis. Thus, each violation listed in the table at N.J.A.C. 7:26C-9.5 that is identified as minor will be eligible for a grace period only if it meets these additional criteria.

When the Department established the base penalties in the existing table, it took into account the fact it may include multiple violations in an enforcement action, each with its own base penalty, to assess a total penalty that reflects the seriousness of the violations and that acts

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as a deterrent. The resultant base penalties in the existing penalty table range from \$4,000-\$20,000

The proposed new penalty table differs from the existing penalty table in three significant ways. First, under the existing rules, the Department categorized a significant, broad violation, such as the failure to conduct a remedial action, as a non-minor violation. However, violations of particular subcategories of the broader requirement are categorized as minor, and a grace period is afforded within which to remedy the violation. This system was possible because the Department oversaw every aspect of the remediation and could advise the person responsible for conducting the remediation along the way as to whether the person was adhering to the rules, in advance of the person committing a non-minor violation.

However, the proposed new rules generally contain performance based goals, rather than the individual steps related to remediation. Since the individual steps are proposed to be deleted from the rules, violations of those steps must necessarily be deleted from the proposed new penalty table. Removing the minor requirements from the rules and removing violations of those steps from the penalty table will result in enforcement actions that will no longer contain multiple minor violations. Rather, the Department will be enforcing on violations of the broader remediation goals. Therefore, the Department adjusted the base penalty amount assigned to each of the violations that remain in the table upward to reflect the importance of timely achieving the proposed new remediation goals.

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The second significant difference between the existing penalty table and the proposed penalty table is that under the new site remediation paradigm, site remediation will largely proceed without Department oversight. Additionally, many of the prescriptive details and requirements are proposed for deletion and incorporation into various guidance documents. The LSRP program is predicated upon the person responsible for conducting the remediation and the LSRP conducting the remediation on their own, and that the remediation be conducted in such a way that it is protective of human health and the environment. Therefore, it is incumbent upon the person responsible for conducting the remediation and the LSRP to adhere to the rules.

Based on the above, the Department proposes that the violations table primarily include only penalties for violations of the broad requirements, and that these penalties be characterized as non-minor. Unlike the existing table, in which the Department categorized approximately 75 percent of the violations as minor, the Department now proposes to categorize the majority of the violations in the proposed new penalty table as non-minor. The Department reassessed each violation in consideration of the Grace Period Law criteria that must be evaluated when determining whether a violation is minor or non-minor. This evaluation was conducted for each violation listed in the proposed violations table. Of particular importance under the new paradigm, consideration of the criterion "...violations that materially and substantially undermine or impair the goals of the regulatory program,..." resulted in some violations previously designated as minor to be re-assigned a designation of non-minor. For example, a violation of the requirement to pay fees and oversight costs is designated as minor in the existing table, but is proposed to be designated as non-minor because failure to pay fees significantly

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undermines the Department's ability to administer the LSRP program. Additionally, a violation of the requirement to hire an LSRP to conduct remediation will be designated as non-minor because the use of LSRPs, in lieu of Department oversight of remediation, is a key tenet of SRRA and is critical to the program's responsibility to assure sites are properly remediated.

The Department proposes that a violation of an administrative requirement or a violation that has a lesser impact on program administration or on public health and safety and the environment be designated as minor and the person responsible for conducting remediation be afforded a grace period during which to correct the violation without the threat of penalty. For example, a person responsible for conducting the remediation who fails to include in a report justification for implementing an alternative public notification plan will have a grace period during which the person may provide this justification. Similarly, a person responsible for conducting the remediation who fails to submit the annual valuation of their remediation funding source will have a 30 day grace period in which to correct the violation.

The third significant difference between the existing penalty table and the proposed new penalty table concerns the amount of the designated base penalties. Since SRRA imposes the affirmative obligation to remediate upon responsible parties, the expectation is that people will move ahead with remediation without the Department's prompting or involvement. When parties do not conduct remediation, or do not conduct it properly or completely, the consequences for non compliance should be more severe given the affirmative obligation imposed by the Act.

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The proposed penalty amounts are within the Department's penalty authority set forth in the various statutes, and are sufficiently great enough to have a deterrent effect. The Department proposes that base penalties range from \$10,000 to \$25,000. Factors the Department considered in the determination of base penalty amounts in the proposed table include whether the violation is administrative in nature, whether the violation is designated as minor or non-minor, whether the non-minor violation is one that significantly undermines or impairs the goals of the program, and whether the violation poses a risk to public health and safety and the environment

8. Proposed amendments to Subchapter 10

The Act amended the Brownfield Act at N.J.S.A. 58:10B-20c(2) to provide that monies in the Remediation Guarantee Fund created pursuant to N.J.S.A. 58:10B-20a may be disbursed by the Department as technical assistance grants to nonprofit organizations to evaluate remediation methods and monitor site conditions at specific sites of public concern in the local community. Subchapter 10 implements these amendments.

At N.J.A.C. 7:26C-10.4, which pertains to the pre-application process, the Department proposes to amend N.J.A.C. 7:26C-10.4(a) by making the submission of a petition containing the signatures of 25 or more people who live or work near the site a mandatory condition of seeking a technical assistance grant. The Department also proposes to require each group that is

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interested in applying for a technical assistance grant in connection with a particular site to request that the Department make a finding of substantial public interest.

The Department proposes to amend N.J.A.C. 7:26C-10.4(c)2 to require that the Letter of Intent include not only a description of the composition of the community group but also a statement that the group meets the eligibility requirements at N.J.A.C. 7:26C-10.3 such as that the group is representative of the community in which the site is located.

The Department proposes to amend N.J.A.C. 7:26-10.4(d) to require the community group to publish the public notice required by this subsection when it submits its letter of intent to the Department, rather than upon receipt of the letter of intent. As currently worded, the provision does not specify upon receipt by whom, and is thus unclear.

Pursuant to N.J.A.C. 7:26C-10.4(d)4, any number of community groups may seek a technical assistance grant concerning a contaminated site. However, each community group must submit its own Letter of Intent to the Department, no later than 30 days from publication of the newspaper notice required by N.J.A.C. 7:26C-10.4(d). The Department proposes to extend this timeframe from 30 to 60 days, and to add the requirement that the Letter of Intent include a petition containing the signatures of 25 or more people who live or work near the site, requesting the Department make a finding of substantial public interest for the community group. The Department proposes this revision to enable the Department to make a finding of substantial

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public interest for each group when multiple community groups express interest in the same technical assistance grant.

N.J.A.C. 7:26C-10.4(f) requires community groups who are interested in a technical assistance grant for the same site to attempt to form a coalition. Accordingly, the Department proposes to amend N.J.A.C. 7:26C-10.4(e) and (f) by adding the word “petition” to clarify the documentation required for the Department to advise community groups that a coalition must be formed. In addition, the Department proposes to change the timeframe allowed to form a coalition from 30 days to 60 days. The Department regards 60 days as a more reasonable timeframe, recognizing that meetings and discussions required to form a coalition can be time-consuming.

The activities that are eligible for technical assistance grants are codified at N.J.A.C. 7:26C-10.6. The Department proposes to amend N.J.A.C. 7:26C-10.6(e)1 by replacing the word “may” with the word “shall,” as the intent is to require the community group to reimburse technical assistance grant funds if the community group or its LSRP uses funds for activities not identified in the approved budget and scope of work or for prohibited activities. This proposed change makes this requirement consistent with the proposed amendments to N.J.A.C. 7:26C-10.6(e)2 which require the community group to repay that portion of the grant monies that are not used in accordance with these rules.

9. Proposed new Subchapter 14

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The Department proposes that new N.J.A.C. 7:26C-14 contain rules concerning the Department's direct oversight of remediation. Pursuant to SRRA at N.J.S.A. 58:10C-27a, the Department must undertake direct oversight of the remediation when the person responsible for conducting the remediation:

- Has a history of noncompliance that includes the issuance of at least two enforcement actions;
- Has failed to meet a mandatory remediation timeframe or an expedited site specific timeframe, including any extension thereof, or a schedule established pursuant to an administrative order or a court order; or
- Has failed to complete the remedial investigation within 10 years after the discovery of the discharge and within five years after the date of the enactment of SRRA (enacted May 7, 2009, so no later than May 7, 2014).

SRRA at N.J.S.A. 58:10B-27b also gives the Department discretion as to whether to undertake direct oversight of the remediation of a contaminated site under the following conditions:

- The contamination at the site includes chromate chemical production waste;

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- The Department determines that more than one environmentally sensitive natural resource has been injured by contamination from the site;
- A site has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface water body; or
- The site is ranked by the Department in the category requiring the highest priority pursuant to the ranking system developed by the Department.

Once the site is under direct Department oversight, SRRA requires at N.J.S.A. 58:10C-27c the following:

- The Department must review and approve or deny each document submitted by an LSRP;
- The person responsible for conducting the remediation must prepare a feasibility study that must be submitted to the Department for approval;
- The Department must select the remedial action for the site;

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- The person responsible for conducting the remediation must establish and maintain a remediation trust fund in the amount of the estimated cost of the remediation;
- The Department must approve all disbursements of funds from the remediation trust fund;
- The LSRP must simultaneously provide to both the Department and the person responsible for conducting the remediation all submissions prepared by the LSRP; and
- The person responsible for conducting the remediation must implement a public participation plan approved by the Department, to solicit public comment from the surrounding community members concerning the remediation of the site.

Proposed new N.J.A.C. 7:26C-14.1 identifies the scope of the subchapter, as identifying the circumstances that trigger compulsory direct oversight by the Department, the criteria that the Department will evaluate in its decision to undertake direct oversight on a discretionary basis, the requirements that apply whenever the Department undertakes direct oversight, whether compulsory or discretionary, and the factors the Department will consider as part of any decision to decrease those requirements.

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At N.J.A.C. 7:26C-14.2(a), the Department proposes language which reiterates the statutory triggers listed at N.J.S.A. 58:10C-27a and noted above that mandate that the Department undertake direct oversight of remediation. The Act requires that the Department put under direct oversight any site where the person responsible for conducting the remediation has, prior to the date of enactment of the Act (i.e., May 7, 2009), failed to complete the remedial investigation of the entire contaminated site 10 years after the discovery of a discharge at the site and has failed to complete the remedial investigation of the entire contaminated site within five years after the date of enactment (see N.J.S.A. 58:10C-27a(3)). Ten years prior to May 7, 2009 is May 7, 1999. Thus, when a discharge was discovered prior to May 7, 1999 and the person responsible for conducting the remediation has failed to complete the remedial investigation of the entire contaminated site by May 7, 2014, the site must be placed under direct oversight.

At N.J.A.C. 7:26C-14.2(b)1 through 10 the Department proposes a list of the requirements that a person responsible for conducting remediation must meet when placed into direct oversight pursuant to N.J.A.C. 7:26C-14.2(a).

Proposed new N.J.A.C. 7:26C-14.3 implements the discretionary oversight provision of SRRA at N.J.S.A. 58:10C-27b. At N.J.A.C. 7:26C-14.3(a), the Department proposes to codify the conditions under which the Department may choose to undertake direct oversight of remediation, per N.J.S.A. 58:10C-27b(1) through (4), with added criteria that require additional, more specific information about the contaminants of concern than is promulgated in SRRA. Specifically, at proposed new N.J.A.C. 7:26C-14.3(a)1, the Department lists the phases and

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concentrations of chromium that would trigger Department concern, and at N.J.A.C. 7:26C-14.3(a)3 the Department refers to Ecological Screening Criteria for certain contaminants available on its website. Proposed new N.J.A.C. 7:26C-14.3(a)2 provides that an evaluation may be made of site impacts to multiple environmentally sensitive natural resources and N.J.A.C. 7:26C-14.3(a)4 provides that an evaluation may be made where the Department has ranked the site in the category requiring the highest priority pursuant to the Department's site ranking system.

When any of the conditions described at N.J.A.C. 7:26C-14.3(a) exist, the Department may, in its discretion, undertake direct oversight. Proposed new N.J.A.C. 7:26C-14.3(b) sets forth the criteria that the Department will consider as part of its decision on whether to undertake direct oversight of remediation. The criteria listed at N.J.A.C. 7:26C-14.3(b)1 are indicative of whether the person responsible for conducting remediation can be expected to conduct remediation in the most environmentally responsible manner, whereas the criteria listed at N.J.A.C. 7:26C-14.3(b)2 reflect the scope of the remediation needed and the potential for significant impacts to human health and the environment.

Proposed new N.J.A.C. 7:26C-14.3(c) includes the steps that follow a determination by the Department to undertake discretionary direct oversight. N.J.A.C. 7:26C-14.3(c)1 provides that the Department will inform the person responsible for conducting remediation in writing of its decision to undertake direct oversight. N.J.A.C. 7:26C-14.3(c)2 requires a person who is so informed to comply with the requirements that apply to all cases under Department direct

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oversight; as discussed above, the Department proposes to codify those requirements at proposed new N.J.A.C. 7:26C-14.2(b).

At N.J.A.C. 7:26C-14.4, the Department has included broad criteria that it intends to apply as part of any case-by-case decision to decrease or eliminate the requirements established in N.J.A.C. 7:26C-14. The Department understands that not all of the requirements may be necessary on a continuous basis in all circumstances. In light of the fact that cases under Department direct oversight will require a significant level of Department involvement, and recognizing the Department's limited resources, the Department may, in its discretion, determine that certain requirements are no longer applicable to a specific case and that it is in the public interest and protective of public health and the environment. The person responsible for conducting the remediation may discontinue implementing those requirements upon receipt of a notice of the Department's determination.

10. Proposed new Subchapter 15

Proposed new Subchapter 15, Confidentiality, contains the administrative procedures for submitting a confidentiality claim under the various statutes and implementing rules that govern site remediation. Both the UST rules and the ISRA rules contain provisions related to confidentiality (see N.J.A.C. 7:14B-3.7 and N.J.A.C. 7:26B-7.1, respectively). However, the UST rule provision merely requires the submittal of a fee, but contains no criteria for asserting a confidentiality claim, while the ISRA provision contains some detail as to how to assert such a claim. Since the ARRCs rules are to contain all administrative requirements, no matter which statute triggered the need to remediate the site, the Department proposes to reserve and repeal the

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UST and ISRA confidentiality rules, and to create a new subchapter in the ARRCs rules governing confidentiality claims, no matter pursuant to which rule the claim is to be asserted.

Proposed new N.J.A.C. 7:26C-15.1, Scope, lists the nine sections to which the subchapter pertains. Proposed new N.J.A.C. 7:26C-15.2 contains general information pertaining to asserting confidentiality claims, including provisions prohibiting the disclosure to the public of material undergoing a confidentiality claim review.

Proposed new N.J.A.C. 7:26C-15.3 contains the procedures for asserting a confidentiality claim and proposed new N.J.A.C. 7:26C-15.4 sets forth how the Department will determine whether or not a claim to confidentiality is valid, including provisions for the person asserting the claim to contest an adverse determination made by the Department.

Once information is deemed confidential, that information may not be disclosed except to other public agencies pursuant to proposed new N.J.A.C. 7:26C-15.5, to a contractor pursuant to proposed new N.J.A.C. 7:26C-15.6, and when the Department receives proper written consent from the person asserting the confidentiality claim, pursuant to proposed new N.J.A.C. 7:26C-15.7. Proposed new N.J.A.C. 7:26C-15.8 provides that the Department may disclose confidential information when there is evidence of imminent and substantial danger to the public health and safety or the environment. Additionally, the Department proposes that new N.J.A.C. 7:26C-15.9 contain the security procedures that the Department must follow when handling

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confidential information, and proposed new N.J.A.C. 7:26C-15.10 contains the remedies for the wrongful access to and or wrongful disclosure of a confidentiality claim.

11. Proposed new Subchapter 16

The Department proposes new subchapter N.J.A.C. 7:26C-16, Linear construction projects. Linear construction projects are projects that involve construction and development activities within an area such as a public or private roadway, railroad, or utility line and the rights of way thereto to create, maintain or alter the public or private roadway, railroad or utility line that includes one or more properties, or parts of properties, that have been impacted by a discharge. While the majority of parties conducting linear construction projects are not Spill Act responsible parties, they often encounter known, or previously unknown contaminated sites. Historically, remedial activities associated with linear construction projects were covered under Memoranda of Understanding or Memoranda of Agreement, and were overseen by assigned Department case managers.

The Department has been working with a group of stakeholders since the spring of 2010 to determine how linear construction projects should be handled under the new LSRP program. The stakeholder group includes representation from a wide range of public and private entities that are involved in linear construction projects and LSRPs. The Department and stakeholders agree that a consistent approach to these projects and the proper management of contaminated soil and ground water encountered during linear construction projects is necessary to ensure the

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protection of human health and the environment. To that end, proposed new N.J.A.C. 7:26E-16 and a technical guidance document specific to linear construction projects have been developed from this stakeholder process.

Proposed new N.J.A.C. 7:26C-16.1 sets forth the scope of the subchapter, including the requirements for a person engaged in a linear construction project and the required fees for a person engaged in a linear construction project.

Proposed new N.J.A.C. 7:26C-16.2 sets forth the requirements for a person engaged in a linear construction project, including the need to a) hire an LSRP, b) notify the Department of the linear construction project, c) conduct the linear construction project without Department approval, d) pay all applicable fees pursuant to proposed N.J.A.C. 7:26C-16.3, e) provide the Department access to the linear construction project, f) obtain and comply with all permits necessary for the linear construction project pursuant to N.J.A.C. 7:26C-7 and N.J.A.C. 7:26E-5.7, and g) provide the Department a final report that describes the management of contamination encountered during the linear construction project within 60 days after completion of the project or upon request of the Department.

Proposed new N.J.A.C. 7:26C-16.3 sets forth the required fees for a person engaged in a linear construction project, including a) a \$450 notification fee, and b) a fee based on the number of contaminated properties, or parts of properties, to be submitted with the linear construction project final report; these proposed fees range from \$1,000 to \$5,000.

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13. Proposed amendments to Appendix B - Model Deed Notice

The Department is proposing to recodify the existing Model Deed Notice from the Technical Requirements at N.J.A.C. 7:26E Appendix E to the ARRC rules at N.J.A.C. 7:26C Appendix B. In addition, the Department is proposing changes to the Model Deed Notice based upon the Site Remediation Reform Act at N.J.S.A. 58:10C-19, which allows the Department to establish a permit program for the maintenance and inspection of engineering or institutional controls and related systems installed as part of a remedial action for a contaminated site. One type of institutional control is a deed notice, which must be established when a person responsible for conducting the remediation implements a remedial action that will leave contaminated soil at the site. N.J.A.C. 7:26C-7.2(d)1 requires that the person who will use a deed notice as part of the remedial action must prepare a deed notice that is worded exactly as the model deed notice being described here.

The Department is proposing to delete existing paragraph 2 titled DEPARTMENT'S ASSIGNED BUREAU. As of the effective date of these rules, the Department will no longer be assigning a case manager to oversee the remediation of most contaminated sites or approving the deed notice prior to its filing. Instead, LSRPs will be overseeing the remediation of contaminated sites; the Department will not be providing oversight.

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The Department is proposing the addition of a new paragraph 2 titled REMEDIATION. This change requires the person responsible for conducting the remediation to identify the name and license number of the LSRP who approved the Deed Notice as an institutional control as a part of the remediation of the property. In addition, proposed paragraph 2 states that N.J.A.C. 7:26C-7 requires the owner of the property, among other persons, to obtain a soil remedial action permit and the permit will contain the monitoring, maintenance and biennial certification requirements that apply to the property.

The Department is proposing to delete the phrase “along with the associated monitoring and maintenance activities and the biennial certification requirements” from existing paragraph 5A RESTRICTED AREAS (which remains paragraph 5A). Biennial certification requirements will be contained in the soil remedial action permit.

The Department is proposing to move the language required to be inserted when engineering controls are also implemented at the site from existing paragraph 5A Restricted Areas to paragraph 5Bii to improve the flow of paragraph 5.

The Department is proposing a new paragraph 5B. RESTRICTED LAND USES to highlight the land uses that are restricted because of the implementation of the remedy that requires a deed notice. These restricted land uses are found in the Brownfield Act, N.J.S.A. 58:10B-12.g(10) which prohibits the conversion of contaminated sites, remediated to non-residential soil remediation standards that require the maintenance of engineering and or

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institutional controls, to child care facility use, or public, private, or charter schools without the Department's prior written approval, unless a presumptive remedy is implemented, and N.J.S.A. 58:10B-12.g(12) which prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to single family residential use or child care facility use without the Department's prior written approval.

Because of the addition of the new paragraph 5B described above, existing paragraph 5B ENGINEERING CONTROLS is being proposed as paragraph 5C. In addition, the Department is proposing to delete the phrase "along with the associated monitoring and maintenance activities and biennial certification requirements." Biennial certification requirements will be contained in the soil remedial action permit.

The Department is proposing to recodify existing paragraph 6A ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES as new paragraph 7A.

The Department is proposing to recodify existing paragraph 9. NOTICES as paragraph 6A CHANGE IN OWNERSHIP AND REZONING. This paragraph requires the owner of a property with restricted areas to include a provision in any lease, grant or other written transfer of interest in the property expressly requiring all holders of the property to take the property subject to the restrictions contained in the Deed Notice. This paragraph also contains the requirements to notify the Department when there is any transfer of the owner's interest in the restricted area, and when the owner petitions to rezone the property. The Department is

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proposing to delete the specific Department programs to which the notice of rezoning must be sent. Instead, The Department is proposing to require the owner(s) to provide notice on a form available on the Department's website. Finally, The Department is proposing to delete existing paragraph 9ii requiring owner(s) to notify any person intending to conduct invasive work in the restricted area of the nature and location of the contamination and the precautions necessary to eliminate human exposure, as this requirement is proposed to be recodified in paragraph 7Ai.

The Department is proposing to recodify existing paragraph 6B. EMERGENCIES as new paragraph 7B.

The Department is proposing to recodify existing paragraph 12. SUCCESSORS AND ASSIGNS as new paragraph 6B.

The Department is proposing to delete existing paragraph 7A. MONITORING AND MAINTENANCE OF DEED NOTICE, AND PROTECTIVENESS CERTIFICATION. This requirement is contained in the soil remedial action permit.

The Department is proposing to delete existing paragraph 7B. MONITORING AND MAINTENANCE OF ENGINEERING CONTROLS, AND PROTECTIVENESS CERTIFICATION. This requirement is contained in the soil remedial action permit.

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The Department is proposing to recodify existing paragraph 6B. EMERGENCIES as new paragraph 7B. The Department is proposing the following changes to this paragraph:

- The Department is proposing a new paragraph 7Bii which requires the person responsible for conducting the remediation to hire an LSRP (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency. This proposed addition reflects the LSRP remediation paradigm.
- The Department is proposing to amend existing paragraph 6Biv (recodified as paragraph 7Bv) by adding the term “or immediate environmental concern condition” between the words “emergency” and the phrase “has ended.” This proposed addition reflects the addition of this phrase to paragraph 7B and that an immediate environmental concern is considered a type of "emergency."
- The Department is proposing to amend existing paragraph 6Bv (recodified as paragraph 7Bvi) by replacing the phrase “written report” with the word “notification” to reflect that under the LSRP remediation paradigm, the person responsible for conducting the remediation is no longer required to submit a full report concerning the emergency to the Department since the person is using an LSRP. Instead, the person has to notify the Department of the restoration efforts implemented at the site.

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The Department is proposing to recodify existing paragraph 8. ACCESS as new paragraph 9. The Department is proposing to replace the phrase “if persons responsible for monitoring the protectiveness of the remedial action, as described in Paragraph 7, above,” from between the phrases “of the environment” and “fail to conduct” with “ the subsequent owners, lessees and operators, during their ownership, tenancy, or operation, and the Owner” to clarify who the persons responsible for monitoring the protectiveness are.

The Department is proposing to replace existing paragraph 13. MODIFICATION AND TERMINATION with a new paragraph 8. TERMINATION OF DEED NOTICE. The proposed change reflects the requirements of N.J.A.C. 7:26C-7 requiring a remedial action permit if the person responsible for conducting the remediation implements a remedial action requiring a deed notice.

The Department is proposing to amend existing paragraph 10. ENFORCEMENT OF VIOLATIONS (recodified as new paragraph 10) by updating the references to the Spill Act and adding the relevant citations to the Brownfield Act and SRRA. The Department is proposing to recodify existing paragraph 11. SEVERABILITY as new paragraph 11.

The Department is proposing to recodify existing paragraph 14A. EXHIBIT A as new paragraph 12A.

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The Department is proposing to recodify existing paragraph 14B. EXHIBIT B as new paragraph 12B.

The Department is proposing to recodify existing paragraph 14C. EXHIBIT C as new paragraph 12C

The Department is proposing to recodify existing paragraph 15. SIGNATURES as new paragraph 13.

14. Proposed amendments to Appendix C - Model Termination Of Deed Notice

The Department proposes to recodify existing Appendix B, Model Termination Of Deed Notice, as Appendix C with no change in text.

15. Proposed amendments to Appendix D - Model Response Action Outcome Document

The Department proposes new Appendix D for the model Response Action Outcome document. The Response Action Outcome is the document issued by Licensed Site Remediation Specialists when the defined area of concern or the entire site has been remediated in accordance with the ARRC rules, in a manner that is protective of public health, safety and the environment. The Response Action Outcome is the equivalent document to the Department

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issued No Further Action letter. Both the Response Action Outcome and the No Further Action letter are considered “final remediation documents.”

By proposing this model document in rules, the Department is emphasizing that the format and language of the Response Action Outcome can only vary based on the site specific details of the remediation. The model document identifies with the use of brackets (i.e. []) defined locations for site specific identifiers or insert selections for “conditions” or “notices,” the areas of the document where LSRPs may vary the language or make specific language selections. By requiring the language of the Response Action Outcome be consistent, the Department is ensuring that the language issued signifying completion of a remediation is predictable. Predictability for this major remedial milestone will assist lenders, attorneys, responsible parties, prospective purchasers, and sellers of property in planning for transactions that involve sites with contamination or sites that have been remediated. Over the course of the last two decades, the Department has made an effort to use consistent language in No Further Action letters and the Department is continuing with this approach for Response Action Outcomes.

The Department has prepared detailed instructions for the completion of the Response Action Outcome. These instructions are available at http://www.nj.gov/dep/srp/guidance/srra/rao_guidance.pdf. These instructions will be updated periodically to assist the LSRP in preparing this document.

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VI. Proposed Repeal and Replacement of the Technical Requirements for Site

Remediation (Technical Requirements), N.J.A.C. 7:26E

A. Background

The Technical Requirements establish criteria and minimum standards necessary for the investigation and remediation of contaminated sites as required by the Brownfield and Contaminated Site Remediation Act (Brownfield Act). The Technical Requirements work in tandem with the ARRCS rules, N.J.A.C. 7:26C, which contain the administrative requirements for contaminated site remediation. Together, these two rules provide the full picture of what is required to properly remediate contaminated sites in a way that is protective of public health and the environment.

Based on stakeholder input, the Department has concluded that the existing Technical Requirements are too prescriptive. The process-focused approach of the existing Technical Requirements sometimes resulted in unnecessarily extending the time and effort required to remediate contaminated sites, an approach that can add to the cost of remediation, may result in longer exposure to contamination, and may have contributed to delays in the remediation and redevelopment of contaminated properties.

Accordingly, with extensive help from stakeholders, consisting of over one hundred volunteers grouped into four teams (Near Term Priorities, Measures of Success, Technical

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Regulations, and Guidance Documents) led by a Steering Committee, the Department has worked to transform the Technical Requirements into a more performance-based set of rules that will allow more flexibility in addressing contamination and potential exposure pathways while continuing to ensure that remediation is conducted in such a way that the results are protective of human health and the environment. The end result of the Department's efforts to transform the Technical Requirements is this proposal to repeal the existing Technical Requirements, and to replace them with new Technical Requirements that contain performance based remediation goals.

The process aspects of the existing Technical Requirements have been updated and revised, and many of these requirements appear as a new series of technical guidance documents that contain the Department's direction concerning how to achieve the performance based goals that the Department is proposing herein to codify as new Technical Requirements. However, the Department will recodify with clarifications certain of the process-based rules, where the Department, with stakeholder input, has determined that they are core to the mission of remediating sites in a way that is protective of human health and the environment.

The technical guidance documents are not the subject of this rulemaking and are therefore not open for comment through this rulemaking. Note, however, that the technical guidance documents have undergone significant stakeholder input and review, and that each of the documents was written by a committee whose members possess technical expertise concerning the topic of the respective technical guidance document. As technical guidance

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documents are finalized, they will be available for download from the Department's website at www.nj.gov/dep/srp/srra/guidance.

The transformation of the Technical Requirements is a massive project that represents a change in the way sites are remediated in New Jersey. Accordingly, each of the following subchapter descriptions is preceded by a table that provides a side-by-side comparison of the existing Technical Requirements with the proposed new Technical Requirements, to help guide the reader in analyzing the distinctions between the existing and the proposed new rules.

B. Subchapter 1. General Information

Existing Subchapter 1, General Information, describes the scope of the chapter as containing notification requirements, requirements to document compliance with the rules, definitions and procedures to be followed when varying from the technical requirements, requirements for submittal of forms and for following referenced technical guidance, requirements to follow whenever an immediate environmental concern is identified or whenever light non-aqueous phase liquid is identified in soil or ground water, and requirements for conducting receptor evaluations and the submittal of receptor evaluation reports. The following table compares existing Subchapter 1 with proposed new Subchapter 1.

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
1.1 Scope	Same with amendments	1.11 Severability	Proposed to be recodified at 1.4. Immediate environmental concern requirements to be recodified from 1.14 to 1.11 with amendments
1.2 Liberal Construction	Same with amendments	1.12 Control of ongoing sources and implementation of interim remedial measures	Proposed to be recodified at 1.10 with amendments. Receptor evaluation - general and reporting requirements proposed to be codified from 1.15 to 1.12 with amendments
1.3 Applicability	Same with amendments	1.13 Requirement for Department Oversight of remediation	Proposed for repeal. Receptor evaluation - land use to be recodified from 1.16 to 1.13 with amendments
1.4 Notification and public outreach	Proposed to be recodified at ARRCS 1.7 Severability proposed to be recodified from 1.11 to 1.4	1.14 Immediate environmental concern requirements	Proposed to be recodified at 1.11 with amendments Receptor evaluation - ground water proposed to be recodified from 1.17 to 1.14 with amendments

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
1.5 Certifications, forms and submissions	Proposed to be merged into new 1.5, General remediation requirements, proposed to be recodified from 1.9 to 1.5 with amendments	1.15 Receptor evaluation - general and reporting requirements	Proposed to be recodified at 1.12 with amendments. Receptor evaluation - vapor intrusion to be recodified from 1.18 to 1.15 with amendments
1.6 Documenting compliance with the technical requirements	Merged into proposed new 1.5, General remediation requirements New General reporting requirements to be codified at 1.6, including the reporting requirements from subchapters 3, 4 and 6	1.16 Receptor evaluation - land use	Proposed to be recodified at 1.13. Receptor evaluation - ecological proposed to be recodified from 1.16 to 1.17 with amendments
1.7 Variance from the technical requirements and guidance	Same with amendments	1.17 Receptor evaluation - ground water	Proposed to be recodified at 1.14 with amendments
1.8 Definitions	Same but with additions and deletions of defined terms	1.18 Receptor evaluation - vapor intrusion	Proposed to be recodified at 1.15 with amendments

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
1.9 General remediation requirements	Proposed to be recodified at 1.5, General remediation requirements. Proposed new Green and sustainable practices to be codified at 1.9	1.19 Receptor evaluation - ecological	Proposed to be recodified at 1.16 with amendments
1.10 Health and Safety Plan	Proposed for repeal. Control of ongoing sources and implementation of interim remedial measures proposed to be recodified from 1.12 to 1.10 with amendments		

Proposed new N.J.A.C. 7:26E-1.1 describes the scope of the chapter. While existing N.J.A.C. 7:26E-1.1(a) provides that the Technical Requirements contain the minimum requirements to investigate and remediate contamination at any site, proposed new N.J.A.C. 7:26E-1.1(a) states that the Technical Requirements establish the technical requirements to remediate a contaminated site and ensure that the remediation is protective of public health and safety and of the environment. The Department is proposing to not continue in these new rules the provision at existing N.J.A.C. 7:26E-1.1(d) which talks about the Department's approval of documents, since the Department will no longer be approving documents when this rulemaking is adopted.

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The Department proposes to continue to codify the statement of liberal construction at N.J.A.C. 7:26E-1.2.

Proposed new N.J.A.C. 7:26E-1.3 states that the Technical Requirements apply to each person to whom the ARRCS rules apply. The Technical Requirements are not self-implementing. A person must comply with the Technical Requirements only if he or she is directed to do so by the ARRCS rules.

At N.J.A.C. 7:26E-1.4, the Department proposes to recodify the severability statement currently codified at N.J.A.C. 7:26E-1.11.

Existing N.J.A.C. 7:26E-1.4, Notification and public outreach, is not continued in the new chapter because these provisions are proposed to be recodified in the ARRCS rules at N.J.A.C. 7:26C-1.7 with amendments.

The Department proposes breaking existing N.J.A.C. 7:26E-1.9, General Remediation Requirements, into two new sections, namely N.J.A.C. 7:26E-1.5, General Remediation Requirements and N.J.A.C. 7:26E-1.6, General Reporting Requirements. Proposed new N.J.A.C. 7:26E-1.5 implements the requirements in SRRA at N.J.S.A. 58:10C-14c, by requiring the person responsible for conducting the remediation to conduct the remediation pursuant to the

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Technical Requirements, the ARRCs rules, and any available and appropriate technical guidance issued by the Department.

Proposed new N.J.A.C. 7:26E-1.5 also requires the person responsible for conducting the remediation to conduct the remediation pursuant to the Remediation Standards, N.J.A.C. 7:26D. Alternatively, the person responsible for conducting the remediation may comply with the standards or criteria developed by the Department under the Brownfield Act at N.J.S.A. 58:10B-12a for a particular site prior to June 2, 2008 (the effective date of the Remediation Standards, N.J.A.C. 7:26D), provided that a remedial action workplan or a remedial action report containing standards or criteria developed for the site under N.J.S.A. 58:10B-12a was submitted to the Department before December 2, 2008, the remedial action workplan or a remedial action report meets the requirements of N.J.A.C. 7:26E-5.6 or N.J.A.C. 7:26E-5.8 and is approved as written by an LSRP, and the standards or criteria developed by the Department under N.J.S.A. 58:10B-12a for the site are not greater by an order of magnitude than the remediation standards otherwise applicable under N.J.A.C. 7:26D. These alternatives exist in the current Technical Requirements, and the Department proposes to continue to provide these alternatives to allow for the remedial action workplans that were submitted or approved based on the remediation standards that the Department was applying prior to June 2, 2008. These remedial action workplans are still pending or being implemented and it would be burdensome to the regulated community if the Department required the person responsible for conducting the remediation to redo and resubmit the workplans based on the standards which became effective after June 2, 2008, unless the standard changed by an order or magnitude or more indicating that the

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remediation of the site using the old standards may not be protective of public health and the environment.

Proposed new N.J.A.C. 7:26E-1.5 also requires the documentation of all work conducted at a site, and establishes a continuing obligation on the person responsible for conducting the remediation to ensure that all information submitted to the Department is complete, accurate and relevant. Proposed new N.J.A.C. 7:26E-1.5 also sets forth requirements for borings and wells and excavated soil from drill cuttings, and requires that remediations conducted in the Pinelands must be conducted in a way that is consistent with the Pinelands Protection Act, including submission of all documents to the Pinelands Commission.

Proposed new N.J.A.C. 7:26E-1.6, General Reporting Requirements, requires that forms, documents and certifications must be made in accordance with the ARRCs requirements at N.J.A.C. 7:26C-1.6. It also requires that a case inventory document worksheet and quality assurance project plan must accompany each submittal (except that a case inventory document is not required if a preliminary assessment is submitted that shows no areas of concern, and a quality assurance project plan need not be submitted with a preliminary assessment report or a remedial action report). A quality assurance project plan is a document that presents in specific terms the policies, organization, objectives, functional activities and specific quality assurance/quality control activities involved with the acquisition of environmental information designed to achieve the data quality goals or objectives of a specific project or operation. (A definition of quality assurance project plan is proposed at N.J.A.C. 7:26E-1.8.) Specific

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requirements for preparing quality assurance project plans are proposed at N.J.A.C. 7:26E-2.2, discussed below.

Proposed new N.J.A.C. 7:26E-1.6 also describes the electronic data submission requirements for submitting sampling data to the Department, but excepts from these requirements the submission of data in situations where a final remediation document for unrestricted use is obtained within one year after the earliest applicable trigger to remediate. Triggers for remediation are found in the ARRCs rules at N.J.A.C. 7:26C-2.2. The Department uses sampling data to evaluate environmental conditions from a regional perspective. However, since data generated from sites that can be remediated to unrestricted use conditions within one year are generally of limited use in the context of evaluating environmental conditions from a regional perspective, the Department proposes excepting these data from the electronic data submission requirements.

Proposed new N.J.A.C. 7:26E-1.6 also lists the information that must be included in each remedial phase workplan and report.

As in the existing Technical Requirements, proposed new N.J.A.C. 7:26E-1.7 contains the procedures to follow when varying from the Technical Requirements. Proposed new N.J.A.C. 7:26E-1.7 more clearly sets forth the procedures to follow, including requiring submittal of a variance form and the specified information to the Department prior to varying from any technical requirement in N.J.A.C. 7:26E-1 through 5.

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The Department proposes to continue to codify the definitions of terms used in the chapter at N.J.A.C. 7:26E-1.8. However, the Department proposes to not include the following definitions, because the terms are no longer used in the proposed new rules (many of these terms are now used only in applicable guidance documents): “active ground water remediation,” “background ground water contamination,” “CERCLA,” “damages,” “Department certified laboratory,” “diligent inquiry,” “discharge to ground water proposal” and “DGW proposal,” “engineered system response,” “feasibility study,” “fill material,” “ground water use area,” “highly permeable soils,” “impermeable,” “indoor air screening level,” “innovative remedial action technology,” “mineral oil,” “natural background soil level,” “natural ground water remediation,” “no further action letter,” “order of magnitude,” “prospective purchaser,” “rapid action level,” “region of the site,” “remedial action selection,” “remedial action selection report,” “restricted use standard,” “retardation,” “sanitary landfill” and “landfill,” “soil gas screening level,” “specific discharge event,” “Spill Act,” “SWMA,” “tank,” “timely manner,” “unrestricted use standard,” “UST,” “volatile organics,” “waste oil,” “waters,” “wetland,” and “WPCA.”

The Department proposes to carry forward from existing N.J.A.C. 7:26E-1.8 to new N.J.A.C. 7:26E-1.8 the following definitions, with amendments to some definitions in order to update or clarify them: “aquifer,” “area of concern,” “child care center,” “Commissioner,” “containment” (but without “containment activities”), “contaminated site,” “contamination” or “contaminant,” “contract laboratory program” or “CLP,” “day,” “deed notice,” “Department,” “discharge,” “effective solubility” (except that the Department proposes to add “water” between

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“effective” and “solubility”), “engineering control,” “environmental medium,” “environmentally sensitive natural resource,” “EPA,” “free product,” “full laboratory data deliverables,” “ground water,” “hazardous waste,” “historic fill material,” “immediate environmental concern” (with the addition of the acronym “IEC”), “injury,” “institutional control,” “landfill,” “licensed site remediation professional” or “LSRP,” “light non-aqueous phase liquid” or “LNAPL,” “limited restricted use remedial action,” “method detection limit” or “MDL,” “natural resources,” “non-targeted compound,” “person,” “person responsible for conducting the remediation,” “pollutant,” “practical quantitation level” or “PQL,” “preliminary assessment,” “quality assurance,” “quality assurance project plan,” “quality control,” “receptor,” “reduced laboratory data deliverables,” “remedial action,” “remedial investigation,” “remedial phase,” “remediation” or “remediate,” “remediation costs,” “remediation standards,” “residual product,” “residual saturation point,” “restricted use remedial action,” “school,” “semivolatile organic compound,” “site investigation,” “soil,” “soil gas,” “surface water,” “target analyte list” or “TAL,” “targeted compound,” “target compound list plus 30” or “TCL + 30,” “tentatively identified compound” or “TIC,” “underground storage tank” (with the addition of the acronym “UST”), “unknown compound,” and “unrestricted use remedial action.” The Department is proposing within the definition of “target analyte list” to incorporate by reference the EPA Contract Laboratory Program Statement of Work for Inorganics Analysis. The Department is also proposing within the definition of “target compound list plus 30” to incorporate by reference the EPA Contract Laboratory Program Statement of Work for Organics Analysis. The EPA Contract Laboratory Program Statement of Work for Inorganics Analysis contains the list of metals inorganic compounds for which samples are to be analyzed (see

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<http://www.epa.gov/superfund/programs/clp/ismtarget.htm>). The EPA Contract Laboratory Program Statement of Work for Organics Analysis contains the list of volatile organic compounds (see <http://www.epa.gov/superfund/programs/clp/som-vtarget.htm>), semivolatile organic compounds (see <http://www.epa.gov/superfund/programs/clp/som-svtarget.htm>) and pesticide and PCB compounds (see <http://www.epa.gov/superfund/programs/clp/som-ptarget.htm>) for which samples are to be analyzed. The EPA Contract Laboratory Program Statement of Work for Organics Analysis also describes the process for evaluating non-targeted compounds (see <http://www.epa.gov/superfund/programs/clp/som1.htm>).

The Department proposes to newly define the following terms at N.J.A.C. 7:26E-1.8: “alkane,” “alternative fill,” “building,” “change in use,” “clean fill,” “currently known extent” or “CKE,” “diffuse anthropogenic pollutants” or “DAP,” “discrete area discharge,” “ecological screening criteria,” “engineered response action,” “explosive condition,” “final remediation document,” “free liquid,” “geotextile fabric,” “ground water classification exception area” or “ground water CEA,” “industrial establishment,” “loose fill surface,” “new construction,” “Pinelands,” “potable water,” “property boundary,” “reporting limit,” “residential type I,” “residential type II,” “Surface Water Quality Standards,” “technical guidance,” “unitary material,” “vapor concern,” “vapor intrusion,” “visible contamination boundary marker,” “volatile organic compound” and “widespread contamination.” The Department is proposing to incorporate by reference the U.S. Consumer Product Safety Commission's Handbook for Public Playground Safety (Pub. No. 325 dated 2008; as amended and/or supplemented) in the definition

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of “loose fill material.” This document presents safety guidelines for public playground equipment and playing surfaces.

As mentioned above, the Department proposes to recodify the general remediation requirements from N.J.A.C. 7:26E-1.9 to 1.5. In their place at N.J.A.C. 7:26E-1.9, the Department proposes to codify a statement through which it encourages the use of green and sustainable practices during the remediation of contaminated sites.

Existing N.J.A.C. 7:26E-1.10, Health and safety plan is not continued in the new chapter. This provision currently requires any person conducting remediation activities to prepare and adhere to a site-specific health and safety plan in accordance with the most recently adopted and applicable Occupational Safety and Health Administration (OSHA) general industry and construction standards at 29 CFR 1910 and 1926, respectively. This provision is redundant; Federal requirements must be adhered to whether or not the requirement to adhere to them is codified in the Department’s rules.

At proposed new N.J.A.C. 7:26E-1.10, the Department proposes to recodify from N.J.A.C. 7:26E-1.12 the provisions regarding controlling ongoing sources and the implementation of interim remedial measures. However, proposed new N.J.A.C. 7:26E-1.10(a)1 asserts that the person responsible for conducting the remediation has a continuing responsibility to identify the need for any interim remedial measure necessary to remove, contain, or stabilize a source of contamination and to protect the public health and safety and the environment.

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Additionally, at new N.J.A.C. 7:26E-1.10(b), the Department proposes to quantify the amount of light non-aqueous phase liquid (LNAPL) that would trigger compliance with this subsection as one one-hundredth (0.01) of a foot found in a collection point, such as a sump, monitoring well, surface water body or excavation. Additionally, while the existing rule at N.J.A.C. 7:26E-1.12(b) requires the person responsible for conducting the remediation to follow the Department's LNAPL Free Product Interim Remedial Measures technical guidance concerning free product removal, proposed new N.J.A.C. 7:26E-1.10(b)1 and 2 require the person responsible for conducting the remediation to report the presence of LNAPL to the Department, initiate LNAPL recovery to the extent practicable, and report the status of the actions taken, on a form available from the Department's website within 60 days after LNAPL is discovered.

Both existing N.J.A.C. 7:26E-1.12(b)2 and proposed new N.J.A.C. 7:26E-1.10(c) contain instructions concerning what measures must be taken within one year after LNAPL is discovered. Existing 7:26E-1.12(b)2 requires that the installation of an LNAPL interim remedial measure and the initiation of operational monitoring must be complete within the one year deadline. However, proposed new N.J.A.C. 7:26E-1.10(c) requires that the delineation of the LNAPL, and the initiation of the implementation of an LNAPL interim remedial measure must be accomplished within one year of LNAPL discovery. The Department recognizes that a successful LNAPL interim remedial measure could not be completed without an understanding

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of the extent of the LNAPL; hence the delineation requirement is added to ensure the success of the LNAPL interim remedial measure.

The Department proposes to recodify requirements concerning immediate environmental concerns from N.J.A.C. 7:26E-1.14 to proposed new N.J.A.C. 7:26E-1.11. The Department proposes to reorganize these requirements by the type of IEC that is encountered (potable water, vapor intrusion, and direct contact), and to more clearly state the requirements that pertain to each type of IEC.

The Department proposes to recodify the requirements concerning receptor evaluations from existing N.J.A.C. 7:26E-1.15 through 19 to proposed new N.J.A.C. 7:26E-1.12 through 1.16 with only a few substantive changes. The requirements for conducting receptor evaluations represent one of the core priorities of the Site Remediation Program, and therefore, the Department and the members of the Technical Requirements stakeholder group have concluded that these provisions should remain as prescriptive in nature in the proposed new Technical Requirements as they are in the existing Technical Requirements. LSRPs will be able to exercise some professional judgment under the proposed new rules, such as, for example, selecting vapor intrusion sample locations within a home, but the Department believes it is important that the rules should specify, for example, where to sample (what house), when to sample and what to do with the sample results.

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Proposed new N.J.A.C. 7:26E-1.12, general and reporting requirements concerning receptor evaluations, contains new requirements at N.J.A.C. 7:26E-1.12(d) concerning when the receptor evaluation must be updated (the known concentration or extent of contamination in any medium increases, a new area of concern is identified, a new receptor is identified, or a new exposure pathway is identified). N.J.A.C. 7:26E-1.12(e) is recodified from existing N.J.A.C. 7:26E-1.15(d) and specifies with which documents the receptor evaluation must be submitted, including a new requirement to submit a receptor evaluation with the IEC source control report.

Proposed new N.J.A.C. 7:26E-1.13, concerning land use receptor evaluations, is reorganized from the existing requirements at N.J.A.C. 7:26E-1.16 for clarity.

Proposed new N.J.A.C. 7:26E-1.14, concerning ground water receptor evaluations, is recodified from existing N.J.A.C. 7:26E-1.17. A new provision at N.J.A.C. 7:26E-1.14(a)ii requires that the door-to-door survey concerning the existence of any unpermitted potable or irrigation wells be conducted at the newly specified radius of 500 feet from each known point of ground water contamination when the ground water flow direction is not known, and within 500 feet side gradient and down gradient and 250 feet up gradient of each known point of ground water contamination when the ground water flow direction is known.

Proposed new N.J.A.C. 7:26E-1.15, concerning vapor intrusion receptor evaluations, is reorganized from the existing requirements at N.J.A.C. 7:26E-1.18. The Department is proposing new requirements at N.J.A.C. 7:26E-1.15(g) for evaluating indoor air results where

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those results are greater than the Department of Health and Senior Services notification levels for indoor air.

At proposed new N.J.A.C. 7:26E-1.16, the Department proposes to consolidate the requirements for conducting the ecological receptor evaluation. As currently codified at N.J.A.C. 7:26E-1.19, the rule requires the person responsible for conducting the remediation to conduct a baseline ecological evaluation pursuant to existing N.J.A.C. 7:26E-3.11, which contains detailed requirements for conducting an ecological evaluation, to determine whether a remedial investigation of ecological receptors is required pursuant to existing N.J.A.C. 7:26E-4.7. Proposed new N.J.A.C. 7:26E-1.16 eliminates the term “baseline ecological evaluation” to avoid confusion with USEPA terminology. Additionally, under these new rules, the Department proposes to recodify the process of conducting an ecological evaluation from the site investigation section to the receptor evaluation section of the rule.

Proposed new N.J.A.C. 7:26E-1.16 requires the person to determine if any environmentally sensitive natural resources are present or are adjacent to the site or area of concern, or may be, has been or are impacted by contamination. It also requires a determination of whether any contaminant is present at the site or area of concern that exceeds any ecological screening criterion or any aquatic surface water quality standard. The proposed new rule then requires that if an environmentally sensitive natural resource is identified, a remedial investigation of ecological receptors must be conducted pursuant to N.J.A.C. 7:26E-4.8. Otherwise, a remedial investigation is not required.

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C. Subchapter 2. Quality Assurance for Sampling and Laboratory Analysis

Existing Subchapter 2, Quality Assurance for Sampling and Laboratory Analysis, contains the requirements to ensure the quality of data produced by laboratories and the associated reporting requirements, and requirements for sampling petroleum hydrocarbon contamination. The requirements for proposed new Subchapter 2 are similar to those in the current Subchapter 2 except where noted below. The requirements set forth in both existing and proposed new Subchapter 2 are basic requirements that are designed to help ensure that all samples are collected and analyzed using uniform procedures. By following these requirements, all persons responsible for conducting the remediation and their LSRPs, and laboratories that are hired to perform the analyses of collected samples will be assured that no matter who collected the sample, or by whom the sample is analyzed, the analysis will be uniform across laboratories, will be accurate, and will yield data that can be accurately compared to promulgated standards. Stakeholders who aided the Department in reviewing Subchapter 2 agreed that having specific guidelines in the rules was helpful in ensuring that sample analyses would be conducted in a uniform manner. Moreover, any LSRP may use his or her professional judgment to order more detailed or additional analyses where he or she believes such analyses are warranted.

The primary difference between existing and proposed new Subchapter 2 is that the Department has reworded and reorganized the text so that it is easier to understand and more

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clearly sets forth the basic requirements. The following table compares existing Subchapter 2 with proposed new Subchapter 2.

Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
2.1(a)1i, ii, iii, v, vii	2.1(a)1	2.2(a)	2.2(a)
2.1(a)1iv	2.1(a)2	2.2(a)1i	2.2(b)1
2.1(a)1vi	2.1(a)6	2.2(a)1ii	2.2(b)2
2.1(a)2	Repealed	2.2(a)1iii	2.2(b)4
2.1(a)3	Repealed	2.2(a)1iv	2.2(b)4
2.1(a)4	2.1(a)8	2.2(a)1v	2.2(b)5; (b)12; (b)13; (b)15
2.1(a)5	2.1(a)2	2.2(a)1vi	2.2(b)6
2.1(a)6	2.1(a)9	2.2(a)1vii	2.2(b)9
2.1(a)7	2.1(a)10	2.2(a)1viii	2.2(b)6
2.1(a)8	2.1(a)4	2.2(a)1ix	2.2(b)10
2.1(a)9	2.1(a)11	2.2(a)1x	2.2(b)11
2.1(a)10	2.1(a)12	2.2(a)1xi	2.2(b)17
2.1(a)11	2.1(a)13	2.2(a)2i	Repealed
2.1(a)12	2.1(a)5	2.2(a)2ii	2.2(b)19
2.1(a)13	2.1(a)5	2.2(a)2iii	2.2(b)7
2.1(a)14	2.1(a)14	2.2(a)2iv(1)	2.2(b)17
2.1(a)15	Repealed	2.2(a)2iv(2)	Repealed

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
2.1(a)16	2.1(a)15	2.2(a)2iv(3)	Repealed
2.1(a)17	Repealed		2.1(a)3 (new)
2.1(a)18	Repealed		2.1(a)7 (new)
2.1(b)1	2.1(b)1		2.1(c)2 (new)
2.1(b)2	2.1(b)2		2.1(c)3 (new)
2.1(b)3	Repealed		2.1(e) (new)
2.1(b)4	Repealed		2.2(b)3 (new)
2.1(c)1	2.1(c)1		2.2(b)8 (new)
2.1(c)2	2.1(c)4		2.2(b)14 (new)
2.1(c)3	Repealed		2.2(b)16 (new)
2.1(c)4	Repealed		2.2(b)18 (new)
2.1(d)	2.1(d)		2.2(b)20 (new)
2.1(e)	Repealed		2.2(b)21 (new)

The Department proposes to codify the activities, including quality assurance procedures, to be followed for all sampling and laboratory analysis, at proposed new N.J.A.C. 7:26E-2.1(a). Included in these provisions are requirements for laboratory qualifications, use of analytical methods with sufficient sensitivity to accurately measure analyte concentrations, the requirement to analyze petroleum products using the most recent revision of the Department's Extractable Petroleum Hydrocarbon Methodology, and requirements for analyzing non-aqueous samples, potable water samples, aqueous and non-aqueous samples taken for hexavalent chromium,

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reporting requirements, and steps to be taken when free or residual product is present in any environmental media and for the presentation of laboratory data deliverables. The Department is proposing to incorporate by reference USEPA analytical method 5035A at N.J.A.C. 7:26E-2.1(a)8i. This method describes a closed-system purge-and-trap process for analysis of volatile organic compounds (VOCs) in solid samples containing low levels (0.5 to 200 $\mu\text{g}/\text{kg}$) of VOCs. The method also provides specific procedures for preparation of samples containing high levels ($>200 \mu\text{g}/\text{kg}$) of VOCs. The Department is also proposing to incorporate by reference USEPA 500 and 200 series analytical methods for the analysis of potable water at N.J.A.C. 7:26E-2.1(a)9i and ii. The 500 series methods are a variety of methods used for the analysis of volatile organic compounds in drinking water. Copies of these methods can be obtained from the USEPA website at: http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm. The 200 series methods are a variety of methods used for the analysis of metals in drinking water. Copies of these methods can be obtained from the USEPA web site at: http://water.epa.gov/scitech/methods/cwa/methods_index.cfm. The Department is also proposing to incorporate by reference Standard Methods for the Examination of Water and Wastewater Method 3113B as an alternative method for the analysis of lead in drinking water at N.J.A.C. 7:26E-2.1(a)9ii. Method 3113B determines concentrations of lead in drinking water by electrothermal atomic absorption spectrometry. A copy of this analytical method can be obtained from the Standard Methods organization at: <http://www.standardmethods.org/Store/ProductView.cfm?ProductID=307>. Finally, The Department is proposing to incorporate by reference USEPA method SW-846 3060A at N.J.A.C. 7:26E-2.1(a)10i. Method 3060A is an alkaline digestion procedure for extracting hexavalent

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chromium from soluble, adsorbed, and precipitated forms of chromium compounds in soils, sludges, sediments, and similar waste materials. A copy of this method can be found on the USEPA web site at: <http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/3060a.pdf>.

In the proposed Technical Rules, the Department is not carrying forward the requirements at existing N.J.A.C. 7:26E-2.1(a)2, concerning when to reject analytical data, (a)3, concerning the requirement to use analytical methods approved by the listed organizations, (a)15, specifying which gas chromatography methods to use and when they should be used, (a)17, concerning sample handling, and (a)18, concerning requirements for sample preservation in the field. The requirements at existing N.J.A.C. 7:26E-2.1(a)2, are superfluous, as data submitted to the Department must be from laboratories that are certified pursuant to proposed new N.J.A.C. 7:26E-2.1(a)1. Additionally, since samples must be analyzed by certified methods pursuant to proposed new N.J.A.C. 7:26E-2.1(a)1, existing N.J.A.C. 7:26E-2.1(a)3 is also superfluous. Additionally, the Department has determined that requirements at existing N.J.A.C. 7:26E-2.1(a)15, specifying the use of gas chromatography methods with a mass spectrometer detector system are unnecessary because it is common laboratory practice to use gas chromatography/mass spectroscopy methods. In addition, the gas chromatography-only option has been rarely used.

Existing N.J.A.C. 7:26E-2.1(a)17, concerning sample handling, storage and shipping requirements and existing N.J.A.C. 7:26E-2.1(a)18, concerning requirements for sample

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preservation and storage in the field, are not carried forward because these activities can be determined by LSRPs using their professional judgment on a site specific basis.

Within N.J.A.C. 7:26E-2.1(a) are two proposed requirements that are in addition to those currently codified at N.J.A.C. 7:26E-2.1(a). First, proposed new N.J.A.C. 7:26E-2.1(a)3 requires that the reporting limit for an analyzed compound must be derived from the lowest concentration standard used in the calibration of the method. This new requirement is added to ensure that the calibration curve contains a point equal to the laboratory's reporting limit, so the laboratory can accurately report results at the reporting limit. Second, N.J.A.C. 7:26E-2.1(a)7 specifies that canister-based collection techniques are required for the analysis of air samples using TO-15 and LLTO-15 analytical methods. The Department proposes this new requirement to ensure that samples are collected in canisters. The TO-15 and LLTO-15 methods specify canister-based sample collection. The Department is proposing to incorporate by reference the TO-15 and LLTO-15 analytical methods at N.J.A.C. 7:26E-2.1(a)7. Both analytical methods contain a description of the use of canisters in the collection of air samples.

Proposed new N.J.A.C. 7:26E-2.1(b) contains requirements concerning field screening methods, including when field screening methods can be used, and which methods should be used to verify contaminant identity or clean zones at a site. The Department proposes not to carry forward existing N.J.A.C. 7:26E-2.1(b)3 and 4, in order to allow LSRPs greater flexibility in selecting field screening methods by using professional judgment on a site specific basis.

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Proposed new N.J.A.C. 7:26E-2.1(c) sets forth the requirements for the selection of analytical parameters for all environmental media. Included are the requirements to analyze samples for contaminants that may be present as determined during the preliminary assessment, or from any other information obtained during the investigation, or if site conditions are unknown, to analyze samples using a larger standardized list of contaminants.

The Department proposes to not to carry forward existing N.J.A.C. 7:26E-2.1(c)3. The requirements for developing an alternative remediation standard for the soil inhalation pathway and site specific standards are addressed in the Remediation Standards at N.J.A.C. 7:26D, and are supplemented by various Department guidance documents. As the ARRCs rules at N.J.A.C. 7:26C-1.2 and the Technical Requirements at N.J.A.C. 7:26E-1.4 require that all remediation must be conducted in accordance with, among other things, Department guidance, this provision is extraneous. The Department also proposes not to carry forward existing N.J.A.C. 7:26E-2.1(c)4, which requires that sampling be conducted for concrete and other building material pursuant to the Department's Guidance for Characterization of Concrete and Clean Material Certification, because the ARRCs rules at N.J.A.C. 7:26C-1.2 and the Technical Requirements at N.J.A.C. 7:26E-1.4 require that all remediation must be conducted in accordance with, among other things, Department guidance. Accordingly, this provision is extraneous.

The Department proposes to add two requirements that are new to these rules. First, at proposed new N.J.A.C. 7:26E-2.1(c)2, the Department proposes to require that initial analysis of potable water samples include the compound list specified in the analytical method used.

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Second, at proposed new N.J.A.C. 7:26E- 2.1(c)3, the Department proposes to require that the initial analysis of vapor intrusion samples include the compound list contained in NJDEP method LLTO-15. The objective of these new requirements is to standardize the list of chemicals in a given analytical method.

Both existing and proposed new N.J.A.C. 7:26E-2.1(d) contain the requirements associated with the analysis of samples for petroleum hydrocarbons. The Department proposes to reword and reorganize the existing requirements for clarity. Proposed new Table 2-1, which contains the analytical requirements for petroleum storage and discharge areas, differs slightly from existing Table 2-1 of the same title. The Department proposes that water contaminated with leaded gasoline or aviation gasoline should continue to be analyzed for VO+TICs. However, analysis for lead is being deleted, and analyses for 1,2-dibromoethane and 1,2-dichloroethane are being added. Additionally, the Department proposes to replace the requirement to analyze soil sediments contaminated with certain petroleum products for petroleum hydrocarbons (PHC) with the more specific requirement that they be analyzed for extractable petroleum hydrocarbons (EPH). The Department also proposes requiring that water contaminated with crude oil also be analyzed for ammonia, in addition to being analyzed for VO+TICs, SVO+TICs, and TAL metals. Additionally, the Department proposes increasing the parameters for which soil/sediment located at manufactured gas plants must be tested from metals, cyanide and phenolics to EPH, VO+TICs, PAH, TAL metals, cyanide and phenolics. Similarly, the Department proposes increasing the parameters for which water located at

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manufactured gas plants must be tested from metals, total ammonia, cyanide, and phenolics to EPH, VO+TICs, PAH, TAL metals, total ammonia, cyanide and phenolics.

Proposed new N.J.A.C. 7:26E-2.1(e) requires that any tentatively identified compounds or unknown compounds detected in any sample analysis shall be evaluated as part of the remediation process. This requirement differs significantly from that in the current rule. The current rule is very prescriptive with regard to identification and quantification of tentatively identified and unknown compounds. The proposed rule only requires tentatively identified and unknown compounds to be evaluated as part of the remediation process. This allows the LSRP greater flexibility in using professional judgment for the remediation of these compounds.

The Department proposes to codify the requirement for quality assurance project plans at proposed new N.J.A.C. 7:26E-2.2. As in the existing rules, proposed new N.J.A.C. 7:26E-2.2(a) requires the preparation of a quality assurance project plan for all sampling and data collection activities. However, the Department proposes to break out the components of a quality assurance project plan at proposed new N.J.A.C. 7:26E-2.2(b) and to add at (b)1, 3, 8, 14, 16, 18, 20 and 21, new components that should be included in the quality assurance project plan.

Proposed new N.J.A.C. 7:26E-2.2(b)3 requires including the sample design and rationale, because the description and rationale of the sampling design are an important part of the overall project plan.

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Proposed new N.J.A.C. 7:26E-2.2(b)8 requires a description of field instrumentation to be utilized; although the existing rule at NJAC 7:26E-2.2(a)1vii requires a description of field instrument operation, it does not require a listing of field instruments to be utilized.

Proposed new N.J.A.C. 7:26E-2.2(b)14 requires the submission of a summary of project compounds to be investigated. While the existing rule requires a description of the analytical methods to be utilized, it does not include a list of compounds that are to be analyzed and the reporting and quantification limits for each compound.

Proposed new N.J.A.C. 7:26E-2.2(b)16 requires that a plan include analytical quality assurance/quality control (QA/QC) requirements. It is important to document the QA/QC being employed for each analytical method.

Proposed new N.J.A.C. 7:26E-2.2(b)18 requires documentation in the plan of the procedure for review of laboratory data. It is important to document how analytical data will be verified and used relative to the project-specific data quality objectives.

Proposed new N.J.A.C. 7:26E-2.2(b)20 requires that a plan include laboratory quality assurance/quality control procedures. In order to determine if analytical results meet the project specific data quality objectives, it is important to know the QA/QC procedures utilized by the laboratory performing the analysis. This information is used as part of the review of laboratory data pursuant to N.J.A.C. 7:26E-2.2(b)18.

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Finally, at proposed new N.J.A.C. 7:26E-2.2(b)21, the Department proposes requiring that data and records management and archive procedures be included in the plan. With the implementation of the LSRP program, greater responsibility is placed on the LSRP, and it is critical that the LSRP store and maintain data so that they are readily accessible and secure.

D. Subchapter 3. Preliminary Assessment and Site Investigation

Like existing Subchapter 3, proposed new N.J.A.C. 7:26E-3 is titled Preliminary Assessment and Site Investigation. Existing N.J.A.C. 7:26E-3 contains the purpose, requirements, and regulatory timeframes for preliminary assessments and site investigations.

The primary difference between existing and proposed new Subchapter 3 is that the Department has reworded and reorganized the text so that it is easier to understand and more clearly sets forth the basic requirements. Additionally, where possible, the Department has removed the prescriptive requirements for conducting preliminary assessments and site investigations and has replaced these requirements with investigation goals.

The requirements of the proposed new rules for conducting the specific types of site investigations are far less prescriptive than the requirements in the existing rules. The proposed new requirements are designed to allow the LSRP to exercise professional judgment in these analyses. Additionally, the Department has prepared guidance documents that pertain to many

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of these analyses, which give the LSRP direction, including the requirements currently codified at N.J.A.C. 7:26E-3.4, Site investigation - general sampling requirements and N.J.A.C. 7:26E-3.9, Site investigation - area specific requirements. That said, the requirements at proposed new N.J.A.C. 7:26E-3.6 concerning site investigations of surface water and sediment specify that contamination should be evaluated from a human health perspective and an aquatic standard/ecological criterion perspective.

The following table compares existing Subchapter 3 with proposed new Subchapter 3.

Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
3.1 Preliminary Assessments	Same with amendments	3.8 Site investigation- surface water and sediment	Recodified with amendments at 3.6. New Site investigation - natural background investigation of soil and ground water to be codified at 3.8
3.2 Preliminary assessment report	Same with amendments	3.9 Site investigation- area specific requirements	Repealed. New Site investigation - diffuse anthropogenic pollutants in soil to be codified at 3.9

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
3.3 Site Investigation	Same with amendments; regulatory timeframes recodified at 3.15 with amendments	3.10 Site investigation-background investigation in soil	Broken out and recodified at 3.8, 3.10, and 3.11 New Site investigation - determination of off-site sources of contamination in soil and ground water to be codified at 3.10
3.4 Site investigation-general sampling requirements	Broken out and recodified at 3.4, 3.5 and 3.6	3.11 Site investigation-ecological evaluation	Absorbed into 1.16 (discussed above) New Determination of off-site source of contamination in surface water and sediment to be codified at 3.11
3.5 Site investigation-building interiors	Recodified at 3.7 with amendments	3.12 Site investigation-landfills and historic fill material	Broken into two sections. Site investigation - landfills to be codified at 3.12 New Site investigation - historic fill material to be codified at 3.13

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
3.6 Site investigation-soil	Recodified at 3.4 with amendments	3.13 Site investigation report	Recodified at 3.14 with amendments. New Site investigation - historic fill material to be codified at 3.13
3.7 Site investigation-ground water	Recodified at 3.5 with amendments		Site investigation report recodified at 3.14 with amendments Site investigation regulatory timeframes recodified at 3.15 with amendments

Proposed new N.J.A.C. 7:26E-3.1, Preliminary assessments, sets forth the purpose of a preliminary assessment, when the person responsible for conducting the remediation is obligated to complete a preliminary assessment, the requirements for conducting the preliminary assessment, and the regulatory reporting obligations based on the results of the preliminary assessment.

Proposed new 7:26E-3.1(a) expands on the existing purpose statement by emphasizing that contaminants that are both on and that have migrated from the site must be assessed, and by reinforcing the concept that whether any additional remediation is necessary stems from the

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information gathered during the preliminary assessment and the conclusions drawn from that information.

Proposed new N.J.A.C. 7:26E-3.1(b) sets forth the five circumstances that trigger the requirement for the person responsible for conducting the remediation to conduct a preliminary assessment, namely, when the person responsible for conducting the remediation:

- Is required to submit a completed Industrial Site Recovery Act General Information Notice to the Department;
- Wants a final remediation document for the entire site;
- Is remediating a site or portion of a site for use as a child care center, or for use as a public school, private school or charter school;
- Is conducting an evaluation of a child care center pursuant to the Department of Community of Affairs Act, N.J.S.A. 52:27D-130.4, and the Manual of Requirements for Child Care Centers, N.J.A.C. 10:122-5.2(i), as part of the license application or renewal for the child care center; or
- Is ordered to do so by a court or the Department.

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Proposed new N.J.A.C. 7:26E-3.1(c) sets forth the elements to be included in the preliminary assessment.

Proposed new N.J.A.C. 7:26E-3.1(d) imposes an affirmative obligation to conduct a site investigation if a potentially contaminated area of concern is identified during the preliminary assessment.

Proposed new N.J.A.C. 7:26E-3.1(e) states that no further remediation is required if no potentially contaminated area of concern is identified during the preliminary assessment unless the following circumstances exist:

- The person responsible for conducting the remediation is required to submit a Industrial Site Recovery Act General Information Notice pursuant to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., and its implementing regulations at N.J.A.C. 7:26B. In this instance, the person responsible for conducting the remediation is required to submit the preliminary assessment report and form within 90 days after the General Information Notice is required to be submitted to the Department;
- The person responsible for conducting the remediation wants a final remediation document for the entire site;

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- The person responsible for conducting the remediation is remediating a site or portion of a site for use as a child care center, or for use as a public school, private school or charter school;
- A person is conducting an evaluation of a child care center pursuant to Department of Community of Affairs Act, N.J.S.A. 52:27D-130.4 and the Manual of Requirements For Child Care Centers, N.J.A.C. 10:122-5.2(i) as part of the license application or renewal for the child care center; or
- A person is ordered to do so by a court or the Department.

Requirements for the preliminary assessment report are codified at proposed new N.J.A.C. 7:26E-3.2. Proposed new N.J.A.C. 7:26E-3.2 requires that anyone who is required to conduct a preliminary assessment (see proposed new N.J.A.C. 7:26E-3.1(b)) is required to prepare a preliminary assessment report.

The provisions that apply to all site investigations are proposed to be codified at new N.J.A.C. 7:26E-3.3, including the purpose of a site investigation, who is obligated to complete a site investigation, the general requirements for conducting a site investigation, and the regulatory reporting obligations and timeframe that must be achieved based on the results of the site investigation.

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Proposed new N.J.A.C. 7:26E-3.3(a) sets forth the purpose of a site investigation.

Proposed new N.J.A.C. 7:26E-3.3(b) sets forth the three circumstances under which the person responsible for conducting the remediation must conduct a site investigation, namely, when:

- Any potentially contaminated area of concern is identified during a preliminary assessment;
- The person responsible for conducting the remediation is an owner or operator of an underground storage tank system that is required to conduct a site investigation pursuant to the Underground Storage Tank (UST) rules, N.J.A.C. 7:14B; or
- A person is ordered to conduct a site investigation by a court or the Department.

Proposed new N.J.A.C. 7:26E-3.3(c) requires the person responsible for conducting the remediation to whom 3.3(b) applies to conduct the site investigation pursuant to N.J.A.C. 7:26E-3.4 through 3.15.

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Proposed new N.J.A.C. 7:26E-3.3(d) contains the requirements to conduct a comparison of all site data with all remediation standards and criteria, concerning when a contaminated area of concern should be identified, and to determine the existence of any immediate environmental concerns.

Proposed new N.J.A.C. 7:26E-3.4 through 3.13 contain the specific requirements that pertain to site investigations involving soil, ground water, surface water and sediment, building interiors, background investigation in soil and ground water, and landfills and historic fill material. In addition, the Department is proposing new requirements concerning diffuse anthropogenic pollutants in soil, determining off-site sources of contamination in soil and ground water, and surface water and sediment in the order as indicated in the above-presented table. Note that similar specific requirements for each of these types of remediations are carried forward through the requirements for remedial investigations in proposed new N.J.A.C. 7:26E-4, and remedial actions in proposed new N.J.A.C. 7:26E-5.

Proposed new N.J.A.C. 7:26E-3.14 contains the data presentation requirements of a site investigation report.

Proposed new N.J.A.C. 7:26E-3.15 sets forth the regulatory timeframes by which site investigation milestones must be accomplished.

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Pursuant to proposed new N.J.A.C. 7:26E-3.15(a), if no contaminated areas of concern are identified during the site investigation, no further remediation is required at the site. However, proposed new N.J.A.C. 7:26E-3.15(a)1 requires that both a preliminary assessment and a site investigation report be submitted to the Department no later than one year from the applicable requirement to remediate pursuant to the ARRCs rules at N.J.A.C. 7:26C-2.2 (pertaining to when a person is required to remediate) for site that is being remediated pursuant to the ISRA rules. Proposed new N.J.A.C. 7:26E-3.15(a)2 requires that only the site investigation report be submitted no later than one year from the applicable requirement to remediate pursuant to the ARRCs rules at N.J.A.C. 7:26C-2.2 for a site being remediated pursuant to the UST rules.

Proposed new N.J.A.C. 7:26E-3.15(a)3 sets forth that a preliminary assessment and/or a site investigation report must be submitted to the Department when the person wants a final remediation document for the entire site, is remediating a site or portion of a site for use as a child care center, or for use as a public school, private school or charter school, is conducting an evaluation of a child care center pursuant to Department of Community of Affairs Act, N.J.S.A. 52:27D-130.4, and the Manual of Requirements for Child Care Centers, N.J.A.C. 10:122-5.2(i), as part of the license application or renewal for the child care center, or when a person is ordered by a court or the Department.

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Proposed new N.J.A.C. 7:26E-3.15(a)4 sets forth when a site investigation report must be submitted to the Department for sites not described in N.J.A.C. 7:26E-(a)1 through 3.

The following table depicts when the preliminary assessment report is due pursuant to proposed new N.J.A.C. 7:26E-3.15(a)3.

Circumstances Pursuant to Which Remediation is Required	Preliminary Assessment Report Due (Yes/No)	Site Investigation Report Due (Yes/No)
Where the person wants a final remediation document for the entire site	Yes	Yes
Where the site is being remediated for use as a child care center, any type of school	Yes	Yes
Where the person is conducting an evaluation of a child care center as a part of the license application or renewal	Yes	Yes
Where the person wants a final remediation document for only the area of concern (not the entire site)	No	Yes
Where the person is ordered by a court or the Department to conduct the remediation	The reporting requirement is as applicable per the court or Department order	The reporting requirement is as applicable per the court or Department order

Where a contaminated area of concern is identified during the site investigation, proposed new N.J.A.C. 7:26E-3.15(b) requires the person responsible for conducting the remediation to conduct a remedial investigation pursuant to N.J.A.C. 7:26E-4. Additionally, proposed new

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N.J.A.C. 7:26E-3.15(b)1 requires that both a preliminary assessment and a site investigation report be submitted to the Department no later than one year from the date that ISRA was triggered. Proposed new N.J.A.C. 7:26E-3.15(b)2 requires that, for UST remediations, only the site investigation report must be submitted no later than one year from triggering the requirement to remediate pursuant to the UST rules.

Proposed new N.J.A.C. 7:26E-3.15(c) provides a mechanism for requesting an extension of the report submission timeframes of N.J.A.C. 7:26E-3.15(a) and (b).

E. Subchapter 4. Remedial Investigations

As in the existing rules, the Department proposes to codify the requirements pertaining to remedial investigations in Subchapter 4, Remedial Investigations. Both existing and proposed new Subchapter 4 establish requirements, workplan items and report items for remedial investigations, contain the information required to be included in the remedial investigation report and the format in which the information is to be reported, and establish remedial investigation requirements for landfills that are being redeveloped.

The principal difference between existing and proposed new Subchapter 4 is that the Department has reworded and reorganized the text so that it is easier to understand and more clearly sets forth the basic requirements. Additionally, where possible, the Department has removed the prescriptive requirements for conducting the remedial investigation and has

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replaced these requirements with investigation goals. Finally, the Department is proposing to add regulatory timeframes for the completion of the remedial investigation. The following table compares existing Subchapter 4 with proposed new Subchapter 4.

Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
4.1 Remedial investigation requirements	Same with amendments	4.6 Remedial investigation of landfills and historic fill material	Broken out and recodified at 4.6, Remedial Investigation of landfills and 4.7, Remedial investigation of historic fill material
4.2 Remedial investigation workplan	Repealed	4.7 Remedial investigation of ecological receptors	Recodified at 4.8 with amendments
4.3 Remedial investigation of soil	Recodified at 4.2 with amendments	4.8 Remedial investigation report	Recodified at 4.9 with amendments
4.4 Remedial investigation of ground water	Recodified at 4.3 with amendments	4.9 (Reserved)	4.9, Remedial investigation report

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
4.5 Remedial investigation of surface water, wetlands and sediment	Broken out and recodified at 4.4, Remedial investigation of surface water and at 4.8, remedial investigation of ecological receptors		4.10 Remedial investigation regulatory timeframes
	Proposed new remedial investigation of building interior proposed to be codified at 4.5		

Proposed new 7:26E-4.1, Remedial investigation requirements, identifies at subsection (a) the purpose of a remedial investigation, and at subsection (b), when a remedial investigation is required. Proposed new 7:26E-4.1(c) requires that remedial investigations must be conducted pursuant to the remaining subsections of N.J.A.C. 7:26E-4, which contain specific requirements for conducting remedial investigations, depending upon the media being investigated and the nature of the site.

Department approval of a remedial investigation workplan is not necessary, and the Department will no longer accept a remedial investigation workplan for review and approval, except under the following three circumstances, as set forth at proposed new N.J.A.C. 7:26E-4.1(d): the remediation is being conducted partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is a priority site under the

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Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S.

Environmental Protection Agency is the lead agency for the remediation.; at a site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., or at a Federal facility where the Department's remedial concurrence is necessary.

Proposed new N.J.A.C. 7:26E-4.2 and 4.3 contain the specific requirements for the remedial investigation of soil and ground water, respectively.

Proposed new N.J.A.C. 7:26E-4.4 is devoted exclusively to the remedial investigation of surface water; in the existing rules, these requirements are grouped together with the requirements concerning remedial investigations of wetlands and sediment.

Proposed new N.J.A.C. 7:26E-4.5 adds new requirements concerning conducting a remedial investigation of building interiors. For contamination that is migrating from the building to the outside, the extent of the contamination migrating from the building must be delineated. For contamination that is migrating into the building, all data necessary to remediate the contamination must be obtained.

The Department proposes to separate the requirements concerning remedial investigation of landfills and of historic fill material, currently codified at N.J.A.C. 7:26E-4.6, into two

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separate sections, proposed new N.J.A.C. 7:26E-4.6, Remedial investigation of landfills, and N.J.A.C. 7:26E-4.7, Remedial investigation of historic fill material.

Proposed new N.J.A.C. 7:26E-4.8 sets forth the requirements for conducting the remedial investigation of ecological receptors. Requirements currently codified at N.J.A.C. 7:26E-4.5 concerning the remediation of wetlands and sediment are proposed to be included in this new section. Note that rules concerning when to conduct an ecological risk assessment are set forth at proposed new N.J.A.C. 7:26E-4.8(c)2. Additionally, Department approval of the final remediation goal for environmentally sensitive natural resources must be obtained before remedial action is implemented if the final remediation goal is something other than the ecological screening criterion (see proposed new N.J.A.C. 7:26E-4.8(c)3). The Department's input is necessary to ensure that the myriad factors that are part of calculating a final remediation goal in these situations are properly evaluated.

Data presentation requirements are proposed for new N.J.A.C. 7:26E-4.9, Remedial investigation report.

At new N.J.A.C. 7:26E-4.10, the Department proposes to codify timeframes for completion of the remedial investigation. The following table summarizes the proposed due dates for each type of remedial investigation report.

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Type of Contaminated Media	Proposed New Rule Citation (N.J.A.C. 7:26E-)	Type of Site	Date on Which Requirement to Remediate Was Triggered	Regulatory Timeframe by Which Remedial Investigation Must be Completed
n/a	4.10(a)	Any	Discharge discovered prior to May 7, 1999	May 7, 2014
Soil only	4.10(b)1i(1) and 4.10(b)2i(1)	ISRA and UST	Between May 7, 1999 and March 1, 2010	March 1, 2015
Soil and other contaminated media	4.10(b)1ii(1) and 4.10(b)2ii(1)	ISRA and UST	Between May 7, 1999 and March 1, 2010	March 1, 2017
Soil only	4.10(b)3i(1)	All other cases	Between May 7, 1999 and {effective date of the rule}	By {effective date of the rule plus three years}
Soil and other contaminated media	4.10(b)3ii(1)	All other cases	Between May 7, 1999 and {effective date of the rule}	By {effective date of the rule plus five years}
Soil only	4.10(b)1i(2) and 4.10(b)2i(2)	ISRA and UST	On or after March 2, 2010	Within three years after the earliest applicable requirement to submit a preliminary assessment and site investigation report (only site investigation report for UST cases)

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Type of Contaminated Media	Proposed New Rule Citation (N.J.A.C. 7:26E-)	Type of Site	Date on Which Requirement to Remediate Was Triggered	Regulatory Timeframe by Which Remedial Investigation Must be Completed
Soil and other contaminated media	4.10(b)1ii(2) and 4.10(b)2ii(2)	ISRA and UST	On or after March 2, 2010	Within five years after the earliest applicable requirement to submit a preliminary assessment and site investigation report (only site investigation report for UST cases)
Soil only	4.10(b)3i(1)	All other cases	May 7, 1999 to the {effective date of the rule}	Within three years after the {effective date of the rule}
Soil and other contaminated media	4.10(b)3ii(1)	All other cases	May 7, 1999 to the {effective date of the rule}	Within five years after the {effective date of the rule}
Soil only	4.10(b)3i(2)	All other cases	On or after {effective date of the rule}	Within three years after the earliest applicable requirement to remediate
Soil and other contaminated media	4.10(b)3ii(2)	All other cases	On or after {effective date of the rule}	Within five years after the earliest applicable requirement to remediate

As depicted in the above table, the proposed remediation timeframes differ by the type of contaminated media, and the date on which the contamination was discovered. The Department has determined with interested party input that three years is sufficient time to complete the

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remedial investigation of soil-only contamination, since the majority of these investigations are generally limited in scope. However, the Department recognizes that a remedial investigation that involves contaminated media in addition to contaminated soil is more complicated than a soil-only remedial investigation. Accordingly, the Department proposes to allow five years for the completion of a remedial investigation that involves contaminated media in addition to contaminated soil.

For cases where the obligation to remediate was triggered before March 2, 2010 (two years prior to mandatory timeframe to submit a site investigation report), the Department proposes to require that the remedial investigation be finished within three years for soil and five years for soil plus other contaminated media, from the earliest obligation to remediate, to prevent the person responsible for conducting the remediation from ignoring the obligation to continue to remediate these “older” sites and to move forward to the next and final phase of remediation.

For “new” cases, where the obligation to remediate was triggered on or after March 2, 2010 for ISRA and UST cases, or the effective date of the rule for all other cases, the Department proposes that the person responsible for conducting the remediation will have three years to complete the remedial investigation of soil-only contamination and five years to complete the remedial investigation of contamination that involves soil and other media from the earliest applicable requirement to submit a preliminary assessment and site investigation report (but only the site investigation report for UST cases).

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The remedial investigation of any site where a discharge was discovered prior to May 7, 1999 must be completed no later than May 7, 2014. This is because SRRA at N.J.S.A. 58:10C-27 requires the Department to undertake direct oversight of any site where the remedial investigation of the entire site has not been completed within 10 years after the discovery of the discharge and within five years after the effective date of SRRA, unless a longer period has been established by court order. Five years after the effective date of SRRA is May 7, 2014.

Proposed new N.J.A.C. 7:26E-4.10(c) provides that the person responsible for conducting the remediation may extend the applicable regulatory timeframe based on the site conditions associated with the site undergoing remediation, and sets forth the procedures for doing so. Additionally, proposed new N.J.A.C. 7:26E-4.10(d) provides that where the person responsible for conducting the remediation wishes to extend a reporting deadline, the person must notify the Department at least 30 days prior to the submittal date for the remediation investigation report.

Government entities and non-profit organizations (that meet the definition set forth at 26 U.S.C. §501(c)3) that are not subject to liability under the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, are exempt from meeting the proposed new regulatory timeframes pursuant to proposed new N.J.A.C. 7:26E-4.10(e). However, this exemption does not apply to a non-profit organization established by or funded by another person that is subject to Spill Act liability.

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F. Subchapter 5. Remedial Action

The Department proposes to not incorporate into the proposed new rules the requirements codified in existing Subchapter 5. Existing Subchapter 5 contains the requirements for the development and selection of remedial actions, including the requirement to establish the remedial action objectives and goals for the site or area of concern, and outlines the conditions under which a feasibility study is required to be submitted and when a presumptive remedy should be used. Under the existing rules, the results of the remedial action selection analysis are to be presented in a report that is to be submitted to the Department for review and approval. However, under the new rules, the LSRP is not required to submit a remedial action selection report to the Department. Rather, the LSRP is required to select and implement the remedial action without waiting for Department approval.

Accordingly, the Department proposes to codify at new Subchapter 5 the general requirements currently codified at existing Subchapter 6, including remedial action workplan and remedial action report requirements. The subchapter also contains general and specific requirements for all remedial actions and requirements to use alternate or clean fill as part of a remedial action. Proposed new Subchapter 5 also requires the submittal of information needed for the Department to approve a remedial action permit for ground water and soil.

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Additionally, the Department proposes to incorporate the requirements codified at existing subchapter 7, Permit Identification and Application Schedule, into proposed new N.J.A.C. 7:26E-5.7. Existing N.J.A.C. 7:26E-7 establishes the permit application requirements that are designed to ensure that the person implementing the remedial action identifies all permits and approvals early in the process and thus obtains permits without delaying the cleanup. This subchapter also includes the requirements for the person responsible for conducting the remediation to discharge treated effluent to ground water under the authority of a permit by rule.

The following table compares existing Subchapter 6 with proposed new Subchapter 5.

Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
6.1 Remedial action requirements	Recodified at 5.1 with amendments	6.5 Remedial action schedule	Repealed. Replaced with 5.5 Remedial Action requirements for diffuse anthropogenic pollutants
6.2 Remedial action workplan	Recodified at 5.6 with amendments	6.6 Remedial action progress reports	Repealed. Replaced with 5.6 Remedial Action workplan requirements

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Existing Technical Requirements	Proposed New Technical Requirements	Existing Technical Requirements (cont.)	Proposed New Technical Requirements (cont.)
6.3 Specific remedial action requirements	Recodified at 5.2 with amendments	6.7 Remedial action report	Recodified at 5.8 with amendments
			Replaced by 5.7 Permit identification and requirements for discharge to ground water proposals
6.4 Additional remedial action requirements	Broken out and recodified at 5.3 regarding schools, child care centers, residences, 5.4 regarding historic fill material, and 5.5 regarding diffuse anthropogenic pollutants		5.8 Remedial action report
			5.9 Remedial action regulatory timeframes

Proposed new N.J.A.C. 7:26E-5.1 contains remedial action requirements. The purpose of the remedial action is to implement a remedy that removes, treats, or isolates contamination in a manner that is protective of human health and the environment. See proposed new N.J.A.C. 7:26E-5.1(a).

Proposed new N.J.A.C. 7:26E-5.1(b) and (c) provide that the person responsible for conducting the remediation shall implement a remedial action within the applicable regulatory timeframe when the concentration of any contaminant exceeds any remediation standard, the

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concentration of any contaminant exceeds any ecological screening criterion or any aquatic surface water quality standard, or the person is ordered to do so by a court or by the Department. Proposed new N.J.A.C. 7:26E-5.1(d) sets forth the criteria to use when implementing the remediation, including, for example, the requirement to ensure that the remedial action does not, in itself, cause a discharge or a natural resource injury. The requirement to treat or remove free product is proposed to be codified at new N.J.A.C. 7:26E-5.1(e).

Proposed new N.J.A.C. 7:26E-5.1(f) is parallel to proposed new N.J.A.C. 7:26E-4.1(d) discussed above, and it establishes that pre-approval of a remedial action workplan or corrective measures study workplan by the Department is required under the following three circumstances: The remediation is being conducted partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., when the site is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation; at a site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601; or at a Federal facility where the Department's remedial concurrence is necessary.

Proposed new N.J.A.C. 7:26E-5.2 sets forth specific remedial action requirements. Pursuant to proposed new N.J.A.C. 7:26E-5.2(a), the person responsible for conducting the remediation is required to select a remedial action that will prevent further exposure of any receptor to any residual contamination, develop and implement a monitoring program that will

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effectively monitor the performance of the remedial action, demonstrate compliance with the appropriate remediation standard or ecological risk-based remediation goal, file a deed notice when implementing a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards, and obtain and comply with a remedial action permit for a restricted use or limited restricted use remedial action.

Proposed new N.J.A.C. 7:26E-5.2(b) through (g) concern the use of different types of fill as a part of a remedial action, including use of alternative fill from an off-site source at proposed new N.J.A.C. 7:26E-5.2(b), use of alternative fill originating on site at proposed new N.J.A.C. 7:26E-5.2(c), use of clean fill material at proposed new N.J.A.C. 7:26E-5.2(d), the prohibition against importing hazardous waste as fill material at proposed new N.J.A.C. 7:26E-5.2(e), the prohibition against using fill material containing free liquid at proposed new N.J.A.C. 7:26E-5.2(f), and the requirement to prepare a fill use plan, to be submitted as a part of the remedial action workplan, whenever alternative fill or clean fill is proposed as part of a remedial action at proposed new N.J.A.C. 7:26E-5.2(g).

Proposed new N.J.A.C. 7:26E-5.3 concerns remedial action requirements for residences, schools, and child care centers. The Brownfield Act contemplates the use of three types of remedial actions, namely, unrestricted use, limited restricted use and restricted use. As amended by the Act, the Brownfield Act at new N.J.S.A. 58:10B-12g(1) now also prescribes the types of remedies that must be implemented at residences, schools, and child care centers. This new

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provision provides that any remediation initiated on or after May 7, 2010 must include the use of an unrestricted use remedial action, a presumptive remedy or an alternative remedy where new construction is proposed for residential purposes, for use as a child care center, as a public or private school, as a charter school, or any other purpose that involves use by a sensitive population.

New N.J.S.A. 58:10B-12b(10) requires the Department to establish by rule presumptive remedies that are appropriate for use on properties proposed for these uses. The presumptive remedies must be based on the historic use of the property, the nature and extent of the contamination at the site, the future use of the site and any other factors deemed relevant by the Department, and may include the use of engineering and institutional controls. New N.J.S.A. 58:10B-12b(10) also provides that an alternative remedy may be used at the site, but only if the person responsible for conducting the remediation demonstrates to the Department that either 1) the use of an unrestricted use remedial action or a presumptive remedy is impractical due to conditions at the site, or 2) that an alternative remedy would be equally protective over time as a presumptive remedy.

Accordingly, the Department is proposing to set forth at proposed new N.J.A.C. 7:26E-5.3 the remedial action requirements for residences, schools and child care centers. Proposed new N.J.A.C. 7:26E-5.3(a) requires the person responsible for conducting the remediation to employ an unrestricted use remedial action, a presumptive remedy, or an alternative remedy for any remediation initiated after May 7, 2010 in the case of new construction of, or change in use

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to, a residence, school or child care center that will occur on an area of concern. The presumptive remedy for both a discrete area discharge and for widespread polychlorinated biphenyl (PCB) contamination where the planned use is Residential Type I is an unrestricted use remedial action, as set forth at proposed new N.J.A.C. 7:26E-5.3(b). All other presumptive remedies are listed in Table 5-1 as referenced at proposed new N.J.A.C. 7:26E-5.3(a)2.

Proposed new N.J.A.C. 7:26E-5.3(c) sets forth the procedure for utilizing an alternative remedy, including preparing and submitting to the Department for approval a remedial action workplan that contains the information listed at proposed new N.J.A.C. 7:26E-5.3(c)1, and obtaining the Department's approval before implementing the alternative remedy, pursuant to proposed new N.J.A.C. 7:26E-5.3(c)2.

Pursuant to proposed new N.J.A.C. 7:26E-5.3(d), the person responsible for conducting the remediation is also required to submit a remedial action workplan and obtain Department approval at any area of concern where that area of concern contains unexploded ordnance, polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, hexavalent chromium, or landfills, or when treatment or removal of free product or residual product is not practicable.

The Brownfield Act as amended at new N.J.S.A. 58:10B-12g(12) prohibits the construction of single family residences, public schools, private schools, or charter schools, or child care centers on a landfill that undergoes a remediation if engineering controls are required

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for the management of landfill gas or leachate. Proposed new N.J.A.C. 7:26E-5.3(e) implements that prohibition.

Proposed new N.J.A.C. 7:26E-5.3(f) and (g) contain requirements for addressing vapor intrusion in new construction of Residential Type I or Type II buildings, schools and child care centers, and in the conversion of existing buildings to Residential Type I or Type II buildings, schools and child care centers, respectively.

At new N.J.A.C. 7:26E-5.4, the Department proposes to set forth the remedial action requirements for historic fill material. The Brownfield Act at N.J.S.A. 58:10B-12h provides that there is a rebuttable presumption that the Department shall not require any person to remove or treat “large quantities” of historic fill material in order to comply with applicable health risk or environmental standards. However, the Department is authorized to require the use of engineering or institutional controls, and may rebut the presumption upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting public health, safety and the environment.

Proposed new N.J.A.C. 7:26E-5.4(a) implements the statutory rebuttable presumption pursuant to N.J.S.A. 58:10B-12h, by requiring the person responsible for conducting the remediation of contamination associated with historic fill material to remediate the historic fill through the establishment of engineering and institutional controls pursuant to the ARRCs rules at N.J.A.C. 7:26C-7. Additionally, proposed new N.J.A.C. 7:26E-5.4(b) is a reminder that a

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classification exception area established during the remedial investigation of historic fill, that is, pursuant to proposed new N.J.A.C. 7:26E-4.7(b), remains effective indefinitely. However, the Department proposes to not require a remedial action permit for the ground water classification area established for historic fill. See also the companion amendment to this provision in ARRCS at N.J.A.C. 7:26C-7.3(h).

The Department also proposes at new N.J.A.C. 7:26E-5.5 that the remedial action for soil contaminated with diffuse anthropogenic pollutants include remediation to an unrestricted use standard or that an engineering or institutional control be instituted as appropriate and as directed by the ARRCS rules at N.J.A.C. 7:26C-7. This requirement is new to the Technical Requirements.

Proposed new N.J.A.C. 7:26E-5.6 details the requirements for the remedial action workplan. Pursuant to proposed new N.J.A.C. 7:26E-5.6(a), the remedial action workplan must be submitted to the Department at least 60 days prior to implementation. Additionally, a remedial action workplan must be submitted for each area of concern, unless a final remediation document for unrestricted use for an area of concern is filed with the Department within one year after the earliest applicable requirement to remediate. The Department contemplates that a remedial action workplan must be prepared for all situations, but the plan does not have to be submitted for areas of concern that can be remediated to unrestricted use in one year. Because of the relatively rapid nature of this remediation to an unrestricted use, submittal of a remedial

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action workplan ahead of implementation is unnecessary. Submittal of this information is still required as part of the remedial action report.

Proposed new N.J.A.C. 7:26E-5.6(b) sets forth the contents of the remedial action workplan, and proposed new N.J.A.C. 7:26E-5.6(c) requires that a revised remedial action workplan or remedial action workplan addendum be prepared when a remedial action does not perform as designed, or when the selected remedial action is to be changed or upgraded.

The Department proposes to include permit identification and the requirements for discharge to ground water proposals, currently codified at N.J.A.C. 7:26E-7, at proposed new N.J.A.C. 7:26E-5.7. The primary difference between existing N.J.A.C. 7:26E-7 and proposed new N.J.A.C. 7:26E-5.7 is that the Department proposes to replace the extensive list of required permits with a general statement at proposed new N.J.A.C. 7:26E-5.7(a) that all required permits must be obtained prior to initiating the activity requiring the permit.

At proposed new N.J.A.C. 7:26E-5.7(b), the Department proposes to require that for each discharge to ground water subject to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, the person responsible for conducting the remediation shall submit a discharge to ground water proposal to the Department.

For discharges to ground water that exceed 180 days, proposed new N.J.A.C. 7:26E-5.7(c) requires the person responsible for conducting the remediation to prepare and publish a

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public notice. The model public notice, a version of which currently appears at N.J.A.C. 7:26E Appendix H, is proposed to be codified at new N.J.A.C. 7:26E Appendix B, with no changes in text other than updating the address to which comments are to be submitted.

Proposed new N.J.A.C. 7:26E-5.7(d) contemplates public hearings on discharge to ground water proposals if there is a significant degree of public interest or at the Department's initiation, and proposed new N.J.A.C. 7:26E-5.7(e) concerns consideration of the comments received at the public hearing.

Remedial action report requirements are proposed to be codified at new N.J.A.C. 7:26E-5.8. These requirements are currently codified at N.J.A.C. 7:26E-6.7.

Proposed new N.J.A.C. 7:26E-5.9 contains the regulatory timeframes by which the remedial action must be implemented. Pursuant to proposed new N.J.A.C. 7:26E-5.9(a), completing the remedial action means that the person responsible for conducting the remediation has implemented all remedial actions that are required to address the contamination at a site, submitted a remedial action report to the Department for all remedial actions at the site, and has caused an LSRP to submit a final remediation document to the Department pursuant to the ARRCs rules.

Proposed new N.J.A.C. 7:26E-5.9(b)1 requires that the remediation of a discharge that only resulted in soil contamination must be completed within three years after the earliest date

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that a remedial investigation report was due, and proposed new N.J.A.C. 7:26E-5.9(b)2 requires that the remediation of all other contamination must be completed within five years after the earliest date that a remedial investigation report was due.

Government entities and non-profit organizations (that meet the definition set forth at 26 U.S.C. §501(c)3) that are not subject to liability under the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, are exempt from meeting the proposed new regulatory timeframes pursuant to proposed new N.J.A.C. 7:26E-5.9(c). However, this exemption does not apply to a non-profit organization established by or funded by another person who is subject to Spill Act liability.

The person responsible for conducting the remediation may apply for an extension of these timeframes pursuant to proposed new N.J.A.C. 7:26E-5.9(d).

F. Appendices

The current Technical Requirements contain the following appendices:

Appendix A - Laboratory Data Deliverables Formats

Appendix B - Reserved

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Appendix C - Mann-Whitney U-Test

Appendix D - Historic Fill Database

Appendix E - Model Deed Notice

Appendix F - Reserved

Appendix G - Contour Map Reporting Form

Appendix H - Model Public Notice for DGW Proposal

The Department proposes to recodify existing Appendix A at new Appendix A, Laboratory Data Deliverables Formats. Since the Department is proposing at new N.J.A.C. 7:26E-2 to retain full data deliverable requirements for sample analysis using USEPA Contract Laboratory (CLP) analytical methods, sample analysis for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, and sample analysis using analytical methods not otherwise listed, the formats for these deliverables have been added to new Appendix A. The Department is proposing to incorporate by reference the USEPA Region 2 data deliverable format for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans as contained in the cited data validation Standard Operating Procedures. Section 2 of these Standard Operating Procedures contain reporting requirements and deliverables which include sample data and

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quality assurance/quality control summary forms, GC/MS displays, chain of custody records and in-house laboratory control documents. New Appendix A also includes formats for new full data deliverable requirements for potable water sample analysis, air sample analysis (including soil gas, sub-slab, indoor and ambient air), sample analysis for hexavalent chromium, and sample analysis for extractable petroleum hydrocarbons.

Additionally, since the Department proposes to combine several reduced data deliverable types found in the existing rule into one data deliverable format, new Appendix A retains the basic reduced deliverable format found in the existing rule with the following additional requirements:

- General requirements - addition of a Table of Contents

- GC/MS requirements - addition of a tentatively identified compound (TIC) summary

- Metals requirements - addition of an internal standard summary, an analysis run log, and a digestion log

- General chemistry requirements - addition of a calibration summary and a Laboratory Control Sample (LCS)/Quality Control (QC) check sample summary

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The Department also proposes to repeal Appendices B through H, and, as mentioned above, to recodify the Model Public Notice for a DGW Proposal from Appendix H to Appendix B.

The Mann-Whitney U-Test and Historic Fill Database will appear in guidance documents, the Model Deed Notice is proposed to be recodified in the ARRCS rules at Appendix B, and the Contour Map Reporting Form is no longer relevant.

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Social Impact

New Jersey industries, while producing the commercial goods and products upon which much of the State's economy is based, have also produced a significant volume of byproducts and wastes, many of which are hazardous. Both the New Jersey Legislature and the New Jersey Supreme Court have noted that this industrial history has left the State with a legacy of contaminated sites that continues to threaten the State's public health and its ecology.

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

The Department has been refining the procedures for the remediation of contaminated sites for nearly four decades. The Department's focus has been on protecting the public health and safety and the environment by identifying and cleaning up discharged hazardous substances,

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eliminating the direct contact exposure pathway to human beings, and ensuring that the State's critical supplies of potable water are protected.

The challenge for the Department had been the iterative process that required the Department's approval before a person could implement any phase of remediation. While the person responsible for conducting the remediation was awaiting Departmental approval to continue with any particular phase of remediation, contamination remained unaddressed, with the ongoing potential to spread and to impact the health of our citizens. Many contaminated sites are located in urban communities where residents are already struggling with a multitude of other quality of life challenges. Additionally, unremediated properties cannot be redeveloped and returned to the tax rolls or converted to open spaces, and thus remain as blighted, unused lots, compromising the economic vitality of the State.

It is critical to the health of our citizens and the environment, and to the health of our economy, that contaminated sites be remediated as quickly as possible while maintaining the strict cleanup standards the Department has historically applied. The proposed amendments and new rules will help accomplish this goal, and will therefore have a positive social impact on the citizens of New Jersey.

The Interim Rules the Department adopted in 2009 redefined how site remediation is to be accomplished in New Jersey. The proposed amendments and new rules will implement the statutory requirement that by May 7, 2012, a person responsible for conducting the remediation,

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no matter when the remediation was initiated, must comply with the requirement to remediate the site under the supervision of an LSRP. In addition, the proposed amendments reflect discussions about the rules that the Department had with stakeholders concerning improvements to the remediation process.

To date, the Department has temporarily licensed over 450 LSRPs, the majority of whom are members of the LSRP Association. The LSRP Association has been a strong supporter of the Department in the implementation of the Interim Rules. The individuals and business entities that are legally responsible for the hazardous substances have also generally supported the new site remediation paradigm in New Jersey. These groups have been working with the Department to modify certain aspects of the ARRCs rules, UST rules, ISRA Rules and the Technical Requirements, including modifying the rules to afford LSRPs greater flexibility to use professional judgment in making remediation decisions.

The Department has also garnered input from representatives of the environmental community. A major concern of this group is the length of time it takes to complete a remedial investigation and remedial action at a site. In order to ensure that these phases of remediation are completed in the shortest possible amount of time, SRRA authorizes the Department to set mandatory timeframes for when a person responsible for conducting the remediation must complete a remedial investigation and remedial action at a site, and the proposed amendments to the ARRCs rules set timeframes for these two remediation goals. Failure to accomplish the

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remedial investigation and remedial action within the mandatory timeframe would subject the person to Department direct oversight of the remediation.

The proposed amendments and new rules will have a positive social impact by facilitating the remediation of more contaminated sites in less time. Since the implementation of the Interim Rules, the Department has noted an improvement in the time necessary to proceed through the remediation process. The Department is tracking the time required for a person responsible for conducting the remediation to complete the remediation of the site as evidenced by issuance of a final remediation document. Although the Department does not yet have meaningful data concerning the time to complete remediation of large, complex sites, representatives of the LSRP Association report anecdotally that it is taking them less time to complete simple remediations, and in fact, for 2010, LSRPs filed over 350 response action outcomes (RAOs) with the Department, of which only one was invalidated by the Department.

The proposed amendments that codify all remediation requirements in the Technical Requirements and all administrative requirements in the ARRCS rules will also help contribute to the more efficient remediation of contaminated sites. For example, the proposed deletion of provisions such as confidentiality and fees from the ISRA and UST rules and promulgating them in the ARRCS rules will add to the efficiency of the remediation of contaminated sites because persons responsible for conducting the remediation will be able to locate all technical requirements in one chapter of the New Jersey Administrative Code and all administrative requirements in a separate chapter of the New Jersey Administrative Code.

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Economic Impact

The new remediation paradigm created by SRRA, as implemented through the ARRCs rules, the proposed new Technical Requirements and the UST and ISRA rules is expected to have a positive economic impact as it makes more efficient uses of limited resources in the field of site remediation. Key improvements that provide economic benefits include: 1) empowering Licensed Site Remediation Professionals (LSRPs) to make all decisions on remediation without the Department's prior approval (expedites the remediation process); 2) imposing affirmative obligations on liable parties to meet regulatory and mandatory timeframes (facilitates the timely remediation of contaminated sites; 3) in most instances, replacing the Department's oversight fees with fixed annual remediation fee structure (brings increased certainty and predictability to budget process); and 4) moving the prescriptive remediation requirements from the Technical Requirements into various technical guidance documents, which allows LSRPs to use professional judgment (allowing a more expeditious and cost effective remediation process).

Successful implementation of SRRA will help to return dormant contaminated sites to productive uses more quickly, revitalizing our communities and stimulating our State's economy.

This analysis will discuss the following economic impacts:

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1. Remediation costs for remediating parties; and
2. Impacts on affected groups including:
 - a. Private Sector: remediating parties, environmental consulting industry, developers/redevelopers and lending institutions
 - b. Public Sector: local governments, the Department and the New Jersey residents

Impact on Remediation Costs for Remediating Parties (RPs)

One of the major changes proposed in the amendments to the ARRCS rules is to replace NJDEP oversight fees with annual remediation fees when the site is not under direct Department oversight. For the program as a whole, the total amount collected from responsible parties to reimburse the Department for supervision of remediation is not anticipated to change as the annual remediation fees are developed based on the existing cases in the Department, the length of time required for a typical remediation, and the current budget, which consists mainly of the oversight fees. As a result, it is expected that individuals will experience variations in fees; however, all should benefit from the improved predictability of the annual remediation fee structure based on number of remediation units and types of media impacted. Although it is not evident at present time which cases may be better or worse off under the new paradigm in terms

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of fees, it is reasonable to predict that more complicated cases should be better off paying annual remediation fees, as the sites are expected to be cleaned up faster than under the old paradigm. In addition, annual remediation fees provide an incentive to persons responsible for conducting the remediation to complete remediation more quickly.

Another cost potentially impacted by this proposal is the hourly rate charged by environmental professionals. If an environmental consultant meets the requirements to become a LSRP, including years of service, passing an examination and meeting continuing education requirements, that person may charge more for their services and the added responsibility of holding and maintaining the license. Other environmental services and subcontractor costs including non-LSRP environmental consultant hourly rates, and fees charged by, for example, laboratories, drilling companies, disposal facilities, are not expected to change as a result of this proposal. An increase in hourly rates for environmental professionals who obtain LSRP status is not expected to have a significant impact on overall remediation costs, as labor costs are generally small compared to disposal and lab testing fees related to site remediations and much of the work to remediate a site can be done by non-LSRP personnel.

The proposed movement of the existing prescriptive technical requirements from rules into guidance is also likely to reduce the costs of remediation because LSRPs will be able to exercise professional judgment in their decision making, which in many cases will make the cleanup process more expeditious and cost-effective.

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Impact on Affected Groups

The proposed rules will likely have economic impact on both private and public sector groups and individuals. The groups that are most effected are: remediating parties, including responsible parties and buyers and sellers of contaminated sites, environmental consulting industry, developers/redevelopers, lending institutions, local governments including municipalities and counties, the Department itself, and New Jersey residents.

1. Private Sector

Remediating Parties

For ISRA subject remediating parties, the proposed amendments and new rules allow property transfers to occur prior to completion of remediation, without Department involvement. The existing requirement for an owner or operator to enter into a Remediation Agreement with the Department before property could be transferred (when the remediation has not reached the Remediation Action Workplan stage) has been replaced with the requirement to submit a Remediation Certification. Through submittal of a Remediation Certification the ISRA-subject party acknowledges its obligation to complete remediation, and the transferee authorizes access to the property for the completion of the remediation. The property transfer may proceed immediately upon the Department's receipt of the Remediation Certification. No fee is required by the Department for a Remediation Certification.

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SRRA imposes an affirmative obligation on persons liable pursuant to the Spill Act to remediate contamination. As a result, an owner of a contaminated site has the obligation to conduct remediation in accordance with the regulatory and mandatory timeframes specified in the Technical Requirements and ARRCs rules. Consequently, some buyers and sellers of contaminated sites may lose some flexibility in choosing their time to start remediation in terms of funding availability. However, all should gain the benefits of having greater predictability throughout the remediation process.

Environmental Consulting Industry

The shifted responsibilities from the Department's site remediation case teams to LSRPs in conjunction with the "affirmative obligation" imposed on any liable parties may result in a need for more environmental professionals.

The increased responsibilities upon environmental professionals that choose to become LSRPs may translate into higher insurance costs for the firms by which the LSRPs are employed or for individual LSRPs. Some of these increased costs may be passed on to the remediating parties (see "Impact on Remediation Costs for Remediating Parties" above).

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Developers

The proposed amendments and new rules should have a positive economic impact on developers who are interested in the development of brownfield sites. Developers can expect a more predictable timeframe for the remediation process due to the regulatory and mandatory timeframes. This in turn will in help reduce uncertainty in planning and coordination with lending institutions, investors, construction contractors, municipalities, and other stakeholders.

For sites they own or acquire, developers will now have an obligation to conduct remediation in accordance with the regulatory and mandatory timeframes specified in the Technical Requirements and ARRCS rules, losing some flexibility in choosing their time to start remediation but gaining the benefit of having greater predictability in the timing of the remediation process.

Lending and Insurance Institutions

SRRA and ARRCS rules are not expected to have significant impact on insurers and lenders. Insurers and lenders are quickly becoming more familiar with the LSRP program, including understanding that the Response Action Outcome (RAO) issued by an LSRP is equivalent to No Further Action (NFA) and covenant-not-to-sue letters issued by the Department. The definition of final remediation document specifies that the term applies to both an RAO and an NFA; the Department has consistently stated during stakeholder meetings that an

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RAO issued by an LSRP is equivalent to an NFA issued by the Department, and therefore lenders and insurers should have full confidence in relying on an RAO.

2. Public Sector

Local Governments

The economic impact of the proposed amendments and new rules on municipalities is expected to be positive. The affirmative obligation imposed on liable parties and required compliance with regulatory and mandatory timeframes should benefit municipalities and counties that have brownfield sites. The Department anticipates that municipalities should experience a positive budgetary impact in terms of increased ratable businesses as properties are more quickly remediated and returned to productive use. Additionally, remediation of blighted properties should help to improve the quality of life in municipalities by improving the nature and look of municipal landscapes. Reducing the number of blighted communities can help to enhance the attractiveness of a community, both to existing and future businesses and existing and future residents.

The proposed amendment and new rules that state that government entities, including municipalities and counties that have acquired property involuntarily or by any means for the purpose of redevelopment are not subject to mandatory timeframes, should have a positive impact on municipal budgets. (Local governments will be subject to mandatory timeframes in

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those instances when they are responsible for a discharge at the site(s) being remediated.)

Municipalities that are trying to remediate sites on which the municipality is not responsible for contamination can only do so when funds become available. The proposed amendments and new rules will allow these municipalities the flexibility to start or resume remediation as budgets allow, without forcing the municipality to remediate during lean budgetary periods.

New Jersey Department of Environmental Protection

The proposed amendments and new rules will enable the Department to focus its limited resources on sites that have immediate environmental concerns, or particularly sensitive receptors, and to oversee cases that are jointly supervised by the Department and the Federal EPA. As the LSRP program frees up the Department's personnel from overseeing every phase of every remediation, the responsibilities of some current case managers will shift to enforcement, site inspection, and reviewing the alternative remedies and variances proposed by LSRPs. The Department anticipates that the proposed new fee structure will help the Department to offset its costs in administering the LSRP program.

New Jersey Residents

Residents of New Jersey should benefit greatly from the proposed amendments and new rules. As more sites are cleaned up more quickly, the potential health risks to residents and workers in the vicinity of existing contaminated sites will be reduced. While most contaminated

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sites are industrial facilities that are located within urban areas, a significant number of sites, particularly sites involving leaking underground storage tanks at neighborhood gasoline stations, are located in residential areas. Health impacts from contamination, whether through contact with contaminated soils or ground water, or through vapor intrusion, have been well documented, and health care costs associated with treatment of maladies resulting from exposure can be expensive. The more quickly sites are remediated, the more rapidly health risks due to exposure can be minimized.

In addition, remediating more contaminated sites and returning them to productive uses will become the power engine for creating jobs and generating revenues, and New Jersey residents will enjoy the benefits of increases in economic activity in the Garden State.

Environmental Impact

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

The proposed amendments and new rules will have a positive environmental impact by allowing contaminated sites to be remediated more quickly. The prior system of oversight and approval of each phase of the remediation equated to contamination remaining unaddressed,

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

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

Federal Standards Analysis

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

The Discharge of Petroleum and Other Hazardous Substances (DPOHS) Rules, N.J.A.C. 7:1E are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. However, there are Federal standards or requirements to which a meaningful comparison can be made, and the

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Department has performed this comparison for rules in N.J.A.C. 7:1E being proposed for amendment.

The effect of the DPOHS Rules that cross-reference the ARRCs rules is that the remediation of a discharge will have to be conducted according to the ARRCs rules, including the use of an LSRP as applicable. To the extent that the Federal regulations do not require the use of an LSRP, the addition of the requirement to comply with the ARRCs rules may be perceived as making the DPOHS rules more stringent than their Federal analogues.

As stated in the economic impact statement above, the Department does not yet have quantifiable data at this time to determine whether the requirement that remediation is to be conducted using the services of an LSRP will increase or decrease the cost of the remediation. Although the Interim Rules have been in effect since November 4, 2009, the Department has not collected enough meaningful data to determine the costs versus the benefits of the using a LSRP to remediate a site. As stated above, the Department has anecdotal information that the cost to remediate a site using the services of a LSRP is less than the cost to remediate a site prior to the implementation of the LSRP program.

Although there is a Federal Underground Storage Tank program pursuant to 42 U.S.C. §§ 6991 et seq., which regulates the operation, closure and upgrade of regulated underground storage tanks, there are no provisions in the Federal statute or regulations requiring a certification program for contractors performing services on underground storage tanks. The Federal rules at

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40 CFR 280.20(e) encourage states to certify individuals to perform services on regulated underground storage tank systems.

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

The ISRA Rules, N.J.A.C. 7:26B, do not contain any standards or requirements that exceed those imposed by Federal law. ISRA was not enacted under the authority of, or in order to implement, comply with, or participate in, a program established under Federal law. Moreover, the ISRA Rules do not incorporate Federal law, standards or requirements.

ISRA does, however, contain several references to remediation programs established by Federal law. These references grant equivalent status to those remediations performed under

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

The ARRCs rules, N.J.A.C. 7:26C, do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the ARRCs rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 CFR Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site, with or without Department oversight. Therefore, there are no Federal provisions with which to compare the provisions of the ARRCs rules. However, the establishment of mandatory timeframes for the completion of certain remediation work is more stringent than equivalent Federal programs. Like the Federal remediation programs, the Department allowed the remediation of contaminated sites to be conducted on site specific

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schedules. The Department has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. As described in the section concerning the DPOHS rules above, the Department is unable at this time to determine whether the requirement that remediation is to be conducted using the services of an LSRP will increase or decrease the cost of the remediation because little meaningful information is available yet regarding the cost of using an LSRP. However, the Department believes that there will be an overall cost savings associated with the timeframes. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated, which often adds to the overall cost of remediation. If the remediation of contaminated sites is completed in a timelier manner, such sites can be put to better use and often may generate more taxes for local and state government.

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

The proposed new Technical Requirements, N.J.A.C. 7:26E, 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. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive

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Order No. 27 (1994), the Department has compared the proposed new Technical Requirements with the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§9601 et seq., and the Resource Conservation and Recovery Act (RCRA) of 1980, 42 U.S.C. §§6901 and 6991 et seq.

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

In the new Technical Requirements, the Department is proposing to establish regulatory timeframes for the completion and submission of reports for the remedial investigation and the remedial action phases of site remediation. As discussed in the Federal Standards Analysis for the ARRCs rules above, the Department has determined that the rules that establish the LSRP program do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required. However, the Technical Requirements contain regulatory timeframes for the

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completion of certain remediation activities. As described in the ARRCs rule section of the Federal Standards Analysis above, the Department believes that the timeframes will result in a cost savings to the regulated community.

Jobs Impact

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

One group of environmental consultants who may feel the greatest impact to their jobs from the adoption of the LSRP program is the subsurface evaluator certified by the Department pursuant to N.J.A.C. 7:14B-13 to conduct remediation activities on regulated underground storage tanks. At this time, certified subsurface evaluators may continue to conduct remediation activities on regulated underground storage tank systems at which remediation was initiated prior

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to November 4, 2009. However, after May 7, 2012, SRRA at N.J.S.A. 58:10C-15 precludes certified subsurface evaluators from working on regulated tanks, although this provision allows certified subsurface evaluators to work on unregulated heating oil tanks.

At present, approximately 4,400 regulated underground storage tanks are being remediated in New Jersey. The owners and operators of 1,541 of those tanks, or 34 percent, have opted into the LSRP program. The vast majority of these tanks are owned by large gasoline retailers such as Shell Oil Products, LukOil, Cumberland Farms, BP, Sunoco, ExxonMobil, Chevron, Hess, and Getty Properties. The remaining 2,921 tanks are being remediated by subsurface evaluators. In 2012, these subsurface evaluators will not be able to submit documents to the Department under their signature, nor will they be able to certify that the site has been remediated so that it is protective of public health and the environment.

Although certified subsurface evaluators will not have the same employment opportunities as they currently have, there will still be employment opportunities as environmental consultants. Eighty-three percent of LSRPs are also certified subsurface evaluators, so many of the certified subsurface evaluators will continue their remediation work as LSRPs. Additionally, certified subsurface evaluators may conduct remediation activities on regulated underground storage tanks under the employ of or as a subcontractor to an LSRP, as long as any documents completed as part of the remediation activities are certified by an LSRP and the LSRP issues a RAO for the remediation.

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After 2012, an owner or operator of an unregulated heating oil tank may choose either an LSRP or a certified subsurface evaluator to perform remediation activities on the tank. In 2010, subsurface evaluators remediated 2,572 unregulated heating oil tanks. Between January and May of 2011 there were over 1000 unregulated heating oil tanks being remediated by subsurface evaluators. The Department expects this number to increase in 2012. Therefore, the market for certified subsurface evaluators remediating unregulated heating oil tanks should remain. In addition, the Department is meeting with stakeholders to draft new rules governing unregulated heating oil tanks that will require a certified subsurface evaluator and an LSRP to follow the same procedures to obtain a no further action letter from the Department. Under these anticipated new rules, an LSRP will not be allowed to issue a RAO, but will be required to obtain a no further action letter from the Department. The Department anticipates that this will allow certified subsurface evaluators to maintain their market share with owners and operators of unregulated heating oil tanks.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has determined that the proposed amendments and new rules impact State agriculture only when a discharge occurs on a farm. The presence of leaking underground storage tanks and storage areas for pesticides and fertilizers are sources of contamination on some farms. A discharge of a hazardous substance at a farm has the same potential to harm human health and the environment as a discharge at any other type of site, and thus must be remediated in accordance with all

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environmental statutes and rules. Accordingly, the amendments and new rules may have an impact on the agricultural community in New Jersey, to the extent that a farmer is required to remediate the contamination from a source on his or her farm. However, this impact would be the same as the impact to any small business that is a Spill Act responsible party. See the Regulatory Flexibility Analysis for an analysis of the impact of the proposed amendments and new rules on small businesses.

Regulatory Flexibility Analysis

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

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

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

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

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Certain of the requirements, such as certifying documents that are submitted to the Department and to the person responsible for conducting the remediation, and document and data retention requirements, are specific to LSRPs. Additionally, every LSRP must follow the rules regarding how to remediate a site in order for the site to be remediated such that it is protective of human health and the environment. These requirements pertain to all LSRPs, regardless of whether the LSRP is a sole proprietor, or is employed by a consulting firm or other business. The proper remediation of a site is not dependent on and does not vary with the size of the business by which the LSRP is employed. None of the statutes that govern the remediation of sites in New Jersey, including SRRA, ISRA, the Spill Act, the Brownfield Act, distinguish the level of remediation that is deemed protective of human health and the environment, by the size or the nature of the business by whom the LSRP is employed.

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 impact of the proposed amendments and new rules on smart growth and the implementation of the State Plan.

The proposed amendments and new rules support the principles of smart growth by promoting efficient and timely cleanups of contaminated sites by replacing Department oversight

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of remediation with private sector remediation services. The elimination of Department oversight and preapproval prior to the cleanup proceeding will eliminate the delays that the parties responsible for conducting remediation have historically experienced and will serve to facilitate smart growth initiatives. Finally, the timeframes included in the rules will serve to hasten cleanup, returning sites to beneficial reuse more quickly.

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

Department records indicate that contaminated sites are generally concentrated in urban areas, a legacy of the State's industrial history. These rules are consistent with the goals and objectives of the State Plan, which focuses on capitalizing on urban infrastructure to enhance "livability" (such as easing transportation woes related to suburban sprawl and conservation of farmland, forests and environmentally sensitive areas). Hence, the redevelopment of contaminated sites in urban areas is a key to success in implementing the State Plan. The proposed amendments and new rules aid this effort in two ways. First, the rules establish clear remediation goals for when a site's end use will be residential, or a school or childcare center. Second, the rules reference the Department's Presumptive Remedy Guidance as a means to

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achieve a protective remedy, acceptable even when implemented without the Department's involvement, in situations where the site will be used for residential, or schools or childcare centers. In addition, the State Plan proffers concepts of social equity and environmental justice as aspects of sustainability. As housing and schools will undoubtedly occupy redeveloped remediated sites, the proposed rules support these goals by requiring the implementation of a remedy that meets the unrestricted use standards or implementation of a protective presumptive remedy. Parties who, consistent with the State Plan, develop formerly contaminated sites for use as housing, schools and childcare centers are required by these rules to utilize the most protective remedies.

Housing Affordability Impact

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

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Smart Growth Development Impact

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

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:14B-1.8, 3.6, 3.8, 8.2, 8.4 through 8.8, 9.3, 12.3, 14; 7:26B-1.7, 1.9, 3.3, 3.4, 4, 5.1, 5.2, 5.5, 5.6, 5.8, 6, 7, 8.2 through 8.4; 7:26C-2.3, 2.5, 7.3; and 7:26E.

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Full text of the proposed amendments to N.J.A.C. 7:1E, 7:14B, 7:26B and 7:26C (additions indicated in boldface thus; deletions indicated in brackets [thus]), and **full text** of proposed new N.J.A.C. 7:26E follows:

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CHAPTER 7:1E. DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES

7:1E-5.7 Discharge response

(a) Any person responsible for a discharge shall:

1. (No change.)

2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by [either]:

i. Following the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4; [or] **and**

ii. Remediating the discharge pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and

3. Coordinate such actions with the Department.

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

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CHAPTER 14B. UNDERGROUND STORAGE TANKS

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.4 Applicability

(a) (No change.)

(b) The following types of underground storage tank systems are exempt from the requirements of this chapter:

1. - 3. (No change.)

4. Septic tanks installed in compliance with rules adopted by the Department pursuant to The Realty Improvement Sewerage and Facilities Act (1954), [Pub. L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.)];

5. Pipelines, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, [Pub. L. 90-481 (49 U.S.C. §§ 1678 et seq.)], the Hazardous Liquid Pipeline Safety Act of 1979, [Pub. L. 96-129 (49 U.S.C. §§ 2001 et seq.)], or intrastate pipelines regulated under State law as approved by the Department;

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6. - 14. (No change.)

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

7:14B-1.6 Definitions

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

...

"Commissioner" means the Commissioner of the **New Jersey** Department of Environmental Protection **or his or her authorized representative.**

...

"**Contamination**" or "Contaminant" means [any discharged hazardous substance] **contamination or contaminant as defined pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.**

...

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["Free product" means a nonaqueous phase liquid present in concentrations greater than a contaminant's residual saturation point, with a positive pressure such that the material can flow]

"Free-phase non-aqueous phase liquid" means a separate phase liquid material, present in concentrations greater than a contaminant's residual saturation point.

"Hazardous substances" means:

1. (No change.)

2. Petroleum products [which] **that** are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);

3. All substances [which] **that** are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute) listed in Appendix A of N.J.A.C. 7:1E; and

4. (No change.)

...

["Monitor well" means a well used to observe the elevation of the water table or potentiometric surface, or to determine water quality in an aquifer.]

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...

["Officer" means an officer as defined in N.J.S.A. 14A:6-15.]

...

"Remedial action" means remedial action as defined in **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.**

"Remedial investigation" means remedial investigation as defined in **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.**

"Remediation" or "remediate" means remediation or remediate as defined in the **Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.**

...

"Site investigation" means site investigation as defined in **the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.**

...

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"State Act" means [P.L. 1986, c.102 (codified at] N.J.S.A. 58:10A-21 et seq.[)] and any amendments thereto.

...

"Unknown source investigation" means an investigation involving the collection of soil and/or ground water samples to verify whether a facility is the source of a discharge.

...

7:14B-1.7 Certifications

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

(d) [Any individual certified in accordance with N.J.A.C. 7:14B-13 in the classification of subsurface evaluator submitting documents] **The owner or operator shall include in each document submitted** in accordance with N.J.A.C. 7:14B-10.3(b)9 [shall sign and submit to the Department] the following certification **signed by the licensed site remediation professional:**

"I certify under penalty of law that I have reviewed the plans for the proposed release detection monitoring system and this system is appropriate for the underground storage tank

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system design and hazardous substance stored and fulfills the monitoring requirements of N.J.A.C. 7:14B-6. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(e) Any individual submitting documents in accordance with N.J.A.C. 7:14B-13.3(c) and 16.4[(e)](c) shall sign and submit to the Department the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(f) (No change.)

[(g) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who conducts or directs activities and prepares documents in accordance with N.J.A.C. 7:14B-7.2(b), 7.4, and 9.5, shall sign, date and submit to the Department the following certification:

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"I certify under penalty of law that the work was performed under my oversight and I have reviewed the report and all attached documents, and the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(h) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who prepares documents pursuant to N.J.A.C. 7:14B-7.2(b), 7.4, 8 or 9.5 for another certified subsurface evaluator who conducted or directed onsite activities, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I certify under penalty of law that the onsite work was performed by a certified subsurface evaluator. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."]

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SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

7:14B-2.1 General registration requirements

(a) [Any person that owns or operates an underground storage tank system] **The owner or operator** shall register each **underground storage** tank with the Department.

(b) [Any person that owns or operates an underground storage tank system] **The owner or operator** who notified the Department pursuant to Section 9002 of the "Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act", 42 U.S.C. §§ 6901 et seq., shall comply with [all requirements set forth in] this chapter.

(c) [Any person that owns or operates an underground storage tank system] **The owner or operator** shall only use [such] **an underground storage** tank upon receipt of a valid Registration Certificate issued by the Department.

(d) [Any person that owns or operates an underground storage tank system] **The owner or operator** that began use of [the] **an underground storage** tank on or before December 21, 1987 shall register the tank system with the Department no later than 60 days following this date. [Any person that owns or operates] **The owner or operator of** an underground storage tank system that was installed after December 21, 1987 shall register the tank system with the Department 30 days prior to the use of that tank system.

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(e) [Any person that owned or operated] **The owner or operator of** an underground storage tank system [which] **that** was removed from the ground on or after September 3, 1986 shall register that tank system for the period between September 3, 1986 and the date that the tank system was removed.

(f) [Any] **The owner or operator** intending to close an underground storage tank system shall register the underground storage tank system with the Department before [these closure activities are begun] **beginning any closure activities.**

7:14B-2.2 Registration and certification procedures

(a) [Any person that owns or operates a facility] **The owner or operator** shall file registration and certification information on the New Jersey Underground Storage Tank Facility Certification Questionnaire.

(b) [All] **The owner or operator shall obtain all** registration and certification forms [shall be obtained] from and accurately [completed, signed, dated and returned] complete, sign, date, and return all such documents to the address below:

[New Jersey Department of Environmental Protection
Division of Remediation Support

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Bureau of Fund Management, Compliance & Recovery

PO Box 028

401 East State Street

Trenton, NJ 08625-0028

Attn: UST Registration/Certification Section]

New Jersey Department of Environmental Protection

Bureau of Case Assignment and Initial Notice

Mail Code 401-05G

PO Box 434

401 East State Street, 5th floor

Trenton, New Jersey 08625-0434

Telephone: (609) 292-2943

(c) The owner or operator [of a facility] shall complete the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to **the** expiration of the facility's Registration Certificate. The Department may issue a Registration Certificate to the registrant following submission of the complete New Jersey Underground Storage Tank Facility Certification Questionnaire. The Department will issue the Registration Certificate for a maximum period of three years. The expiration date of the Facility Certification will be specified on the Registration Certificate.

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(d) The owner or operator [of a facility] shall, during initial registration, [at a minimum,] supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. The facility name and location;

Recodify existing 1. - 5. as **2. - 6.** (No change in text.)

(e) The owner or operator [of a facility] shall, during Certificate renewal, [at a minimum] supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. - 3. (No change.)

(f) The owner or operator [of a facility having] **who** made any change in status [to] **of** the underground storage tank system since the initial registration shall[, at a minimum,] supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. - 8. (No change.)

7:14B-2.3 Transfer of registration

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(a) (No change.)

(b) The owner or operator [of an underground storage tank system] shall notify the Department of any change in the ownership of a facility within 30 days after the contract date or the date of closing on the New Jersey Underground Storage Tank Facility Certification Questionnaire obtainable from the Department at the address provided in N.J.A.C. 7:14B-2.2(b) and in accordance with the procedures for reporting modifications set for the ion N.J.A.C. 7:14B-2.4.

(c) (No change.)

7:14B-2.4 Changes to registration

(a) The owner or operator [of a facility] shall amend a facility's registration to reflect any modification of any information included in the New Jersey Underground Storage Tank Facility Certification Questionnaire. Each modification shall be reported to the Department on a separate New Jersey Underground Storage Tank Facility Certification Questionnaire within 30 days after completion of the modification except as provided for in (c) below.

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

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[(d) Upon receipt of an amended New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to (a) above, the Department will remove an underground storage tank system from its registrant list when the Department receives a final remediation document.]

7:14B-2.6 Registration Certificate

(a) The owner or operator [of an underground storage tank system] shall prominently display a valid Registration Certificate at the facility or shall make the Registration Certificate available for inspection by any authorized local, State or Federal representative.

(b) (No change.)

7:14B-2.7 Denial or revocation of registration

(a) The Department may, in its discretion, deny the issuance of a Registration Certificate upon a determination [of the following] **that the owner or operator:**

1. [The] **Submitted a** New Jersey Underground Storage Tank Facility Certification Questionnaire **that** is incomplete, contains inaccurate information and/or is illegible;

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2. [The owner or operator fails] **Failed** to enclose the accurate Registration Fee with the New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-3.1; [or]

3. [The owner or operator fails] **Failed** to comply with any requirement of the State Act or this chapter; **or**

4. Failed to hire a licensed site remediation professional to conduct the remediation of a discharge from the underground storage tank system.

(b) The Department may revoke the registration of a facility upon a determination [of the following] **that the owner or operator:**

1. [The] **Submitted a** New Jersey Underground Storage Tank Facility Certification Questionnaire **that** contains false or inaccurate information;

2. [The owner or operator has failed to submit] **Failed to submit** a New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2;

3. [The owner or operator has failed] **Failed** to pay the Facility Certification fee pursuant to N.J.A.C. 7:14B-3.2;

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4. [An] **Denied the Department or its** authorized representative [is denied] access to the [facility] **system** during any reasonable hour; [or]

5. [The owner or operator has failed] **Failed** to comply with any requirement of the State Act or this chapter; **or**

6. Failed to hire a licensed site remediation professional to conduct the remediation of a discharge from the underground storage tank system.

(c) - (f) (No change.)

SUBCHAPTER 3. FEES

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7:14B-3.1 Registration fee

The owner or operator [of an underground storage tank system] shall submit a \$ 150.00 Registration Fee for each facility upon registration of the facility with the Department. The Department shall only issue a Registration Certificate following the submission of the Registration Fee.

7:14B-3.2 Facility Certification fee

(a) The owner or operator [of an underground storage tank system] shall submit a Facility Certification fee for each facility upon the periodic renewal of the Facility Certification with the Department.

(b) (No change.)

(c) The owner or operator [of an underground storage tank system] who failed to register the system and pay the necessary fees when initially required in 1988 or when the tank system was installed, whichever is later, shall be responsible for paying all Facility Certification fees for the years the tank system was not closed in accordance with API Recommended Practice 1604, titled "Closure of Underground Petroleum Storage Tanks." Payment of these fees by the owner or operator does not restrict the Department from taking enforcement action against the owner or operator pursuant to N.J.A.C. 7:14B-12.

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7:14B-3.5 Program fees and oversight costs

(a) The owner or operator of an existing, former or proposed underground storage tank system shall pay all required fees and costs pursuant to this chapter [and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4, as applicable,] and shall:

1. Submit a separate fee for each activity at a facility which requires a permit or approval at the time the application[, or report] is submitted. The owner or operator shall pay a separate fee for resubmissions of the same application [or report] when the application [or report] is disapproved due to technical deficiencies in the initial submittal[. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department];

2. Submit a separate fee for each application[, or report which is contained within a single document]; and

3. (No change.)

(b) The Department will not approve any application [or report] unless all fee requirements of this subchapter are met.

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[(c) The fee schedule is as follows:

Activity	Fee
1. Permit for the installation or substantial modification of an underground storage tank system	\$ 450.00
2. Review of the closure plan for an underground storage tank system	\$ 450.00
3. Review of the site investigation report	\$ 750.00
4. Review of the initial remedial investigation report	\$ 1,500.00

(d) The cost for the Department review of any remediation document not listed in (c) above shall be assessed pursuant to N.J.A.C. 7:26C-4.

(e) When required, the owner or operator shall submit oversight costs pursuant to the provisions found in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4.5 and submit payment pursuant to N.J.A.C. 7:26C-4.7. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.]

(c) When an owner or operator applies for a permit pursuant to N.J.A.C. 7:14B-4.1(a), and in accordance with N.J.A.C. 7:14B-10, the owner or operator shall pay a permit fee of

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\$450.00 for the installation or substantial modification of an underground storage tank system.

(d) The Department shall not pro-rate any fees or charges required by this chapter.

(e) The owner or operator shall pay fees and oversight costs related to investigation, closure and remediation of an underground storage tank system pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-4.

(f) The owner or operator shall make all payments of fees required by this chapter as follows:

1. Submit pursuant to (f)2 below a certified check, attorney check, money order, or personal check made payable to "Treasurer, State of New Jersey;" until such time that the Department requires the electronic payment of these fees. Within 180 days after receipt of written notification from the Department that its electronic payment system is operational, each fee shall be submitted to the Department through the electronic payment system in a manner compatible with the Department's computer system; and

2. Mail each payment to the address listed at N.J.A.C. 7:14B-2.2(b) above or as otherwise indicated on the first page of the Department's billing invoice.

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7:14B-3.7 Confidentiality claims

[Any confidentiality claim submitted in accordance with N.J.A.C. 7:14B-15 shall be accompanied by a fee of \$500.00] **Any person required to submit any information pursuant to this chapter which, in the person's opinion, constitutes a trade secret or proprietary or confidential information may assert a confidentiality claim by following the procedures set forth in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-15.**

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.1 Spill and overfill control

(a) The owner or operator [of an underground storage tank system] shall ensure the following:

1. There shall be no release of hazardous substance [due to spills or overfills] at an underground storage tank facility;

2. - 3. (No change.)

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(b) (No change.)

(c) The owner [and] **or** operator shall report, investigate, and remediate any [spills and overfills] **discharge from the underground storage tank system** in accordance with **the Administrative Requirements for the Remediation of Contaminated Sites** N.J.A.C. [7:14B-8] **7:26C**.

(d) (No change.)

7:14B-5.4 Repairs

(a) Owners and operators [of underground storage tank systems] shall obtain a permit for the Department in accordance with N.J.A.C. 7:14B-10 and meet the following requirements to ensure that repairs shall prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store hazardous substances:

1. - 5. (No change.)

6. [Underground storage tank system owners] **Owners** and operators shall maintain records of each repair and associated tightness test for the remaining operating life of the undergrounds storage tank system that demonstrate compliance with the requirements of this section. When an underground storage tank system is closed, an owner or operator may

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make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(b) The owner and operator [of an underground storage tank system] shall obtain a permit from the Department pursuant to N.J.A.C. 7:14B-10.1(a), prior to performing repairs which constitute a substantial modification under N.J.A.C. 7:14B-10.

(c) (No change)

7:14B-5.5 Release response plan

(a) The owner or operator [of an underground storage tank system] shall prepare, **and update as necessary to reflect changes to the facility and to regulations governing response plans**, a release response plan which includes the following information:

1. - 2. (No change.)

3. The name and telephone number of any retained [corrective action contractor] **licensed site remediation professional**; and

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4. The procedures to be followed in the event of a leak or discharge of a hazardous substance, pursuant to N.J.A.C. 7:14B-7.3 and 8, and **the Administrative Requirements for the Remediation of Contaminated Sites**, N.J.A.C. 7:26C[-2], and N.J.A.C. 7:14B-9 if the underground storage tank system must be closed.

(b) The **owner or operator shall ensure that the** release response plan [shall be] **is** available for on site inspection.

(c) Any release response plan [which]that is required by and is in compliance with the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., **and the Discharges of Petroleum and Other Hazardous Substances Rules, N.J.A.C. 7:1E**, shall suffice for this requirement.

7:14B-5.6 Recordkeeping

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

(d) A request for written approval to discard documents shall be sent to[:] **the Department at the address at N.J.A.C. 7:14B-2.2(b) above.**

[New Jersey Department of Environmental Protection
Division of Remediation Management and Response

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Bureau of Southern Case Management

PO Box 433

401 East State Street

Trenton, NJ 08625-0433]

7:14B-5.7 Right of entry

(a) The owner or operator of any property or place of business where an underground storage tank system is or might be located shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

1. -4. (No change.)

5. [Sample soil, ground water, surface water and/or air] **Conduct remediation of any discharge.**

7:14B-5.8 Fill port markings

The owner or operator [of an underground storage tank system] shall permanently mark all fill ports to identify product inside the underground storage tank system. The markings shall be consistent with the colors and symbol codes established by the American Petroleum Institute Publication #1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for

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Product Identification at Service Station and Distribution Terminals” and the American Petroleum Institute Publication #1542, “Airport Equipment Marking for Fuel Identification,” incorporated herein by reference, as amended and supplemented.

7:14B-5.9 Use of regulated underground storage tank systems

(a) No person or business firm shall introduce hazardous substances into an underground storage tank system which is known to be or suspected to be leaking or discharging hazardous substances except in accordance with N.J.A.C. 7:14B-[8.1(a)2ii]**8.1(b)2i and ii.**

(b) No person or business firm shall introduce hazardous substances into a regulated underground storage tank which is not properly registered with the Department pursuant to N.J.A.C. 7:14B-2.1, **or where any registration has been revoked or denied.**

SUBCHAPTER 6. RELEASE DETECTION

7:14B-6.5 Methods of release detection for tanks

(a) [Each] **The owner or operator shall use each** method of release detection for tanks [used] **according** to [meet] the requirements of N.J.A.C. 7:14B-6.2, 6.3 and 6.4, [shall be conducted] **and in** accordance with the following:

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1. - 5. (No change.)

6. Testing or monitoring for liquids floating on the ground water shall meet the following requirements:

i. - v. (No change.)

vi. The continuous monitoring devices or manual methods used shall detect the presence of at least one-eighth of an inch of [free product]**free-phase non-aqueous phase liquid** on top of the ground water in the monitoring wells;

vii-viii. (No change.)

7. - 9. (No change.)

7:14B-6.7 Release Detection recordkeeping

(a) The owner or operator [of an underground storage tank system] shall develop written routine monitoring procedures which set forth the following:

1. - 5. (No change.)

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(b) (No change.)

(c) All [underground storage tank system] owners and operators shall maintain records of all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer.

(d) All [underground storage tank system] owners and operators shall maintain records of all written documentation of all calibration, maintenance, and repair or release detection equipment permanently located on-site.

(e) (No change.)

(f) All [underground storage tank system] owners and operators shall maintain records of the results of any sampling, testing or monitoring, and monthly inventory reconciliations for as long as the site is operational.

(g) After a facility is closed pursuant to N.J.A.C. 7:14B-9, an owner or operator may make a written request to the Department at the address at N.J.A.C. 7:14B-[5.6(d)]**2.2(b)** to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

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(h) (No change.)

(i) The owner or operator [of an underground storage tank system] that is equipped with a monitoring system installed prior to September 4, 1990 shall maintain on site a certification from a Subsurface Evaluator certified pursuant to N.J.A.C. 7:14B-13, that the site conditions and locations of the monitoring devices comply with N.J.A.C. 7:14B-6.5 and documentation from the manufacturer that the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized.

(j) (No change.)

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.1 Suspected releases

(a) The owner or operator [of an underground storage tank system] shall complete an investigation of a suspected release in accordance with the requirements of N.J.A.C. 7:14B-7.2(a) within seven calendar days of the discovery of the suspected release, when any of the following situations have occurred:

1. - 8. (No change.)

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(b) No product shall be introduced into an underground storage tank undergoing a suspected release investigation.

7:14B-7.2 Investigating a suspected release

(a) The owner or operator [of an underground storage tank system] shall confirm or disprove a suspected release by conducting an investigation in accordance with all of the applicable following procedures.

1. - 3. (No change.)

4. Check for a malfunction of the monitoring system; [or]

5. If the release is suspected due to the results of a previously conducted precision test which indicated that a release occurred, then an additional precision tank test shall be conducted on the underground storage tank system in accordance with N.J.A.C. 7:14B-6.5(a)3, if the test results indicated the following:

i. (No change.)

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ii. There were loose fittings not associated with any product bearing part of the tank system or above the holding capacity of the tank where an overflow device has been installed pursuant to this chapter; **or**

6. Retain a licensed site remediation professional to collect a soil and/or groundwater sample(s), as necessary, in the immediate area of any photoionization detector registering a reading above 50 units.

(b) If the investigation conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator shall, in accordance with the schedule [at] **in the Technical Requirements for Site Remediation**, N.J.A.C. [7:26E-3.3(e)] **7:26E-3.3(f)**, conduct and complete a site investigation designed to confirm or disprove a suspected discharge in accordance with **the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E-3.3**. If a discharge is confirmed, the owner or operator shall initiate action pursuant to N.J.A.C. 7:14B-7.3. [Documentation] **The owner or operator shall keep documentation** of an investigation in accordance with this section [which] **that** disproves a suspected discharge [shall be kept] at the facility and [made] **make it** available for inspection by the Department for the operational life of the underground storage tank system.

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7:14B-7.3 Confirmed discharges

(a) Any person, including, but not limited to, the owner or operator [of an underground storage tank system], or individual certified pursuant to N.J.A.C. 7:14B-13 hired to install, remove[,] **or** test [or perform a subsurface evaluation on] an underground storage tank system, **or licensed site remediation professional or his or her representative performing remediation**, shall, upon confirming a discharge, immediately report the discharge to the appropriate local health agency in accordance with local requirements, and to the Department's Environmental Action Hotline 877-927-6337. Discharges may be confirmed on the basis of the following:

1. Test, sampling or monitoring results from a discharge detection method specified in N.J.A.C. 7:14B-6.2[3, 4, and 5] **through 6.5** that indicate that a discharge has occurred;

2. (No change.)

3. Results from a closure plan [conducted] **implemented** in accordance with the requirements of N.J.A.C. 7:14B-9.2(b) [or 9.3(b)], which indicate the presence of contamination in the soil or ground water immediately beneath [and/or] **or** in the immediate vicinity of the underground storage tank system;

4. - 5. (No change.)

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(b) (No change.)

(c) The owner or operator [of an underground storage tank system] shall [take remedial action as set forth in N.J.A.C. 7:14B-8 when a discharge is confirmed] **remediate any discharge from the underground storage tank system, in accordance with this chapter and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.**

(d) The owner or operator [of an underground storage tank system] shall implement the release response plan required by N.J.A.C. 7:14B-5.5 when a discharge is confirmed.

(e) (No change.)

(f) No hazardous substance shall be introduced into an underground storage tank system which is known to be leaking or discharging hazardous substances except in accordance with N.J.A.C. 7:14B-8.1(b)2i and ii.

7:14B-7.4 Unknown sources

If the owner or operator [of a facility] has information indicating that a facility may be the source of a discharge, the owner or operator [of the facility] shall perform [a site investigation of the underground storage tank system(s)] **an unknown source investigation** [at the facility in accordance with N.J.A.C. 7:26E-3.3, prepare a site investigation report in accordance with the

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Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3.13, and submit the report to the Department within the timeframe indicated at N.J.A.C. 7:26E-3.3(e). The owner or operator of a facility that is the suspected source of a discharge shall perform additional investigation(s) as the Department determines to be necessary and shall remediate any discharge discovered during the additional site investigation(s)]. **The owner or operator shall prepare an unknown source investigation report following the format presented in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-3.14, and submit the report and a form available from the Department at www.nj.gov/dep/srp/srra/forms within 90 days after the receipt of information indicating the facility may be the source of a discharge.**

SUBCHAPTER 8. REMEDIATION [ACTIVITIES]

7:14B-8.1 [Immediate corrective action requirements and procedures] **Responses to leaks and discharges**

(a) The owner or operator of an underground storage tank system shall, upon confirming a leak of a hazardous substance into the interstitial space created by the secondary containment system:

- 1. Determine the source of the leak;**

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2. Properly remove all hazardous substances from the underground storage tank system;

3. Repair, replace or close the underground storage tank system in accordance with the requirements of this chapter; and

4. Within 30 calendar days after identifying a leak into the interstitial space of an underground storage tank system in accordance with N.J.A.C. 7:14B-7, prepare a written report, which shall be maintained on site and made available for inspection by any Department representative, containing a detailed description of the remedial actions taken concerning the leak into the interstitial space pursuant to (a)1 through 3, above.

[(a)](b) The owner or operator [of an underground storage tank system] shall, upon confirming a [release] **discharge**, take immediate action to:

1. (No change.)

2. Cease use of the underground storage tank system, **provided, however, that:**

i. In the event that ceasing use of the underground storage tank system would precipitate an emergency which constitutes an immediate threat to human health and

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safety, then the [owner/operator] **owner or operator** shall cease use of the underground storage tank system immediately subsequent to taking all necessary actions to abate the emergency[.]; **and**

ii. Where a building's sole source of heat is from an oil burner, and there has been a discharge from the underground storage tank system containing heating oil, then the [owner/operator] **owner or operator** shall take immediate action to provide an alternate source of heat[. Upon]; **then upon** providing an alternate source of heat, the [owner/operator] **owner or operator** shall immediately cease use of the underground storage tank system which [has discharged] **is the source of a discharge.**

3. (No change.)

4. Conduct a visual inspection to detect any above ground or exposed below ground discharge, and where any discharge is evident, [mitigate the effects of] **remediate** the discharge **pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C;**

5. - 7. (No change.)

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7:14B-8.3 Reporting [requirements] **requirement**

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall provide the local health department and the Department with a remedial investigation report prepared and presented pursuant to N.J.A.C. 7:26E-4.8, and shall pay all required fees and costs pursuant to this chapter and the Administrative Requirements for the Remediation of Contaminated Sites Rules at N.J.A.C. 7:26C-4, as applicable, within 270 calendar days after the notification required by N.J.A.C. 7:14B-7.3(a) or by November 26, 2010, which ever is later.

1. If required pursuant to N.J.A.C. 7:26E-5, the owner or operator shall submit a remedial action selection report prepared and presented in accordance with N.J.A.C. 7:26E-5.2. Unless otherwise allowed by the Department, the remedial action selection report shall be submitted in the sequence required by N.J.A.C. 7:26E-5.2(d) and (e).

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

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[(c) As required pursuant to N.J.A.C. 7:14B-1.8, the report described in (a) above, and the form described in (b) above if applicable, shall be prepared either by an individual certified in subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or by a licensed site remediation professional. The report(s) shall include the name and address for both the owner and the operator.

(d) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, in addition to the requirements listed in (a) and (b) above, the owner or operator of an underground storage tank system which has discharged a hazardous substance shall submit one of the documents listed in (d)1 through 3 below, and all of the appropriate fees pursuant to N.J.A.C. 7:14B-3.5 with the remedial investigation report to the address specified in N.J.A.C. 7:14B-2.2(b):

1. A request for a letter requiring no further action at the site if the remedial investigation indicates that no contamination at the site, or which has migrated off-site, exceeds any applicable remediation standard;

2. A proposed remedial investigation workplan prepared and presented pursuant to N.J.A.C. 7:26E-4.2 if the remedial investigation indicates that contamination remains in excess of any applicable remediation standard and the contamination on and off site has not been fully delineated vertically or horizontally; or

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3. A proposed remedial action workplan, prepared and presented pursuant to N.J.A.C.

7:26E-6.2.

(e) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, within 90 calendar days after the Department's approval of the remedial investigation workplan submitted pursuant to (d)2 above, the owner or operator shall submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8 and (d) above that presents all the data and information collected in accordance with the approved remedial investigation workplan, or any other sampling conducted in accordance with N.J.A.C. 7:26E, accompanied by the applicable fee required in N.J.A.C. 7:14B-3.

(f) If the Department determines at any time prior to the approval of a proposed request for no further action that additional sampling and analysis is required, the owner or operator shall conduct the additional sampling and analysis as required, which may include submission of a remedial investigation workplan in the timeframe specified by the Department.

(g) If the Department determines that any submittal made under this section is inadequate or incomplete, the Department shall provide the owner or operator with written notification of the deficiencies, and the owner or operator shall correct the deficiencies and resubmit the required information within 30 calendar days of receipt of the notification unless otherwise specified by the Department. If the revision does not address the deficiency(ies) to the Department's

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satisfaction, the Department shall disapprove the submittal and require the owner or operator to present a new submittal pursuant to (d) above and a new fee pursuant to N.J.A.C. 7:14B-3.5.

(h) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the owner or operator may request an extension of time to submit the remedial investigation report required in (e) above. The request shall be in writing and include a justification for such a change and outline a new detailed schedule for the submission of the report. All requests for extensions shall be submitted pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3.2(b).

(i) The owner or operator of the facility shall provide the Department with 14 calendar days notice of the onset of all remedial activities and shall allow site access to observe all said activities.

(j) If the Department approves a revised remedial investigation workplan submitted pursuant to (d) above, the owner or operator shall perform the additional work in accordance with the timeframes specified therein.

(k) If the Department determines that a remedial action for affected media at or emanating from any portion of the facility is necessary prior to full contaminant delineation due to a discharge posing an immediate threat to public health or the environment, the owner or operator shall comply with N.J.A.C. 7:26E-1.14.

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(l) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2, the owner or operator shall implement the remedial investigation and submit reports pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4 and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4, within the timeframe specified at (a) above.]

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 Out-of-service underground storage tank systems

(a) The owner or operator of an underground storage tank system [which] **that** is out-of-service shall:

1. (No change.)

2. Remain in compliance with all applicable environmental rules, including N.J.A.C. 7:14B-7, **the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;**

3. - 5. (No change.)

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(b) (No change.)

(c) The owner or operator [of an underground storage tank system] may request that the underground storage tank system remain out of service for a period of more than 12 months without having to close the tank system as required in (d) below by:

1. Submitting to the Department a site investigation report prepared [and presented] **by a licensed site remediation professional** in accordance with **the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-2.3, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-3.3(b) and -3.13** at least 30 calendar days prior to the expiration of the 12-month period referenced in (c) above; or

2. Submitting documentation at least 30 calendar days prior to the expiration of the 12-month period referred to in (c) above that the requirements of (a)³ above have been completed and that the system has had a release detection monitoring system operated in accordance with N.J.A.C. 7:14B-6.1 through 6.6 indicating that no discharge of hazardous substances has occurred during the operational life of the system or since the performance of a site investigation or remedial investigation performed in accordance with the provisions of **the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.**

(d) (No change.)

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[(e) An individual certified in subsurface evaluation or a licensed site remediation professional shall be involved as follows:

1. An individual certified in subsurface evaluation in accordance with N.J.A.C. 7:14B-13 shall be on site during the removal or abandonment-in-place of the underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities when those activities were initiated prior to November 4, 2009; and

2. A licensed site remediation professional shall supervise all tank closure and site investigation activities required under this section, and shall ensure that those activities are conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, when those activities are initiated on or after November 4, 2009.]

7:14B-9.2 Closure requirements for underground storage tank systems [containing hazardous substances which are not hazardous wastes]

(a) The owner or operator [of an underground storage tank system containing hazardous substances which are not hazardous wastes] who intends to close the underground storage tank system shall:

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1. [Notify the Department and all applicable municipal and county health departments of the closure activity in writing on forms provided by the Department at least 30 calendar days prior to the anticipated closure date.]**Ensure that the facility is registered as required by N.J.A.C. 7:14B-2.2. If the facility is not registered as required by N.J.A.C. 7:14B-2.2, the owner or operator shall register the facility by submitting a completed New Jersey Underground Storage Tank Certification Questionnaire with the appropriate fee as specified by N.J.A.C. 7:14B-3.2(c) and 3.5 prior to initiating closure. The owner or operator shall not close any tank(s) located at the facility unless the facility is properly registered with the Department.**

2. **At least 14 calendar days prior to the anticipated closure date, notify the Department of the intent to close the underground storage tank by logging on to the NJDEP Online service via either the myNewJersey Portal at <http://www.nj.gov> or directly from <http://njdeponline.com>, selecting the underground storage tank notice of intent to close in the Service Selection section of the My Workspace screen, and completing and submitting the form.** This notification shall include **the following information:**

i - iii. (No change)

iv. The certification [numbers and categories of service] **number** of the business [firm(s)] **firm** performing the closure activities [and subsurface evaluation] required

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pursuant to N.J.A.C. 7:14B-13 [or] **and** the license number of the licensed site remediation professional performing remediation[, if applicable];

v. Any additional information of the person submitting the notification as required by the Department in order that the closure shall be performed in accordance with this chapter[.]; **and**

3. Provide a copy of the Department's approval of the notice of intent to close the tank, which is automatically generated upon submission of the online notification pursuant to (a)2 above, to each of the following:

i. The applicable municipal and county health departments at least 14 calendar days prior to the anticipated closure date; and

ii. The applicable local authority with the application for a local demolition permit.

[2.]**4.** Comply with all applicable requirements of the New Jersey Uniform Construction Code, N.J.A.C. 5:23;

[3. Include a copy of the Department notification required in (a)1 above with the application for a local demolition permit;] and

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5. If any contamination is detected above any applicable remediation standard, conduct the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.

[4. If the facility is not registered as required by N.J.A.C. 7:14B-2.2, the owner or operator shall submit to the Department a completed New Jersey Underground Storage Tank Registration Questionnaire with the appropriate fee as specified by N.J.A.C. 7:14B-3.2(c) and 3.5 at least 60 calendar days prior to the date of tank closure].

(b) The owner or operator who intends to close an underground storage tank containing hazardous substances which are not hazardous wastes **or an underground storage tank containing hazardous waste which is exempt from the requirements of the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26G**, shall [develop and] implement a closure plan which consists of a site investigation [work plan] **set forth at N.J.A.C. 7:26E-3.3(b)** and a tank decommissioning plan which includes the procedures [set forth at N.J.A.C. 7:26E-6.3(b)] **pursuant to (d) through (f) below, as applicable**. The owner or operator shall keep the closure plan at the facility and make it available for inspection by the Department, the local construction code enforcement official, or a county or municipal health official.

(c) [When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the owner or operator of an underground storage tank system may choose to submit a

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closure plan to the Department for review. The appropriate fees pursuant to N.J.A.C. 7:14B-3.5 shall accompany the closure plan.] **The owner or operator who intends to close an underground storage tank containing hazardous waste regulated pursuant to the Hazardous Waste rules, N.J.A.C. 7:26G, shall follow the closure procedures in the Hazardous Waste rules N.J.A.C. 7:26G-8.**

[(d) The owner or operator of an underground storage tank system shall ensure the system is closed by either:

1. An individual certified for closure in accordance with N.J.A.C. 7:14B-13 when closure was initiated prior to November 4, 2009; or
2. A licensed site remediation professional when closure is initiated on or after November 4, 2009.]

(d) The owner or operator shall close an underground storage tank pursuant to the American Petroleum Institute's "Practice for the Abandonment or Removal of Used Underground Service Tanks," in publication at the time the tank is to be closed (available from the American Petroleum Institute, 1220 L Street Northwest, Washington, DC 20005) and shall:

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1. Drain the associated piping, pump out the tank, clean the system thoroughly and plug all of the openings in the tank except for one vent hole;

2. Unless the tank is to be closed in place pursuant to (e) below, excavate the soil around the tank and remove and secure the tank;

3. Examine the secured tank for holes and call the Department Hotline at 1-877 WARNDP or (877) 927-6337 if any holes are discovered and/or a discharge has been confirmed pursuant to N.J.A.C. 7:14B-7.3, unless the discharge from the tank was previously reported to the Department;

4. Prepare the tank for disposal by labeling the tank regarding its site of origin, ultimate destination site and the substance(s) that were stored in it during its use as a storage tank; and

5. Remove the tank from the site according to all applicable laws and regulations.

(e) The owner or operator may abandon an underground storage tank in place if no contamination is detected above applicable remediation standards or if removal is not feasible by:

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1. Submitting to the Department a statement, signed and certified by a licensed New Jersey professional engineer, that explains why removal is not feasible;

2. Following the procedures at (d)1 through 4 above, draining the associated piping, pumping out the tanks, and thoroughly cleaning the system, being sure to ameliorate any health and safety concerns due to any vapors that may be in the tank atmosphere during the tank cleaning and abandonment operation;

3. Inspecting the tank interior and documenting any areas of questionable integrity, including, without limitation, any cracks or corrosion, or evidence of discharge. Photographs may be submitted to document that the integrity of the system has been breached, if the evidence is clearly visible in the photograph;

4. Decommissioning the tank system, including all fill pipes, by completely filling the tank system with sand, cement or other inert material with similar physical/chemical properties;

5 Removing all fill pipes to a depth of a minimum of one foot below ground surface; and

6. Complying with all local ordinances.

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(f) If the underground storage tank is located under a permanent structure or is physically inaccessible, or a certification, signed and sealed by a licensed New Jersey professional engineer, is submitted stating that the sampling requirements for site investigations at N.J.A.C 7:26E-3.3 will cause damage to the structure, the owner or operator may use an alternate method for determining the integrity of the tank, provided that it is documented pursuant to N.J.A.C. 7:26E-1.7.

7:14B-9.4 Change in service to a nonregulated substance

(a) The owner or operator of an underground storage tank system in which the substance being stored is being changed to a substance not regulated by this chapter shall:

1. Prior to storing the nonregulated substance, empty and clean the tank by removing all liquid and accumulated sludge; **and**

2. Prior to storing the nonregulated substance, conduct a site investigation of the underground storage tank system **and submit a site investigation report** in accordance with **the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-2.3, and otherwise comply with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-3**; and

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3. Submit a site investigation report prepared and presented in accordance with N.J.A.C.

7:26E-3.13 within 270 calendar days after the tank cleaning].

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

7:14B-9.5 Reporting and recordkeeping requirements

(a) The owner or operator [of an underground storage tank] shall[, within 270 calendar days of initiation of closure activities, such as breaking ground for removal or cleaning for abandonment, submit to the Department] **prepare** a site investigation report [prepared and presented] in accordance with the **Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-2.3, and the** Technical Requirements for Site Remediation [rules] at N.J.A.C. 7:26E-[3.13]**3.14**, accompanied by the appropriate fees required pursuant to the N.J.A.C. 7:14B-3.5 and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4, as applicable, **and within the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-3.3.**

(b) [As required pursuant to N.J.A.C. 7:14B-1.8, the report described in (a) above shall be prepared either by an individual certified in subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or by a licensed site remediation professional. The report]**The owner or operator shall submit a site investigation report and a form found on the Department's website at**

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www.nj.gov/dep/srp/srra/forms, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-3.14, within the mandatory timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-3.3, which shall include the name and address for both the owner and the operator, the underground storage tank [system facility registration] **Facility Identification Number, the specific tank number(s) for the underground storage tanks systems being closed**, and all applicable case numbers or tank closure approval numbers. **The site investigation report shall be accompanied by the appropriate fee pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-4.**

(c) The owner of the property on which an underground storage tank system [exists and] was closed shall [maintain]:

1. Maintain permanently all records generated to comply with the requirements of this subchapter[. These records shall be made]; **and**

2. Make all such records available to the Department [upon request for an indefinite period of time. These records shall be made available for inspection by] **and** any authorized local, State and/or Federal representative [and shall be submitted to the Department] upon request.

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SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.1 Permit requirements

(a) - (e) (No change.)

(f) The owner or operator [of an underground storage tank system] shall maintain at the underground storage tank facility the site diagrams and specifications required by N.J.A.C.

7:14B-10.3(b).

7:14B-10.3 Permit Applications

(a) All permit applications shall be submitted on forms provided by the Department obtained from the address noted below and containing the information specified in (b) below. The permit application shall be accurately completed, signed, dated and returned to **the address at N.J.A.C.**

7:14B-2.2(b):

[New Jersey Department of Environmental Protection

Division of Remediation Support

Oversight Resources Allocation Element

PO Box 028

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401 East State Street

Trenton, NJ 08625-0028

Attn: UST Permitting Unit]

(b) Any owner or operator of an existing or proposed underground storage tank system which requires a Department issued permit shall:

1. - 7. (No change.)

8. Submit a scaled site diagram which accurately indicates the location of all sampling and monitoring points in relation to all underground storage [tanks] **tank** systems at the facility; [and]

9. Submit certification in accordance with N.J.A.C. 7:14B-1.7(d) signed by a [subsurface evaluator certified by the Department pursuant to N.J.A.C. 7:14B-13] **licensed site remediation professional**, that the number and location of all vapor or product monitoring points is sufficient to monitor the underground storage tank system should this method of monitoring be chosen; **and**

10. Submit all fees in accordance with N.J.A.C. 7:14B-3.5.

(c) - (f) (No change.)

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7:14B-10.4 Public Access to permit information

(a) (No change.)

(b) Interested persons shall submit a written request for an appointment to review the public records. This written request shall be sent to[:] **the Department at the address at N.J.A.C.**

7:14B-2.2(b).

[New Jersey Department of Environmental Protection

Bureau of Risk Management, Initial Notice and Case Assignment

PO Box 435

401 East State Street

Trenton, NJ 08625-0435]

7:14B-10.6 Emergency permits

(a) (No change.)

(b) The owner or operator [of an underground storage tank system,] requesting an emergency permit[,] shall contact the Department on the day of the emergency or, when the emergency occurs after business hours, on a weekend or on a holiday, the owner or operator shall contact the

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Department on the next working day thereafter at (609) 633-0708 for issuance of an emergency permit. The owner or operator shall, within 14 calendar days of receipt of the emergency permit, submit a permit application pursuant to this subchapter, including the appropriate fee **in accordance with N.J.S.A. 7:14B-3.5**, to the Department for review of compliance with the requirements of this chapter.

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

7:14B-10.8 Grounds for denial or revocation of permits

(a) (No change.)

(b) The Department may revoke a permit upon a determination of the following:

1. - 3. (No change.)

4. The owner or operator [of an underground storage tank system] is performing or has authorized an activity which is not in compliance with this chapter.

(c) - (f) (No change.)

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SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 Penalties

[(a) Failure by any person to comply with any requirement of the State Act or this chapter may result in denial or revocation of an owner's or operator's registration or permit for the tank system; and/or denial, suspension, revocation or refusal to renew a certified individual's or business firm's certification issued pursuant to N.J.A.C. 7:14B-13 or 16.

(b) Failure by any person to comply with any requirement of N.J.A.C. 7:14B-1, 3 and 7 through 14, may result in the assessment of civil administrative penalties, pursuant to the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-10, and any other enforcement action, or any action pursuant to N.J.A.C. 7:14B-16.11.

(c) Failure by any person to comply with any requirements of N.J.A.C. 7:14B-2, 4, 5, 6 or 15 may result in the assessment of civil administrative penalties pursuant to the Water Pollution Control Act Rules, at N.J.A.C. 7:14-8.

(d) An owner, operator, certified individual or certified business firm, may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the

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requirements of N.J.A.C. 7:14-8.4, or the Department Oversight of the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-10.9, as applicable.]

(a) Upon a finding that an owner or operator has failed to comply with any requirement of the State Act or N.J.A.C. 7:14B-1, 3, or 7 through 11, the Department may:

- 1. Deny or revoke an owner's or operator's registration or permit for an underground tank system;**
- 2. Order compliance with the State Act or regulatory provision violated; and**
- 3. Assess a civil administrative penalty pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-9.**

(b) Upon a finding that an owner or operator has failed to comply with any requirement of the State Act or N.J.A.C. 7:14B-2, 4, 5, 6 or 15, the Department may:

- 1. Deny or revoke an owner's or operator's registration or permit for an underground tank system;**
- 2. Order compliance with the State Act or regulatory provision violated; and**

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3. Assess a civil administrative penalty pursuant to the Water Pollution Control Act rules, N.J.A.C. 7:14-8.

(c) Upon a finding that any individual or business who is certified pursuant to N.J.A.C. 7:14B-13 or 16 has failed to comply with any requirement of the State Act or N.J.A.C. 7:14B-1, 3, or 7 through 11, the Department may:

1. Deny, suspend, revoke or refuse to renew a certification pursuant to N.J.A.C. 7:14B-13.10 and 16.11, as applicable;

2. Order compliance with the State Act or regulatory provision violated; and

3. Assess a civil administrative penalty pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-9.

7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption

(a) [Within 30 calendar days from receipt of notification from the Department denying or revoking a permit, registration, or a certification of an individual or business firm issued pursuant to N.J.A.C. 7:14B-13 or 16 or denying an ordinance adoption, issued pursuant to N.J.A.C.

7:14B-11, the registrant, permittee, certificant or political subdivision, may request an

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adjudicatory hearing to contest such action by submitting a written request to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, 401 East State Street, Trenton, New Jersey, 08625-0402, which shall include the following information: **A registrant, permittee, certificant or political subdivision may request an adjudicatory hearing to contest a denial or revocation of a registration, permit, a certification for an individual and business firm, or the denial of an ordinance adoption issued pursuant to N.J.A.C. 7:14B-11, within 30 calendar days after receipt from the Department of a notice of intent to deny or revoke a permit, registration, or a certification of an individual or business firm issued pursuant to N.J.A.C. 7:14B-13 or 16, or a notice of intent to deny an ordinance adoption by submitting a written request, that contains all of the information listed in (b) below to the Department at the address specified at N.J.A.C. 7:14B-2.2(b) and at the following address:**

Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection

Mail Code 401-042

PO Box 402

401 East State Street, 4th floor

Trenton, New Jersey, 08625-0402;

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(b) The person requesting an adjudicatory hearing pursuant to (a), above, shall include with the request for a hearing, the following information:

1. The name, address, [and] telephone number, **fax number, and email address** of the registrant, permittee, certificant, or political subdivision and **of its authorized representative and attorney**, if any;

2. (No change.)

3. The date the person received from the Department the notice of intent to deny or revoke;

4. A copy of the notice of intent to deny or revoke;

[3.]**5. The registrant's, permittee's, certificant's or political subdivision's [factual position on each question alleged to be at issue, its relevance to the Department's decision,] admission or denial or a statement of insufficient knowledge with regard to each of the findings of fact contained in the Department's notice with specific reference to contested conditions as well as suggested revised or alternative conditions;**

Recodify existing 4. as **6.** (No change in text.)

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[5.] **7.** An estimate of the time required for the hearing (in days and/or hours); [and]

[6.] **8.** A request, if necessary, for a barrier-free hearing location for disabled persons;

and

9. A clear indication of the person's willingness to negotiate a settlement with the Department.

Recodify existing (b) - (d) as (c) - (e) (No change in text.)

[(e)](f) Pending the decision on appeal to the Department and upon a [typewritten] **written** request supporting the ongoing need to use the tank, the Department may stay the revocation of the permit, for good cause shown, upon such terms and conditions as are deemed proper. The request for stay of revocation of the permit shall be included in the request for hearing.

7:14B-12.4 Civil administrative penalties for violations of N.J.A.C. 7:14B-13 and 16

(a) (No change.)

(b) If the violation is of a continuing nature, each day of violation constitutes an additional, separate and distinct offense. No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. The notice shall include a

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reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the civil penalty to be imposed; and a statement of the violator's right to a hearing. The violator shall have 20 calendar days from receipt of notice within which to deliver to the Department a written request for a hearing. **The request for a hearing shall be submitted to the Department at both of the addresses specified at N.J.A.C. 7:14B-12.2(a), and shall include all of the information specified at N.J.A.C. 7:14B-12.2(b).** Subsequent to the hearing and upon a finding that a violation has occurred, the Department may issue a final order assessing the amount of the penalty. If no hearing is requested, the notice shall become a final order upon the expiration of the 20 day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Agreement to, or payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

(c) - (e) (No change)

SUBCHAPTER 13. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS

7:14B-13.1 General requirements for certification **and services**

(a) No individual shall [provide]:

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1. Provide any services listed at N.J.A.C. 7:14B-13.2(a) below on an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter for the purpose of complying with this chapter, unless the individual is certified or working under the immediate, on-site supervision of a person certified in accordance with this subchapter; **or**

2. Conduct remediation of an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter for the purpose of complying with this chapter and N.J.A.C. 7:26C, unless that person is a licensed site remediation professional, or representative thereof. A licensed site remediation professional need not also be licensed pursuant to this subchapter in order to conduct remediation on an underground storage tank system.

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

(d) The owner or operator [of an underground storage tank system] shall ensure that all services performed on regulated underground storage tank systems pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter are performed by an individual certified pursuant to this subchapter or under the immediate, on-site supervision of an individual certified pursuant to this subchapter **or that remediation is performed by a retained licensed site remediation professional, or representative thereof, for the purpose of complying with N.J.A.C. 7:26C.** If a certified individual is not present at the underground storage tank site **or a licensed site remediation professional has not been retained to conduct remediation,** the owner or operator shall

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suspend all regulated activities in that classification of service **or remediation activities, as applicable.**

(e) No individual shall perform any service pursuant to N.J.A.C. 7:14B except as provided for by (f) **and (g)** below, unless:

1. The individual is a permanent employee at a business firm which is certified in the classification of service, **listed at 13.2(a) below**, being performed and the individual is certified in the classification of service being performed; or

2. The individual is working under the immediate, on-site supervision of an individual certified in the classification of service, **listed at 13.2(a) below**, being performed and both individuals are employed at the same business firm which is certified in the classification of service being performed.

(f) An owner or operator [of an underground storage tank system,] or the permanent employee of an owner or operator may perform any service, **listed at 13.2(a) below**, on the owner's or operator's underground storage tank provided the individual is certified in that classification of service. Certification of the owner or operator as a business firm is not required if the owner or operator can provide to the Department proof of financial responsibility assurance in accordance with N.J.A.C. 7:14B-13.8 or 40 C.F.R. Part 280 for the remediation of a hazardous substance discharge resulting from the performance of such service(s).

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(g) An owner or operator of an underground storage tank system shall retain a licensed site remediation professional to conduct remediation pursuant to N.J.A.C. 7:26C.

Recodify existing (g) - (j) as **(h) - (k)** (No change in text.)

[(k)] **(l)** A certified individual shall sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to this chapter **for the category of services listed at 13.2(a) below** and submitted to the Department.

[(l)] **(m)** When a permit is required to be obtained through the local construction office, for the purposes of complying with N.J.A.C. 7:14B, the individual's certification card and a copy of the certification for the business firm **or the license number of the retained licensed site remediation professional, as applicable,** shall be available upon request of the local construction official.

Recodify existing (m) as **(n)** (No change in text.)

7:14B-13.2 Classifications of underground storage tank services

(a) An individual or business firm may apply for certification in any one or more of the following classifications of underground storage tank services:

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1. - 2. (No change.)

3. Tank testing; **and**

4. [Subsurface evaluation; and]

5. Recodify as 4. (No change in text.)

(b) The activities which comprise the above classifications include the following:

1. - 2. (No change.)

3. Closure includes all physical activities required by N.J.A.C. 7:14B relative to the removal or abandonment in place of an underground storage tank, associated piping and appurtenant equipment, from the time the ground is broken until the excavation is filled or until a determination is made that [further subsurface evaluation] **remediation** is necessary and the site falls under the on-site supervision of a [subsurface evaluator] **licensed site remediation professional , or representative thereof**. A [certified subsurface evaluator] **licensed site remediation professional , or representative thereof** shall be present at the removal of an underground storage tank from the ground as well as during the activities designed to determine the presence and extent of contamination. Closure activities do not

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include the preparation or implementation of site investigation or remedial investigation workplans or any other remedial action plans or activities, which are the exclusive purview of [an individual certified in subsurface evaluation described in (b)5 below] **a licensed site remediation professional.**

4. (No change.)

[5. Subsurface evaluation includes all activities regarding site investigation, remedial investigation and remedial action and the evaluation for selection of release detection monitoring systems, as follows:

i. For site investigation, subsurface evaluation activities include the preparing or reviewing the closure plan required pursuant to N.J.A.C. 7:14B-9.2, witnessing the tank and/or piping removal, inspecting the tank system for possible holes, inspecting the excavation for contamination, performing (or overseeing) necessary field screening tests, selecting soil and ground water sampling locations, and submitting or reviewing of the report(s) required under N.J.A.C. 7:14B-9.5.

ii. Site investigation, remedial investigation and remedial action activities include, but are not limited to, the development, implementation, or review of soil and/or ground water sampling plans, quality assurance/quality control plans, health and safety plans; overseeing field screening activities; determining the horizontal and vertical extent of

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contamination; assessing the actual or potential effect of a discharge on receptors; determining appropriate remedial activities for soil and/or ground water contamination; the submittal or review of appropriate site investigation, remedial investigation and remedial action reports, and recommendations for no further action.

iii. Release detection monitoring system selection activities include selecting locations for soil borings, characterizing soils, and determining soil permeability and depth to ground water.

iv. Subsurface evaluation activities do not include:

(1) The design or installation of any treatment works necessary to perform the remedial action, which is the purview of a licensed professional engineer;

(2) The taking of any soil or groundwater samples for laboratory analyses once a certified subsurface evaluation has determined, through on-site observation, the appropriate sample locations; however, the subsurface evaluator must have knowledge of proper sampling and analytical protocols; and

(3) The performance of well drilling or pump installation services which shall be performed by an individual who is licensed to perform such services pursuant to N.J.S.A. 58:4A-11.]

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Recodify existing 6. and 7. as **5. and 6.** (No change in text.)

7:14B-13.4 Eligibility

(a) Individuals not satisfying the criteria in (b) or (c) below may obtain certification by passing the proficiency examination described in *N.J.A.C. 7:14B-13.5*. An applicant shall be eligible to take the proficiency examination if the applicant meets the following minimum criteria for each classification for which the applicant is seeking certification:

1. - 6. (No change.)

[7. Applicants for the subsurface evaluation classification examination shall meet the following criteria:

i. A bachelor's degree from an accredited institution in a natural (earth, biological, or environmental), physical, or chemical science or appropriate engineering discipline;

ii. Either a minimum of two years experience performing subsurface evaluation services with participation in at least five subsurface evaluation services performed during each year of experience or nine months experience with participation in at least 25 subsurface evaluations in that nine-month period; and

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iii. Completion of appropriate health and safety training given in accordance with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (165.5)) and the United States Department of Labor's Occupational Safety and Health Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).]

(b) Any individual possessing a valid New Jersey Professional Engineers License, issued pursuant to N.J.S.A. 45:8-27 et seq., shall be eligible for certification in all classifications **listed at N.J.A.C. 7:14B-13.2(a)** upon application to the Department and shall be exempt from the examination requirements of (a) above and individual certification fee requirements of N.J.A.C. 7:14B-3.10.

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

7:14B-13.8 Financial responsibility assurance

(a) (No change.)

(b) A business firm shall provide written notification to the Department 120 days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance at the [following] address[:]**at N.J.A.C. 7:14B-2.2(b).**

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[New Jersey Department of Environmental Protection

Bureau of Underground Storage Tanks

PO Box 433

401 East State Street

Trenton, NJ 08501-0433]

(c) (No change.)

7:14B-13.10 Denial, suspension, revocation and refusal to renew a certification

(a) The Department may deny, suspend, revoke, or refuse to renew a certification issued pursuant to N.J.A.C. 7:14B-13 for good cause, including:

1. - 5. (No change.)

6. Any other violation of this subchapter, the Technical Requirements for Site Remediation [rules], N.J.A.C. 7:26E, the [Department Oversight of the Remediation of Contaminated Sites rules] **Administrative Requirements for the Remediation of Contaminated Sites**, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., **the Site**

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Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., or of an order issued pursuant to any of these Acts.

(b) - (e) (No change.)

SUBCHAPTER 15. FINANCIAL RESPONSIBILITY REQUIREMENTS

7:14B-15.1 Applicability and general requirements

(a) This subchapter sets forth financial responsibility assurance requirements for owners and operators [of underground storage tank systems] for the purpose of remediation and for compensating third parties for bodily injury and property damage as a result of a discharge from an underground storage tank system.

(b) (No change.)

(c) By September 16, 2003, the owner or operator [of an underground storage tank system subject to the requirements of this chapter,] not covered by (b) above, shall comply with this subchapter for the amounts listed in N.J.A.C. 7:14-15.2 by maintaining financial assurance pursuant to USEPA's Financial Responsibility Regulations at 40 C.F.R. 280 Part H incorporated by reference, with the noted exclusions at N.J.A.C. 7:14B-15.3(c).

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(d) (No change.)

(e) If the owner and operator [of an underground storage tank system] are separate persons, only one person is required to demonstrate financial responsibility; however, both the owner and operator are responsible in the event of noncompliance.

(f) (No change.)

(g) The owner [and]or operator is [no longer] **not** required to maintain financial responsibility assurance **pursuant to this subchapter** for any underground storage tank system when [the Department has provided the owner or operator with the following:] **either of the following conditions has been met; the owner or operator may be required, however, to maintain financial assurance if the owner or operator is required to obtain a remedial action permit pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-7.7.**

1. [A no further action letter] **The Department or a licensed site remediation professional has issued a final remediation document** for the closure of the underground storage tank system; [and] **or**

2. (No change.)

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(h) - (i) (No change.)

SUBCHAPTER 16. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS FOR UNREGULATED UNDERGROUND STORAGE TANK SYSTEMS

7:14B-16.2 General requirements for certification

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

(e) Except as provided in (n) below, no individual shall perform any service on an unregulated heating oil tank system unless:

1. The individual is a permanent employee at a business firm which is certified in the classification of service being performed and the individual is certified in the classification of service being performed; [and] **or**

2. The individual is working under the immediate, on-site supervision of an individual certified in the classification of service being performed and both individuals are employed at the same business firm which is certified in the classification of service being performed.

7:14B-16.9 Financial responsibility assurance

(a) (No change.)

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(b) A business firm shall provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance at the [following] address[:]**at N.J.A.C. 7:14B-2.2(b).**

[New Jersey Department of Environmental Protection
Bureau of Underground Storage Tanks
P.O. Box 433
401 E. State Street
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(c) (No change.)

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CHAPTER 7:26B. INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.4 Definitions

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

...

"Change in ownership" means[,unless otherwise provided at N.J.A.C. 7:26B-2.2]:

1. - 3. (No change.)

4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:

i. - ii. (No change.)

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- iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation [pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b)];
5. The sale or transfer of the sole general partner's entire interest in a limited partnership where the limited partnership is one of the following:
- i. (No change.)
 - ii. The limited partnership has the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation [pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b)];
6. - 8. (No change.)

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9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an industrial establishment, where the indirect owner's assets would be available for remediation [pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b), that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment].

"Closing operations" means[, unless otherwise provided at N.J.A.C. 7:26B-2.4]:

1. - 7. (No change.)

...

"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity [based on the criteria in N.J.A.C. 7:26B-2.2(d). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(d), this definition does not require that a person submit an application for an applicability determination in order for a person or transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(d)].

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department's ability to reach those assets,

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or otherwise hinder the owner's or operator's ability to remediate the industrial establishment

[based on the criteria in N.J.A.C. 7:26B-2.2(c). Notwithstanding the reference to N.J.A.C.

7:26B-2.2(c), this definition does not require that a person submit an application for an

applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C.

7:26B-2.2(c)].

...

“Engineering [controls] **control**” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

...

“GIN” means General Information Notice described at [N.J.A.C. 7:26B-3.3(a)] **N.J.A.C. 7:26B-3.2(a)**.

...

“Hazardous waste” means any waste defined as such pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., that is further defined as a hazardous waste pursuant to the Solid Waste [Regulations,] **rules at N.J.A.C. 7:26-1.6**

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...

"Industrial establishment" means any place of business or real property at which such business is conducted, having the North American Industry Classification System (NAICS) codes listed in chapter Appendix C, incorporated herein by reference, dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002-502024, subject to the specified exceptions and limitations and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal [or] of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. [Except as provided below for lease properties] **For properties which are owner occupied or are leased to a single tenant**, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For [lease]**leased properties with two or more leased spaces**, the industrial establishment includes the leasehold and any [external tank , surface impoundments, septic systems, or any other structures, vessels, contrivances, or units] **areas of concern** that provide, **are associated with**, or are utilized for, hazardous substances and wastes to or from the leasehold, **regardless of their location**.

...

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“Institutional [controls] **control**” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

...

["Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment, or other person assuming responsibility for the remediation under ISRA and this chapter, to the Department certifying that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with N.J.A.C. 7:26E.]

...

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

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...

"Preliminary assessment" means [the first phase of remediation] **those actions** defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

...

"Remedial investigation" means those actions [to investigate a discharge] defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remediation" or "remediate" means [all necessary] **those** actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

...

"Remediation certification" means a certification prepared pursuant to N.J.A.C. 7:26B-4.3 which, when submitted to the Department by the owner or operator of an industrial establishment, authorizes the owner or operator to transfer ownership or operations prior to the [approval of a negative declaration] **issuance of a final remediation document or a licensed site remediation professional's certification of a remedial action workplan.**

...

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"Remediation standard" means a remediation standard defined as such pursuant to the [Technical Requirements for Site Remediation]**Remediation Standards**, N.J.A.C. [7:26E]**7:26D**.

...

["Restricted use standard" means a remediation standard as defined in N.J.A.C. 7:26E-1.8.]

...

"Site investigation" means [the collection and evaluation of data] **those actions** defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

...

"Unrestricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E[-1.8].

["Unrestricted use standard" means a remediation standard as defined in N.J.A.C. 7:26E-1.8.]

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7:26B-1.5 Forms and submissions

[(a)]Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter[, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B,] by downloading it from the Department's website at www.nj.gov/dep/srp/srra/forms or by contacting the Department at the address [below] **at N.J.A.C. 7:26C-1.6**. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the [following address:

New Jersey Department of Environmental Protection

Bureau of Case Assignment and Initial Notice

401 East State Street, 5th floor

PO Box 434

Trenton, New Jersey 08625-0434

Telephone: (609) 292-2943] **Department pursuant to N.J.A.C. 7:26C-**

1.6.

[(b) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and

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2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.]

7:26B-1.6 Certifications and signatories

Any person submitting an application, **form**, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include a certification that is executed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.5.

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

[(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA

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and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

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

1. The owner's or operator's submission of a remediation certification pursuant to N.J.A.C. 7:26B-[4.3]**3.3(c)**;
2. (No change.)
3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d); **and**
4. [The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e);
5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d); and

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

[(c)](b) The issuance of an authorization letter pursuant to [(c)](a) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial establishment pursuant to ISRA, this chapter and any other applicable law.

7:26B-1.10 Liability for ISRA compliance

(a) (No change.)

(b) An owner or operator shall not transfer ownership or operations of an industrial establishment until:

1. [The Department has issued a no further action letter, or a] **A** licensed site remediation professional has issued a response action outcome[,] for the industrial establishment pursuant to N.J.A.C. 7:26C-6;

2. [The Department has approved or a] **A** licensed site remediation professional has certified a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);

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3. The owner or operator has executed prior to November 4, 2009 a remediation agreement or remediation agreement amendment, or, on or after November 4, 2009, has submitted a remediation certification pursuant to N.J.A.C. 7:26B-[4.3]**3.3(c)**; or

4. The Department has issued an authorization letter to the owner or operator pursuant to N.J.A.C. 7:26B-[1.8(c)]**1.8(a)**:

(c) An owner or operator that is closing operations shall [be required to] amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(a) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to (b)1 or 2 above.

(d) (No change.)

(e) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of this chapter, the landlord or the tenant may petition the Department to seek ISRA compliance from that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of this chapter. The petitioning party shall submit the following to the Department at the address provided at N.J.A.C. 7:26C-[1.5]**1.6**:

(f) - (g) (No change.)

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7:26B-1.11 Civil penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of not more than \$25,000 for [each] **the first offense, and not more than \$50,000 for the second and subsequent offenses.** If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

(b) The Department may assess a civil administrative penalty, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites [rules], at N.J.A.C. 7:26C-9, against any person who violates the requirements of this chapter [to remediate contamination].

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

7:26B-1.12 Confidentiality claims

Any person required to submit any information pursuant to this chapter which in the person's opinion constitutes a trade secret, proprietary information, specific information regarding an ISRA-subject transaction other than the fact that the ISRA-subject transaction has occurred and the general nature of such transaction, or information related

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to national security, may assert a confidentiality claim by following the procedures set forth in N.J.A.C. 7:26C-15.

SUBCHAPTER 2. APPLICABILITY

7:26B-2.1 Operations and transactions not subject to ISRA

(a) The following transactions shall not be considered closing operations or transferring of operations or ownership:

1. Corporate reorganization not substantially affecting the ownership or control of the industrial establishment [in accordance with N.J.A.C. 7:26B-2.2(c)];
2. (No change.)
3. A transaction or series of transactions involving the transfer of stock and/or assets resulting in the merger or de facto merger or consolidation of the indirect owner with another person, when the indirect owner's assets would have been unavailable for remediation [in accordance with N.J.A.C. 7:26B-2.2(b) if the transaction or transactions had not occurred];
4. A transaction or series of transactions involving the transfer of stock and/or assets resulting in a change in the person holding the controlling interest of an indirect owner of an

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industrial establishment, when the indirect owner's assets would have been unavailable for remediation [in accordance with N.J.A.C. 7:26B-2.2(b)] if the transaction or transactions had not occurred;

5. - 22. (No change.)

(b) (No change.)

SUBCHAPTER 3. [GENERAL INFORMATION NOTICE] **NOTIFICATION AND REMEDIATION REQUIREMENTS**

7:26B-3.2 Notification requirements

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice, [to the Department pursuant to N.J.A.C. 7:26B-3.3(a)] **in accordance with (b) below**, within five calendar days after the occurrence of any of the [transactional] events [provided] **listed** below:

1. - 15. (No change.)

[(b) The owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter, when the written notice in (a) above is required to be submitted.

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7:26B-3.3 General information notice

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

1. [The name and location of the site, including street address, city or town, municipality, county, zip code, acreage and geographic boundaries;

2. The tax block and lot numbers of the site;] **Site identification information, including site identification number if known;**

[3.]**2.** [The name, address, and telephone number of the current] **Current property owner identification and contact information;**

[4.]**3.** [The name, address and telephone number of the current] **Current business operator and/or business owner [of the industrial establishment] identification and contact information;**

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Recodify existing 5. - 9. as **4. - 8.** (No change in text.)

[10. A schedule for submission to the Department of the preliminary assessment report, receptor evaluation, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, remedial action report, as applicable, and any other information required by this chapter, as follows:

i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3, and in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.15; or

ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department; except that no schedule may allow for more time than is established in the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3;

11]9. (No change in text.)

[12.]10. The applicable fees required pursuant to N.J.A.C. [7:26B-8.1] **7:26C-4**

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[13.]**11.** Written authorization [pursuant to N.J.A.C. 7:26B-1.9(a); and] **to allow access;**

Recodify existing 14. as **12.** (No change in text.)

[(b) Any person submitting a General Information Notice pursuant to (a) above may submit additional information, including any documentation, workplans and reports required pursuant to this chapter or N.J.A.C. 7:26E, along with the General Information Notice.

(c) For a General Information Notice submitted to the Department prior to November 4, 2009, the Department shall review the General Information Notice, and shall respond in writing to the authorized agent as follows:

1. The Department has determined that the General Information Notice, including any specific applications submitted for the purpose of complying with ISRA, is administratively complete and:

i. The Department shall issue either a no further action letter or authorization letter in accordance with this subchapter; or

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ii. The owner or operator of the industrial establishment is required to complete additional remediation, as specified prior to the Department's issuance of a no further action letter or authorization letter; or

2. The Department has determined that the General Information Notice is administratively incomplete and the person is required to correct any deficiencies or complete additional remediation activities, as specified.

(d) For a General Information Notice submitted to the Department on or after November 4, 2009, the owner or operator shall comply with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.

7:26B-3.4 Revisions to the general information notice or withdrawal of required notice by an owner or operator]

[(a)] **(b)** An owner or operator may withdraw the notice required pursuant to [N.J.A.C. 7:26B-3.2(a)] **(a) above** if the owner or operator determines that none of the transactional events listed in N.J.A.C. 7:26[C]**B**-3.2(a) will occur; provided, however, that any such owner or operator may have statutory liability for conducting the remediation pursuant to other statutes, including, without limitation, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.. The withdrawal of the notice does not alter or affect any statutory liability of the owner or operator for conducting the remediation.

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Recodify existing (b) as **(d)** (No change in text.)

(e) An owner or operator that is closing operations shall amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(b) for any subsequent event listed in N.J.A.C. 7:26B-3.2(a) that occurs prior to the issuance of a final remediation document, or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment.

7:26B-3.3 Remediation requirements

(a) An owner or operator shall remediate the industrial establishment in accordance with this chapter and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, when any of the events listed in N.J.A.C. 7:26B-3.2(a) occur.

(b) An owner or operator or other person who entered into a remediation agreement or a remediation agreement amendment with the Department prior to November 4, 2009, or an owner or operator who submitted a remediation certification to the Department on or after November 4, 2009, shall remediate the industrial establishment in accordance with that agreement or certification, this chapter, and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.

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

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;

2. A certification by the owner or operator of the industrial establishment describing:

i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;

ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;

iii. The requirement of the owner or operator to perform the remediation the Department requires;

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iv. The requirement of the owner or operator to allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A. 13:1K-10;

v. The requirement of the owner or operator to comply with the provisions of the Site Remediation Reform Act, N.J.S.A. 58:10C, and this chapter; and

vi. The requirement of the owner or operator to prepare and submit any document the Department requires for the remediation of the industrial establishment;

3. Evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with N.J.A.C. 7:26C-5; and

4. Evidence of the payment of all applicable fees in accordance with N.J.A.C. 7:26C-4.

7:26B-3.4 Remediation funding source requirements

(a) The owner or operator shall establish and maintain a remediation funding source in accordance with N.J.A.C. 7:26C-5:

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1. Within 30 days of the Department's approval or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment;

2. Upon the submittal of a remediation certification pursuant to N.J.A.C. 7:26B-3.2(c); or

3. In accordance with the terms of a remediation agreement or remediation agreement amendment.

SUBCHAPTER 5 ALTERNATE COMPLIANCE OPTIONS

7:26B-5.3 Regulated underground storage tank waiver

(a) (No change.)

(b) The Department's approval of a regulated underground storage tank waiver application authorizes the owner or operator to close operations or transfer ownership or operations of an industrial establishment prior to [obtaining approval of a remedial action workplan] **the issuance of a final remediation document** or [a negative declaration or] **prior to a licensed site remediation professional's certification of a remedial action workplan, and** without the [approval of a] **submittal of a remediation [agreement] certification** if the only areas of concern

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or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B.

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed [regulated underground storage tank waiver application] **ISRA Alternate Compliance Option Application, available on the Department's website at www.nj.gov/dep/srp/srra/forms**, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department, at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. - 2. (No change.)

3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance[, pursuant to N.J.A.C. 7:26B-5.3(d),] with the provisions of N.J.S.A. 58:10A-21 et seq. [and], N.J.A.C. 7:14B, **N.J.A.C. 7:26C and N.J.A.C. 7:26E** for all underground storage tanks at the industrial establishment that are covered by that act;

4. (No change.)

5. Payment of all applicable fees required pursuant to N.J.A.C. [7:26B-8.1]**7:26C-4**.

(d) (No change.)

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(e) [The Department shall review the regulated underground storage tank waiver application in accordance with N.J.A.C. 7:26B-1.7, and shall either approve the application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E]. **The owner or operator:**

1. May close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the regulated underground storage tank waiver application; or

2. Shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the regulated underground storage tank waiver application.

7:26B-5.4 Remediation in progress waiver

(a) (No change.)

(b) The Department's approval of a remediation in progress waiver application authorizes the owner or operator to close operations or transfer ownership or operations of the industrial establishment prior to [obtaining approval from the Department of a remedial action workplan, a

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negative declaration and without the approval of a remediation agreement] **the issuance of a final remediation document or prior to a licensed site remediation professional's certification of a remedial action workplan and without the submittal of a remediation certification.**

(c) To apply for a remediation in progress waiver, the owner or operator shall submit a completed [remediation in progress waiver application,] **ISRA Alternate Compliance Option Application, available on the Department's website at www.nj.gov/dep/srp/srra/forms** certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. (No change.)

2. A preliminary assessment report and, as applicable, a site investigation report that demonstrates that:

i. There have been no discharges of a hazardous substance or a hazardous waste at the industrial establishment during the owner's or operator's period of ownership or operation; or

ii. Any discharged hazardous substance or hazardous waste that occurred at the industrial establishment during the owner's or operator's ownership or operation

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has been remediated, provided that the owner or operator includes identification of the spill incident numbers and a copy of a final remediation document for the remediation of those discharges;

[2] **3.** Evidence that establishes that the **property occupied by the** industrial establishment **for which the waiver is sought** is [already in the process of a remediation] **being remediated by a prior owner or operator** pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or other applicable state laws and regulations, or the industrial establishment is currently in the process of an equivalent remediation pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable Federal law;

[3. A certification by the owner or operator which includes the following:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, to identify areas of concern in accordance with N.J.A.C. 7:26E and based on the preliminary assessment report and site investigation report:

(1) There has been no discharge of any hazardous substance or hazardous waste during the owner's or operator's period of ownership or operation;

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(2) A discharge of a hazardous substance or hazardous waste occurred during the owner's or operator's period of ownership or operation and the Department approved the remediation;]

4. (No change.)

5. A certification by the owner or operator that:

i. A remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-[7]5; or

ii. (No change.)

6. Payment of all applicable fees required pursuant to [N.J.A.C. 7:26B-8.1] **N.J.A.C. 7:26C-4.**

(d) [The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall either approve the remediation in progress waiver application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or

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operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.] **The owner or operator:**

1. May close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the remediation in progress waiver application; or

2. Shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the remediation in progress waiver application.

7:26B-5.7 Limited conveyance

(a) (No change.)

(b) The Department's approval of a certificate of limited conveyance **shall be valid for three years from the date of issuance and** authorizes the owner of an industrial establishment to transfer [a portion of an] **up to one third the total appraised value of the real property of the** industrial establishment upon the [Department's] **licensed site remediation professional's** issuance of a [no further action letter] **response action outcome** or [approval] **certification** of a remedial action workplan or remediation [agreement] **certification** for the subject portion of the industrial establishment **to be conveyed** without the owner or operator conducting a remediation

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of the entire industrial establishment. [The certificate of limited conveyance shall be valid for three years from the date of issuance.]

(c) To apply for a certificate of limited conveyance, the owner or operator shall submit a completed limited conveyance application **available on the Department's website at www.nj.gov/dep/srp/srra/forms**, certified in accordance with N.J.A.C. 7:26B-1.6; to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. - 8. (No change.)

9. Payment of [all applicable fees required pursuant to N.J.A.C. 7:26B-8.1] **of a fee of \$600.**

(d) The Department shall review the information submitted pursuant to (c) above [in accordance with N.J.A.C. 7:26B-1.7] and shall issue a certificate of limited conveyance for the real property on which an industrial establishment is situated after the Department deems the following criteria to be satisfied:

1. - 3. (No change.)

(e) (No change.)

(f) [Upon] **For the conveyance to occur upon** the Department's disapproval of the limited conveyance application, the owner or operator shall remediate the **entire** industrial establishment

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in accordance with [ISRA and] this chapter **and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.**

(g) - (h) (No change.)

(i) An owner who transfers additional portions pursuant to (h) above shall use the funds paid for those additional portions exclusively for remediating the additional portion(s) transferred pursuant to (h) above. The owner shall deposit any portion of the amount paid that remains unexpended **for remediation** in a remediation trust fund that shall be established pursuant to [N.J.A.C. 7:26C-7] **N.J.A.C. 7:26C-5** and N.J.S.A. 13:1K-11.8(g).

(j) (No change.)

7:26B-5.9 De minimis quantity exemption

(a) An owner or operator to whom the Department grants a de minimis quantity exemption is exempt from the [provisions] **substantive requirements** of this chapter[, except as provided at N.J.A.C. 7:26B-8.1,] based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment. **Such an owner or operator is not exempt from any requirement in any other law or regulation to remediate a discharge.**

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(b) [The] **An** owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:

1. - 4. (No change.)

(c) (No change.)

(d) The total quantity of hazardous substances at an industrial establishment having the NAICS number of 424210[, 446110, 446120,] or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above [shall submit] **may apply for a de minimis quantity exemption by submitting:**

1. A completed de minimis quantity exemption application form **available from the Department on its website at www.nj.gov/dep/srp/srra/forms**, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided [at N.J.A.C. 7:26B-1.5] **on the form, that includes information that identifies the owner or operator and the industrial establishment, describes the quantities and nature of the hazardous substances or hazardous waste generated, manufactured, refined, transported, treated,**

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stored, handled or disposed of at the industrial establishment, and includes a certification that the industrial establishment is not contaminated above any standard set forth in the Remediation Standards, N.J.A.C. 7:26D; and

2. [Submit the applicable] **A fee [in accordance with N.J.A.C. 7:26B-8] of \$300.**

(f) [The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7.]

The owner or operator:

1. [may] May close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application[.] ; **or**

2. Shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the application.

SUBCHAPTER 8. PROGRAM FEES AND OVERSIGHT COSTS

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7:26B-8.1 Fee schedule

[(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance with N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

1.	Area of concern waiver application	\$150.00
2.	Confidentiality claim	\$375.00
3.	De minimis quantity exemption application	\$300.00
4.	Expedited review application	\$225.00
5.	General Information Notice	\$150.00
6.	Limited site review application	\$525.00
7.	Limited conveyance application	\$600.00
8.	Negative declaration review	\$150.00
9.	Preliminary assessment report	\$375.00
10.	Regulated underground storage tank waiver application	\$600.00
11.	Remedial action workplan deferral application	\$975.00
12.	Remediation in progress waiver application	\$225.00
13.	Site investigation report	\$750.00

(b) The cost for the Department review of any remediation document not listed in (a) above shall be assessed pursuant to N.J.A.C. 7:26C-4.5.

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(c) The applicable fees required by (a) above are nonrefundable.

(d) The fees required by (a) above are not one time fees but rather the fees required to perform the review of each specific submittal to the Department.

(e) Any fees required pursuant to (a) above that are subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.] **The owner or operator shall pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4 and this chapter.**

APPENDIX C - ISRA SUBJECT NAICS CODES

Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[113310	Logging	No exceptions or limitations
115210	Support Activities for Animal Production	Limited to farriers]

...

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
...		
221	Utilities	Except Water Supply, Irrigation Systems (NAICS Industry 221310), [and] Sewerage Systems (NAICS Industry 221320), Hydroelectric Power generation (NAICS Industry 221111), and Other Electric Power Generation (NAICS Industry 221119)
...		
[311942	Spice and Extract Manufacturing	Limited to producing table salt by the evaporation of sea water or brine]
...		

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	Except [for] <u>dyeing gloves,</u> <u>woven or knit, for the trade</u> <u>and</u> converters (except broadwoven), who buy fabric goods (except knit goods) in the grey, have them finished on contract, and sell them at wholesale
...		
[314121	Curtain and Drapery Mills	Except operations involved with the production of custom drapes
314129	Other Household Textile Product Mills	Except operations involved with the production of custom slipcovers]

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
314911	Textile Bag Mills	[Except operations involved with the production of textile bags] <u>Limited to operations involved with the manufacture of bags, rubberized fabric.</u>
[314912	Canvas and Related Product Mills	No exceptions or limitations]

...

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
314999	All Other Miscellaneous Textile Product Mills	[Except operations involved with embroidering advertising on shirts for the trade and operations doing rug binding for the trade] Limited to miscellaneous textile product mills involved with the following operations; apparel fillings (e.g., cotton mill waste, kapok) manufacturing, appliquéing on textile products (except apparel), art needlework for the trade, batts and batting (except nonwoven fabrics) manufacturing, beading on textile products (except apparel) for the trade, burnt-out laces manufacturing, cotton battings (except nonwoven batting) manufacturing, crochet ware made from purchased materials, decorative stitching on textile articles and apparel,

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
		<p>(except nonwoven textile), upholstery, manufacturing, fire hose, textile, made from purchased materials, garnetting of textile waste and rags, padding and wadding (except nonwoven fabric) manufacturing, processing of textile mill waste and recovering fibers, quilting of textiles, reclaimed wool processing, recovered fibers processing, stitching, decorative and novelty, on textile articles and apparel, textile fire hose made from purchased material, upholstering filling (except nonwoven fabric) manufacturing, weatherstripping made from purchased textiles and wool waste processing</p>

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315211	Men's and Boys' Cut and Sew Apparel Contractors	[Except men's and boys' apparel contractors producing men's and boys' shirts, except work shirts, fur goods, robes and dressing gowns, waterproof outerwear, leather and sheep-lined clothing, and apparel belts] Limited to the following men's and boys' cut and sew apparel contractors; appliquing, art needlework, buttonhole making, buttonholing and button covering, decorative stitching, dress and semidress gloves, leather, eyelet making, leather gloves or mittens (except athletic), hemstitching, novelty stitching, pleating, stitching decorative and novelty and work leather gloves.

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	[Except women's, girls' and infants' apparel contractors producing brassieres, girdles, and allied garments, fur goods, robes and dressing gowns, waterproof outerwear, leather and sheep- lined clothing, and apparel belts] Limited to the following women's, girl's and infant's, cut and sew apparel contractors; appliquéing, art needlework, buttonhole making, buttonholing and button covering, decorative stitching, dress and semidress gloves, leather, eyelet making, leather gloves or mittens (except athletic), hemstitching, novelty stitching, pleating, stitching decorative and novelty and work leather gloves

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	Except operations, other than contract operations, involved in the production of robes and dressing gowns
315222	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing	Except custom tailors and operations, other than those working under contract, involved in the production of waterproof outerwear (men's and boys' water resistant or water repellent tailored overcoats, except made from rubberized fabric, plastics, etc.
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	Except custom tailors and operations, other than those working under contract, involved in the production of men's and boys' shirts, except work shirts

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315224	Men's and Boys' Cut and Sew Trousers, Slacks and Jeans Manufacturing	No exceptions or limitations
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing	No exceptions or limitations
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (men's and boys' water resistant or water repellent nontailored outerwear, except made from rubberized fabric, plastics, etc.)

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	Except for operations, other than those working under contract, involved in the production of brassieres, girdles, and allied garments, and robes and dressing gowns
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing	No exceptions or limitations
315233	Women's and Girls' Cut and Sew Dress Manufacturing	Except for retail custom dressmakers

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (women's and girls' water resistant or water repellent tailored coats, except made from rubberized fabric, plastics, etc.)
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (other women's and girls' water resistant or water repellent nontailored outerwear, except made from rubberized fabric, plastics, etc.)

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315291	Infants' Cut and Sew Apparel Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (infants' waterproof outerwear made from rubberized fabric, plastics, etc.)]

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315299	All Other Cut and Sew Apparel Manufacturing	[Except for operations, other than those working under contract, involved in the production of waterproof outerwear (men's, boys', women's, and girls' waterproof outerwear made from rubberized fabric, plastics, etc.)] <u>Limited to the following cut and sew apparel manufacturing; pants, rubber and rubberized fabric, made in the same establishment as the basic materials, pants, vulcanized rubber, manufacturing, raincoats, rubber or rubberized fabric, manufacturing</u>
[315991	Hat, Cap, and Millinery Manufacturing	No exceptions or limitations]

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315992	Glove and Mitten Manufacturing	[No exceptions or limitations] Limited to the following glove and mitten manufacturing; gloves, leather (except athletic, cut and sewn apparel contractors), manufacturing, leather gloves or mittens (except athletic, cut and sewn apparel contractors) manufacturing, mittens, leather (except apparel contractors), manufacturing, and work gloves, leather (except apparel contractors), manufacturing
[315993	Men's and Boys' Neckwear Manufacturing	No exceptions or limitations]

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315999	Other Apparel Accessories and Other Apparel Manufacturing	[Except for operations, other than those working under contract, involved in the production of apparel belts and waterproof outerwear (accessories, such as aprons, bibs, and other miscellaneous waterproof items, made from rubberized fabric, plastics, etc.)] Limited to the following other apparel accessories and other apparel manufacturing; bathing caps, rubber, manufacturing
...		
323	Printing and Related Support Activities	Except for operations involved in photocopying and duplicating services [(quick printing)] other than printing.

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
...		
[424940	Tobacco and Tobacco Product Merchant Wholesalers	No exceptions or limitations]
...		

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[425110	Business to Business Electronic Markets	Limited to industries serving as agents and brokers of goods using the internet or other electronic means to bring buyers and sellers together and dealing with the following goods: drugs, drug proprietaries, and druggists' sundries, plastics materials and basic forms and shapes, chemicals and allied products, not elsewhere classified, petroleum and petroleum products wholesalers, except bulk stations and terminals, farm supplies, tobacco and tobacco products and paints, varnishes, and supplies

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
425120	Wholesale Trade Agents and Brokers	Limited to industries serving as agents and brokers of goods dealing with the following goods: drugs, drug proprietaries, and druggists' sundries, plastics materials and basic forms and shapes, chemicals and allied products, not elsewhere classified, petroleum and petroleum products wholesalers, except bulk stations and terminals, farm supplies, tobacco and tobacco products, paints, varnishes, and supplies
442	Furniture and Home Furnishings	Limited to custom picture framing shops

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
443	Electronic and Appliance Stores	Limited to operations involved with both the retail sales of new refrigeration and air-conditioning and electrical and electronic equipment, not elsewhere classified and the repair of same where repair services is the major source of receipts
444130	Hardware Stores	Limited to operations involved with both the retail sales of new power tools and the repair of same where repair services is the major source of receipts]
444220	Nurseries, Garden Centers, and Farm Supply Stores	Limited to operations selling [goods] farm supplies primarily to industrial, commercial, institutional or farm customers (business customers), and not to members of the general public

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<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[446110	Pharmacies and Drug Stores	Limited to operations selling drugs, drug proprietaries, and druggists' sundries primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
446120	Cosmetics, Beauty Supplies, and Perfume Stores	Limited to operations selling cosmetics and beauty supplies primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public

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<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
446191	Food (Health) Supplement Stores	Limited to operations selling vitamins primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
453991	Tobacco Stores	Limited to operations selling tobacco products primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	Limited to operations selling plastic materials and basic forms and shapes primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public]

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
...		
[488119	Other Airport Operations	Limited to the vacuuming of runways
488210	Support Activities for Rail Transportation	Limited to operations involved with the rental of railroad cars including grain leveling in railroad cars, grain trimming for railroad equipment, precooling of fruits and vegetables in connection with transportation, and railroad car cleaning, icing, ventilating, and heating]
...		
[488490	Other Support Activities for Road Transportation	Limited to sanitary services, specifically snow plowing and sweeping streets and highways

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
488991	Packing and Crating	No exceptions or limitations]
493	Warehousing	Limited to establishments storing raw materials for other establishments of the same enterprise
511	Publishing Industries	Except direct mail advertising services[specifically], mailing list compilers, [and] publishing of prepackaged software and publishing locations where no printing operations have ever been conducted

...

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<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[516	Internet Publishing and Broadcasting	Except internet broadcasting of special interest web sites, entertainment sites, and interactive game sites)
532	Rental and Leasing	Limited to the rental of railroad cars]
541710	Research and Development in the Physical, Engineering, and Life Sciences	Except for commercial physical, engineering and biological research and development on a contract or fee basis and noncommercial research organizations (physical, engineering, and life sciences) [performed on a contract or fee basis]
...		
[561710	Exterminating and Pest Control Services	Limited to mosquito eradication

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
561790	Other Services to Buildings and Dwellings	Limited to the cleaning of parking lots and driveways and furnace, duct, gutter, and drain cleaning services]
...		
[562219	Other Nonhazardous Waste Treatment and Disposal	No exceptions or limitations
562910	Remediation Services	Except special trade contractors performing asbestos abatement and lead paint and removal
562920	Materials Recovery Facilities	No exceptions or limitations]
...		
562998	All Other Miscellaneous Waste Management Services	[No exceptions or limitations] Limited to tank cleaning and disposal services, commercial or industrial
...		

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[811211	Consumer Electronics Repair and Maintenance	Except radio and television repair shops (stereo, tv, vcr, and radio repair) and camera repair]
811212	Computer and Office Machine Repair and Maintenance	Limited to [business and office machine repair, electrical and]refilling or recycling ink jet cartridges
[811213	Communication Equipment Repair and Maintenance	Limited to electrical and electronic repair shops not elsewhere classified, specifically telephone set repair
811219	Other Electronic and Precision Equipment Repair and Maintenance	Except precision equipment repair shops]

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	[No exceptions or limitations] Except repair and maintenance service of the following; commercial refrigeration, and freezer equipment, truck refrigeration equipment and welding repair service.
[811411	Home and Garden Equipment Repair and Maintenance	Except lawnmower repair shops
811412	Appliance Repair and Maintenance	Except repair shops and related services not elsewhere classified specifically gas appliance repair services, stove repair shops, and other non-electrical appliance repair]

...

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Subsector or

<u>Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
811490	Other Personal and Household Goods Repair and Maintenance	Limited to[boat building and repairing (pleasure boat repair and repair shops and related services, not elsewhere classified (except industrial, electronic, home and garden, appliance, and leather goods repair)] pleasure boat, repair and maintenance services without retailing new boats.

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7:26C. ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF
CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope of subchapter

(a) This subchapter establishes the administrative procedures and requirements for the remediation of a contaminated site, including:

1. - 2. (No change.)

3. [Exemptions]**Applicability and exemptions, N.J.A.C. 7:26C-1.4;**

4. - 5. (No change.)

6. Public notification, N.J.A.C. 7:26C-1.7;

7. Right of entry and inspection, N.J.A.C. 7:26C-1.8;

[6.] **8. Liberal construction, N.J.A.C. 7:26C-[1.7]1.9;** and

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[7.] **9.** Severability, N.J.A.C. 7:26C-[1.8]**1.10.**

7:26C-1.2 General requirements

[(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with all applicable statutes, rules, and guidance, including, but not limited to, the Remediation Standards rules, N.J.A.C. 7:26D, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, this chapter and the Department's guidance at www.nj.gov/dep/srp/srra/guidance.]

(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with the following:

1. All applicable New Jersey statutes, including:

i. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; and

ii. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4.

2. All applicable New Jersey rules, including, without limitation:

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i. This chapter;

ii. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;

iii. The Remediation Standards rules at N.J.A.C. 7:26D; and

iv. Any other applicable standards adopted pursuant to law; and

3. By applying any available and appropriate technical guidance concerning site remediation as issued by the Department. The Department's technical guidance can be found on the Department's website, www.nj.gov/dep/srp/srra/guidance. When there is no specific technical guidance issued by the Department or in the judgment of a licensed site remediation professional the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements of (a)1 and 2 above, the person responsible for conducting the remediation may use the following additional guidance, provided that the person includes in the appropriate report a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements of (a)1 and 2 above, and justifies the acceptability of the guidance or methods that were utilized:

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i. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and

ii. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of the public health and safety, and of the environment.

[(b) Any person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4.]

7:26C-1.3 Definitions

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

...

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to N.J.S.A. 58:10B-25.1.

...

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"Deed notice" means a document [defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.] **that is identical in wording to the model deed notice found N.J.A.C. 7:26C, Appendix D, except where the model deed notice indicates that property-specific information is to be inserted.**

...

"Environmentally sensitive natural resource" means all resources defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

...

"Green remediation" means the practice of considering all environmental effects of the remediation and incorporating options that maximize the net environmental benefit of cleanup actions.

"Ground water classification exception area" means any area defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

...

"Immediate environmental concern" means [a condition] **any such concern as** defined [as such pursuant to] **in** the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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...

"Innovative remedial action technology" means a [technology defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8] **new or alternative method, procedure or process that does not have a substantial operational record. An innovative remedial action technology with a substantial operational record in one field could be considered innovative if it is proposed for a new or different environmental problem.**

...

"Linear construction project" means construction and development activities within an area such as a public or private roadway, railroad, or utility line and the rights-of-way thereto that are undertaken to create, maintain or alter the public or private roadway, railroad or utility line that:

- 1. Includes one or more contaminated properties, or parts of properties; and**
- 2. Will generate more than 200 cubic yards of contaminated soil for fill or disposal during the duration of the linear construction project.**

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...

"Permittee" means the person responsible for conducting the remediation, and includes a statutory permittee.

...

"Regulated underground storage tank [system]" means an underground storage tank [system] as defined pursuant to the Underground Storage Tank rules[,] at N.J.A.C. 7:14B 1.6.

...

"Remedial action workplan" or "RAW" means a plan defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E[-1.8].

...

"Remediation costs" means all costs associated with **conducting the preliminary assessment, site investigation, remedial investigation, feasibility study when applicable, and remedial action, including** the development and implementation of a remediation including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs, **and costs incurred by a certified public accountant or an independent auditor pursuant to N.J.A.C. 7:26C-4.10.** Such costs, when applicable, shall include, without

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limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and [legal,] administrative and capital costs. **Certain legal costs may be considered remediation costs to the extent that they are directly supporting the remediation, but remediation costs shall not include those legal costs associated with: recovery of costs expended on remediation, compelling a party to take part in the remediation, and defense against a Department enforcement action. Remediation costs do not include interest on monies owed.**

...

["Restricted use standard" means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.]

"Sanitary landfill" or "landfill" means a [solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that the term sanitary landfill shall not include any waste facility approved for disposal of hazardous waste regulated pursuant to N.J.A.C. 7:26G. A facility is a sanitary landfill regardless of when solid waste was deposited or whether the facility was properly registered, permitted, approved or otherwise authorized to conduct such activity, by

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the Department or other State agency] **sanitary landfill as defined in the Solid Waste rules at N.J.A.C. 7:26-1.4.**

...

"State fiscal year" means July 1 through June 30.

"Statutory permittee" means a person who subsequently becomes an owner, operator, or tenant of a site for which the Department has issued a remedial action permit pursuant to this chapter; provided however, that the Department may terminate a person's status as a statutory permittee if that person follows the applicable procedures in this chapter.

...

"Technical guidance" means the technical guidance defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

...

["Underground storage tank" means an underground storage tank as defined pursuant to the Underground Storage Tank rules, at N.J.A.C. 7:14B-1.6.]

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...

["Unrestricted use standard" means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.]

7:26C-1.4 [Exemptions]**Applicability and exemptions**

(a) Except as provided in (c) and (d) below, each of the following persons shall comply with this chapter:

1. Each person who has executed or is otherwise subject to a judicial or administrative order, a judicial consent judgment, an administrative consent order, a memorandum of understanding, a remediation agreement, or any other legally binding document with the Department for the remediation of a contaminated site;

2. Each owner and operator of a regulated underground storage tank who is liable for the remediation pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;

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

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4. Each person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, for any hazardous substance that was discharged, including, without limitation:

i. Each owner of the real property where the discharge occurred at the time of the discharge;

ii. Each subsequent owner of the real property where the discharge occurred prior to the filing of a final remediation document with the Department;

iii. A holder of a security interest in the site, who actively participated in the management of the site or regulated underground storage tank that was the subject of a remedial action that includes an engineering and/or institutional control;

iv. A holder of a security interest in the site, who negligently caused a new discharge at the site after the date of foreclosure on a security interest in the site or the regulated underground storage tank that was the subject of the remedial action that includes an engineering and/or institutional control; or

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v. A statutory permittee during that person's ownership, tenancy, or operation, depending on that person's continuing liability for the remediation pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g.;

5. The person responsible for conducting the remediation when:

i. The Department rescinds a no further action letter or invalidates a response action outcome; or

ii. The licensed site remediation professional rescinds his or her own response action outcome; and

6. Any other person who is responsible for remediating a site pursuant to N.J.S.A. 58:10-23.11g.

(b) If more than one person is responsible for conducting the remediation of a contaminated site, each such person is jointly and severally liable for compliance with this chapter.

[(a)](c) The requirements of this chapter do not apply to any person who is:

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1. **Not listed in (a), above, and who is** [Conducting] **conducting** due diligence in accordance with N.J.S.A. 58:10B-1.3d(2);

2. Remediating a **sanitary** landfill, unless:
 - i. The **sanitary** landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;

 - ii. When **sanitary** landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, a Brownfield Redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or

 - iii. (No change.)

3. [Responding to a discharge pursuant to a discharge prevention, containment, and countermeasures plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility;

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4.] Remediating a discharge pursuant to a New Jersey Pollutant Discharge Elimination System Underground Injection Control permit issued pursuant to N.J.A.C. 7:14A[; or].

[5.](d) [Remediating] **The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank [except that the requirements of N.J.A.C. 7:26C-4 and 13 shall apply to a person responsible for remediating a discharge from an unregulated heating oil tank] is exempt from the requirements at N.J.A.C. 7:26C-2.3 to use the services of a licensed site remediation professional or to submit documents to the Department and is not subject to the mandatory timeframes in N.J.A.C. 7:26C-3.**

[(b)](e) Unless notified in writing by the Department that additional remediation is necessary, [a] **the person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirements at N.J.A.C. 7:26C-[2.4]2.3 to use the services of a licensed site remediation professional or to submit documents to the Department:**

1. A petroleum surface spill of less than 100 gallons that does not reach the waters of the State of New Jersey **provided that:**

i. Any contamination is remediated within 90 days after the occurrence of the spill; and

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ii. The person responsible for conducting the remediation documents, at the time of the spill, his or her specific knowledge of the date and volume of the spill;

2. - 3. (No change.)

(f) Any governmental entity that is not liable under N.J.S.A. 58:10-23.11g.d(4) shall be exempt from paying the initial annual remediation fee and subsequent annual remediation fees as required by N.J.A.C. 7:26C-4.3(a)3 through 5, and instead, shall pay annual remediation fees pursuant to N.J.A.C. 7:26C-4.3(a)7.

7:26C-1.5 Certifications

(a) The person responsible for conducting the remediation [of a site pursuant to N.J.A.C. 7:26C-2.3(b) and 2.4] shall:

1. (No change.)

2. Ensure that each form submitted to the Department by [the] **that** person or by a licensed site remediation professional on behalf of [the] **that** person is certified by a licensed site remediation professional in accordance with the applicable form.

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[(b) The person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a) shall certify all submissions as follows:

1. For all documents that are required to be certified pursuant to the applicable provisions of the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, the person responsible for conducting the remediation shall include the following certification with the document:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. In addition to the certification requirement in (b)1 above, the person responsible for conducting the remediation of a site who is required to establish a remediation funding

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source pursuant to N.J.A.C. 7:26C-5 shall include the following certification with the remediation funding source instrument:

"I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties."

[(c)](b) The **person responsible for conducting the remediation shall ensure that the** certifications required in (a) [and (b)] above, [shall be] **are** signed and dated original certifications, **and** not photocopies.

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[(d)](c) The **person responsible for conducting the remediation shall ensure that the** [person submitting a]certification required by [either] (a)[or (b)] above [shall ensure that the certification] is signed as follows:

1. - 3. (No change.)

[(e)](d) **The person responsible for conducting the remediation may have that person's** [A] duly authorized representative [of the person described in (d)1 through 3 above may] sign the certification required in (a) [or (b)] above. A person is deemed to be a duly authorized representative only if:

1. The authorization is made in writing by a person described in [(d)](c) above;

2. - 4. (No change.)

7:26C-1.6 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, by downloading it from the Department's website at www.nj.gov/dep/srp/srra/forms or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications

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and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

New Jersey Department of Environmental Protection

Bureau of Case Assignment and Initial Notice

Mail Code 401-05H

401 East State Street, 5th floor

PO Box [434]**420**

Trenton, New Jersey 08625-[0434]**0420**

[Telephone: (609) 292-2943

(b) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and
2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is

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functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.]

(b) The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as follows:

1. One electronic copy on compact disk (CD) in Adobe portable document format (PDF), or in another format determined by the Department, of:

- i. All forms, applications, documents and laboratory data deliverables; and**
- ii. All required maps that are less than or equal to 11 x 17 inches. Maps in excess of this size shall be submitted on paper;**

2. One electronic copy of all full laboratory data deliverables on compact disk (CD) in Adobe portable document format (PDF) or in another format determined by the Department, and additionally, one paper copy of all full laboratory deliverables for potable water, vapor intrusion (sub-slab, indoor, and ambient), polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans (PCDDs/PCDFs), and hexavalent chromium soil sample results;

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3. Except where a final remediation document for unrestricted use is filed with the Department within one year after the date of discovery of the discharge, one electronic copy of all sampling data electronically in a summary table using the format in the Electronic Data Interchange Manual in effect as of the date the report is submitted. The Electronic Data Interchange Manual is available at the Department's website at <http://www.nj.gov/dep/srp/hazsite/docs>; and

4. One electronic copy of all GIS compatible maps prepared in accordance with guidance available at the Department's website at <http://www.nj.gov/dep/srp/guidance/techgis/>.

(c) Within 90 days after the date that the Department informs the public, by a notice in the New Jersey Register, that an electronic portal is available, the person responsible for conducting the remediation shall submit to the Department via the electronic application all forms, applications and documents required by this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E electronically.

7:26C-1.7 Notification and public outreach

(a) 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

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the Department by following the requirements of the Discharge of Petroleum and Other Hazardous Substances rules at N.J.A.C. 7:1E-5.

(b) The person responsible for conducting the remediation shall immediately notify the Department hotline at 1-877 WARNDEP or 1-877-927-6337 when either of the following is identified at a site:

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

2. An immediate environmental concern.

(c) The person 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 Department hotline at 1-877-WARNDEP (1-877-927-6337).

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

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1. A discharge of a hazardous substance, or the discovery of a discharge of a hazardous substance pursuant to N.J.A.C. 7:1E-5.7; or

2. The owner or operator of a regulated underground storage tank:

i. Determines that there has been a known or suspected discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-6 or 7;

ii. Is required to close a regulated underground storage tank, pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d), 9.2 or 9.3; or

iii. Is otherwise required to conduct a site investigation pursuant to N.J.A.C. 7:14B.

(e) The person responsible for conducting the remediation shall provide the notification and any updates, and the fact sheet and any updates required in (h), (k), (l), (n) and (o) below in English. Additionally, where the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners or tenants in the area within 200 feet of the site boundary, the notification and any updates, and the fact sheet and any updates shall also be provided in that predominant non-English language;

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(f) The person responsible for conducting the remediation shall include contact information for the person responsible for conducting the remediation and the name and telephone number for the licensed site remediation professional of record for the site in the notification and any updates, and the fact sheet and any updates required in (h), (k), (l), (n) and (o) below.

(g) To document compliance with this section, the person responsible for conducting the remediation shall submit one copy of each of the following in the subsequent applicable remedial phase report:

- 1. The notification letter and any updates;**
- 2. The public notification fact sheet and any updates, and the list of recipients required at (h) below and (l) below;**
- 3. The display advertisement required at (l)3 below or a photograph of the notification sign required in (h) below; and**
- 4. The appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms.**

(h) The person responsible for conducting the remediation shall:

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1. Provide site specific information and documents related to the remediation at a site or area of concern when requested by the Department, including information pertaining to field sampling activities; and

2. Within 14 days prior to commencing field activities associated with the remedial action, provide notification to any local property owners and tenants who reside within 200 feet of the contaminated site, and to the government entities noted in (h)2iii below. The notification shall summarize site conditions and describe the activities that are to take place to remediate the site and shall either be in the form of written correspondence or the posting of a sign visible to the public, which shall be located on the boundaries of the contaminated site. The person responsible for conducting the remediation shall also:

i. Send a notification letter to each local property owner and tenant to whom notification was sent pursuant to (h)2 above that describes the current condition and progress of the remediation every two years until the required remediation is completed and the final remediation document is filed with the Department;

ii. If a sign is utilized, post and maintain the sign until such time as the required remediation is completed and the final remediation document is filed with the Department; and

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iii. Submit one copy of the notification letter and list of recipients required in (h)2i above or a photograph of the notification sign required in (h)2ii above to the local government entities as follows:

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

(2) The county health department and the local health agency.

(i) The person responsible for conducting the remediation shall provide a copy of the remedial action workplan and any updates or status reports, and a copy of the site health and safety plan to the clerk of the municipality, county health department, and local health agency for the municipality and county in which the site is located, when requested.

(j) The person responsible for conducting the remediation of any unregulated heating oil tank system or the person responsible for conducting an emergency response action shall only comply with the notification requirements of (a) through (d) above.

(k) 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 raise the topographic level in a floodplain, the person shall:

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1. Obtain the Department's prior written approval;

2. Comply with the N.J.A.C. 7:26E-5.2; and

3. Provide notification, which includes the type and concentrations of contaminants in the fill material, the proposed use of the fill and the controls designed to reduce or eliminate exposure, to the following:

i. Each owner of real property 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 municipal clerk of each municipality in which the site is located; and

v. The county health department and local health agency.

(l) Except as provided in (l)4ii and (m) below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall

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prepare, distribute and publish a fact sheet, which shall include a description of the site's industrial history, source(s) of contamination, description of contamination, current remedial status, proposed remedial actions with a schedule, extent of contamination actions performed to minimize the impact to the public, and a list of online resources for information about the contaminants, as follows:

1. Prepare and distribute the fact sheet within 14 days after the determination that contamination has migrated off site;

2. Distribute the fact sheet to 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 and to the following government entities:

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

ii. The county health department and local health agency;

3. Publish the fact sheet, or a fact sheet template available at www.nj.gov/dep/srp/srra/guidance that has been updated with site specific information, as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site, within 30 days after the determination that contamination has migrated off site;

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4. For soil contamination:

i. The fact sheet shall be updated to include current contaminant extent, redistributed to the parties listed in (l)2 above and republished as described in (l)3i above within 90 days of complete delineation; and

ii. If the contamination has affected only 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. The notice shall describe the nature and extent of the contamination; and

5. For ground water contamination, conduct the public notification pursuant to the requirements of N.J.A.C. 7:26C-7.3 when the Department establishes a ground water classification exception area.

(m) If only contamination from historic fill migrates off site onto an adjacent property, the person responsible for conducting the remediation is exempt from the requirements of (l) above.

(n) Unless under direct oversight pursuant to N.J.A.C. 7:26C-14, the person responsible for conducting the remediation may implement a public notification and outreach plan that

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is different from the requirements set for the in (g), (h) and (l) above if that plan is prepared by a licensed site remediation professional and adequately provides notifications and public outreach substantially equivalent to the public notification otherwise required in (g), (h) and (l) above. The person responsible for conducting the remediation shall include in the applicable remedial phase report that is submitted to the Department the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice.

(o) The person responsible for conducting the remediation shall conduct additional public outreach based on the needs expressed by the community if the Department determines that:

1. Additional outreach is needed due to site-specific circumstances. This shall include responding to public inquiries either received by the person responsible for conducting the remediation directly or received by the Department and sent to the person responsible for conducting the remediation; or

2. There is substantial public interest based on a petition containing the signatures of 25 or more people who live or work within 200 feet of the extent of contamination or the property boundary, whichever is greater, and the Department notifies the person responsible for conducting the remediation of its determination and posts a summary of this determination on the Department's web site at www.state.nj.us/dep.

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(p) If the person responsible for conducting the remediation is in compliance with 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 CFR Part 300, then that person shall only comply with (a) through (d) above.

(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. Submit copies of all reports or workplans, for preliminary assessments, site investigations, remedial investigations and remedial actions, to the Pinelands Commission concurrently with submission of each such document to the Department;**
- 2. Submit, for approval, a copy of the remedial action workplan or remedial design and construction documents and a completed Pinelands application to the Pinelands Commission prior to implementing a remedial action;**
- 3. Not commence any construction activity at the site until the Pinelands Commission approves the remediation in writing; and**

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4. Send the information required pursuant to this subsection to the Pinelands

Commission at the following address:

The Pinelands Commission

P.O. Box 359

15 Springfield Road

New Lisbon, NJ 08064

7:26C-1.8 Right of entry and inspection

(a) The owner, operator or tenant of a contaminated site shall allow entry to the site by the Department and its authorized representatives, upon the presentation of credentials, to inspect the site, buildings and records related to environmental issues and to take samples from the site, photograph the site and the buildings, and to make copies of the records. If samples are taken, the owner, operator or tenant may request that the Department provide split samples.

(b) The owner, operator or tenant of a contaminated site, a party to a remediation agreement, or a person who has submitted a remediation certification shall, as necessary:

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1. Have appropriate technical, scientific, and engineering representatives accompany the Department and its authorized representative during the inspection;

and

2. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection.

Recodify existing 7:26C-1.7 and 1.8 as **7:26C-1.9 and 1.10** (No change in text.)

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

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

1. Criteria for determining when a person [has initiated remediation] **is required to remediate a site**, in N.J.A.C. 7:26C-2.2; **and**

2. Requirements for a person who [initiated remediation prior to November 4, 2009], **is responsible for conducting remediation** in N.J.A.C. 7:26C-2.3[;

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3. Requirements for a person who initiated remediation on or after November 4, 2009, in N.J.A.C. 7:26C-2.4; and

4. Requirements for a person to retain records, in N.J.A.C. 7:26C-2.5].

7:26C-2.2 Criteria for determining when a person [has initiated remediation] **is required to remediate a site**

[(a) A person has initiated remediation prior to November 4, 2009 only when the criteria in both (a)1 and 2 below have occurred prior to November 4, 2009.

1. A person has notified the Department of a discharge or an obligation to remediate prior to November 4, 2009, pursuant to:

i. The Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E-5;

ii. The Underground Storage Tanks rules, N.J.A.C. 7:14B-7.3; or

iii. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2; and

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2. The person has continuously conducted the remediation since the person notified the Department pursuant to one of the rules cited in (a)1 above.

(b) A person initiates remediation on or after November 4, 2009 when a person initiates or resumes remediation in response to any of the following which occur on or after November 4, 2009:

1. The person takes over the remediation from any other person or from the Department;

2. The person submits a document to the Department concerning a site for which the Department has rescinded a no further action letter or has invalidated a response action outcome, prior to the submission of the document;

3. The person discovers or becomes liable in any way for a discharge;

4. The owner or operator of a regulated tank system:

i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B; or

ii. Is required to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.21;

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5. The person is liable for compliance with the Industrial Site Recovery Act rules pursuant to N.J.A.C. 7:26B-1.10; or

6. When additional remediation or other activities would result in the need to file a new deed notice or replace a declaration of environmental restrictions, associated with the real property.]

(a) Unless exempted pursuant to N.J.A.C. 7:26C-1.4(c) or (d), a person shall remediate a site in accordance with this chapter when:

1. The person discharges a hazardous substance or otherwise becomes in any way responsible pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10.23-11g for a discharge;

2. The owner or operator of a regulated underground storage tank:

i. Determines there has been a discharge or suspects there has been a discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-7.2; or

ii. Undertakes closure of a regulated underground storage tank pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.2(a)1; or

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iii. Is required to conduct an unknown source investigation pursuant to N.J.A.C.

7:14B-7.4;

3. Any of the events described in the Industrial Site Recovery Act Rules at N.J.A.C.

7:26B-3.2(a) occurs;

4. The person discovers a discharge on property that person owns;

5. A no further action letter is rescinded or a response action outcome is invalidated;

6. The Department determines that additional remediation is necessary after the Department has issued a remedial action permit for a remedial action; or

7. The person has executed or is otherwise subject to a judicial or administrative order, a judicial consent judgment, an administrative consent order, a memorandum of understanding, a remediation agreement, or any other oversight document for the remediation of a contaminated site.

[7:26C-2.4] **7:26C-2.3** Requirements for [a] **the person responsible for conducting the remediation** [who initiated remediation on or after November 4, 2009]

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(a) [Any person who initiates remediation on or after November 4, 2009] **Upon the occurrence of any of the events listed in 2.2(a) above, the person who is responsible for conducting the remediation at a site pursuant to N.J.A.C. 7:26C-1.4(a) shall:**

1. Hire a licensed site remediation professional, **unless:**

i. **The remediation is being conducted partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation;**

ii. **The remediation is being conducted on a site that is listed on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation; or**

iii. **The remediation is being conducted at a Federal facility.**

2. Notify the Department, on a [Licensed Site Remediation Professional Notification of Retention or Dismissal] form [available from the Department on its] **found on the Department's** website at www.nj.gov/dep/srp/srra/forms, of the name and license

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information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation, **including the number of contaminated areas of concern and impacted media known at the time the form is submitted and determined pursuant to N.J.A.C. 7:26C-4.3(b)2 below**[. The person shall submit this notification], within 45 days after [the date]:

[i. Of the occurrence of the earliest of the events listed at N.J.A.C. 7:26C-2.2(b);

ii. The person receives written approval from the Department of that person's request to continue remediation without the Department's pre-approval pursuant to N.J.A.C. 7:26C-2.3(b); or

iii. The person receives written notification from the Department that the Department is taking direct oversight of the remediation of the site, area of concern, or site condition pursuant to N.J.S.A. 58:10C-27]

i. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurred prior to November 4, 2009;

ii. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurred between November 4, 2009 and May 7, 2012, the date of that occurrence;

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iii. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurs after May 7, 2012, the date of that occurrence; or

iv. If a different licensed site remediation professional is hired to replace the licensed site remediation professional about whom the person notified the Department pursuant to (a)2i. through iii. above prior to the issuance of a response action outcome, the date of hiring of the new licensed site remediation professional;

3. Conduct the remediation [of the discharge]:

i. Without prior Department approval, except [if the Department has undertaken direct oversight of a site, area of concern or site condition pursuant to N.J.S.A. 58:10C-27]:

(1) If the Department directs otherwise;

(2) If the person is remediating the site, area of concern or site condition pursuant to N.J.A.C. 7:26C-14;

(3) If the remediation is being conducted pursuant to (a)1i, ii or iii above;

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(4) If the site is suspected or known to be contaminated with anthropogenic radionuclide contamination of any media; or

(5) For an immediate environmental concern, for the implementation of an engineered response action pursuant to N.J.A.C. 7:26E-1.11(a)6;

ii. In accordance with [all applicable statutes, and rules and guidance] **N.J.A.C. 7:26C-1.2(a)**; and

iii. [Address] **By addressing** all deficiencies identified by the Department in any submittals made by the person or by a licensed site remediation professional on behalf of the person;

4. - 6. (No change.)

7. Provide the Department copies of all applicable documents concerning the remediation as required by this chapter, **and** by the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, [and guidance,] or upon request of the Department;

8. - 9. (No change.)

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(b) A person responsible for conducting the remediation who has been conducting the remediation without a licensed site remediation professional prior to May 7, 2012 and is required to conduct the remediation using a licensed site remediation professional as of the effective date of this chapter shall comply with (a) above.

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.2 Regulatory timeframes

(a) The person responsible for conducting the remediation **who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 5** shall comply with the regulatory timeframes established by all applicable statutes, rules and guidance, including, but not limited to, the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter.

(b) (No change.)

(c) The request for an extension of a regulatory timeframe submitted in accordance with (b) above shall be deemed to be approved by the Department unless the Department notifies the person in writing that the extension request is denied.

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1. If the Department denies the extension request, the period between the date the Department received the extension request and the date the Department denies the request shall not be considered when determining whether the person responsible for conducting the remediation is in compliance with any regulatory timeframe.

(d) (No change.)

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation **who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 5** shall:

1. If required to conduct a preliminary assessment and site investigation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or a site investigation pursuant to the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., submit the preliminary assessment and/or site investigation report, as applicable, within two years from the later of the following dates:

i. March 1, 2010; or

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- ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2[(b)](a)**1 through 6** occurs;

2. Submit the initial receptor evaluation report containing the information required by N.J.A.C. 7:26E-1.[13]**12** through 1.[19]**16** known at the time the report is submitted within two years from the later of the following dates:
 - i. March 1, 2010; or

 - ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2[(b)](a)**1 through 6** occurs;

3. Initiate immediate environmental concern contaminant source control and submit an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-[1.14] **1.11**, no later than two years from the later of the following dates:
 - i. March 1, 2010; or

 - ii. The date the person was required to report the immediate environmental concern to the Department pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-[1.14] **1.11**; [and]

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4. Complete [the installation of a light non-aqueous phase liquid (LNAPL) free product interim remedial measure, initiate operational monitoring and submit an LNAPL Free Product Interim Remedial Measures report,] **a remedial investigation for the delineation of light non-aqueous phase liquid (LNAPL), initiate implementation of an LNAPL interim remedial measure, initiate monitoring, and submit an LNAPL interim remedial measure report with a form**, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-[1.12(b)]**1.10**, within two years from the later of the following dates:

- i. March 1, 2010; or
- ii. The date the person identified the presence of LNAPL [free product] **pursuant to N.J.A.C. 7:26E-1.10[.]**;

5. Complete the remedial investigation of the entire site and submit the remedial investigation report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.10; and

6. Complete the remedial action of the entire site and submit the remedial action report, with a form found on the Department's website at

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www.nj.gov/dep/srp/srra/forms, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.9.

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

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. The formula the Department uses to calculate the annual remediation fee for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.2;

[1]**2. The payment of an annual remediation fee for the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-[2.4]2.3, pursuant to N.J.A.C. 7:26C-[4.2]4.3;**

[2]**3. The payment of the applicable individual document review fees for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-[4.3]4.4;**

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4. The formula the Department uses to calculate the remedial action permit fees for the person responsible for permit fees pursuant to N.J.A.C. 7:26C-4.5;

[3]5. The payment of remedial action permit fees, pursuant to N.J.A.C. 7:26C-[4.4]4.6;

[4]6. The methodology the Department [will use] **uses** to calculate its costs in overseeing remediation and the payment of those costs, pursuant to N.J.A.C. 7:26C-[4.5]4.7;

[5]7. The procedures by which a person may request a review of an oversight cost invoice from the Department, pursuant to N.J.A.C. 7:26C-[4.6]4.8; [and]

[6]8. How a person is to make payments to the Department of the fees and costs in this subchapter, pursuant to N.J.A.C. 7:26C-[4.7.]4.9; **and**

9. The procedures for a person to apply for the application of the 7.5 percent cap on fees and costs applicable in this subchapter, pursuant to N.J.A.C. 7:26C-4.10.

7:26C-4.2 Annual remediation fee formula

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(a) The Department shall calculate the annual remediation fee in accordance with (b) below and assess the annual remediation fee in accordance with N.J.A.C. 7:26C-4.3.

(b) The Department shall calculate annual remediation fees for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year as follows:

1. Utilizing the information contained in the annual budget submission to the Department of Treasury for the upcoming fiscal year, the Department shall set its Site Remediation Reform Act Program budget by determining the dollar amount needed to accomplish all tasks associated with administering the Site Remediation Reform Act. The Department shall not include in its Site Remediation Reform Act Program budget any costs associated with any other program area within the Department's Site Remediation Program that is funded by a source outside of the Site Remediation Reform Act Program budget.

2. The Department shall calculate the percentage of its Site Remediation Reform Act Program budget that shall be offset by the collection of contaminated area of concern fees and contaminated media fees by multiplying the total Site Remediation Reform Act Program budget by:

i. Sixty-five percent, which shall be the total amount of revenue that is to be collected through the assessment of contaminated area of concern fees; and

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ii. Thirty-five percent, which shall be the total amount of revenue that is to be collected through the assessment of contaminated media fees.

3. The Department shall calculate the base contaminated area of concern fee by dividing the total contaminated area of concern revenue calculated pursuant to (b)2i above by either:

i. The number of contaminated areas of concern reported to the Department pursuant to N.J.A.C. 7:26C-4.3(a) in the previous calendar year; or

ii. Where the number of contaminated areas of concern is, in the Department's opinion, underreported such that the resultant fee calculated pursuant to (b)4 below would result in an unnecessarily elevated base contaminated area of concern fee, the estimated total number of contaminated areas of concern for each category defined in (b)4 below. The estimated total number of contaminated areas of concern for each category shall be determined based on the information available to the Department regarding the number of sites undergoing remediation in the previous calendar year.

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4. Using the base contaminated area of concern fee calculated in (b)3 above, the Department shall establish the contaminated area of concern fee for each of the four Categories described below as follows:

i. Category 1: The fee for category 1 is the base fee. This category applies where:

(1) There are zero or one areas of concern, and there are no contaminated regulated underground storage tanks;

(2) Historic fill is the only contaminated area of concern; or

(3) The number of contaminated areas of concern has not been determined based on the information known at the time the fee is calculated;

ii. Category 2: The fee for category 2 is two times the base fee. This category applies where:

(1) There are two through 10 contaminated areas of concern; or

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(2) The areas of concern are limited to any number of contaminated regulated underground storage tanks and there are no other contaminated areas of concern;

iii. Category 3: The fee for category 3 is 11 times the base fee. This category applies where:

(1) There are 11 through 20 contaminated areas of concern;

(2) There are 11 through 20 contaminated areas of concern, at least one of which is a contaminated regulated underground storage tank area of concern; or

(3) There is at least one sanitary landfill area of concern, whether by itself or with any other contaminated areas of concern; and

iv. Category 4: The fee for category 4 is 22 times the base fee. This category applies where:

(1) There are more than 20 contaminated areas of concern; or

(2) There are more than 20 contaminated areas of concern, at least one of which is a contaminated regulated underground storage tank area of concern;

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5. The Department shall calculate the contaminated media fee by dividing the total contaminated media revenue calculated pursuant to (b)2ii above by either:

i. The number of contaminated media reported to the Department pursuant to N.J.A.C. 7:26C-4.3(a) in the previous calendar year; or

ii. Where the number of contaminated media is, in the Department's opinion, underreported such that the resultant fee calculated pursuant to (b)6 below would result in an unnecessarily elevated base contaminated media fee, the estimated total number of contaminated media for each media type defined in (b)6 below shall be determined based on the information available to the Department regarding the number of sites and the number of contaminated media; and

6. For the purposes of calculating the contaminated media fee, contaminated media means any or all of the following:

i. Contaminated ground water;

ii. Contaminated sediment; and

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iii. Contaminated ground water contaminated above a Surface Water Quality Standard as defined in N.J.A.C. 7:9B that is migrating into surface water.

(c) Each year, the Department shall prepare an Annual Site Remediation Reform Act Program Fee Calculation Report based on the prior calendar year data, including the information contained in the annual budget submission to the Department of the Treasury, and the numbers of contaminated areas of concern and of contaminated media, the base contaminated area of concern fee, the contaminated area of concern fee for each of the four categories described at N.J.A.C. 7:26C-4.2(b)4, and the contaminated media fee that shall be due and payable for that calendar year. Beginning March 2013 and each March thereafter, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and its Site Remediation Reform Act Program budget. The Department shall also post this report on its website at www.nj.gov/dep/srp/fees.

[7:26C-4.2]**7:26C-4.3** Annual remediation fee [for a person initiating remediation on or after November 4, 2009]

(a) Except as provided in [(h)](i) below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-[2.4]**2.3** shall submit the applicable annual remediation fee to the Department pursuant to this section.

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1. A person subject to this section shall pay a nonrefundable annual remediation fee, which shall be the sum of the applicable [category] **contaminated area of concern** fee [as determined pursuant to (a)2 below,] and the total contaminated media fee [as calculated pursuant to (a)3 below]. **The person shall use the description of the categories at N.J.A.C. 7:26C-4.2(b)4 to determine the applicable contaminated area of concern category and the description of contaminated media at N.J.A.C. 7:26C-4.2(b)6 to determine the number of contaminated media at the site.**

[2. The applicable category fee shall be assessed as follows:

i. The fee for zero to one contaminated areas of concern where the number of contaminated areas of concern is undetermined, determined to be one, or where the site is limited to historic fill \$450.00;

ii. The fee for:

(1) Two through 10 contaminated areas of concern: \$900.00; and

(2) Any number of contaminated regulated underground storage tank system areas, excluding regulated heating oil tank systems, provided there are no other contaminated areas of concern at the site: \$900.00;

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iii. The fee for 11 through 20 contaminated areas of concern, or one or more landfills: \$5,000; and

iv. The fee for more than 20 contaminated areas of concern: \$9,500.

3. The total contaminated media fee is as follows. A fee shall be assessed for each separate contaminated medium that is present at the site as determined from the following list. The total contaminated media fee shall be the sum of the individual contaminated medium fees.

- | | |
|---|--------------|
| i. Ground water | \$1,400; |
| ii. Surface water sediment | \$1,400; and |
| iii. Ground water contaminated above an applicable Surface
Water Quality Standard that is an unpermitted discharge
to surface water | \$1,400.] |

2. Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report in accordance with N.J.A.C. 7:26-4.2(c), the person responsible for conducting the remediation shall pay an annual remediation fee, which shall be calculated by multiplying the number of contaminated media by \$1,400, and adding to the resultant

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dollar amount the fee listed at (a)2 i through iv below, for the applicable contaminated area of concern category as determined pursuant to N.J.A.C. 7:26C-4.2(b):

- i. Category 1: \$450;**
- ii. Category 2: \$900;**
- iii. Category 3: \$5,000; and**
- iv. Category 4: \$9,500.**

[4. The]3. **Except as provided in (a)4 and 7 below**, each person responsible for conducting the remediation shall submit the first annual remediation fee and a completed Annual Remediation Fee Reporting form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the address noted on the form upon the earliest of the following:

- i. - iii. (No change.)
- iv. [Two hundred and seventy any event listed at N.J.A.C. 7:26C-2.2(b)]**Forty-five days after the date the person responsible for conducting the remediation is required to submit the notification required pursuant to N.J.A.C. 7:26C-2.3(a)2;**

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4. The person responsible for conducting the remediation who was conducting the remediation without a licensed site remediation professional prior to May 7, 2012 and who is continuing on or after that date to conduct the remediation using a licensed site remediation professional shall submit the annual remediation fee, and the appropriate form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as follows:

i. The first annual remediation fee shall be due on or before June 20, 2012, and the amount shall be based on the county in which the site is located as indicated in lines 1 through 4 of Table 4-1 below, as follows:

(1) Each person whose site is located in Hudson, Middlesex and Monmouth counties shall pay the amount indicated on line 1 of Table 4-1 below;

(2) Each person whose site is located in Atlantic, Hunterdon, Morris, Passaic and Union counties shall pay the amount indicated on line 2 of Table 4-1 below;

(3) Each person whose site is located in Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem, Somerset, Sussex and Warren counties or out-of-State shall pay the amount indicated on line 3 of Table 4-1 below; and

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(4) Each person whose site is located in Bergen, Burlington, Camden or Essex counties shall pay the amount indicated on line 4 of Table 4-1 below;

ii. The second annual remediation fee:

(1) Shall be due based on the county in which the site is located as indicated in lines 1 through 4 of Table 4-1 below, as follows:

(A) On September 1, 2012 for each person whose site is located in Hudson, Middlesex and Monmouth counties;

(B) On December 1, 2012 for each person whose site is located in Atlantic, Hunterdon, Morris, Passaic and Union counties;

(C) On March 1, 2013 for each person whose site is located in Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem, Somerset, Sussex and Warren counties or out-of-State; and

(D) On June 1, 2013 for each person whose site is located in Bergen, Burlington, Camden or Essex counties; and

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**(2) Shall be the full amount as indicated on line 4 of Table 4-1 below,
irrespective of the county in which the site is located;**

**iii. If the site is located in more than one county, the date that the annual
remediation fee is due shall be based on the county that appears first in Table 4-1
below; and**

iv. Where the columns in Table 4-1 specify the following:

(1) Column I specifies the county in which the site is located;

(2) Column II specifies the assigned anniversary month and year;

**(3) Column III specifies the fee amount due that all persons responsible for
conducting the remediation who meet the criteria in (a)4ii shall pay, calculated
as the full annual remediation fee plus the pro-rated percentage of the annual
remediation fee based on the assigned anniversary month (for example, if the
assigned anniversary month is September, the pro-rated percentage is 25
percent, June to September);**

(4) Column IV specifies the number of contaminated media at the site;

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(5) Columns V through VIII specify the specific dollar amount (rounded to the nearest dollar) the person responsible for conducting the remediation owes based on category and number of contaminated media at the site;

(6) Column IX specifies the date that the second and subsequent annual remediation fee shall be due, where the year is the year specified in column II.

Table 4-1

I. County of Origin of Site	II. Assigned Anniversary Month	III. Fee Amount Due June 20, 2012	IV. Number of Contaminated Media	Initial Fee Amount By Category				IX. Anniversary Date for Subsequent Annual Remediation Fees
				V. 0-1 Contaminated Areas of Concern Cat. 1	VI. 2-10 Contaminated Areas of Concern Cat. 2	VII. 11-20 Contaminated Areas of Concern Cat. 3	VIII. >21 Contaminated Areas of Concern Cat. 4	
1. Hudson, Middlesex, Monmouth	September 2012	Full Annual Remediation Fee plus 25%	No Contaminated Media	\$ 113	\$ 225	\$ 1,250	\$ 2,375	September 1
			1 Contaminated Media	\$ 463	\$ 575	\$ 1,600	\$ 2,725	
			2 Contaminated Media	\$ 813	\$ 925	\$ 1,950	\$ 3,075	
			3 Contaminated Media	\$ 1,163	\$ 1,275	\$ 2,300	\$ 3,425	
2. Atlantic, Hunterdon, Morris, Passaic, Union	December 2012	Full Annual Remediation Fee plus 50%	No Contaminated Media	\$ 225	\$ 450	\$ 2,500	\$ 4,750	December 1
			1 Contaminated Media	\$ 925	\$ 1,150	\$ 3,200	\$ 5,450	
			2 Contaminated Media	\$ 1,625	\$ 1,850	\$ 3,900	\$ 6,150	
			3 Contaminated Media	\$ 2,325	\$ 2,550	\$ 4,600	\$ 6,850	
3. Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem, Somerset, Sussex, Warren, Out-of-State	March 2013	Full Annual Remediation Fee plus 75%	No Contaminated Media	\$ 338	\$ 675	\$ 3,750	\$ 7,125	March 1
			1 Contaminated Media	\$ 1,388	\$ 1,725	\$ 4,800	\$ 8,175	
			2 Contaminated Media	\$ 2,438	\$ 2,775	\$ 5,850	\$ 9,225	
			3 Contaminated Media	\$ 3,488	\$ 3,825	\$ 6,900	\$ 10,275	
4. Bergen, Burlington, Camden, Essex	June 2013	Full Annual Remediation Fee plus 100%	No Contaminated Media	\$ 450	\$ 900	\$ 5,000	\$ 9,500	June 1
			1 Contaminated Media	\$ 1,850	\$ 2,300	\$ 6,400	\$ 10,900	
			2 Contaminated Media	\$ 3,250	\$ 3,700	\$ 7,800	\$ 12,300	
			3 Contaminated Media	\$ 4,650	\$ 5,100	\$ 9,200	\$ 13,700	

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5. For each subsequent year, [the Department shall invoice] the person responsible for conducting the remediation [for the annual remediation fee on] **shall pay an annual remediation fee in response to a Department invoice as follows:**

i. For a person paying the fee pursuant to (a)3 above, on the anniversary date of the first year that the annual remediation fee was submitted. [pursuant to (a)4]; or

ii. For a person paying the fee pursuant to (a)4 above, on the month and day indicated in Column IX of Table 4-1 above;

6. If a person responsible for conducting the remediation does not submit the initial annual remediation fee pursuant to (a)3 or (a)4 above by the time the subsequent year's annual remediation fee is due pursuant to (a)4 above, and does not provide any information required in N.J.A.C. 7:26E-4.2(b)3 and (b)5 so that the Department cannot otherwise calculate the annual remediation fee, that person shall:

i. For each year the Department is not able to calculate the annual remediation fee, pay the applicable Category 2 annual remediation fee as amended annually pursuant to N.J.A.C. 7:26C-4.2(c) until that person provides the information required by N.J.A.C. 7:26E-4.2(b)3 and (b)5; and

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ii. On the anniversary date subsequent to the year in which the information is provided, the person responsible for conducting the remediation shall pay:

(1) The correct annual remediation fee for the applicable category and number of contaminated media; and

(2) The difference between the correct annual remediation fee for the applicable category and number of contaminated media and the Category 2 fee for each year the Category 2 fee was paid; and

7. Any governmental entity that is not liable under N.J.S.A. 58:10-23.11g.d(4) shall pay an annual remediation fee determined pursuant to N.J.A.C. 7:26C-4.2(b) for any 12 month period during which the governmental entity performs any type of remediation as defined pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8, within 45 days of commencing remediation pursuant to the following:

i. The date on which the governmental entity pays the first annual remediation fee becomes that governmental entity's anniversary date on which each subsequent annual remediation fee shall be due;

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ii. If the governmental entity determines to stop remediation for any reason, the governmental entity shall notify the Department 90 days prior to the governmental entity's anniversary date and shall not be required to pay subsequent annual remediation fees until such time as the governmental entity determines to resume remediation; and

iii. When the governmental entity determines to resume remediation, the governmental entity shall notify the Department, and shall determine the annual remediation fee pursuant to N.J.A.C. 7:26C-4.2(b); the date of this notification shall become the governmental entity's new anniversary date.

(b) [The] **Except as provided in (c) below, the** person responsible for conducting the remediation shall identify all contaminated areas of concern individually and shall not combine contaminated areas of concern or contaminated media for the purpose of determining the amount of the annual remediation fee.

(c) Where a public entity, or a non-profit organization that meets the definition set forth at 26 U.S.C. §501(c)3, is the person responsible for conducting the remediation of a brownfield development area, the person responsible for conducting the remediation shall pay an annual remediation fee in an amount that equals the sum of the applicable contaminated area of concern fee and the total contaminated media fee as may be amended

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pursuant to N.J.A.C. 7:26C-4.2(c), except that, regardless of the number of sites within each brownfield development area:

- 1. The entire brownfield development area may be considered as a single site; and**

- 2. The total contaminated media fee shall be calculated by determining the number of contaminated media, listed at N.J.A.C. 7:26C-4.2(b)6i through iii, that are present across the entire brownfield development area, rather than for each site within the brownfield development area.**

[(c)](d)The person responsible for conducting the remediation that receives [an RAO]a response action outcome for a contaminated area of concern or a contaminated medium, but other contaminated areas of concern or contaminated media remain at the site, may request an adjusted annual remediation fee by [submit] submitting a new [Annual Remediation Fee Reporting] form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, at least 90 days prior to the annual remediation fee anniversary date described at (a)5 above. Information to be supplied by filling out the form includes:

- 1. The site name and location;**

- 2. Information concerning a fee billing contact;**

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3. The applicable category fee and the subtotal category fee;

4. The applicable contaminated media fee(s), the subtotal of the contaminated media fee(s) and the total fee paid which is the sum of the category fee and the applicable contaminated media fee(s);

5. A list of the contaminated areas of concern;

6. The name and contact information for the person responsible for conducting the remediation and the Licensed Site Remediation Professional remediating the site; and

7. The signatures and certifications of the person responsible for conducting the remediation and the Licensed Site Remediation Professional.

[(d)](e)The person responsible for conducting the remediation that discovers [an] **any** additional contaminated [area] **areas of concern or contaminated media** shall submit a new [Annual Remediation Fee Reporting] **annual remediation fee and a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, as described in (d) above, at least 90 days prior to the annual remediation fee anniversary date **described at (a)5 above. If the Department determines that any additional contaminated areas of concern are present at a site, the Department shall increase the next annual remediation fee, if the new total number**

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of contaminated areas of concern changes the fee category in (b)3, above. If the Department determines that any additional contaminated media are present at a site, the Department shall increase the next annual remediation fee for each additional contaminated medium listed at N.J.A.C. 7:26C-4.2(b)6.

[(e)](f) The person responsible for conducting the remediation shall continue to pay an annual remediation fee to the Department until a [response action outcome] **final remediation document is on file** for all of the contaminated areas of concern and contaminated media at the site [have been filed] with the Department.

[(f) If the Department makes a determination that it will undertake] (g) **When a portion or a condition of the remediation becomes subject to** direct oversight [of a portion or condition of the site] pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall pay the annual remediation fee every year and the Department's oversight costs pursuant to N.J.A.C. 7:26C-[4.5]4.7.

[(g) If the Department makes a determination that it will undertake] (h) **When the entire remediation becomes subject to** direct oversight [of the entire site] pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall continue to pay the annual remediation fee until it submits [the first direct oversight] **its next remedial phase** document [required by] **to** the Department and [at] **from** that point **on**, shall **only** pay the

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Department's oversight costs pursuant to N.J.A.C. 7:26C-[4.5]**4.7 as long as the entire remediation is in direct oversight.**

Recodify existing (h) as **(i)** (No change in text.)

[7:26C-4.3]**7:26C-4.4** Individual **document** review fees

(a) The person responsible for conducting the remediation shall submit to the Department, at the address noted on the appropriate document submission form or questionnaire, provided by the Department at www.nj.gov/dep/srp/srra/forms, the applicable nonrefundable document review fee pursuant to this section each time that the person submits any of the following documents to the Department unless the person is subject to an annual remediation fee:

- | | |
|----------------------------------|------------|
| 1. Preliminary assessment report | \$375.00; |
| 2. Site investigation report | \$750.00;] |

Recodify existing 3. as **1.** (No change in text.)

2. Re-issuance of no further action letter for unregulated

heating oil tank system **\$100.00;**

- [4.]**3.** Biennial certification, unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification

\$375.00; [and]

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[5.]4. Child care center [response action outcome or child care center] renewal certification \$225.00[.]; **and**

5. Confidentiality claim \$500.00

(b) (No change.)

(c) The person responsible for conducting the remediation [of a discharge from an unregulated heating oil tank system] shall pay [the following fees, as applicable:

1.] **a** \$350.00 fee for a discharge to ground water proposal[pursuant to N.J.A.C. 26C-13.5(b)1;

2. \$ 400.00 for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3; and

3. All applicable fees pursuant to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A].

(d) The person responsible for conducting the remediation who is remediating a discharge from an unregulated heating oil tank system shall pay a \$400.00 fee for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3.

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7:26C-4.5 Remedial action permit fee formula

(a) The Department shall annually calculate remedial action permit fees for the remedial action permit types and activities listed at (b) below in accordance with (c) below.

(b) The Department shall annually calculate the remedial action permit fee for the upcoming State fiscal year, as of the December 1 that precedes the upcoming State fiscal year, for the following remedial action permit types and activities:

1. Remedial action permit types include:

- i. Deed notice with no engineering control;**
- ii. Deed notice with engineering control(s);**
- iii. Natural attenuation ground water remedial action; and**
- iv. Any other ground water remedial action;**

2. Remedial action permit fee activities include:

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i. Reviewing the remedial action permit application and issuing the remedial action permit;

ii. Modifying the remedial action permit;

iii. Transferring the remedial action permit; and

iv. Terminating the remedial action permit;

(c) The Department shall determine the annual remedial action permit fee by:

1. Calculating the average number of hours required by permit program staff to accomplish the activities at (b)2 above for each remedial action permit type at (b)1 above; and

2. Multiplying the average number of hours calculated pursuant to (c)1 above by the remedial action permit program staff hourly rate derived pursuant to (d) below to derive the annual remedial action permit fee for each type of remedial action permit.

(d) The Department shall calculate the remedial action permit program staff hourly rate for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year as follows:

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$$\text{Hourly Rate} = \frac{AS + FB + IC + OE}{BH}$$

Where:

AS = The average annual salary of the program staff full time equivalents directly assigned to the activity, plus a component that reflects the salaries for program overhead staff who perform functions related to the fee activity. To calculate the overhead component of AS, the Department divides the number of program staff full time equivalents directly assigned to the activity by the total number of program staff full time equivalents, and the resulting percentage is multiplied by the program overhead staff salaries. To calculate AS, these two components are then added together.

FB = The fringe benefit rate, which represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, unemployment insurance, temporary disability insurance, unused sick leave, FICA and Medicare. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate

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is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs

IC = The indirect costs, which are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, program indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for program overhead staff and direct support personnel. Indirect costs involve a rate negotiated annually between the Department and the U.S. Environmental Protection Agency that is multiplied by the sum of AS and FB.

OE = The average annual operational expenses attributable to a program staff full time equivalent directly assigned to the activity. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

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BH = 1,428. The billable hours, which is the average number of hours each program staff full time equivalent directly assigned to the activity spends annually performing activities for which fees are assessed, and is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives.

(e) Each year, the Department shall include in the Annual Site Remediation Reform Act Program Fee Calculation Report that it prepares pursuant to N.J.A.C. 7:26C-4.2(c), the factors used to calculate the remedial action permit fee for each remedial action permit activity.

[7:26C-4.4]**7:26C-4.6 Payment of Remedial action permit fees**

(a) [The person responsible for conducting remediation] Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c), the

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permittee shall submit to the Department the applicable remedial action permit **activity** fees [as required by this chapter and the Technical Requirements for Site Remediation rules, N.J.A.C.

7:26E,] pursuant to the following table. **Thereafter, the person responsible for conducting the remediation shall pay the applicable remedial action permit activity fees as published in the**

Annual Site Remediation Reform Act Program Fee Calculation Report:

Remedial Action	Soil Remedial	Ground Water -	
		Natural	Ground Water -
<u>Permit Fees</u>	<u>Action Permit</u>	Attenuation	Active System
		<u>Remedial Action</u>	<u>Remedial Action</u>
		<u>Permit</u>	<u>Permit</u>
Remedial Action Permit			
Application Fee	[\$550.00] \$600.00	[\$750.00] \$800.00	\$1,000.00
Remedial Action Permit			
Modification Fee	[\$550.00] \$300.00	[\$750.00] \$300.00	\$300.00
Remedial Action Permit			
Transfer Fee	[\$100.00] \$400.00	[\$100.00] \$600.00	\$800.00
Remedial Action Permit			
Termination Fee	[\$550.00] \$600.00	[\$750.00] \$800.00	\$1,000.00

(b) [For each year after it issues a remedial action permit, the Department shall invoice the permittees the amount of the annual remedial action permit fee.

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1. The annual soil remedial action permit fee for a remedial action:

i. With a deed notice without engineering controls: \$100.00; and

ii. With a deed notice and engineering controls: \$250.00.

2. The annual ground water remedial action permit fee is as follows:

i. For a natural attenuation remedial action: \$250.00; and

ii. For any other ground water remedial action: \$750.00.]Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c) and 4.5(e), the permittee shall pay an annual remedial action permit fee in response to a Department invoice, on the anniversary date of the Department issuing the remedial action permit, as follows. Thereafter, the permittee shall pay the annual remedial action permit fee as published in the Annual Site Remediation Reform Act Program Fee Calculation Report:

1. The annual soil remedial action permit fee for a remedial action:

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- i. With a deed notice without engineering controls: \$300.00; and**
 - ii. With a deed notice and engineering controls: \$320.00.**
- 2. The annual ground water remedial action permit fee:**
 - i. For a natural attenuation remedial action: \$550.00; and**
 - ii. For any other ground water remedial action: \$650.00.**

[7:26C-4.5]7:26C-4.7 Oversight costs

(a) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to this section whenever the Department assesses those costs against the person responsible for conducting the remediation that is subject to any of the following circumstances:

- 1. The provisions of N.J.A.C. 7:26C-[2.4]2.3(a)3i;[, and the]**
- 2. The Department [incurs those costs when a case manger is assigned] assigns a case manager pursuant to the criteria in the Site Remediation Reform Act at N.J.S.A. 58:10C-21b or c; or**

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[2. N.J.A.C. 7:26C-2.3, unless an individual review fee applies pursuant to N.J.A.C. 7:26C-4.3 or other applicable rules; or]

3. [N.J.S.A. 58:10C-27]**The provisions of N.J.A.C. 7:26C-4.3(i)1 or 2.**

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

[(e) The Department shall calculate its oversight costs based upon the following:

Oversight Costs = direct program costs + indirect program costs + expenses

or for persons signing the Developer's Certification found in chapter Appendix A, incorporated herein by reference, and for persons responsible for conducting the remediation of discharged substances at their primary residence:

Oversight Costs = direct program costs + expenses

where:

1. Direct program costs = (number of coded hours X hourly salary rate) X (1 + salary additive factor) X (1 + fringe benefit factor), where:

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i. Number of coded hours represents the sum of hours each Departmental employee has coded to the site specific job number. Actual hours for all Departmental employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to Departmental employees' reimbursable "down time" salary expenses. Reimbursable "down time" expenses includes costs for vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive rate is the sum of the reimbursable "down time" expenses divided by the net Department regular salary for a given fiscal year. The net Department regular salary cost is calculated by subtracting the

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Department employees' reimbursable "down time" expenses from the Department's regular salary; and

iv. The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, unemployment insurance, temporary disability insurance, unused sick leave, FICA and Medicare. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs; and

2. Indirect program costs = (number of coded hours X hourly salary rate) X (indirect program cost rate factor), where:

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in Site Remediation. This indirect rate is developed by the Department on an annual basis in accordance with the applicable New Jersey Department of Treasury OMB Circular Letters and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments" (2 CFR Part 225); and

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ii. The methodology for computing the indirect program cost rate involves the following basic processes:

(1) Identification of Site Remediation expenditures that cannot be assigned directly to a specific Site Remediation cost objective. These expenditures include indirect labor coded as such by employees, and approved by supervisors, on their timesheets. Also included are expenses such as the Site Remediation's proportionate share of costs associated with upper management offices, and individual costs such as rent, general equipment use charges, office supplies, training, etc. that cannot be identified to a specific Site Remediation cost objective;

(2) Site Remediation indirect expenditures identified above are adjusted for any expenses not allowed by the Federal Cost Principles such as interest expense;

(3) The adjusted Site Remediation's indirect expenditures are then reduced by the amount of any funds received by the Program from Federal Grants or New Jersey State Fee Reimbursements; and

(4) The resulting total unreimbursed Site Remediation indirect expenditures is then divided by the total unreimbursed Site Remediation direct labor expenditures to arrive at the indirect program cost rate.]

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(e) The Department shall calculate its oversight costs based upon the following:

$$\text{OC} = \text{DPC} + \text{IPC} + \text{E};$$

$$\text{DPC} = (\text{CH}) * (\text{HSR}) * (1 + \text{SAR}) * (1 + \text{FBC});$$

$$\text{IPC} = (\text{CH}) * (\text{HSR}) * (\text{IPCRF})$$

where:

OC = oversight costs

DPC = direct program costs, where:

CH = The number of coded hours, which represents the sum of hours each Departmental employee has coded to the site specific job number. Actual hours for all Departmental employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, shall be included in the formula calculations;

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HSR = The hourly salary rate, which is an employee's annual salary divided by the number of working hours in a year (1,820 hours);

SAR = The salary additive rate, which represents the prorated percentage of charges attributable to each Department employee's reimbursable "down time" salary expenses. Reimbursable "down time" expenses includes costs for vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive rate is the sum of the reimbursable "down time" expenses divided by the net Department regular salary for a given fiscal year. The net Department regular salary cost is calculated by subtracting the Department employees' reimbursable "down time" expenses from the Department's regular salary; and

FBC = The fringe benefit rate, which represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, unemployment insurance, temporary disability insurance, unused sick leave, FICA and Medicare. The fringe benefit rate

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is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs; and

IPC = Indirect program costs, where:

IPCRF = The indirect program cost rate factor, which represents the rate which has been developed for the recovery of indirect program costs in Site Remediation. This indirect rate is developed by the Department on an annual basis in accordance with the applicable New Jersey Department of Treasury OMB Circular Letters and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments" (2 CFR Part 225); and

The methodology for computing the indirect program cost rate involves the following basic processes:

Identification of Site Remediation expenditures that cannot be assigned directly to a specific Site Remediation cost objective. These expenditures include indirect labor coded as such by employees, and approved by supervisors, on their timesheets. Also included are expenses such as the Site Remediation's

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proportionate share of costs associated with upper management offices, and individual costs such as rent, general equipment use charges, office supplies, training, etc. that cannot be identified to a specific Site Remediation cost objective;

Site Remediation indirect expenditures identified above are adjusted for any expenses not allowed by the Federal Cost Principles such as interest expense;

The adjusted Site Remediation's indirect expenditures are then reduced by the amount of any funds received by the Program from Federal Grants or New Jersey State Fee Reimbursements; and

The resulting total unreimbursed Site Remediation indirect expenditures is then divided by the total unreimbursed Site Remediation direct labor expenditures to arrive at the indirect program cost rate.

E = expenses, which includes non-salary direct costs specific to the site such as sampling, analytical, equipment, or supply costs, contractor expenses, and Emergency Response overtime hours. These costs are not subject to additive, fringe, or indirect multipliers.

(f) The person responsible for conducting the remediation:

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1. Is exempt from paying the indirect program costs if the person is responsible for conducting the remediation of discharged substances at their primary residence; or

2. May be exempt prospectively from paying the indirect program costs if:

i. The person meets the criteria in the Developer Certification form in Appendix A of this chapter and submits the completed form to the Department to the address in N.J.A.C. 7:26C-1.6(a); and

ii. The person requests a statutory exemption pursuant to N.J.S.A. 58:10B-2.1 from the obligation to reimburse the Department for its indirect costs, by following the procedures in (g), below.

(g) To request the prospective application of the statutory exemption for which the person qualifies pursuant to (f)2 above, the person responsible for conducting the remediation shall submit the following to the Department within 60 calendar days after the person initiates remediation at the site or area of concern:

1. An executed Developer Certification, found in Appendix A of this chapter, that establishes that that person is neither:

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- i. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., nor**

- ii. A discharger, or a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, and who does not have a defense to liability pursuant to N.J.S.A. 58:10-23.11g.d; and**

- 2. A form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that requires the person(s) completing the form to describe information concerning the acquisition of the site and that person's liability for the discharge at the site, including the name and address of the site and the person responsible for conducting the remediation, that person's signature, when and how the person either acquired or plans to acquire the site, a statement that the person exercised the appropriate due diligence at the site, the type of due diligence the person conducted, when the discharge occurred, and that the person is not liable for the discharge;**

- (h) When the Department determines that a person who has complied with (g) above meets the statutory exemption, the Department shall calculate that person's prospective oversight costs, beginning on the date of the requested exemption, using the following alternative oversight cost formula; however, the Department may only offset**

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any future costs by the exempted amount, and shall not offset or pay any rebates of such costs prior to either the [effective date of this provision] or the date the requested exemption is submitted to the Department.

$$\text{OC (NI)} = \text{DPC} + \text{E}$$

where

OC (NI) = oversight costs without indirect program costs included;

DPC = direct program costs as defined in (e) above; and

E = expenses, as defined in (e) above.

[7:26C-4.6]7:26C-4.8 Oversight cost review

(a) The person responsible for conducting the remediation may contest an oversight cost the Department has assessed, pursuant to N.J.A.C. 7:26C-[4.5]4.7, by submitting a written request to the Department, pursuant to (c) and (d) below, within 30 days after the billing date indicated on the oversight cost invoice that person received from the Department.

(b) The Department shall deny an oversight cost review request if the request is based on the following:

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1. (No change.)

2. The Department's salary additive rate, fringe benefit or indirect rate;[or]

3. Management decisions of the Department, including decisions regarding who to assign to **the** case, how to oversee the case or how to allocate resources for case review[.];**or**

4. Receipt of the request after the 30 day period established in (a) above.

(c) - (h) (No change.)

(i) If the objector does not file a request for an oversight cost review within 30 days after the billing date shown on the invoice for the Department's oversight costs, the full amount of the oversight costs shall be due and owing. If the invoice is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-[4.7]**4.9**.

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Recodify existing 7:26C-4.7 as **7:26C-4.9** (No change in text.)

7:26C-4.10 Seven and one-half percent of the cost of the remediation

(a) **The person responsible for conducting the remediation may request that the Department determine whether the applicable costs in this subchapter have exceeded 7.5 percent of the total remediation costs for a site as provided pursuant to the Brownfield Act at N.J.S.A. 58:10B-2.1d, by following the procedures outlined in this section.**

(b) **A person may make a request pursuant to this section by submitting the information required in (c) below, to the Department within 90 calendar days after the later of:**

1. [The effective date of this section];

2. The issuance of the final remediation document for all of the discharges at the site, for which that person is responsible, issued after [the effective date of this section];

or

3. The resolution of all oversight cost reviews pursuant to N.J.A.C. 7:26C-4.6.

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(c) A person may make a request pursuant to this section by submitting the following to the Department:

- 1. The appropriate form found on the Department's website at www.nj.gov/dep/srp/srra/forms, which contains the information as described in (c)2 through 6 below;**
- 2. A narrative summary of the remediation of the site;**
- 3. A narrative statement that all reviews of any oversight cost invoice pursuant to N.J.A.C. 7:26C-4.6 have been either settled or resolved;**
- 4. A narrative statement that includes the date of each oversight cost invoice received, and indicates the date that the full payment was made for each such invoice the Department has issued pursuant to:**
 - i. This subchapter; and**
 - ii. The applicable rules at N.J.A.C. 7:14B, N.J.A.C. 7:26B, and N.J.A.C. 7:26C in effect prior to [the effective date of this section];**

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5. A detailed description of all of the remediation costs as defined in N.J.A.C.

7:26C-1.3, prepared by a certified public accountant or an independent auditor, including, as applicable:

i. The costs of all correspondence and other communication with the Department concerning the remediation, including, without limitation, the costs of preparing all letters, email and other correspondence, whether by the person, or any other person acting of behalf of that person, such as a consultant, licensed site remediation professional, or attorney;

ii. All remediation costs incurred by any other person, including any other person responsible for conducting the remediation and the Department;

iii. The future costs of compliance with a remedial action permit, if applicable, prepared by a licensed site remediation professional; and

6. The date and scope of each final remediation document issued for the site.

(d) The Department shall only approve a request pursuant to this section:

1. After a final remediation document has been issued for all areas of concern at the site;

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- 2. If the person responsible for conducting the remediation has paid each cost invoice within 60 calendar days after the later of:**
 - i. [The effective date of this section];**
 - ii. The receipt by the person responsible for conducting the remediation of each oversight cost invoice; or**
 - iii. The resolution of all oversight cost reviews pursuant to N.J.A.C. 7:26C-4.6;**
- 3. If the Department has not addressed an earlier such request for a particular site; and**
- 4. For a rebate of costs paid, if the Legislature has specifically provided the funds to the Department to make such payments.**

(e) Upon receipt of a request pursuant to this section, the Department shall:

- 1. Review the request to determine compliance with (b) through (d), above;**

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2. Inform the requester in writing of any noncompliance with (b) through (d), above. The requester shall have 30 days to respond to the Department and resubmit missing information;

3. Deny the request if the requester does not resubmit information within 30 days, or the request is again found to be incomplete;

4. If full compliance with (b) through (d) above is determined, recalculate fees and any costs related to remediation permits, and, if applicable, one or a combination of the following:

i. The amount of credit that could be applied to future costs to offset any prior payment above the statutory maximum; or

ii. Rebate any prior payment above the statutory maximum, subject to the legislative authorization specified in (d)4 above.

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

7:26C-5.1 Scope of subchapter

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(a) This subchapter establishes the requirements for:

1. Who has the obligation to establish and maintain a remediation funding source **or financial assurance**, in N.J.A.C. 7:26C-5.2;

2. The dollar amount that the person responsible for conducting the remediation has to establish and maintain in a remediation funding source **or financial assurance**, in N.J.A.C. 7:26C-5.3

3. The **requirements related to each of the** financial mechanisms available as remediation funding sources **or financial assurance**, in N.J.A.C. 7:26C-5.4 through 5.9;

4. (No change.)

5. The procedures for adjusting the amount of the remediation funding source **or financial assurance** and for returning the remediation fund source **or financial assurance**, in N.J.A.C. 7:26C-5.11;

6. The disbursement of funds from a remediation funding source **or financial assurance**, in N.J.A.C. 7:26C-5.12; and

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7. The procedures the Department will use to draw on the funding in the remediation funding source **or financial assurance** when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.13.

7:26C-5.2 Establishing a remediation funding source **and financial assurance**

(a) (No change.)

(b) The following persons are not required to establish a remediation funding source pursuant to this subchapter:

1. - 2. (No change.)

3. A person who implements an unrestricted use remedial action or a limited restricted use remedial action **in a timely manner** for all or part of a remedial action, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the unrestricted use remedial action or the limited restricted use remedial action;

4. - 7. (No change.)

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(c) Except as provided in (d) below, the person responsible for conducting the remediation who is implementing an engineering control as part of a remedial action shall establish and maintain financial assurance pursuant to this subchapter.

(d) The owner or operator of a small business and the persons listed at (b)4 through 7 above is not required to establish financial assurance pursuant to this subchapter.

[(c)](e) Any person who is required to establish a remediation funding source **or financial assurance** shall establish and maintain a remediation funding source **or financial assurance** in an amount specified in N.J.A.C. 7:26C-5.3, until:

1. [The Department or] **For a remediation funding source**, the licensed site remediation professional issues an unrestricted use or limited restricted use [final remediation document] **response action outcome** for the site; [or]

2. [The person responsible for conducting the remediation obtains a remedial action permit for an engineering control and submits to the Department evidence of compliance with the requirement to establish financial assurance pursuant to N.J.A.C. 7:26C-7 prior to the termination of the existing remediation funding source] **For financial assurance, the Department either:**

i. Terminates the remedial action permit, pursuant to N.J.A.C. 7:26C-7.13; or

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ii. For a statutory permittee only, transfers the remedial action permit, pursuant to N.J.A.C. 7:26C-7.11.

[(d)](f) Any person required to establish a remediation funding source **or financial assurance** that elects to apply for a loan and/or a grant from the Hazardous Discharge Site Remediation Fund to satisfy all or a portion of the remediation funding source **or financial assurance** requirements shall submit all the information required in N.J.A.C. 7:26C-11.2 to the Department.

[(e)](g) In the event the New Jersey Economic Development Authority denies the application for a loan and/or grant from the Hazardous Discharge Site Remediation Fund, the person required to establish a remediation funding **source or financial assurance** shall establish the full amount of the remediation funding source **or the financial assurance** in accordance with this subchapter within 14 days after the person's receipt of notice from the New Jersey Economic Development Authority that the application has been denied.

[(f)](h) Except as provided in [(g)](k) below, the person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter may use any one or any combination of the following [instruments] **financial mechanisms**:

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1. A remediation trust fund [agreement] in accordance with N.J.A.C. 7:26C-5.4;

2. (No change.)

3. A line of credit [agreement] in accordance with N.J.A.C. 7:26C-5.6;

4. (No change.)

5. [A self-guarantee in accordance with N.J.A.C. 7:26C-5.8] **A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12; or**

6. [A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12] **A self-guarantee in accordance with N.J.A.C. 7:26C-5.8.**

(i) Any person may establish, on behalf of any person required to establish a remediation funding source, any of the mechanisms listed at [(f)4] (h) above except for a self-guarantee.

(j) The person responsible for conducting the remediation may use any one or any combination of the financial mechanisms listed in (h)1 through (h)5 above, to satisfy the financial assurance requirement in N.J.A.C. 7:26C-5.3. The financial mechanism listed at (h)6 above shall not be used to satisfy the financial assurance requirement in N.J.A.C. 7:26C-5.3.

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[(g)](k) Notwithstanding [(f)](h) or (j) above, [any person subject to the Department's] a **person responsible for conducting the remediation that is subject to** direct oversight pursuant to N.J.S.A. 58:10C-27 shall establish and maintain a remediation trust fund [agreement] in accordance with N.J.A.C. 7:26C-5.4.

[(h)](l) The person responsible for conducting the remediation required to establish and maintain a remediation funding source **or financial assurance** shall submit evidence of the establishment of a remediation funding source **or financial assurance** to the Department no later than the following deadlines as applicable, unless the Department approves an extension of that deadline:

1. (No change.)

2. A discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., shall submit evidence of the remediation funding source according to the following:

i. - iii. (No change.)

iv. As required by a court;[and]

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3. A person [who has received notice from the Department that the Department will undertake direct oversight of the remediation of the contaminated site pursuant to N.J.S.A. 58:10C-27 shall submit evidence of a remediation trust fund agreement established] **responsible for conducting the remediation shall submit evidence of a remediation trust fund established** in accordance with N.J.A.C. 7:26C-5.4, no later than 30 days after [receipt of such notification.]:

- i. The occurrence of any of the events listed at N.J.A.C. 7:26C-14.2; or**
 - ii. Receipt of notice from the Department pursuant to N.J.A.C. 7:26C-14.3(c);**
- and**

4. The person responsible for conducting the remediation shall submit evidence of financial assurance as part of a remedial action permit application required pursuant to N.J.A.C. 7:26C-7.5.

7:26C-5.3 Determination of remediation funding source **and financial assurance** amount

(a) The person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter shall establish and maintain the remediation funding source in an amount that is equal to or greater than:

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1. The amount calculated in a cost estimate [of] **for** the [implementation of the] remediation, including the **estimated cost to operate, maintain and inspect engineering controls, and the** Department's fees and oversight costs, [but excluding the estimated cost to operate, maintain and inspect engineering controls as part of a remedial action permit as provided in N.J.A.C. 7:26C-7, as approved by the Department or] as certified by the licensed site remediation professional and the person responsible for conducting the remediation[, as applicable];

2. - 5. (No change.)

(b) The person responsible for conducting the remediation may reduce the amount of the remediation funding source by an amount equal to the costs to operate, maintain and inspect engineering controls when the person has submitted to the Department a complete remedial action permit application, including evidence of the establishment of financial assurance pursuant to N.J.A.C. 7:26C-5.2.

(c) The person responsible for conducting the remediation implementing a remedial action that includes an engineering control shall establish and maintain the financial assurance in an amount that is equal to or greater than the full cost to operate, maintain and inspect all engineering controls that are part of any remedial action over the life of the

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permit as estimated at the time the person submits the complete remedial action permit application.

Recodify existing (b) as **(d)** (No change in text.)

(e) If the person responsible for conducting the remediation pursuant to a remedial action permit is a residential condominium association, the financial assurance amount requirements at (c) above may be met by submitting an annual budget approved by the governing body of the residential condominium association that reflects an amount dedicated to the operation, maintenance and inspection of engineering controls which is equal to the annual estimated amount required.

7:26C-5.4 Remediation trust fund requirements

(a) Any person who is required or chooses to establish a remediation trust fund [agreement] as a remediation funding source **or financial assurance** pursuant to this subchapter shall submit to the Department the original remediation trust fund agreement. The remediation trust fund agreement must:

1. - 3. (No change.)

4. Indicate that the trustee may only disburse those funds from the remediation trust fund:

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i. If the [entire] **remediation of the site** [or portion of the site] is under direct oversight by the Department pursuant to N.J.S.A. 58:26C-27, the Department [approves] **shall approve** in writing **the amount to** be disbursed; or

ii. For all other sites, [the Department or] the licensed site remediation professional [approves] **shall approve** in writing **the amount to** be disbursed;

5. - 6. (No change.)

(b) Any person responsible for conducting the remediation that uses a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source or **financial assurance**, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved or a licensed site remediation professional has certified, and confirming that the trust shall continue to exist for the next consecutive 12-month period.

7:26C-5.5 Environmental insurance policy requirements

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(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source **or financial assurance** pursuant to this subchapter shall submit to the Department the original insurance policy. The environmental insurance policy must:

1. - 4. (No change.)

5. Indicate that the insurer may only disburse those funds from the environmental insurance policy that the [Department or the] licensed site remediation professional approves in writing may be disbursed pursuant to N.J.A.C. 7:26C-5.12;

6. - 7. (No change.)

(b) Any person responsible for conducting the remediation using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source **or financial assurance**, submit to the Department a written statement from the insurance company confirming the value of the environmental insurance policy in an amount that the [Department has approved or a] licensed site remediation professional has certified, and that the environmental insurance policy has been renewed for the next consecutive 12-month period.

7:26C-5.6 Line of credit requirements

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(a) Any person who chooses to establish a line of credit [agreement] as a remediation funding source **or financial assurance** pursuant to this chapter shall submit to the Department an original of a line of credit. The line of credit must:

1. - 4. (No change.)

5. Indicate that the person providing the line of credit shall only disburse those funds from the line of credit that the [Department or] licensed site remediation professional approves in writing to be disbursed pursuant to N.J.A.C. 7:26C- 5.12;

6. - 7. (No change.)

(b) Any person responsible for conducting the remediation using a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding **or financial assurance**, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the [Department has approved or a] licensed site remediation professional has certified, and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

7:26C-5.7 Letter of credit

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(a) Any person who chooses to provide a letter of credit as a remediation funding source **or financial assurance** to guarantee the availability of funds pursuant to this subchapter shall submit to the Department an original letter of credit. The letter of credit must:

1. - 5. (No change.)

7:26C-5.8 Self-guarantee requirements

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

1. - 2. (No change.)

3. Information that demonstrates that the individual or entity possesses the required cash flow and has sufficient net cash provided by operating activities [, as defined by the American Institute for Certified Public Accountants,] to pay for the remediation during the next 12-month period. Cash flow and net cash will be deemed sufficient if:

i. - ii. (No change.)

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4. Audited financial statements **for the preceding fiscal year that ended closest to the date of the self guarantee statement, including, but not limited to, an income statement, a balance sheet and a consolidated statement of cash flow**, in which the auditor expresses an unqualified opinion [for the preceding fiscal year that ended closest in time to the date of the self guarantee statement,]. **This information must be prepared in accordance with [the American Institute for Certified Public Accountants' guidelines, including, but not limited to, income statement, balance sheet and consolidated statement of cash flow] Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board Accounting Standards Codification or the International Accounting Standards Board International Financial Reporting Standards. This information must be audited in accordance with the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board's auditing standards; and**

5. (No change.)

(b) (No change.)

(c) In the case of a special purpose entity created specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not

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available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant **that the statement is prepared in accordance with the Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board's Accounting Standards Codification or the International Accounting Standards Board's International Financial Reporting Standards.**

(d) (No change.)

7:26C-5.9 Remediation funding source surcharge

(a) (No change.)

(b) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter and who is required to pay a surcharge pursuant to (a) above, shall submit the remediation funding source surcharge to the Department, and shall:

1. (No change.)

2. Submit the remediation funding source surcharge with the remediation funding source as required in N.J.A.C. 7:26C-5.2 and annually thereafter on the same date **or within 30 days after receipt of an invoice from the Department, whichever date occurs sooner, and**

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until the Department or a licensed site remediation professional issues a final remediation document.

(c) The surcharge is not applicable to the financial assurance established for a remedial action permit.

7:26C-5.10 Remediation cost review

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

1. A [detailed] summary of all monies spent to date to remediate the contaminated site;
2. An [detailed] estimate of the remaining costs to complete the remediation pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, [excluding] **including** the cost to operate, maintain and inspect engineering controls [as part

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of a remedial action permit pursuant to N.J.A.C. 7:26C-7] **and the Department's fees and oversight costs pursuant to N.J.A.C. 7:26C-5.3;** and

3. (No change.)

(b) The person responsible for conducting the remediation who is subject to a remedial action permit shall submit to the Department, on the same schedule that the person is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.4(b)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls, on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. A summary of all monies spent as of the date of the estimate to comply with the remedial action permit;

2. An estimate of the remaining costs to comply with the remedial action permit;
and

3. An explanation of any changes from the most recently submitted cost review for implementing the remedial action that is the subject of a remedial action permit.

7:26C-5.11 Changes in the remediation funding source **or financial assurance** amount or type

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and return of the remediation funding source **or financial assurance**

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

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

1. [Receipt] **For cases where the person responsible for conducting the remediation is subject to direct oversight, receipt** from the Department of written approval in response to a request submitted pursuant to (a) above provided, however, that the Department will respond to requests within 45 calendar days after the Department's receipt of the request; or

2. Submission to the Department of a [Remediation Cost Review Form] **form, found on the Department's website at www.nj.gov/dep/srp/srra/forms**, pursuant to [(a)] **5.10** above

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[, but only if that submission includes a certification by the licensed site remediation professional justifying the revised cost estimate].

(c) The person required to establish the remediation funding source **or financial assurance** pursuant to this subchapter shall increase the remediation funding source **or financial assurance** amount within 30 days after:

1. Submission to the Department of any remediation cost review, required pursuant to N.J.A.C. 7:26C-5.10, that indicates that the cost of remediation has increased to an amount greater than the existing remediation funding source; **or**

2. [Receipt] **For cases where the person responsible for conducting the remediation is subject to direct oversight, receipt** of a demand from the Department to increase the amount of the remediation funding source **or financial assurance** to match the amount of the estimated costs; or

3. Receipt of written certification, with a copy provided to the Department, from a licensed site remediation professional that the estimated cost of the remediation has increased.

(d) [The person responsible for conducting the remediation may decrease the amount of the remediation funding source, pursuant to (a) above, to the extent that the remediation includes:

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1. An innovative remedial action technology;
2. A limited restricted use remedial action; or
3. An unrestricted use remedial action.

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

[(f) The Department shall return the remediation funding source to the person responsible for conducting the remediation when either the Department or a licensed site remediation professional has issued a final remediation document for the entire site pursuant to N.J.A.C.

7:26C-6.]

(e) The Department shall return:

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1. The remediation funding source when:

- i. A person has substituted another form of remediation funding source; or**
- ii. When another person has established a remediation funding source; or**
- iii. The Department or a licensed site remediation professional has issued a final remediation document for the entire site pursuant to N.J.A.C. 7:26C-6; and**

2. The financial assurance when:

- i. A permittee has substituted another form of financial assurance;**
- ii. When another permittee has established financial assurance; or**
- iii. The Department has terminated the remedial action permit, pursuant to N.J.A.C. 7:26C-7.13.**

7:26C-5.12 Disbursements from the remediation funding source **and financial assurance**

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(a) Except [those persons subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27] **as provided in (b) below**, a person [responsible for conducting the remediation] who is required to establish and maintain a remediation funding source **or financial assurance** pursuant to this subchapter, and who has established a remediation trust fund, an environmental insurance policy, **letter of credit** or a line of credit, in satisfaction of the requirements of this subchapter, may submit **to the provider, with a copy to the Department**, no more frequently than once every three months, a written request to use the remediation funding source **or financial assurance** to pay for the actual cost of remediation. The request [may be submitted to the Department, or directly to the provider of the remediation funding source with a copy provided to the Department if the information specified in (a)2i through iv below is prepared and certified by a licensed site remediation professional if applicable, and] must include the following information:

1. Identification of the site, including name, address, case number (if applicable), program interest name, program interest number (preferred ID)[, and status of the remediation];

2. [Information related to remediation costs, prepared and certified by a licensed site remediation professional, if applicable, including:

i. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed under this request;

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ii. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request;

iii. The total amount of disbursement being requested; and

iv. An updated, detailed estimate of the cost of implementing the remaining remediation] **The amount of the disbursement request;** and

3. A certification by the person responsible for conducting the remediation[,] and by the licensed site remediation professional, [if applicable,] that the disbursement request represents actual remediation costs of the subject site, incurred or to be incurred[, and does not include legal fees].

(b)[If the disbursement request is submitted to the Department rather than directly to the provider of the remediation funding source] **For sites where the person responsible for conducting the remediation is subject to direct oversight,** within 30 days after the Department's receipt of the written request submitted [pursuant to (a) above,] **on a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms,** the Department will respond to a disbursement request as follows:

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1. The information submitted is complete and the disbursement amount represents actual remediation costs and, therefore, the disbursement is approved; **or**

2. [The information submitted is complete; however, the requested disbursement amount includes remediation costs that has neither been approved by the Department nor has been certified by a licensed site remediation professional, and therefore, the Department will only allow disbursement of funds for the approved remediation costs; or

3.]The information submitted is incomplete, [including] **and the disbursement is not approved. The Department shall include** a list of the missing information and a statement that the Department shall give no further consideration to the disbursement request until the requestor submits all the required information.

(c) If the disbursement request is submitted directly to the provider of the remediation funding source **or financial assurance** in accordance with (a) above, the person responsible for conducting the remediation **and the licensed site remediation professional** shall provide the Department with notice of the disbursement [or denial] and the amount of the remaining remediation funding source **or financial assurance** within 30 days [of] **after** disbursement [or denial] **on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms.**

7:26C-5.13 Failure to perform the remediation

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(a) The Department shall notify in writing the person required to establish a remediation funding source **or financial assurance** pursuant to this subchapter if the Department determines that the person has failed to perform the remediation as required. [The person shall have 30 days after receipt of such notice, unless otherwise extended in writing by the Department, to perform any obligation not performed.]

(b) The Department shall provide a copy of the notification required in (a) above, to the current owners and operators of the site when the person required to establish the remediation funding source **or financial assurance** has failed to remediate the site.

(c) [Thirty calendar days after the person's receipt of the notification in (a) above, the] **The** Department may, in its sole discretion, **avail itself of the funds in the remediation funding source or financial assurance and** perform the remediation of a site using the funds in the remediation funding source **or financial assurance**.

(d) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the moneys in the remediation funding source **or financial assurance** established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the monies to the petitioner.

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

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7:26C-6.2 Response action outcomes

(a) The licensed site remediation professional shall issue a response action outcome[:

1. To] **to** the person who has conducted the remediation[when, in]:

1. When, in the opinion of the licensed site remediation professional, the site or area of concern has been remediated pursuant to [all applicable statutes, rules, and guidance, including, but not limited to, this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and the Remediation Standards rules, N.J.A.C. 7:26D](c), (f), and (g), below;

2. (No change.)

3. After **the person responsible for conducting the remediation has paid to the Department** all fees and oversight costs [have been paid to the Department];

4. For an entire site or one or more areas of concern, including all areas to which [a discharge] **contamination** originating at the site or area of concern may have migrated; and

5. (No change.)

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(b) The licensed site remediation professional shall:

1. Prepare [the] **and issue a** response action outcome pursuant to:

- i. [This] **The requirements of this** section; and
- ii. [The Guidance for the Issuance of Response Action Outcomes (RAO) found on the Department's website at www.nj.gov/dep/srp/srra/guidance; and]**The Model Response Action Outcome included in Appendix D of this chapter, including all applicable inserts; and**

2. File each response action outcome with the Department, **within 30 days after issuing the response action outcome, with:**

- i. [With a Response Action Outcome] **A** form [available from] **found on the** [Department] **Department's website** at www.nj.gov/dep/srp/srra/forms[, when the licensed site remediation professional issues the response action outcome to the person who has conducted the remediation]; and
- ii. [Three] **One** [electronic copies] **copy**, pursuant to N.J.A.C. 7:26C-1.6, of all data, documents and information concerning remediation, including but not limited to,

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technical records [and contractual documents], raw sampling and monitoring data, whether [or not] the data and information relate in any way to the site or area of concern, **and any contractual documents specifically requested by the Department**, including technical records and contractual documents, developed by the licensed site remediation professional, the licensee's divisions, employees, agents, accountants, contractors, or attorneys, or a prior licensed site remediation professional for the remediation to the extent that the subsequent licensed site remediation professional relied on the work of the earlier licensed site remediation professional.

(c) The licensed site remediation professional shall base his or her opinion as to whether to issue the response action outcome on the [following] **hierarchy in N.J.A.C. 7:26C-1.2(a)**], in effect at the time of the response action outcome:

1. All applicable New Jersey statutes, including:

i. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; and

ii. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4; and

2. All applicable New Jersey rules, including, without limitation:

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- i. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
 - ii. The Remediation Standards rules at N.J.A.C. 7:26D; and
 - iii. Any other applicable standards adopted pursuant to law;
3. The Department's technical guidelines concerning site remediation at www.nj.gov/dep/srp/srra/guidance; and
4. If there is no specific requirement provided by any technical standard the Department has adopted, or the Department's guidance is not appropriate or necessary, the licensed site remediation professional may use the following additional technical guidance to make decisions regarding remediation, and shall specifically identify all such guidance used and set forth the rationale for such use:
 - i. Relevant guidance from the United States Environmental Protection Agency or other states; and
 - ii. Other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and of the environment].

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(d) (No change.)

(e) The licensed site remediation professional shall correct all deficiencies identified by the Department in the Department's inspection and review findings, **pursuant to N.J.A.C. 7:26C-6.4(e)**.

(f) If the licensed site remediation professional issues a response action outcome that is based upon either a preliminary assessment or site investigation, the licensed site remediation professional shall certify that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standards in the Remediation Standards rules, [at] N.J.A.C. 7:26D;

2. The applicable ground water remediation standards in the Remediation Standards rules, [at] N.J.A.C. 7:26D; and

3. (No change.)

(g) The licensed site remediation professional shall **only** issue a response action outcome after the licensed site remediation professional has determined that the remediation has been

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completed pursuant to [the Technical Requirements for Site Remediation rules, N.J.A.C.

7:26E](c), **above**, including, without limitation, the following, as applicable:

1. All contaminated soil has been remediated:

- i. (No change.)
- ii. [Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard and the] **The** Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and

2. All contaminated ground water has been remediated:

- i. To the applicable ground water [quality] **remediation** standard; **or**
- ii. The [licensed site remediation professional has:
 - (1) Determined, based upon the most recent eight consecutive quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards,

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N.J.A.C. 7:7C, and that a natural attenuation ground water remedial action is therefore appropriate;

(2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;

(3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and

(4) Determined that the Department has issued a ground water remedial action permit for the remediation, unless the site is in an area of regional historic fill; or

iii. The licensed site remediation professional has:

(1) Approved a ground water remedial action that utilizes an engineering control:

(2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;

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(3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and

(4) Determined that the] Department has issued a ground water remedial action permit [for the remediation] **pursuant to N.J.A.C. 7:26C-7.**

7:26C-6.3 No further action letters

[(a)]The Department will issue a no further action letter to the person responsible for conducting the remediation when that person is[

1. Remediating] **remediating** an unregulated heating oil tank [; or

2. Subject to N.J.A.C. 7:26C-2.3 and completes the remedial action prior to May 7, 2012].

7:26C-6.4 Modification, rescission and invalidation of a final remediation document

(a) [The Department may modify or rescind a no further action letter or invalidate a response action outcome under the following circumstances if it determines that the remedial action is no

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longer protective of public health and safety] **A remedial action is not protective of the public health, safety and the environment when any of the following occur:**

1. (No change.)

2. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude and the person responsible for conducting the remediation fails to [conduct] **complete** further remediation;

3. - 5. (No change.)

6. [The Department concludes that the remediation was not performed in compliance with applicable statutes, rules and guidance] **The remediation was not conducted in accordance with the remediation standards;**

7. The conclusions in the final remediation document are not supported by environmental data as required by this chapter;

8. The scope of the final remediation document is not consistent with the scope of the actual remediation;

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9. Mistakes or errors in the final remediation document may result in detrimental reliance on the final remediation document by a third party;

10. The remediation was not conducted pursuant to N.J.A.C. 7:26C-6.2(c), (f), or (g), as applicable;

11. A presumptive remedy or alternative presumptive remedy was not implemented when required; or

Recodify existing 7. as **12.** (No change in text.)

(b) The **licensed site remediation professional shall rescind his or her** [Department may invalidate a] response action outcome when [it]**he or she** determines that [the person responsible for conducting the remediation]:

[1. Implemented a remedial action that will render the property unusable for future redevelopment or recreational use; or

2. Failed to implement a presumptive remedy or alternative presumptive remedy when required.]

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- 1. The remedial action is not protective of the public health, safety, and the environment pursuant to (a) above; or**

- 2. The person responsible for conducting the remediation implemented a remedial action that will render the property unusable for future redevelopment or recreational use.**

(c) The Department shall:

- 1. Invalidate a response action outcome when it determines that the licensed site remediation professional has failed to comply with (b) above; or**

- 2. Invalidate a response action outcome or rescind a no further action letter when it determines that:**
 - i. The remedial action is not protective of the public health, safety, and the environment pursuant to (a) above; or**

 - ii. The person responsible for conducting the remediation implemented a remedial action that will render the property unusable for future redevelopment or recreational use.**

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Recodify existing (c) as (d) (No change in text.)

(e) A licensed site remediation professional shall withdraw and reissue a response action outcome, pursuant to N.J.A.C. 7:26C-6.2, upon a finding by the Department or by that licensed site remediation professional that the response action outcome was not prepared in accordance with this subchapter. When the finding that the response action outcome was not prepared in accordance with this chapter because it contains administrative errors, the licensed site remediation professional shall, within 14 days:

1. Amend a response action outcome, by correcting all administrative errors, including but not limited to, the improper use of notices, changes made to the Model Response Action Outcome that are inconsistent with that model or this subchapter, and missing or incomplete site specific identifiers; and

2. Reissue the amended response action outcome pursuant to N.J.A.C. 7:26C-6.2(b).

**SUBCHAPTER 7. DEED NOTICES, GROUND WATER CLASSIFICATION
EXCEPTIONS AREAS AND REMEDIAL ACTION PERMITS**

7:26C-7.1 Purpose and scope

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(a) The purpose of this subchapter is to establish [a permit program for implementing remedial actions that require institutional or engineering controls, or that include operation and maintenance systems] **the administrative requirements of the person responsible for conducting the remediation for:**

1. Using a deed notice as an institutional control;

2. Using a ground water classification area as an institutional control; and

3. A remedial action permit that establishes the regulatory mechanism for:

i. Operating and maintaining certain remedial actions;

ii. Monitoring the effectiveness of certain remedial actions; and

iii. Submitting a biennial certification of the continued protectiveness of a remedial action that includes an engineering or institutional control.

(b) More specifically, this subchapter establishes:

[1. A regulatory mechanism for the:

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- i. Operation and maintenance of certain remedial actions;
 - ii. Monitoring the effectiveness of certain remedial actions; and
 - iii. Submission of biennial certifications of engineering and institutional controls;]
- 1. The requirements for the use of a deed notice as part of a remedial action, pursuant to N.J.A.C. 7:26C-7.2;**
 - 2. The requirements for the use of a ground water classification area as part of a remedial action, pursuant to N.J.A.C. 7:26C-7.3;**
 - [2]**3. The permittees of a remedial action permit, pursuant to N.J.A.C. 7:26C-[7.2]7.4;**
 - [3]**4. [Remedial action permits]The requirements for applying for a remedial action permit at N.J.A.C. 7:26C-[7.3]7.5;**
 - 5. The remedial action permit application schedule, pursuant to N.J.A.C. 7:26C-7.6;**
 - [4]**6. The general conditions that apply to [each]all remedial action [permit]permits, pursuant to N.J.A.C. 7:26C-[7.4]7.7;**

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- [5]7. The specific conditions applicable to [each]**all** soil remedial action [permit]**permits**, pursuant to N.J.A.C. 7:26C-[7.5]**7.8**;
- [6]8. The specific conditions that apply to [each]**all** ground water remedial action [permit]**permits**, pursuant to N.J.A.C. 7:26C-[7.6]**7.9**;
- [7]9. The financial assurance requirements [for] **when** a remedial action [permit include]**includes an** engineering [controls]**control**, pursuant to N.J.A.C. 7:26C-[7.7]**7.10**;
- [8]10. The procedures for [transferring] **the transfer of** a remedial action permit, pursuant to N.J.A.C. 7:26C-[7.8]**7.11**;
- [9]11. The procedures for the Department to modify **specific requirements in** a remedial action permit, pursuant to N.J.A.C. 7:26C-[7.9]**7.12**; and
- [10]12. The procedures for the Department to terminate a remedial action permit, pursuant to N.J.A.C. 7:26C-[7.10]**7.13**.

(c) (No change.)

(d) Any person who chooses to redevelop or change the use of real property in a manner inconsistent with a remedial action that includes an engineering or institutional control, or

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to conduct additional remediation or other activities that would result in the need to file a new deed notice or to replace a declaration of environmental restrictions associated with the real property, shall comply with this subchapter.

7:26C-7.2 Administrative requirements for using a deed notice in a remedial action

(a) The person responsible for conducting the remediation implementing a remedial action that requires a deed notice pursuant to N.J.A.C. 7:26E-5.2(a)4 shall prepare a deed notice that:

1. Is worded exactly as the model document in N.J.A.C. 7:26C Appendix B except that site-specific information shall be inserted where indicated in the model document; and

2. Includes copies of all required maps that:

i. Are GIS compatible and are prepared using the Department's GIS guidance at www.nj.gov/dep/srp/guidance/techgis/;

ii. Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary);

iii. Are scaled at one inch to 200 feet or less;

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iv. Are clean, clear, and legible; and

v. Include:

(1) A bar scale;

(2) A north arrow;

(3) A legend;

(4) The applicable Program Interest name and number (Preferred ID);

(5) Tax Block and Lot numbers; and

(6) The date prepared.

(b) The person responsible for conducting the remediation who will use a deed notice as part of a remedial action for a contaminated site shall comply with the following, as applicable:

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1. If there is a deed for the property to which the deed notice applies, the person shall cause the owner of the property to record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the property is located; and shall obtain an official copy of the recorded deed, stamped “Filed” for use in satisfying the requirements of (b)3 below.

2. If there is no deed for the property to which the notice applies, the documents prepared pursuant to (a) above shall serve as a notice in lieu of a deed notice, and the person shall:

i. Where the property is a local, county or State roadway, provide a copy of the documents prepared pursuant to (a) above in both paper and electronic (read only) format, including all maps, to the following, as applicable:

(1) Each road department of each municipality in which the property is located;

(2) Each road department of each county in which the property is located;

(3) The New Jersey Department of Transportation; and

(4) Each utility company with an easement on the roadway; and

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ii. For a property that is owned by the U.S. Department of Defense, prepare an amendment to the Base Master Plan or Land Use Control Assurance Plan in the format prescribed in (a) above and submit the amendment to the commanding officer of the affected Base or the commanding officer's designated representative; and

iii. For a property that is owned by a local, county, State or Federal government agency (except as provided in ii above), provide a copy of the documents prepared pursuant to (a) above, in both paper and electronic (read only) format, including all maps, to the head of each affected agency or that agency's designated representative; and

3. Provide a paper copy of the recorded deed notice, stamped "Filed" pursuant to 1 above or notice in lieu of deed notice with proof of submission to the officials to which the notice in lieu of deed notice is to be submitted pursuant to 2 above, as applicable, and an electronic copy in a read only format, including all maps, to the following individuals and groups:

i. The Department as part of a remedial action permit application pursuant to 7:26C-7.4;

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- ii. The municipal clerk, mayor and governing body of each municipality in which the property is located;**
- iii. The local, county, and regional health department in each municipality and county in which the property is located;**
- iv. Each gas, electric, water, sewer, and cable company and all other utilities that service the property or have a license or easement to cross the property;**
- v. The Pinelands Commission if the property is located within an area subject to the jurisdiction of the Pinelands Commission; and**
- vi. Any other person who requests a copy.**

7:26C-7.3 Administrative requirements for establishing and removing a ground water classification exception area in a remedial action

(a) The person responsible for conducting the remediation who is proposing a ground water classification exception area shall complete and submit to the Department for the Department's approval a CEA/Well Restriction Area (WRA) Fact Sheet form available from the Department at www.nj.gov/dep/srp/srra/forms, to which the following shall be attached:

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- 1. The information required pursuant to (b) below;**

- 2. The map and cross sections required pursuant to (c) below;**

- 3. The remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4; and**

- 4. A list of the names and addresses of those persons who were notified pursuant to (d) below.**

(b) The person responsible for conducting the remediation shall include the following information with the CEA/Well Restriction Area (WRA) Fact Sheet form as required pursuant to (a)1 above:

- 1. Data tables that include for each contaminant:**
 - i. Name;**

 - ii. Maximum concentration in micrograms per liter (ug/L);**

 - iii. New Jersey Ground Water Quality Standard pursuant to N.J.A.C. 7:9C;**

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iv. New Jersey Surface Water Quality Standard pursuant to N.J.A.C. 7:9B, when contaminants in the ground water classification exception area may discharge to a surface water body; and

v. Vapor Intrusion Ground Water Screening Levels as developed by the Department;

2. A description of the fate and transport of the ground water contaminant plume, including a summary and description of all data, information, interpretations, and software used to describe the plume's fate and transport. The fate and transport information shall document:

- i. That degradation products were addressed appropriately;**
- ii. How horizontal and vertical extent predictions were performed;**
- iii. How the ground water classification exception area duration was estimated;**
- iv. That the vapor intrusion pathway was included in the fate and transport description, if applicable; and**

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v. That a site-specific evaluation was conducted regarding how changes in property use or conditions above the ground water classification exception area could affect the fate and transport of the ground water contamination or of vapors emanating from the plume;

3. An estimate of the horizontal and vertical extent that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to the applicable ground water quality standards; and

4. The estimated length of time that the ground water classification exception area will need to remain in place.

(c) The person responsible for conducting the remediation shall include the following map(s) and cross section(s) as required pursuant to (a)2 above:

1. A map of the ground water classification exception area, in both PDF and GIS-compatible formats. The GIS-compatible format shall be produced in conformance with guidance found at www.nj.gov/dep/srp/guidance/techgis/. The maps shall include the following information:

i. The known and predicted extent of the most mobile and the most persistent ground water contaminants;

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- ii. The prevailing ground water flow direction;**

- iii. The proposed ground water classification exception area boundary;**

- iv. The locations and identifications of wells and/or sampling points, including but not limited to those that represent:**
 - (1) The farthest down gradient extent of the ground water contamination;**

 - (2) The greatest width of the ground water contamination;**

 - (3) The greatest concentrations of ground water contamination;**

- v. The location(s) of all area(s) of concern that caused the ground water contamination; and**

- vi. The location(s) and identifications of the downgradient well(s) closest to the area(s) of concern identified in (a)1v above; and**

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2. A cross section figure along the prevailing ground water flow direction that defines the approximate ground water contaminant plume centerline. The cross section shall include identification of:

i. The location and identification of all wells and borings used to construct the cross section;

ii. The generalized location of the water table;

iii. The generalized hydrostratigraphy;

iv. The known and predicted extent of the contaminant plume;

v. The proposed upper and lower vertical boundaries of the ground water classification exception area; and

vi. The proposed horizontal boundary of the ground water classification exception area along the axis of the cross section.

(d) The person responsible for conducting the remediation shall notify by mailing a copy of the CEA/Well Restriction Area (WRA) Fact Sheet form, via certified mail, return

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receipt requested, the following persons of the intent to establish the ground water classification exception area:

1. The municipal and county clerks for each municipality and county in which the ground water classification exception area will be located;

2. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;

3. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;

4. The county planning board for each county in which the ground water classification exception area will be located;

5. The Pinelands Commission if the ground water classification exception area is located within the jurisdiction of that Commission;

6. New Jersey Department of Environmental Protection, Water Supply Administration:

i. Bureau of Safe Drinking Water; and

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ii. Bureau of Water Systems and Well Permitting of Water Allocation; and

7. Each owner of any real property that will be within the foot print of the ground water classification exception area.

(e) The Department shall establish a ground water classification exception area based upon the actual and projected area and depth of the contaminant plume in the ground water based on the information submitted pursuant to (b) and (c) above by posting the map of the ground water classification exception area and well restriction area on its website at www.nj.gov/dep/gis/geoweb splash.htm and the CEA/Well Restriction Area (WRA) Fact Sheet at http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=Site+Case+sub-category. The Fact Sheet shall include the effective date establishing the CEA and its anticipated expiration date.

(f) The Department may revise or reestablish a ground water classification exception area at any time to more accurately reflect ground water conditions using any relevant data. The Department shall post an updated CEA/Well Restriction Area (WRA) Fact Sheet if it has revised the ground water classification exception area.

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(g) The Department shall remove a ground water classification exception area based upon ground water data, collected pursuant to N.J.A.C. 7:26C-7.9(f), that indicate that the concentrations of contaminants in the ground water are at or below all of the applicable ground water quality standards.

(h) The ground water classification exception area established for historic fill pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.7(b) shall remain effective indefinitely. However, a ground water remedial action permit is not required for the ground water classification exception area.

[7:26C-7.2]7:26C-7.4 Permittees of remedial action permits

(a) Each of the following persons shall comply with this [subchapter] **section and N.J.A.C. 7:26C-7.5 through 7.13**, including any applicable remedial action permit the Department issues pursuant to this [subchapter] **section and N.J.A.C. 7:26C-7.5 through 7.13**:

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

i. Each owner and operator of an underground storage tank facility who is liable for the remediation pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;

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

iii. Any other person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for any hazardous substance that was discharged; and

iv. Any other person who is remediating a site; and

2. The permittees for a remedial action permit also include certain persons due to their position as owners, operators, or tenants of the property that is being, or has been remediated, including, without limitation, each of the following:

i. Each owner of the property, where the discharge occurred, at the time of implementation of the remedial action that includes an engineering or institutional control or operation and maintenance requirements for the remedial action; and

ii. Each subsequent owner, operator and tenant of the property of the discharge during that person's ownership or operation.]

1. A person subject to N.J.A.C. 7:26C-2.2; and

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2. A statutory permittee.

(b) (No change.)

7:26C-7.5 Application for a remedial action permit

(a) The person responsible for conducting the remediation shall apply for a remedial action permit pursuant to this section, according to the schedules in N.J.A.C. 7:26C-7.6, when the remedial action includes any of the following:

- 1. A deed notice or a declaration of environmental restrictions;**
- 2. A ground water classification exception area;**
- 3. Any other institutional or engineering control; or**
- 4. Any obligations for monitoring, maintenance and evaluation of a remedial action.**

(b) The person responsible for conducting the remediation shall apply for a remedial action permit for a soil remedial action that includes an engineering or institutional control by submitting the following to the Department:

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1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the soil remedial action permit that is to be supplied by filling out the form includes:

- i. The site name and location;**
- ii. The permit type and fees;**
- iii. The person responsible for conducting the remediation;**
- iv. The owner of the site;**
- v. The deed notice;**
- vi. The engineering control(s), if applicable, and financial assurance;**
- vii. The use of the engineering controlled area(s) and the contaminants that require the use of the deed notice/engineering control; and**

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viii. The signature and certification of the person(s) responsible for conducting the remediation, the Licensed Site Remediation Professional or the certified subsurface evaluator (if the site is an unregulated heating oil tank.);

2. A copy of the notice that complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices or a declaration of environmental restrictions that has been recorded with the county clerk and stamped “Filed;”

3. As-built drawings for each engineering control for contaminated soil;

4. A copy of each of the following:

i. The soil remedial action report that either the Department or a licensed site remediation professional has approved for the area(s) addressed in the deed notice and/or by the engineering control(s); and

ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012;

5. An engineering control monitoring and maintenance plan, if applicable, and schedule to support the biennial certification required pursuant to N.J.A.C. 7:26C-7.6(b);

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6. An estimate of the future costs to operate, maintain, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C.

7:26C-7.10; and

7. A permit application fee for a soil remedial action permit, pursuant to N.J.A.C. 7:26C-4.4(a).

(c) The person responsible for conducting the remediation shall apply for a ground water remedial action permit for a monitored natural attenuation remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the ground water remedial action permit to be supplied by filling out the form includes:

i. The site name and location;

ii. The permit type and fees;

iii. The person responsible for conducting the remediation;

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- iv. The owner of the site;**

- v. The classification exception area at the site;**

- vi. Monitoring, maintenance and evaluation information concerning the type of remediation;**

- vii. The engineering control and financial assurance;**

- viii. The use of the property;**

- ix. The use of the property abutting the site;**

- x. A summary of the receptor evaluation concerning the site;**

- xi. A list of other remediation permits, if applicable; and**

- x. The signature and certification of the person(s) responsible for conducting the remediation, the Licensed Site Remediation Professional or the certified subsurface evaluator (if the site is an unregulated heating oil tank);**

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2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the permit application;

3. A copy of each of the following:

i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates monitored natural attenuation is an effective remedial action;

ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012; and

4. A ground water monitoring plan and schedule to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, and to assess the effectiveness of the natural attenuation, including the following:

- i. At least one area of concern monitoring well located at the source area;**
- ii. At least one plume sampling point located downgradient of the source area but within the plume of contaminated ground water;**

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iii. At least one plume fringe monitoring well located at the limit of the plume of contaminated ground water that was delineated to the ground water remediation standard applicable to the nearest downgradient receptor; and

iv. At least one downgradient sentinel well located beyond the zone that was delineated to the ground water remediation standard applicable to the nearest downgradient receptor;

5. An evaluation plan and schedule to evaluate the effectiveness of the natural attenuation ground water remedial action and to determine whether natural attenuation is protective or further remediation is required for ground water;

6. An estimate of the future costs to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, and to assess the effectiveness of the natural attenuation, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

7. A permit application fee for a ground water remedial action permit, pursuant to N.J.A.C. 7:26C-4.4(a).

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(d) The person responsible for conducting the remediation shall apply for a ground water remedial action permit for an active ground water remedial action by submitting the following to the Department:

- 1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms , as described in (c)1 above;**
- 2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the permit application;**
- 3. As-built drawings, and operations manual, if applicable, for any engineering control for contaminated ground water;**
- 4. A copy of each of the following:**
 - i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates that the active ground water treatment system is operating and functioning as designed;**
 - ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012;**

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5. A ground water monitoring plan and schedule designed to evaluate the active ground water remedial action in order to:

i. Optimize the system's performance as the remediation progresses; and

ii. Determine whether:

(1) The plume of contaminated ground water is migrating horizontally or vertically into an aquifer zone below or adjacent to the plume of contaminated ground water; or

(2) The plume of contaminated ground water is contained and therefore not reaching a sentinel well, and the ground water remedial action is performing as designed;

6. An evaluation plan and schedule to evaluate the effectiveness of the active ground water remedial action and to determine whether the active ground water remedial system is protective or further remediation is required for ground water;

7. An estimate of the future costs to operate, maintain, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C.

7:26C-7.10; and

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8. A permit application fee for a ground water remedial action permit, pursuant to N.J.A.C. 7:26C-4.4(a).

7:26C-7.6 Remedial action permit application schedule

(a) The person responsible for conducting the remediation shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-7.4 within two years after the last biennial certification was due to the Department, but in no case later than May 7, 2014, when both of the following apply:

1. The Department has not yet issued a remedial action permit for a remedial action; and

2. The Department has issued a restricted or limited restricted use no further action letter.

(b) For all other situations not included in (a), above, the person responsible for conducting the remediation shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-7.4 according to the following schedule:

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1. For a soil remedial action that includes an engineering or institutional control, within 30 days after the owner complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices or June 7, 2012, whichever is later;

2. For a natural attenuation ground water remedial action, when the person responsible for conducting the remediation is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.8 that demonstrates that the natural attenuation remedial action is effective; and

3. For an active ground water remedial action, when the person responsible for conducting the remediation is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.8 that demonstrates that an active ground water remedial action for the site or area of concern is operational and functioning as designed.

[7:26C-7.4]7:26C-7.7 General conditions applicable to all remedial action permits

[(a) The permittees for a remedial action permit shall comply with all maintenance, monitoring, and evaluation requirements in any or all of the following that pertain to the remediation that is the subject of the permit:

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1. Every remedial action workplan and remedial action report that either the Department or a licensed site remediation professional has approved;

2. Every final remediation document that either the Department or a licensed site remediation professional has approved; and

3. Any subsequent modification of, any document referenced in (a)1 or 2 above, that either the Department or a licensed site remediation professional approves.

(b)](a) The [permittees] **permittee** shall:

1. Prepare and submit to the Department [a biennial] **biennially a remedial action protectiveness certification on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms**, as required by this subchapter [every two years following the anniversary of the date of the earliest of the following:

- i. The date the owner of property records a deed notice as part of a remedial action;
- ii. The date the Department establishes a ground water classification exception area pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-8.3; or

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iii. The date the Department or the licensed site professional approves a ground water remedial action report for a ground water remedial action] **and the remedial action permit.**

Information concerning the protectiveness of the remedial action to be supplied by filling out the form includes:

i. The site name and location;

ii. The current owner and operator of the site;

iii. The current lessee of the site, if applicable;

iv. Any areas of immediate environmental concern at the site;

v. The results of the analysis of statutory and regulatory changes subsequent to the establishment of the deed notice or the last submittal of the biennial certification and report;

vi. The use of the property;

vii. Any land disturbances at the site;

vii. If any additional remediation was conducted at the site; and

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viii. The signature and certification of the person(s) responsible for conducting the remediation and the Licensed Site Remediation Professional.;

2. If there is more than one remedial action permit for a site:

- i. Submit a separate biennial certification **form** for each remedial action permit; and
 - ii. Submit all of the biennial [certifications] **remedial action protectiveness certification forms** at the same time, when the first biennial certification is due to the Department pursuant to (b)1 above, and biennially thereafter on that same date;
3. Maintain financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-[7.7]**7.10**; and
4. (No change.)

b) The permittee of a remedial action permit shall comply with all conditions in the remedial action permit.

[7:26C-7.5]**7:26C-7.8** Specific conditions applicable to soil remedial action permits

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(a) [The permittees] **Each permittee** of a soil remedial action permit shall comply with **all of the following concerning the soil remedial action:**

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-
[7.4]**7.7**;

2. The conditions in each notice **that meets the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices**, recorded for the property pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;

3. The biennial certification requirements pursuant to [N.J.A.C. 7:26E-8.5(a) through (d)]**(b) through (e) below**; and;

4. (No change.)

(b) The permittee shall determine the protectiveness of the soil remedial action in preparation for submitting a soil biennial remedial action protectiveness certification report form by:

1. Determining whether any actual or pending zoning or land-use change is consistent with the use restrictions in the deed notice or declaration of environmental

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restrictions or whether it could undermine the protectiveness of the remedial action in a manner that could prevent the remedial action from:

i. Meeting the applicable health risk standard pursuant to N.J.S.A. 58:10B-12g(3)(b); and

ii. Continuing to be protective of public health, safety, and of the environment pursuant to N.J.S.A. 58:10B-12g;

2. Periodically inspecting the site to identify whether:

i. Any excavation or other disturbance activities have taken place within the restricted areas;

ii. Any disturbances of the soil within the restricted area have resulted in unacceptable human exposure to the soil contamination; and

iii. All engineering or institutional controls that are part of the remedial action continue to function as designed to limit human exposure to contamination above the unrestricted use standard;

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3. Comparing New Jersey laws, remediation standards, and other regulations

applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations, or remediation standards to determine whether:

i. Any subsequently promulgated or modified laws, regulations, or remediation standards apply to the site; and

ii. Each engineering and institutional control is consistent with the requirements of the subsequently promulgated or modified laws, regulations, and remediation standards; and

4. Keeping records, including a detailed log, completed for the time since the implementation of the remedial action, or the last certification and monitoring report was submitted to the Department, whichever is more recent, of how the permittee has maintained and evaluated the engineering control in compliance with this section.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (b) above in a certification to the Department biennially, according to the schedule in the permit, pursuant to the instructions on the form, as well as to the following persons and entities:

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1. The municipal and county clerks for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

2. The local, county and regional health department for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

3. Each owner of the property which is included in the deed notice or declaration of environmental restrictions;

4. The Pinelands Commission if the deed notice or declaration of environmental restrictions is recorded within the jurisdiction of that Commission; and

5. Each permittee.

(d) As part of the evaluation of the protectiveness of the soil remedial action, the permittee shall either:

1. Certify to the Department that:

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i. The deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained; and

ii. The soil remedial action continues to be protective of the public health and safety and the environment; or

2. If the permittee cannot provide the certification required in (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary, modifying the remedial action, proposing a revision to the deed notice, and applying for a modification of the soil remedial action permit.

(e) The permittee shall submit both a paper and electronic copy of the biennial remedial action protectiveness certification for the soil remedial action to the Department according to the schedule on a form available from the Department at www.nj.gov/dep/srp/srra/forms.

[7:26C-7.6]7:26C-7.9 Specific conditions applicable to ground water remedial action permits

(a) The [permittees of a ground water remedial action permit] permittee shall comply with all of the following concerning the ground water remedial action:

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1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-
[7.4]7.7;

2. The ground water monitoring reporting requirements in any remedial action workplan or remedial action report approved **for the site** by either the Department or a licensed site remediation professional;

3. The ground water monitoring plan and schedule as required in N.J.A.C. 7:26C-7.5(c)4 or 7.5(d)5;

Recodify existing 3. as **4.** (No change in text.)

[4]5. The [biennial certification pursuant to N.J.A.C. 7:26E-8.6] **remedial action protectiveness evaluation in (b) through (d), below; and**

Recodify existing 5. as **6.** (No change in text.)

(b) The permittee shall determine the protectiveness of the ground water remedial action in preparation for submitting a ground water biennial remedial action protectiveness certification report form by:

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1. Determining the effectiveness of the remediation by evaluating the data gathered by the monitoring program required pursuant to N.J.A.C. 7:26C-7.4(c)4 and (d)5;

2. Comparing New Jersey laws, Ground Water Quality Standards, and other regulations applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws, regulations, or remediation standards to determine whether:

i. Any subsequently promulgated or modified laws, regulations, or remediation standards apply to the site; and

ii. Each ground water classification exception area is consistent with the requirements of the subsequently promulgated or modified laws, regulations and remediation standards;

3. Determining whether there are any planned changes within a 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located since the Department established the ground water classification exception area or the last completed protectiveness evaluation;

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4. Identifying whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed protectiveness evaluation;

5. Inspecting all ground water monitoring wells associated with the ground water classification exception area and maintaining a log for each monitoring well;

6. Identifying any land use disturbance, such as the installation of a detention basin, that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water. If any such disturbance is identified, sample the ground water and surface water downgradient and proximate to the land use disturbance to determine whether the ground water meets the more stringent of either:

i. The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; or

ii. The Federal Surface Water Quality Criteria, 40 CFR Part 131; and

7. Determining whether:

i. The current fate and transport analysis remains accurate with regard to the risk of vapor intrusion; and

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ii. There are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (b) above in a certification to the Department biennially, according to the schedule in the permit, on a form, found on the Department's website, www.nj.gov/dep/srp/srra/forms, as described in (a)5 above, as well as to the following:

1. The municipal and county clerks for each municipality and county in which any property included in the ground water classification exception area is located;

2. The local, county and regional health department for each municipality and county in which any property included in the ground water classification exception area is located;

3. The county planning board for each county in which the ground water classification exception area will be located;

4. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;

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5. Each owner of any real property that will be within the footprint of the ground water classification exception area; and

6. Each permittee listed on the permit.

(d) As part of the evaluation of the protectiveness of the ground water remedial action, the permittee shall either:

1. Certify to the Department that:

i. The ground water classification exception area is being properly maintained; and

ii. The ground water remedial action continues to be protective of public health and safety and the environment; or

2. If the permittee cannot provide the certification required in (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary:

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i. Modifying the remedial action, re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, and applying for a modification of the ground water remedial action permit; and

ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, then conduct public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk.

(e) The permittee shall submit both a paper and electronic copy of the biennial remedial action protectiveness certification for the ground water remedial action to the Department according to the schedule in the permit and on a form available from the Department at www.nj.gov/dep/srp/srra/forms.

(f) Within 180 calendar days after the anticipated expiration date of the ground water classification exception area posted by the Department on its website pursuant to N.J.A.C. 7:26C-7.3(e), the permittee shall collect at least two rounds of ground water samples such that the time between sampling events accounts for seasonal fluctuations in the ground

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water table and the number of ground water samples collected is representative of the entire horizontal and vertical extent of the ground water classification exception area, and:

1. If ground water samples indicate that contaminant concentrations have decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then any person may request that the Department remove the ground water classification exception area pursuant to N.J.A.C. 7:26C-7.3(g) and terminate the ground water remedial action permit pursuant to N.J.A.C. 7:26C-7.13; or

2. If ground water samples indicate that contaminant concentrations have not decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then:

i. Modify the remedial action by re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, and applying for a modification of the ground water remedial action permit; and

ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, then perform public outreach,

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consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk.

[7:26C-7.7]**7:26C-7.10** Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided in [(b)](c) below, the [permittees for a remedial action permit for] **permittee implementing** a remedial action that includes an engineering control shall:

1. Submit to the Department, **biennially** on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-[7.4(b)1]**7.7(b)1**, an estimate of the future costs to operate, maintain, and inspect all engineering controls **that are** part of [any] **each** remedial action at the site; and

2. Maintain financial assurance in accordance with [the remediation funding source options established in] N.J.A.C. 7:26C-[5.4, 5.5, 5.6, and 5.7]**5.2(e)**:

i. In an amount equal to or greater than the most recent estimated full cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit [as most recently estimated based upon applicable guidance published by the Department or other sound basis for estimating those costs]; and

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ii. Until the Department terminates the permit pursuant to N.J.A.C. 7:26C-[7.10]7.13.

(b) In the event that more than one permittee is required to establish financial assurance pursuant to this section and one or more of the permittees is exempt from this requirement pursuant to (c) below, the non-exempt permittee(s) shall establish the full amount of the financial assurance required.

Recodify existing (b) through (f) as **(c) through (g)** (No change in text.)

[7:26C-7.8]7:26C-7.11 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-[7.2(a)2]7.4(a)2) may, prior to changing such status, request that the Department transfer the permit to a new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-[4.4]4.6 and has the burden of showing that its permittee status is so limited by law.

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least 60 calendar days prior to the sale or transfer of

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the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit by providing the following information on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department at

www.nj.gov/dep/srp/srra/forms:

1. - 4. (No change.)

5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:

i. - ii. (No change.)

iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-
[7.8]**7.10**, if applicable.

(c) The Department shall not rescind a person's status as a permittee until all of the following occur:

1. - 2. (No change.)

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3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-[7.7]**7.10**.

[7:26C-7.9]**7:26C-7.12** Modification of specific requirements in a remedial action permit

(a) (No change.)

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after **the occurrence of** any of the following, by submitting a completed [Remedial Action Permit Form] **form** appropriate for the specific remedial action permit, **as described in**

(c) below, as applicable, available from the Department on its website at

www.nj.gov/dep/srp/srra/forms[, which includes the following]:

1. A [statement that the permittee has completed a protectiveness evaluation required in its permit and has determined] **determination** that the remedial action is not adequately protective of the public health and safety and of the environment[, and stating the reasons for coming to this conclusion];

2. [The]A **determination that the** size, duration, or contaminants of a **ground water** classification exception area, **or the frequency and parameters of the ground water monitoring** need to be modified;

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3. [Any]A person proposes to change the engineering **or institutional** controls applicable to the site, as described in the [deed] notice [filed for the property] **that complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices;**

4. [The]The person responsible for conducting the remediation modifies the **remedial action;**

5. **A determination that the** municipality has revised the lot and block designations of the property; or

[5.] **6.** The permittee changes its [name or] address.

(c) (No change.)

[7:26C-7.10]**7:26C-7.13** Termination of a remedial action permit

(a) (No change.)

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

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1. - 4. (No change.)

5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix [B]D to this chapter, incorporated herein by reference; and

6. (No change.)

(c) (No change.)

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

(a) The amount of a civil administrative penalty shall be determined as follows:

1. The Department shall identify the violation listed in the table in [(c)] **(b)** below;

2. – 3. (No change.)

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4. For a violation identified by an “NM” as non-minor in the “Type of Violation” column, or for a violation that is identified by an “M” as minor in the “Type of Violation” column, but for which the conditions at N.J.A.C. 7:26C-9.3 are not satisfied, the Department:

i. Shall identify the corresponding base penalty dollar amount for the rule violated as listed in [(c)] **(b)** below;

ii. – iii. (No change.)

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

Full text of the table proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26C-9.5(b).

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of</u>	<u>Grace</u>	<u>Base</u>
		<u>Violation</u>	<u>Period</u>	<u>Penalty</u>
			<u>Days</u>	

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

5 Discharge notification, response and reporting

Failure to conduct remediation	7:1E-5.7(a)2ii	NM		\$20,000
in accordance with N.J.A.C. 7:26C.				

Underground Storage Tanks N.J.A.C. 7:14B

1 General information

Failure to submit proper	7:14B-1.7	M	30	\$10,000
certifications.				

3 Fees

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
<p>Failure to pay fees or oversight costs.</p>	7:14B-3	NM		<p>100 percent of the amount of the fee that is in arrears</p>
7 Release reporting and investigation				
<p>Failure to perform an investigation of a suspected release, in accordance with 7:14B-7.2(a) within 7 days of discovery of the suspected release.</p>	7:14B-7.1(a)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Introduction of product into an underground storage tank undergoing a suspected release investigation.	7:14B-7.1(b)	NM		\$25,000
Failure to properly conduct a suspected release investigation.	7:14B-7.2(a)	NM		\$15,000
Failure to perform a Site Investigation within the required timeframe, in accordance with N.J.A.C. 7:26E-3.3, when the 7-day investigation was inconclusive in confirming or disproving a suspected release or when available information indicates the tank system may be the source of a discharge.	7:14B-7.2(b)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Failure to immediately report a confirmed discharge as required.	7:14B-7.3(a) and (b)	NM		\$25,000
Failure to remediate discharges from the underground storage tank system in accordance with this chapter and N.J.A.C. 7:26C.	7:14B-7.3(c)	NM		\$20,000
Failure to implement the release response plan when a discharge is identified.	7:14B-7.3(d)	NM		\$20,000
Failure to report a discharge of a reportable quantity of hazardous substances other than petroleum or waste oil to the National response Center per 40 CFR Part 302.	7:14B-7.3(e)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Introduction of a hazardous substance into an underground storage tank system which is known to be leaking or discharging hazardous substances.	7:14B-7.3(f)	NM		\$25,000
Failure to perform an unknown source investigation and submit the required report and form when required within the required timeframe.	7:14B-7.4	NM		\$15,000

8 Remediation

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Failure to take the required actions upon confirming the leak of a hazardous substance into the interstitial space created by the secondary containment system.	7:14B-8.1(a)	NM		\$15,000
Upon confirming a release, failure to take all required actions, including remediation of the discharge pursuant to N.J.A.C. 7:26C.	7:14B-8.1(b)	NM		\$20,000
For tanks subject to regulation at 40 C.F.R. Part 280, failure to report to the Department the source and cause of the confirmed release.	7:14B-8.3(a)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
9 Out-of-service underground storage tank systems and closure of underground storage tank systems				
Failure to comply with requirements related to out of service tanks.	7:14B-9.1	NM		\$15,000
Failure to comply with required procedures when closing an underground storage tank system.	7:14B-9.2	NM		\$15,000
Failure to comply with required procedures when the substance being stored is being changed to a substance not regulated by this chapter.	7:14B-9.4	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Failure to comply with reporting and record keeping requirements related to tank system closure.	7:14B-9.5	NM		\$15,000
10 Permitting requirements for underground storage tank systems				
Failure to obtain a permit when required.	7:14B-10.1(a)	NM		\$15,000
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$10,000
Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.	7:14B-10.2(a)	NM		\$15,000

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<p>Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.</p>	7:14B-10.2(b)	M	60	\$15,000
<p>Failure to comply with permit application requirements.</p>	7:14B-10.3	M	30	\$10,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
<p>Failure to make the Department-issued permit available for inspection, prominently display the permit during the course of the permitted activity, maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection.</p>	7:14B-10.5	M	30	\$10,000
<p>Failure to comply with requirements related to emergency permits.</p>	7:14B-10.6	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
<p>Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.</p>	7:14B-10.8(e)	NM		\$25,000
11 Municipal ordinances				
<p>Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.</p>	7:14B-11.1(b)	NM		\$10,000

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<p>Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.</p>	7:14B-11.2(a)	M	30	\$10,000

13 Certification of individuals and business firms

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Performance of entire system installation or release detection monitoring system installation, closure, tank testing, subsurface evaluation, or corrosion protection system analysis without proper certification and/or supervision..	7:14B-13.1(a)1	NM		\$20,000
Conducting remediation on an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter without holding a LSRP license.	7:14B-13.1(a)2	NM		\$20,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
<p>Failure to make the Department-issued certification card available to the Department or its authorized agent upon request or to conspicuously display the Department-issued certificate at the office of the business firm as required.</p>	<p>7:14B-13.1(b) and (c)</p>	<p>M</p>	<p>30</p>	<p>\$10,000</p>

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
<p>Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.A.C. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual, and that remediation is being conducted by a LSRP.</p>	<p>7:14B-13.1(d)</p>	<p>NM</p>		<p>\$20,000</p>

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
<p>Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm, or to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.</p>	7:14B-13.1(e)	NM		\$20,000
<p>Failure to retain a licensed site remediation professional to conduct remediation pursuant to N.J.A.C. 7:26C.</p>	7:14B-13.1(g)	NM		\$20,000

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<p>Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.</p>	7:14B-13.1(i)	NM		\$10,000
<p>Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.</p>	7:14B-13.1(k)	NM		\$10,000

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<p>Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.</p>	7:14B-13.1(l)	M	30	\$10,000

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<p>Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card, or the license number of the Licensed Site Remediation Professional as applicable, when requested by the local construction official.</p>	7:14B-13.1(m)	M	30	\$10,000
<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to comply with the professional business practices described in N.J.A.C 7:14B-13.9</p>	7:14B-13.1(n)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$20,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation when requested.	7:14B-13.7(f)	M	30	\$10,000
Failure to maintain evidence of financial responsibility assurance for the mitigation or remediation of a hazardous substance discharge resulting from the performance of services.	7:14B-13.8(a)	NM		\$15,000

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<p>Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.</p>	<p>7:14B-13.8(b)</p>	<p>NM</p>	<p>30</p>	<p>\$10,000</p>
<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 shall perform all services in accordance with all Federal, State and local rules and regulations and comply with the listed professional business practices.</p>	<p>7:14B-13.9(a) through (c)</p>	<p>NM</p>		<p>\$15,000</p>

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<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to submit to the Department documentation of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance, and to facilitate an audit by the Department of the individual and business firm's pricing and business practices.</p>	<p>7:14B-13.9(d)1 and 2</p>	<p>M</p>	<p>30</p>	<p>\$10,000</p>

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<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.</p>	7:14B-13.9(e)	NM		\$20,000
<p>16 Certification of individuals and business firms for unregulated underground storage tank systems</p>				
<p>Performing services on unregulated heating oil tanks without proper certification and/or supervision.</p>	7:14B-16.2(a)	NM		\$20,000

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<p>Failure to make the Department-issued certification card available to the Department or its authorized agent upon request or to conspicuously display the Department-issued certificate at the office of the business firm as required.</p>	<p>7:14B-16.2(b) and (c)</p>	<p>M</p>	<p>30</p>	<p>\$10,000</p>
<p>Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tanks are performed by an individual with proper certification and/or supervision.</p>	<p>7:14B-16.2(d)</p>	<p>NM</p>		<p>\$20,000</p>

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Performing services on unregulated heating oil tanks without proper certification and/or supervision.	7:14B-16.2(e)	NM		\$20,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.	7:14B-16.2(f)	NM		\$15,000

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<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to facilitate any audit of its pricing and business practices, including the individual's or business firm's cost for providing services being performed with financial assistance from the Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund.</p>	7:14B-16.2(g)	NM		\$20,000

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<p>Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.</p>	7:14B-16.2(i)	NM		\$10,000
<p>Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.</p>	7:14B-16.2(j)	NM		\$10,000

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<p>Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.</p>	7:14B-16.2(k)	NM		\$10,000
<p>Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.</p>	7:14B-16.2(l)	M	30	\$10,000

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Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$15,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation.	7:14B-16.8(f)	M	30	\$10,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of services.	7:14B-16.9(a)	NM		\$15,000

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<p>Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.</p>	7:14B-16.9(b)	NM		\$15,000
<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations and comply with the listed professional business practices.</p>	7:14B-16.10(a) through (c)	NM		\$15,000

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<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to submit to the Department documentation of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance, and to facilitate an audit by the Department of the individual and business firm's pricing and business practices.</p>	7:14B-16.10(d)	NM		\$20,000

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<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.</p>	7:14B-16.10(e)	NM		\$20,000

Industrial Site Recovery Act Rules N.J.A.C. 7:26B

1 General information

<p>Failure to submit proper certifications.</p>	7:26B-1.6	M	30	\$10,000
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Failure of an owner or operator to comply with ISRA and this chapter.	7:26B-1.10(a)	NM		\$15,000
Transfer of an industrial establishment prior to: a licensed site remediation professional's issuance of a response action outcome or certification of a remedial action workplan; submittal of a remediation certification with all required information; or Department approval of an application for a waiver or exemption.	7:26B-1.10(b)	NM		\$15,000

3 Notification and remediation requirements

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Failure to submit a General Information Notice with the required information within five calendar days after the occurrence of a transaction event, on the proper form, and to amend it as required.	7:26B-3.2	NM		\$15,000
Failure to remediate the industrial establishment as required.	7:26B-3.3(a)	NM		\$20,000
Failure to establish and maintain a remediation funding source as required.	7:26B-3.4	NM		\$15,000
8 Program fees and oversight costs				

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Failure to pay fees and oversight costs.	7:26B-8	NM		100 percent of the amount of the fee that is in arrears

Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C.

7:26C

1 General information

Failure to conduct remediation in accordance with all applicable statutes, rules, standards and guidance.	7:26C-1.2(a)	NM		\$20,000
Failure to comply with this chapter	7:26C-1.4(a)	NM		\$15,000

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Failure to conduct additional remediation using the services of a LSRP when notified of termination of exempt status.	7:26C-1.4(e)	NM		\$15,000
Failure to properly certify all submissions.	7:26C-1.5	M	30	\$10,000
Failure to submit forms, applications and documents as required.	7:26C-1.6	M	30	\$10,000
Failure to immediately notify the Department of a discharge or IEC condition.	7:26C-1.7(a) and (b)	NM		\$25,000
Failure to comply with the notification requirements listed	7:26C-1.7(c) through (d)	NM		\$25,000

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<p>Failure to assure required notifications are in English, and other predominant language if warranted, include the proper contact information and are submitted as required.</p>	<p>7:26C-1.7(e) through (g)</p>	<p>M</p>	<p>30</p>	<p>\$10,000</p>
<p>Failure to provide requested information to the Department, and to local property owners and tenants who reside within 200 feet of the contaminated site, and to the government entities, as required.</p>	<p>7:26C-1.7(h)</p>	<p>NM</p>		<p>\$10,000</p>

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<p>Failure to submit a copy of the remedial action workplan and any updates or status reports, and a copy of the site health and safety plan to the clerk of the municipality, county health department, and local health agency in which the site is located, when requested.</p>	7:26C-1.7(i)	M	30	\$10,000

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<p>Failure to obtain the Department's prior written approval, comply with the N.J.A.C. 7:26E-5.2, and provide required notification, prior to bringing 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 raise the topographic level in a floodplain.</p>	7:26C-1.7(k)	NM		\$15,000
<p>Failure to prepare, distribute and publish a fact sheet when contamination migrates off site in any environmental medium, as required.</p>	7:26C-1.7(l)	NM		\$10,000

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Failure to include in the applicable remedial phase report the rationale for implementation of an alternative public notification plan.	7:26C-1.7(n)	M	30	\$10,000
Failure to conduct additional public outreach when required.	7:26C-1.7(o)	M	30	\$10,000
Failure to comply with requirements for a site located within the jurisdiction of the Pinelands Commission.	7:26C-1.7(q)	M	30	\$10,000
Failure to allow access as required	7:26C-1.8	NM		\$20,000
2 Obligations of the persons responsible for conducting the remediation of a contaminated site				

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Failure to conduct remediation when required.	7:26C-2.2(a)	NM		\$15,000
Failure to hire a licensed site remediation professional to conduct remediation and submit the required form.	7:26C-2.3(a)1 and 2	NM		\$15,000
Failure to conduct remediation in accordance with this chapter.	7:26C-2.3(a)3	NM		\$15,000
Failure to pay all applicable fees and oversight costs.	7:26C-2.3(a)4	NM		100 percent of the amount of the fee that is in arrears

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Failure to establish and maintain a remediation funding source when required.	7:26C-2.3(a)5	NM		\$15,000
Failure to provide the Department access to the contaminated site.	7:26C-2.3(a)6	NM		\$20,000
Failure to provide the Department copies of all applicable documents concerning the remediation.	7:26C-2.3(a)7	M	30	\$10,000
Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E.	7:26C-2.3(a)8	NM		\$20,000

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<p>Failure to obtain and comply with all permits necessary for the remediation.</p> <p>3 Remediation timeframes and extension requests</p>	7:26C-2.3(a)9	NM		\$15,000
<p>Failure to comply with each applicable regulatory timeframe.</p>	7:26C-3.2(a)	NM		\$20,000
<p>Failure to comply with each applicable mandatory timeframe.</p>	7:26C-3.3(a)	NM		\$20,000
<p>Failure to comply with an expedited site-specific timeframe established by the Department.</p> <p>4 Fees and oversight costs</p>	7:26C-3.4(c)	NM		\$20,000

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Failure to pay the annual remediation fee and submit the required form.	7:26C-4.3(a)	NM		100 percent of the amount of the fee that is in arrears
Failure to accurately identify contaminated areas of concern/media for the purpose of determining the amount of the annual remediation fee.	7:26C-4.3(b) and (c)	NM		\$15,000

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<p>Failure to submit a new Annual Remediation Fee Reporting Form within the required timeframe prior to the annual remediation fee anniversary date, when additional contaminated areas of concern/media are discovered.</p>	7:26C-4.3(e)	NM		\$15,000

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<p>Failure to pay the annual remediation fee and the Department oversight costs, as required, when the Department has determined that it will undertake direct oversight of a site portion or condition, or the whole site.</p>	<p>7:26C-4.3(g) and (h)</p>	<p>NM</p>		<p>100 percent of the amount of the fee and oversight costs that are in arrears</p>
<p>Failure to pay document review fees as required.</p>	<p>7:26C-4.4(a) through (d)</p>	<p>NM</p>		<p>100 percent of the amount of the fee that is in arrears</p>

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Failure to submit the required remedial action permit fee.	7:26C-4.6	NM		100 percent of the amount of the fee that is in arrears
Failure to pay oversight costs as required.	7:26C-4.7(a)	NM		100 percent of the amount of the oversight costs that are in arrears

5 Remediation funding source and financial assurance

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Failure to establish and maintain a remediation funding source and/or financial assurance in the required amount for the required time period.	7:26C-5.2(e)	NM		\$15,000
Failure to establish a remediation trust fund for a site being remediated under the Department's direct oversight as required.	7:26C-5.2(k)	NM		\$15,000
Failure to submit the required confirmation of the value of the RFS, or renew a self guarantee, when required 30 days prior to expiration.	7:26C-5.4(b), 5.5(b), 5.6(b), 5.8(d)	M	30	\$10,000

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Failure to pay the annual RFS surcharge.	7:26C-5.9(b)	NM		\$10,000
Failure to submit the required remediation cost review when a remediation funding source or financial assurance is required.	7:26C-5.10	M	30	\$10,000
Failure to increase the remediation funding source and/or financial assurance within 30 days of a determination that remediation costs are greater than the amount established.	7:26C-5.11(c)	NM		\$15,000
Failure to submit info regarding disbursements.	7:26C-5.12(c)	M	30	\$10,000

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7 Deed notices, ground water classification exception areas and remedial action permits				
Failure to comply with requirements related to the redevelopment or change in use of real property.	7:26C-7.1(d)	NM		\$15,000
Failure to properly prepare and follow procedures for filing a deed notice.	7:26C-7.2	NM		\$15,000
Failure to properly prepare, submit and file information related to a classification exception area.	7:26C-7.3	NM		\$15,000

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Failure to comply with the requirements of a remedial action permit including the submittal of a biennial certification, maintenance of financial assurance, if applicable, and payment of applicable fees.	7:26C-7.4(a)	NM		\$15,000
Failure to apply for a remedial action permit when required.	7:26C-7.5(a)	NM		\$15,000
Failure to submit the required information when applying for a soil remedial action permit for a remedial action that includes an engineering or institutional control.	7:26C-7.5(b)	M	30	\$10,000

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Failure to submit the required information when applying for a ground water remedial action permit for a monitored natural attenuation remedial action.	7:26C-7.5(c)	M	30	\$10,000
Failure to submit the required information when applying for a ground water remedial action permit for an active ground water remedial action.	7:26C-7.5(d)	M	30	\$10,000
Failure to apply for a remedial action permit in accordance with the required schedule.	7:26C-7.6	NM		\$15,000

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Failure to comply with the requirements of a remedial action permit, including the requirement to submit a remedial action protectiveness certification.	7:26C-7.7	NM		\$15,000
Failure to comply with specific conditions applicable to a soil remedial action permit.	7:26C-7.8	NM		\$15,000
Failure to comply with specific conditions applicable to a ground water remedial action permit.	7:26C-7.9	NM		\$15,000

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<p>Failure to submit to the Department, on the same schedule as biennial certification submittal, an estimate of the future costs to operate, maintain, and inspect all engineering controls and to maintain financial assurance in an amount equal to the estimate.</p>	7:26C-7.10	NM		\$15,000

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Failure provide the required information at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease when requesting that the Department rescind permittee status.	7:26C-7.11	NM		\$10,000
Failure to apply for modification of a remedial action permit when required, including submittal of required information.	7:26C-7.12	NM		\$15,000
Failure to provide the information required for remedial action permit termination.	7:26C-7.13	M	30	\$10,000

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8 Site access				
Failure to send written requests for access as required to each property owner.	7:26C-8.2(b) and (c)	M	30	\$10,000
Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.	7:26C-8.2(d)	M	30	\$10,000
13 Remediation of unregulated heating oil tanks				

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Failure to use either an appropriately certified subsurface evaluator or a licensed site remediation professional to perform the remediation of a discharge from an unregulated heating oil tank system.	7:26C-13.2(a)	NM		\$15,000
Failure to submit the required information.	7:26C-13.3	M	30	\$15,000
Failure to obtain the required approvals when conducting remediation of an unregulated heating oil system	7:26C-13.5(b)	NM		\$15,000

14 Direct oversight

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to comply with the requirements for direct oversight.	7:26C-14.2(b)	NM		\$25,000
16 Linear construction Projects				
Failure to comply with linear construction requirements	7:26C-16.2(a)	NM		\$15,000
Failure to pay fees related to linear construction project	7:26C-16.3(a)	NM		\$15,000

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

1 General Information

Failure to conduct any additional remediation the Department determines is necessary to protect public health and safety and the environment.	7:26E-1.1(c)	NM		\$20,000
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Failure to comply with this chapter when conducting remediation pursuant to any of the applicable statutes.	7:26E-1.3(a)	NM		\$15,000
Failure to conduct remediation pursuant to this chapter and N.J.A.C. 7:26C-1.2.	7:26E-1.5(a)	NM		\$20,000
Failure to remediate to the applicable standards.	7:26E-1.5(c)	NM		\$20,000
Failure to document all work conducted at a site and include required information in reports.	7:26E-1.5(d)	NM		\$15,000
Failure to provide all complete, accurate and relevant information regarding the remediation.	7:26E-1.5(e)	NM		\$15,000

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Failure to provide site specific information and documents related to the remediation when requested by the Department	7:26E-1.5(f)	NM		\$15,000
Failure to properly install or decommission borings and wells.	7:26E-1.5(g)	NM		\$15,000
Failure to follow procedures and criteria for the return excavated soil from drill cuttings or test pit excavations to the original location.	7:26E-1.5(h)	NM		\$15,000

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<p>Failure to comply with listed requirements and conduct remediation consistent with the requirements of Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and any rules promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.</p>	<p>7:26E-1.5(i) and 5.1(d)5</p>	<p>NM</p>		<p>\$15,000</p>
<p>Failure to submit a completed case inventory document worksheet at the front of each remedial phase workplan and report.</p>	<p>7:26E-1.6(a)3</p>	<p>M</p>	<p>30</p>	<p>\$15,000</p>

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Failure to submit a quality assurance project plan, prepared pursuant to N.J.A.C. 7:26E-2.2, with each remedial phase workplan and report.	7:26E-1.6(a)4	NM		\$15,000
Failure to submit all sampling data electronically in a summary table using the format outlined in the Site Remediation Program's "Electronic Data Interchange Manual."	7:26E-1.6(a)5	M	30	\$15,000
Failure to submit a GIS compatible site plan that includes the location of all areas of concern as polygons.	7:26E-1.6(a)6	M	30	\$15,000

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Failure to include required general reporting information in each remedial phase workplan and report.	7:26E-1.6(b)	NM		\$15,000
Failure to submit technical information required to justify varying from a technical requirement prior to varying.	7:26E-1.7(a)	NM		\$15,000

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<p>Failure to implement an interim response measure to remove, contain or stabilize a source of contamination to prevent contaminant migration and include a description of each interim remedial measure implemented and each interim remedial measure that is planned in each remedial phase report.</p>	7:26E-1.10(a)	NM		\$25,000
<p>Failure to notify the Department of the discovery of light non-aqueous phase liquid (LNAPL) and initiate free product recovery as required.</p>	7:26E-1.10(b)	NM		\$25,000

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<p>Failure to complete the delineation of LNAPL, complete the installation of LNAPL interim remedial measure, initiate operational monitoring and submit report within the required timeframe.</p>	7:26E-1.10(c)	NM		\$25,000
<p>Failure to immediately notify the Department upon the discovery of an IEC condition.</p>	7:26E-1.11(a)1	NM		\$25,000

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<p>Failure to mitigate the IEC impacts within the required timeframe by providing an interim response action and a copy and explanation of the analytical results to the property owner, occupant (if applicable), and designated local health department.</p>	<p>7:26E-1.11(a)2</p>	<p>NM</p>		<p>\$25,000</p>
<p>Failure to submit the required information within the required timeframe and provide routine updates to the Department on a schedule set by the Department's IEC case manager.</p>	<p>7:26E-1.11(a)3 through 5</p>	<p>NM</p>		<p>\$25,000</p>

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Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.11(a)6	NM		\$25,000
Failure to identify and sample all potable wells, pursuant to N.J.A.C. 7:26E-1.14, within the appropriate distance of the impacted well.	7:26E-1.11(a)6i(2)	NM		\$25,000
Failure to identify all buildings at risk and conduct additional vapor intrusion investigations pursuant to N.J.A.C. 7:26E-1.15 at all buildings within 100 feet of the impacted building,	7:26E-1.11(a)6ii(2)	NM		\$25,000

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Failure to identify and sample all areas of concern and evaluate for direct contact threats.	7:26E-1.11(a)6iii(2)	NM		\$25,000
Failure to submit an IEC engineered system response action report with the required information, form, and spreadsheet within the required timeframe.	7:26E-1.11(b)7	NM		\$25,000
Failure to identify and initiate control of all IEC contaminant sources and submit an IEC contaminant source control report including the required information and form within the required timeframe.	7:26E-1.11(a)8	NM		\$25,000

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<p>Failure to provide annual monitoring and maintenance reports to the Department that detail the monitoring of contaminated properties and receptors and monitoring conducted for wells and buildings that are located near the wells and buildings that are impacted by the IEC</p>	<p>7:26E-1.11(a)9</p>	<p>NM</p>		<p>\$25,000</p>
<p>Failure to conduct and submit an initial receptor evaluation, pursuant to N.J.A.C. 7:26E-1.12(a) within the applicable required timeframe.</p>	<p>7:26E-1.12(a) and (c)</p>	<p>NM</p>		<p>\$25,000</p>
<p>Failure to update a receptor evaluation and submit it as required.</p>	<p>7:26E-1.12(d) and (e)</p>	<p>NM</p>		<p>\$25,000</p>

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Failure to send a copy of each receptor evaluation to local officials as required.	7:26E-1.12(f)	M		\$10,000
Failure to conduct a receptor evaluation of land use.	7:26E-1.13	NM		\$25,000
Failure to conduct a well search within the required timeframe.	7:26E-1.14(a)1	NM		\$25,000
Failure to notify the Department and conduct potable well sampling as required within the required timeframe.	7:26E-1.14(a)2	NM		\$25,000

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<p>Failure to update the well search every two years after the first trigger for a well search to identify if new wells have been installed.</p>	7:26E-1.14(a)3	NM		\$25,000
<p>Failure to comply with requirements when contaminants are discovered in any potable or irrigation well that may be utilized for potable purposes.</p>	7:26E-1.14(b)	NM		\$25,000

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Failure to make the proper notifications or submissions when no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard within the required timeframes.	7:26E-1.14(c)	NM		\$25,000
Failure to conduct a vapor intrusion receptor evaluation when required.	7:26E-1.15(a)	NM		\$25,000
Failure to conduct a proper vapor intrusion investigation.	7:26E-1.15(b) and (c)	NM		\$25,000

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Failure to make the proper notifications or submissions when a vapor intrusion investigation has been conducted pursuant to N.J.A.C. 7:26E-1.15(c), within the required timeframes.	7:26E-1.15(d)	NM		\$25,000
Failure to submit required notifications and information concerning exceedance of the vapor intrusion indoor air screening levels within the required timeframe.	7:26E-1.15(e)1	NM		\$25,000
Failure to submit a mitigation plan within the required timeframe.	7:26E-1.15(e)2	NM		\$25,000

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Failure to implement a mitigation plan within the required timeframe.	7:25E-1.15(e)3	NM		\$25,000
Failure to submit a vapor intrusion mitigation action report within the required timeframe.	7:26E-1.15(e)4	NM		\$25,000
Failure to provide routine updates to the Department's IEC case manager.	7:26E-1.15(e)5	NM		\$25,000
Failure to identify all buildings at risk and conduct additional vapor intrusion investigations at all buildings within 100 feet of the impacted building,	7:26E-1.15(e)6	NM		\$25,000

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<p>Failure to make submissions or provide notifications to the New Jersey Department of Health and Senior Services, Consumer and Environmental Health Services, Indoor Environments Program.</p>	<p>7:26E-1.15(g)2, (h) and (i)3</p>	<p>NM</p>		<p>\$25,000</p>
<p>Failure to report potentially explosive conditions.</p>	<p>7:26E-1.15(i)</p>	<p>NM</p>		<p>\$25,000</p>
<p>Failure to conduct an ecological receptor evaluation.</p>	<p>7:26E-1.16</p>	<p>NM</p>		<p>\$25,000</p>
<p>2 Quality assurance for sampling and laboratory analysis</p>				
<p>Failure to use a laboratory that has the appropriate certification and capabilities.</p>	<p>7:26E-2.1(a)1 and 2</p>	<p>NM</p>		<p>\$15,000</p>

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Failure to use appropriate methods for sampling, sample management, sample matrix cleanup, analysis and reporting as required.	7:26E-2.1(a)3 through 15	NM		\$15,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	NM		\$15,000

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<p>Failure to analyze samples for contaminants which may be present or to analyze for the Target Compound List (TCL) plus tentatively identified compounds (TICs)/Target Analyte List (TAL) (TCL + TICs/TAL), hexavalent chromium, extractable petroleum hydrocarbons (EPH), and pH when contaminants are unknown or not well documented.</p>	7:26E-2.1(c)1	NM		\$15,000

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Failure to analyze all initial potable water and vapor intrusion samples for the method specific compounds plus TICs and report all results.	7:26E-2.1(c)2 and (c)3	NM		\$15,000
Failure to analyze samples for petroleum hydrocarbons contamination as required.	7:26E-2.1(d)	NM		\$15,000
Failure to further address tentatively identified compounds, as required.	7:26E-2.1(e)	NM		\$15,000
Failure to prepare and follow a quality assurance project plan, as required.	7:26E-2.2(a)	NM		\$15,000

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3 Preliminary assessment and site investigation				
Failure to conduct a preliminary assessment when required.	7:26E-3.1(b)	NM		\$20,000
Failure to properly conduct a preliminary assessment.	7:26E-3.1(c)	NM		\$15,000
Failure to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.15 when potentially contaminated areas of concern are identified.	7:26E-3.1(d)	NM		\$20,000
Failure to submit a preliminary assessment report when no areas of concern are identified, as required.	7:26E-3.1(e)	NM		\$15,000

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Failure to submit a preliminary assessment report that conforms to the requirements of N.J.A.C. 7:26E-3.2.	7:26E-3.2	NM		\$15,000
Failure to conduct a site investigation when required.	7:26E-3.3(b)	NM		\$20,000
Failure to conduct a site investigation that satisfies all the listed requirements in N.J.A.C. 7:26E-3.	7:26E-3.3(c)	NM		\$15,000

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<p>Failure to conduct a comparison of all site data with the Department's applicable remediation standards or any criterion to determine if contaminated areas of concern are present, identify as contaminated areas of concern those areas where site data demonstrate that contaminant concentrations exceed any remediation standard or any criterion; and determine if any immediate environmental concerns exist.</p>	7:26E-3.3(d)	NM		\$15,000

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<p>Failure to properly conduct soil sampling in each potentially contaminated area of concern, including failure to properly select sample locations, and to properly collect and analyze samples.</p>	7:26E-3.4	NM		\$15,000
<p>Failure to properly conduct ground water sampling in all potentially contaminated area of concern, including failure to properly select sample locations, and to properly collect and analyze samples.</p>	7:26E-3.5	NM		\$15,000

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Failure to determine if there is any evidence that contamination from the site has reached a surface water body.	7:26E-3.6(a)	NM		\$15,000
Failure to conduct a site investigation of surface water and sediment including failure to properly select sample locations, and to properly collect and analyze samples, when required.	7:26E-3.6(b)	NM		\$15,000

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<p>Failure to conduct a site investigation of building interiors in order to determine whether contaminants inside the building have the potential to migrate to the environment outside the building or contaminants outside the building have the potential to migrate into the building, and to conduct additional remedial investigation necessary for the impacted media.</p>	7:26E-3.7	NM		\$15,000

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Failure to support the conclusion that any hazardous substance, hazardous waste, or pollutant identified in soil or ground water is naturally occurring pursuant to N.J.A.C. 7:26E-3.8.	7:26E-3.8	NM		\$15,000
Failure to support the conclusion that a contaminant found in soil is a diffuse anthropogenic pollutant.	7:26E-3.9(a)	NM		\$15,000
Failure to investigate areas of concern located in soil containing diffuse anthropogenic pollutants independently from the diffuse anthropogenic pollutants.	7:26E-3.9(b)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Failure to support the conclusion that contamination found in soil, ground water, surface water or sediment is due to migration to the site from an offsite source.	7:26E-3.10 through 3.11	NM		\$15,000
Failure to conduct a site investigation of any landfill suspected to be present at the site to determine whether a landfill is present.	7:26E-3.12	NM		\$15,000
Failure to conduct a site investigation when a historic fill is suspected to be present.	7:26E-3.13	NM		\$15,000

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Failure to submit a site investigation report that conforms to the requirements of N.J.A.C. 7:26E-3.14.	7:26E-3.14	NM		\$15,000
Failure to submit a preliminary assessment report and site investigation report for a site being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. within the required timeframe.	7:26E-3.15(a)1 and (b)1	NM		\$15,000

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<p>Failure to submit a site investigation report for a site being remediated pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. within the required timeframe.</p>	<p>7:26E-3.15(a)2 and (b)2</p>	<p>NM</p>		<p>\$15,000</p>
<p>4 Remedial investigations</p>				
<p>Failure to conduct a remedial investigation when required</p>	<p>7:26E-4.1(b)</p>	<p>NM</p>		<p>\$20,000</p>
<p>Failure to conduct a remedial investigation that satisfies all the listed requirements in N.J.A.C. 7:26E-4.</p>	<p>7:26E-4.1(c)</p>	<p>NM</p>		<p>\$15,000</p>
<p>Failure to submit a remedial investigation workplan when required.</p>	<p>7:26E-4.1(d)</p>	<p>NM</p>		<p>\$15,000</p>

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<p>Failure to conduct a remedial investigation of contaminated soil that satisfies all the listed requirements, including failure to properly select sample locations, and to properly collect and analyze samples.</p>	<p>7:26E-4.2(a) and (b)</p>	<p>NM</p>		<p>\$15,000</p>
<p>Failure to conduct a remedial investigation of contaminated ground water that satisfies all the listed requirements, including failure to properly select sample locations, and to properly collect and analyze samples.</p>	<p>7:26E-4.3(a) and (b)</p>	<p>NM</p>		<p>\$15,000</p>

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<p>Failure to conduct a remedial investigation of surface water that satisfies all the listed requirements, including failure to properly select sample locations, and to properly collect and analyze samples.</p>	7:26E-4.4	NM		\$15,000
<p>Failure to conduct a remedial investigation of building interiors that satisfies all the listed requirements.</p>	7:26E-4.5	NM		\$15,000
<p>Failure to conduct a remedial investigation of a landfill that satisfies all the listed requirements.</p>	7:26E-4.6	NM		\$15,000

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Failure to conduct a remedial investigation of historic fill material that satisfies all the listed requirements.	7:26E-4.7	NM		\$15,000
Failure to conduct an investigation of ecological receptors that satisfies all the listed requirements.	7:26E-4.8	NM		\$15,000
Implementing a remedial action for an ecological receptor without the Department's prior written approval of the final remediation goal when the final remediation goal is something other than the ecological screening criterion.	7:26E-4.8(c)3	NM		\$15,000

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Failure to submit a remedial investigation report that conforms to the requirements of N.J.A.C. 7:26E-4.9.	7:26E-4.9	NM		\$15,000
Failure to complete the remedial investigation and submit a remedial investigation report within the required timeframe.	7:26E-4.10	NM		\$15,000
5 Remedial action				
Failure to conduct a remedial action when required.	7:26E-5.1(b)	NM		\$20,000
Failure to conduct a remedial action that satisfies all the listed requirements in N.J.A.C. 7:26E-5	7:26E-5.1(c)	NM		\$15,000

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Failure to implement a remedial action that is protective of public health, safety and the environment.	7:26E-5.1(d)1	NM		\$15,000
Failure to utilize engineering and institutional controls in conjunction with a remedial action permit whenever a restricted use or limited restricted use remedy is implemented.	7:26E-5.1(d)2	NM		\$15,000
Implementing a remedy that causes an uncontrolled or unpermitted discharge or transfer of contaminants.	7:26E-5.1(d)3	NM		\$25,000

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Failure to implement a remediation that complies with all applicable remediation standards in effect at the time the remedial action workplan was approved, and failure to conduct additional remedial action when a remediation standard decreased by an order of magnitude.	7:26E-5.1(d)4	NM		\$15,000
Implementing a remedial action that causes a natural resource injury.	7:26E-5.1(d)6	NM		\$25,000
Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.	7:26E-5.1(e)	NM		\$25,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to submit a remedial action workplan prepared pursuant to N.J.A.C. 5.6 or a corrective measures study workplan for approval when required.	7:26E-5.1(f)	NM		\$15,000
Failure to select a remedial action that prevents further exposure of residual contamination to any receptor.	7:26E-5.2(a)1	NM		\$15,000
Failure to develop and implement a monitoring program to effectively monitor the performance of a remedial action.	7:26E-5.2(a)2	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to demonstrate compliance with the appropriate remediation standard or ecological risk based remediation goal.	7:26E-5.2(a)3	NM		\$15,000
Failure to file a deed notice when implementing a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards.	7:26E-5.2(a)4	NM		\$15,000
Failure to obtain a remedial action permit for a restricted use or limited restricted use remedial action.	7:26E-5.2(a)5	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
<p>Failure to comply with all the listed requirements concerning the use of clean or alternative fill as part of a remedial action.</p>	7:26E-5.2(b) through (g)	NM		\$15,000
<p>Failure to utilize an unrestricted use remedy, a presumptive remedy, or alternative remedy for any remediation initiated after May 7, 2010 when new construction of, or a change in use to, a residence, a school or child care center will occur at a an area of concern that is undergoing remediation.</p>	7:26E-5.3(a)	NM		\$25,000

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Failure to implement a presumptive remedy that is unrestricted use for a discrete area discharge or widespread PCB contamination as required.	7:26E-5.3(b)	NM		\$25,000
Failure to submit a remedial action workplan that includes the required information pursuant to 7:26E-5.3(c) and obtain the Department's approval prior to implementation when an unrestricted use remedy or presumptive remedy is not utilized.	7:26E-5.3(c)	NM		\$25,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to submit a remedial action workplan and obtain the Department's approval prior to implementation where required.	7:26E-5.3(d)	NM		\$25,000
Constructing single family residences, schools or child care centers on a landfill where engineering controls are required for landfill gas or leachate.	7:26E-5.3(e)	NM		\$25,000
Failure to address vapor intrusion concerns for all new construction of, or conversion to, Residential Type I or II buildings, schools, or child care centers.	7:26E-5.3(f) and (g)	NM		\$25,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
Failure to implement a remedial action for soil contamination associated with historic fill material and ground water contaminated by historic fill material.	7:26E-5.4	NM		\$15,000
Failure to implement a remedial action for soil contamination associated with diffuse anthropogenic pollutants.	7:26E-5.5	NM		\$15,000
Failure to prepare and submit a remedial action workplan that complies with all listed requirements.	7:26E-5.6	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to apply for and obtain all required permits and comply with public notice requirements, prior to initiating the activity requiring the permit.	7:26E-5.7	NM		\$15,000
Failure to submit a remedial action report that conforms to the requirements of N.J.A.C. 7:26E-5.8.	7:26E-5.8	NM		\$15,000
Failure to conduct a remedial action within the required regulatory timeframe.	7:26E-5.9	NM		\$15,000

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SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.4 Pre-application process

(a) A community group [may] **shall** request that the Department make a finding of substantial public interest [in] **for each community group interested in applying for a technical assistance grant in connection with** a particular contaminated site, as a condition of seeking a technical assistance grant, by submitting to the Department a petition containing the signatures of 25 or more people who live or work near the site.

(b) The Department will respond to a petition and inform the community group of whether or not it has met the requirements of [a] substantial public interest.

(c) Within 30 days after receiving the Department's response, the community group shall submit to the Department's Office of Community Relations a Letter of Intent that includes the following information:

1. (No change.)

2. A description of the composition of the group, **including a statement that the community group meets the eligibility requirements pursuant to N.J.A.C. 7:26C-10.3;**

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3. - 5. (No change.)

(d) Upon [receipt]**submittal** of the Letter of Intent **to the Department**, the community group [will]**shall** publish a public notice in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site which includes the following information:

1. - 3. (No change.)

4. A statement that any other community groups interested in a technical assistance grant for the same contaminated site [has 30] **have 60** days after the publication of the notice in the newspaper to **submit a petition containing the signatures of 25 or more people who live or work near the site, requesting that the Department make a finding of substantial public interest for the community group, and that each community group must** submit its own Letter of Intent to the Department.

(e) If the Department does not receive an additional **petition and** Letter of Intent within the prescribed time period, the Department will advise the community group in writing that it has 60 days to file an application for a technical assistance grant pursuant to N.J.A.C. 7:26E-10.5.

(f) If the Department receives additional **petitions and** Letters of Intent, all community groups filing letters will have an additional [30] **60** days from the publication of the public notice

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to attempt to form a coalition. The Department's website at www.nj.gov/dep/srp/srra/community/ provides guidance about the coalition process.

(g) (No change.)

7:26C-10.6 Eligible technical assistance grant activities

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

(e) If the community group or its licensed site remediation professional uses technical assistance grant funds for activities not identified in the approved budget and scope of work or for activities listed in (c) above:

1. The Department [may]**shall** revoke the technical assistance grant and require reimbursement; and
2. The community group shall repay [all]**the portion** of the grant **that was used for activities not identified in the approved budget and scope of work or for activities listed in (c) within 60 days of the revocation.**

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SUBCHAPTER 13. REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-13.3 Person responsible for conducting the remediation of an unregulated heating oil tank system using a certified subsurface evaluator

(a) (No change.)

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation in accordance with N.J.A.C. 7:26C-6, upon receipt and review of the following:

1. A certification by the subsurface evaluator certified pursuant to N.J.A.C. 7:14B-13 or 16 to perform the remediation, that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated was remediated pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site

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supervision of the remediation. Moreover, I understand that should I discover evidence of a discharge of a hazardous substance, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery and to the Department pursuant to the [Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.4] **Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.7**. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties";

2. (No change.)

3. The applicable review fee as set forth at N.J.A.C. 7:26C-[4.3]**4.4**; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-[6.7]**5.8**.

(c) (No change.)

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7:26C-13.4 Person responsible for conducting the remediation of an unregulated heating oil tank system using a licensed site remediation professional

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil system who uses a licensed site remediation professional to conduct the remediation shall submit the applicable review fee as set forth at N.J.A.C. 7:26C-[4.3]**4.4**.

(b) (No change.)

7:26C-13.5 Special conditions

(a) The person responsible for conducting the remediation of the unregulated heating oil system shall comply with N.J.A.C. 7:26E-[1.14]**1.11** when the discharge from the unregulated heating oil tank system results in an immediate environmental concern condition.

(b) The person responsible for conducting the remediation shall obtain the appropriate Departmental approvals when:

1. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit pursuant to N.J.A.C. 7:26E-[7.2]**5.7**;

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2. - 3. (No change.)

SUBCHAPTER 14. DIRECT OVERSIGHT

7:26C-14.1 Scope

(a) This subchapter contains provisions that specify:

1. The compulsory direct oversight triggers and requirements applicable when the person responsible for conducting the remediation becomes subject to the compulsory statutory provisions for direct oversight in N.J.A.C. 7:26C-14.2;

2. The discretionary direct oversight triggers and the criteria the Department will evaluate when considering a remediation of a contaminated site for direct oversight in N.J.A.C. 7:26C-14.3; and

3. The criteria the Department will evaluate in determining whether to adjust the applicable requirements for the remediation of a contaminated site in direct oversight in N.J.A.C. 7:26C-14.4.

7:26C-14.2 Compulsory direct oversight

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(a) The person responsible for conducting the remediation shall comply with the statutory requirements for direct oversight, pursuant to N.J.S.A. 58:10C-27, whenever:

1. The person responsible for conducting the remediation has been the object of two enforcement actions, concerning the remediation, during any five-year period after May 7, 2009;

2. The person responsible for conducting the remediation has failed to meet:

i. A mandatory remediation timeframe established by the Department pursuant to N.J.A.C. 7:26C-3.3, including any extension thereof granted by the Department;

ii. An expedited site-specific timeframe established by the Department pursuant to N.J.A.C. 7:26C-3.4, including any extension thereof granted by the Department;

or

iii. A schedule established pursuant to an administrative order or court order; or

3. A discharge was discovered prior to May 7, 1999 and the person responsible for conducting the remediation has failed to complete the remedial investigation of the entire contaminated site by May 7, 2014.

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(b) The person responsible for conducting the remediation that is in direct oversight as described in (a) above, shall:

1. Proceed with the remediation as the Department directs, including retaining a licensed site remediation professional if one has not yet been retained;

2. Conduct and submit a feasibility study to the Department for approval;

3. Implement each remedial action the Department selects for the site;

4. Submit an initial remediation cost review, pursuant to N.J.A.C. 7:26C-5.10(a), within 60 days after the applicable event in (a) above, and submit an annual remediation cost review on the same calendar day each year thereafter;

5. Establish a remediation trust fund pursuant to N.J.A.C. 7:26C-5.4(g) in the amount of the estimated cost of the remediation, within 90 days after the applicable event in (a), above, and maintain a remediation trust fund in the amount of the estimated cost of the remediation;

6. Pay an annual remediation funding source surcharge pursuant to N.J.A.C. 7:26C-5.9;

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7. Obtain the Department's prior approval before making any disbursements from the remediation trust fund;

8. Ensure that all submissions prepared by the licensed site remediation professional concerning the remediation required by the Department are provided simultaneously to the Department and the person responsible for conducting the remediation;

9. Submit a proposed public participation plan, with a schedule, to the Department for approval pursuant to N.J.S.A. 58:10C-27.c.7, that contains the strategy for soliciting public comment concerning the remediation from the members of the surrounding community concerning the remediation of the site, within 30 days after the applicable event in (a), above; and

10. Implement the Department-approved public participation plan to solicit public comment concerning the remediation from the members of the surrounding community.

7:26C-14.3 Discretionary direct oversight

(a) The Department may evaluate undertaking direct oversight of a portion, a condition, or the entire remediation of a contaminated site when the contamination at the site:

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1. Includes chromate chemical production waste and either of the following apply:

i. Hexavalent chromium (Cr+6) is detected in the soil in excess of 20 milligrams per kilogram of dry weight soil (mg/kg or ppm); or

ii. The Cr+6 contamination in ground water exceeds 70 micrograms per liter of solution (ug/l or ppb);

2. Has injured more than one environmentally sensitive natural resource;

3. Has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface water above the Department's Ecological Screening Criteria as found on the Department website at www.nj.gov/dep/srp/guidance/ecoscreening, and the concentration of any of these substances exceeds either of the following:

i. The severe effects level for freshwater conditions; or

ii. The effects range medium for saline conditions; or

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4. The Department has ranked the site in the category requiring the highest priority pursuant to the ranking system developed pursuant to N.J.S.A. 58:10-23.16.

(b) The Department will consider the following criteria when evaluating, pursuant to (a) above, whether to undertake direct oversight of a portion, a condition, or the entire remediation of a contaminated site:

1. The extent that the person responsible for conducting the remediation:

- i. Is in compliance with all applicable remediation statutes and regulations;**
- ii. Has implemented an interim response action necessary to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors;**
- iii. Has entered into a voluntary agreement with the Department to resolve the natural resource injury caused by discharges at a site if such damage has occurred; and**
- iv. Has implemented green remediation as part of remediation; and**

2. Whether:

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- i. Ground water contamination is greater than 5 acres;**

- ii. Wetland soil or sediment contamination is greater than 5 acres;**

- iii. Surface water sediment contamination exceeds, for any given contaminant, the severe effects level concentration for freshwater conditions or the effects range medium concentration for saline conditions pursuant to the Department's Ecological Screening Criteria as found on the Department's website at www.nj.gov/dep/srp/guidance/ecoscreening;**

- iv. Surface water contamination exceeds, for any given contaminant, an acute aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);**

- v. Ground water contamination, which is discharging to surface water, exceeds, for any given contaminant, the acute aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);**

- vi. Soil contamination, except for pesticides, exceeds, for any given contaminant, 100 times the greatest value in the Department's Ecological Screening Criteria, which are available at www.nj.gov/dep/srp/guidance/ecoscreening; or**

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vii. Pesticide soil contamination exceeds 1 mg/kg for any given pesticide.

(c) When the Department determines to undertake discretionary direct oversight of the remediation of a contaminated site:

1. The Department shall inform the person responsible for conducting the remediation in writing of its decision; and

2. The person responsible for conducting the remediation shall, upon receipt of the Department's written notice pursuant to (c)1, above, comply with the requirements for direct oversight listed at N.J.A.C. 7:26C-14.2(b).

7:26C-14.4 Adjustments in direct oversight

(a) The Department may determine that certain direct oversight requirements established in this subchapter are not applicable to a specific case based upon a finding that such an action would be:

1. In the public interest; and

2. Protective of public health and safety and the environment.

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(b) When the Department makes a determination pursuant to (a) above, the Department shall notify the person responsible for conducting the remediation of its determination, and the person responsible for conducting the remediation may discontinue implementing those requirements upon receipt of the Department's determination.

SUBCHAPTER 15. CONFIDENTIALITY

7:26C-15.1 Scope

(a) This subchapter sets forth the procedures for making information received by the Department available to the public and maintaining confidentiality of certain parts of that information, including:

- 1. General information pertaining to confidentiality at N.J.A.C. 7:26C-15.2;**
- 2. The process for asserting a confidentiality claim at N.J.A.C. 7:26C-15.3;**
- 3. The process for determining the validity of a confidentiality claim at N.J.A.C. 7:26C-15.4;**
- 4. The process concerning the exchange of confidential information between the Department and other public agencies at N.J.A.C. 7:26C-15.5;**

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5. The procedure for disclosing confidential information to contractors at N.J.A.C. 7:26C-15.6;

6. The process for disclosing information by consent at N.J.A.C. 7:26C-15.7;

7. When the Department may disclose confidential information upon a finding of imminent and substantial danger at N.J.A.C. 7:26C-15.8;

8. The procedures the Department will use to ensure the security of confidential information at N.J.A.C. 7:26C-15.9; and

9. The penalties for wrongful access to or disclosure of confidential information at N.J.A.C. 7:26C-15.10.

7:26C-15.2 General information

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made shall be limited to Department employees, representatives, and contractors, whose activities necessitate such access and as provided in this subchapter.

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(b) If a request for public disclosure of information is made for interagency or intra-agency memoranda or letters, the Department may deny this request if such request is exempted from disclosure pursuant to the Freedom of Information Act 5 U.S.C. § 552(b)(5) or the Open Public Records Act, N.J.S.A. 47:1A-3.

(c) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(7) or the Open Public Records Act, N.J.S.A. 47:1A-3.

(d) The Department shall not disclose to any person information for which a confidentiality claim has been asserted except as provided in this subchapter or as otherwise required by law.

(e) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow a person, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:26C-15.3 Process for submitting confidentiality claims

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(a) Any person required to submit any information to the Department pursuant to this chapter, N.J.A.C. 7:14B, N.J.A.C. 7:26B, N.J.A.C. 7:26D, or N.J.A.C. 7:26E, which in the person's opinion constitutes a trade secret, proprietary information, specific information regarding a real estate transaction at an industrial establishment that subjects the transaction to the Industrial Site Recovery Act, other than the fact that the transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the appropriate fee pursuant to N.J.A.C. 7:26C-4.3(a).

(b) Any person asserting a confidentiality claim pursuant to (a) above shall submit two copies of the document to the Department that contains the purportedly confidential material, a non-redacted copy, and a copy in which the purportedly confidential material has been redacted. The non-redacted copy shall conform to the following:

1. The top of each page of the first submission containing the information which the person alleges to be entitled to confidential treatment shall be stamped or otherwise marked "CONFIDENTIAL" in bold type:

2. All parts of the text that the person alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential

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information and the underscoring or highlighting is reproducible on photocopying machine; and

3. The non-redacted copy, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the redacted submission (which may or may not be enclosed in a separate envelope, at the option of the person), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(c) The package containing both the redacted and the non-redacted copies of the material containing the purportedly confidential information should be sent to the address listed in N.J.A.C. 7:26C-1.6 by certified mail, return receipt requested or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department assumes no responsibility for packages until they are received.

7:26C-15.4 Confidentiality determination

(a) When the Department receives a request for a confidentiality determination that complies with N.J.A.C. 7:26C-15.3, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential as follows:

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1. The person has asserted a confidentiality claim pursuant to this subchapter which has not expired by its terms, been waived or withdrawn;

2. The person has shown that reasonable measures were taken to protect the confidentiality of the information and that the person intends to continue to take such measures;

3. The person has demonstrated that the information is not, and has not been, available or otherwise disclosed to any other person without the consent of the person asserting a confidentiality claim (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. The person has demonstrated that no statute or regulation specifically requires disclosure of the information; and

5. Except for information related to national security, the person has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

(b) The Department shall determine whether information is entitled to confidential treatment whenever the Department:

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1. Receives a request under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. or the Freedom of Information Act 5 U.S.C. § 552(b)(5), to inspect or copy such information;

2. Finds it necessary to determine whether information in its possession is entitled to confidential treatment; or

3. Determines for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) Within 30 calendar days after deciding that the information is not entitled to confidential treatment, the Department shall send written notification, by certified mail, return receipt requested, to the person who submitted the information, outlining the reasons for its decision and that the information will become part of the Department's public files unless successfully contested pursuant to (d) below.

(d) A person who wishes to contest a determination by the Department that the information submitted is not entitled to confidential treatment shall, within 30 calendar days after receipt of the Department's written notification, submit evidence to support the person's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

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1. The period of time for which confidential treatment is desired by the person (for example, until a certain date, until the occurrence of a specified event, or permanently);

2. The measures taken by the person to guard against undesired disclosure of the information to others;

3. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

4. The extent to which disclosure of the information would result in substantial damage to the person, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the nexus between disclosure and the damage.

(e) Failure of the person to furnish timely comments or exceptions pursuant to (d) above waives the person's confidentiality claim.

(f) The person may assert a confidentiality claim to any information submitted to the Department as part of its comments pursuant to (d) above.

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(g) A person may submit a written request for an extension to contest the Department's determination pursuant to (d) above. The Department may extend the time limit for submitting comments pursuant to (d) above for good cause.

(h) The Department shall review the evidence and:

1. To the extent that the Department determines that the information submitted is not entitled to confidential treatment, the Department shall send written notification of this determination to the person by certified mail, return receipt requested. The notice shall state the basis for the determination and that the Department shall make the information available to the public on the 14th calendar day after receipt by the person of the written notice; or

2. To the extent that the Department determines that the information submitted is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The Department shall send written notification of this determination to the person by certified mail, return receipt requested.

7:26C-15.5 Exchange of confidential information between the Department and other public agencies

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(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section.

(b) The Department may disclose confidential information to another state agency or to a Federal agency if:

- 1. The Department is required by law to disclose the information;**
- 2. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;**
- 3. The request sets forth the official purpose for which the information is needed;**
- 4. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;**
- 5. The other state or Federal agency has first furnished to the Department a written legal opinion from the agency's chief legal officer or counsel stating that under applicable law, the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;**

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6. The other agency has obtained the written consent of the affected person to the proposed disclosure; and

7. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in this subchapter, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which the confidential information was disclosed; and

4. A description of the confidential information disclosed.

(d) When the U.S. Environmental Protection Agency supplies information to the Department that was submitted to the U.S. Environmental Protection Agency under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from the U.S. Environmental Protection Agency that is not claimed to be confidential, the Department

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may make that information available to the public without further notice to any interested party.

(e) Notwithstanding any other provision of this subchapter, any information obtained by the Department shall be available to the U.S. Environmental Protection Agency and U.S. Department of Justice upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to the U.S. Environmental Protection Agency when providing information as required in this section.

(f) Access to any information for which a confidentiality claim has been made will be limited to Department employees, representatives and contractors, whose activities necessitate such access, subject to N.J.A.C. 7:26C-15.6 below. Additionally, U.S. Environmental Protection Agency employees may have access to confidential information subject to (e) above.

7:26C-15.6 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department if the contract in question provides that the contractor and the contractor's employees, agents and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to

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anyone the Department has not authorized in writing, shall store the information in locked cabinets in secure rooms, and shall return to the Department all copies of the information, and any abstracts or extracts there from, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(b) Within 30 calendar days after the disclosure of the information to its contractors, the Department shall notify in writing the person who supplied the confidential information of:

- 1. Its disclosure to its contractors;**
- 2. The date on which disclosure was made;**
- 3. The name of the contractor to which disclosure was made; and**
- 4. A description of the information disclosed.**

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1D-2, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

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7:26C-15.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the person who made the confidentiality claim to such disclosure.

(b) The giving of consent by the person who made the confidentiality claim to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

7:26C-15.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

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(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that the information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

- 1. Its disclosure;**
- 2. The date on which disclosure was made;**
- 3. The name of the person to which disclosure was made; and**
- 4. A description of the information disclosed.**

7:26C-15.9 Security procedures

(a) Submissions to the Department, pursuant to N.J.A.C 7:26C-15.3, will be opened only by persons authorized by the Department engaged in administering this chapter.

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(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope that is marked "CONFIDENTIAL".

(c) The Department shall store all submissions entitled to confidential treatment as determined by this subchapter in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors that contains confidential information shall contain appropriate indicators identifying that the information is confidential.

7:26C-15.10 Wrongful access or disclosure remedies

(a) No person may disclose, seek access to, obtain or have possession of any confidential information obtained by the Department, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information that came into his or her possession,

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or to that he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

SUBCHAPTER 16 LINEAR CONSTRUCTION PROJECTS

7:26C-16.1 Scope

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(a) The purpose of this subchapter is to specify the:

1. Requirements for a person engaged in a linear construction project, in N.J.A.C.

7:26C-16.2; and

2. Required fees for a person engaged in a linear construction project, in N.J.A.C.

7:26C-16.3.

7:26C-16.2 Requirements for a person engaged in a linear construction project

(a) Any person who initiates a linear construction project shall:

1. Hire a licensed site remediation professional to oversee the management of contamination encountered during the linear construction project;

2. Notify the Department of the linear construction project and the name of the licensed site remediation professional on a form available from the Department on its website at www.nj.gov/dep/srp/srra/forms either:

i. At least 45 days prior to initiating construction on a project with known or suspected contamination; or

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ii. **Within 45 days after detecting contamination on a project where it was assumed contamination was not present;**

3. Conduct the linear construction project without prior Department approval;

4. Pay all applicable fees as required pursuant to N.J.A.C. 7:26C-16.2 below;

5. Provide the Department access to the linear construction project pursuant to N.J.A.C. 7:26C-8;

6. Obtain and comply with all permits necessary for the linear construction project pursuant to N.J.A.C. 7:26C-7 and N.J.A.C. 7:26E-5.7; and

7. Provide the Department a final report that describes the management of contamination encountered during the linear construction project, within 60 days after completion of the project or upon request of the Department, whichever occurs sooner.

7:26C-16.3 Required fees for a person engaged in a linear construction project

(a) The person conducting a linear construction project shall pay the following fees:

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1. \$450 with the notification of the linear construction project required pursuant to N.J.A.C. 7:26C-16.2(a)2; and

2. A fee based on the number of contaminated properties, or parts of properties, with the linear construction project final report required pursuant to N.J.A.C. 7:26C-16.2(a)7 as follows:

i. \$1,000 for one through five contaminated properties or parts of contaminated properties;

ii. \$3,000 for six through ten contaminated properties or parts of contaminated properties; or

iii. \$5,000 for 11 or more contaminated properties or parts of contaminated properties.

APPENDIX B - MODEL DEED NOTICE

DEED NOTICE

This shell document contains blanks and matter in brackets []. These blanks shall be replaced with the required site information prior to recording.

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Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____

[Signature]

[Print name below signature]

Recorded by:

[Signature, Officer of County Recording Office]

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[Print name below signature]

DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by *[Insert the full legal name and address of each current property owner]* (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. *[Insert the full legal name and address of each current property owner]* *[Insert as appropriate: "is", or "are"]* the owner in fee simple of certain real property designated as Block(s) ____ Lot(s) ____, on the tax map of the *[Insert, as appropriate: City/Borough/Township/Town]* of *[Insert the name of municipality]*, *[Insert the name of county]* County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site which includes this property is *[Insert the Program Interest Number (Preferred ID)]*; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. REMEDIATION.

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i. *[Insert name of the Licensed Site Remediation Professional and LSRP License No. of the LSRP that approved this Deed Notice]* has approved this Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.

ii. N.J.A.C. 7:26C-7 requires the Owner, among other persons, to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.

3. SOIL CONTAMINATION. *[Insert the full legal name of the person that was responsible for conducting the remediation]* has remediated contaminated soil at the Property, such that soil contamination remains in certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property; this soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice *[include if appropriate: and engineering controls]* in accordance with N.J.S.A. 58:10B-13.

4. CONSIDERATION. In accordance with the remedial action for the site which included the Property, and in consideration of the terms and conditions of that remedial action, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon

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the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental officials.

5B. RESTRICTED LAND USES. The following statutory land use restrictions apply to the Restricted Areas:

i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented; and

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ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to a single family residence or a child care facility without the Department's prior written approval.

[Insert the following paragraph when engineering controls are also implemented at the site:

5C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls is provided in Exhibit C.]

6A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any

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obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at www.nj.gov/srp/forms within thirty (30) calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Restricted Area.

iii. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at www.nj.gov/srp/forms, within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.

6B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees and operators while each is an owner, lessee, or operator of the Property.

7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct

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invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. Except as provided in Paragraph 7B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first obtaining a soil remedial action permit modification pursuant to N.J.A.C. 7:26C-7. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.

iii. Notwithstanding subparagraph 7Aii., above, a soil remedial action permit modification is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

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(B) Restores any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(C) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(D) Ensures that human exposure to contamination in excess of the remediation standards does not occur; and

(E) Describes, in the next biennial certification the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance.

7B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:

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- i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;**

- ii. Hires a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;**

- iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;**

- iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;**

- v. Notifies the Department of Environmental Protection when the emergency or immediate environmental concern condition has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337; and**

- vi. Restores the engineering control to the pre-emergency conditions as soon as possible, and provides notification to the Department of Environmental Protection within sixty (60) calendar days after completion of the restoration of the engineering control, including: (a) the nature and likely cause of the emergency; (b) the potential discharges of or exposures to contaminants, if any, that may have occurred; (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment;**

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(d) the measures completed or implemented to restore the engineering control; and (e) the changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.

8. TERMINATION OF DEED NOTICE.

i. This Deed Notice may be terminated only upon filing of a Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the [Insert as appropriate the County Clerk/Register of Deeds and Mortgages] of [Insert the name of the County] County, New Jersey, expressly terminating this Deed Notice.

ii. Within thirty (30) calendar days after the filing of a Termination of Deed Notice, the owner of the property shall apply to the Department for termination of the soil remedial action permit pursuant to N.J.A.C. 7:26C-7.

9. ACCESS. The Owner, and the subsequent owners, lessees and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessees and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners

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and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable

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and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description - A tax map of lots and blocks as wells as metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

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12B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted

Areas:

i. Exhibit B-1: Restricted Area Map - A separate map for each restricted area that includes:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, (and, if any) ground water monitoring wells, extent of the ground water classification exception area, pumping and treatment systems that may be required as part of a ground water engineering control in addition to the deed notice

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes either (A) or (B) through (F):

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(A) Only for historic fill extending over the entire site or a portion of the site and for which analytical data are limited or do not exist, a narrative that states that historic fill is present at the site, a description of the fill material (e.g., ash, cinders, brick, dredge material), and a statement that such material may include, but is not limited to, contaminants such as PAHs and metals;

(B) Sample location designation from Restricted Area map (Exhibit B-1);

(C) Sample elevation based upon mean sea level;

(D) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;

**(E) The restricted and unrestricted use standards for each contaminant in the table;
and**

(F) The remaining concentration of each contaminant at each sample location at each elevation.

12C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls [*Insert as appropriate:* and engineering controls] as follows:

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i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) Description and estimated size of the Restricted Areas as described above;

(B) Description of the restrictions on the Property by operation of this Deed Notice;

and

(C) The objective of the restrictions.

[Insert the following if engineering controls are part of the remedial action for the site:

ii. Exhibit C-2: *[Insert the name of the first engineering control]*: Exhibit C-2 includes a narrative description of *[Insert the name of the first engineering control]* as follows:

(A) Description of the engineering control;

(B) The objective of the engineering control; and

(C) How the engineering control is intended to function.

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[Repeat the contents of Exhibit C-2, renumbering accordingly, for each separate engineering control that is part of the remedial action for the site.]

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is an individual]

WITNESS:

[Signature]

[Print name below signature]

STATE OF [State where document is executed] SS.:

COUNTY OF [County where document is executed]

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I certify that on _____, 20__, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public

[Print Name and Title]

14. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed

Notice as of the date first written above.

[If Owner is a corporation]

ATTEST:

[Name of corporation]

By _____

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[Print name and title]

[Signature]

STATE OF [State where document is executed] SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

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(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[Signature]

[Print name and title of attesting witness]

Signed and sworn before me on _____, 20__

_____, **Notary Public**

[Print name and title]

APPENDIX [B]C - MODEL TERMINATION OF DEED NOTICE

(No change.)

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APPENDIX D - MODEL RESPONSE ACTION OUTCOME DOCUMENT

[Only Insert Name and address of Person(s) Responsible for Conducting the Remediation]

[Date]

Re: Response Action Outcome

Remedial Action Type: [Select One *Restricted Use with Permit Requirements* OR *Limited Restricted Use with Permit Requirements* OR *Unrestricted Use*]

Scope of Remediation: [Select One *Area(s) of Concern: (followed by a list of the remediated area(s) of concern) and no other areas* OR *Entire Site* OR *ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Entire Site* OR *ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Leasehold* OR *Child Care Facility*

Note: Entire Site, Child Care Facility or ISRA Industrial Establishment Response Action Outcomes can only be issued if a complete preliminary assessment and site investigation, as applicable was completed for the Entire Site, Child Care Facility or an ISRA Industrial Establishment]

Case Name:

Address:

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Municipality :

County:

Block: ___ Lot: ___ [Include when issued for an ISRA Industrial Establishment or

Child Care Center that is only a smaller leasehold portion of a larger site (Leasehold

Portion)]

Preferred ID: 000000

Child Care License #

KCSL # NJL000000000

Communication Center # 00-00-00-0000-00 [List all that apply], UST Registration #

0000000, UST Closure #C00-0000

ISRA Transaction: [Select as applicable to this ISRA Case: Sale of Property, Cessation,

Sale of Business, Bankruptcy - List Type, Foreclosure, Partnership Change, Sale of

Assets, Stock Transfer/Corporate Merger, List Other Applicable ISRA

Transactions]

ISRA Case # E00000

Well Permit #

Dear :

As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey, I hereby issue this Response Action Outcome for the remediation of the [Select one: *site OR, industrial establishment as defined according to*

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N.J.A.C. 7:26B OR area(s) of concern specifically referenced above. I [Select one or both of the following: directly oversaw and supervised all of the referenced remediation, AND\OR personally reviewed and accepted all of the referenced remediation] and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4.

This remediation includes the completion of a [Select all that apply: Preliminary Assessment, Site Investigation, Remedial Investigation and Remedial Action] as defined pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E),

My decision in this matter is made upon the exercise of reasonable care and diligence and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time these professional services are performed.

As required pursuant to N.J.A.C. 7:26C-6.2(b)2ii, a copy of all records related to the remediation that occurred at this location is being simultaneously filed with the New Jersey Department of Environmental Protection (Department). These records contain all information upon which I based my decision to issue this Response Action Outcome.

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By operation of law a Covenant Not to Sue pursuant to N.J.S.A. 58:10B -13.2 applies to this remediation. The Covenant Not to Sue is subject to any conditions and limitations contained herein. The Covenant Not to Sue remains effective only as long as the real property referenced above continues to meet the conditions of this Response Action Outcome [Select if Limited Restricted Use or Restricted Use RAO: and applicable permits].

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12o, [Insert Name of Person(s) Responsible for Conducting the Remediation] and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. shall inform the Department in writing, on a form available from the Department, within 14 calendar days after its name or address changes. Any notices you submit pursuant to this paragraph shall reference the above case numbers and shall be sent to:

New Jersey Department of Environmental Protection

Bureau of Case Assignment and Initial Notice - Case Assignment Section

P.O. Box 434

Trenton, N.J. 08625-0434

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[Add the Following if a Remedial Action Permit has been Issued Related to this Response

Action Outcome: Any such name or address change may also trigger a transfer or modification of the remedial action permit pursuant to N.J.A.C. 7:26C-7.11 and 7.12.]

[Select if Limited Restricted Use or Restricted Use Response Action Outcome: Based on my professional opinion you have obtained all applicable permit(s) and authorization(s) to ensure this remedial action remains protective of public health, safety and the environment into the future provided that you, and any other persons responsible for conducting remediation, remain in full compliance with the terms and conditions of those permit(s) and authorization(s). The designated remedial action permit number(s) is\are Add Permit Number(s) effective Insert Date(s)]

NOTICES

[Insert All of the Following Notices that are Applicable to this Remediation].

Well Decommissioning

[Select One: Pursuant to N.J.A.C. 7:9D-3, all wells installed as part of this remediation have been properly decommissioned by a New Jersey licensed well driller of the proper class in accordance with the procedures set forth in N.J.A.C. 7:9D and the well driller's well decommissioning report has been submitted to the Bureau of Water Systems and Well Permitting. OR Pursuant to N.J.A.C. 7:9D-3 any wells installed as part of this remediation

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that will no longer be used for remediation have been properly decommissioned. If any wells have been properly decommissioned, the well driller's well decommissioning report has been submitted to the Bureau of Water Systems and Well Permitting. Pursuant to N.J.S.A. 58:4A, any monitoring wells remaining onsite shall be properly decommissioned prior to the termination of the applicable remedial action permit. A New Jersey licensed well driller shall decommission the well(s) in accordance with the requirements of N.J.A.C. 7:9D-3 and submit the decommissioning report on your behalf to the Bureau of Water Systems and Well Permitting. More information about regulations regarding the maintenance and decommissioning of wells in New Jersey can be found at www.nj.gov/dep/watersupply. For a list of New Jersey licensed well drillers, click on the "reports" button in the left column and select "access the well permit reports." Questions can be emailed to wellpermitting@dep.state.nj.us.] [Select if applicable: Please note that [add count of wells to which this applies] well(s) could not be located or properly decommissioned. Contact has been made with the Bureau of Water Systems and Well Permitting regarding appropriate steps to document and conclude efforts in this regard.]

Building Interiors Not Addressed (Non-Child Care)

Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains.

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[Select if applicable: The only exception to this building interior exclusion is the release of specify contaminant from specify the AOC that discharged outside the building.] A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

Building Interiors Addressed

Site specific: to be developed by licensed site professional in coordination with the Department.

Regional Natural Background Levels of Materials in Soil

Please be advised that concentrations of [Insert specific materials] were detected in the soil at this site above the Department's (Select: Residential OR Non-residential) Direct Contact Remediation Standards. However, these concentrations are associated with natural background levels of these material(s) in the soil. Pursuant to N.J.S.A. 58:10B, remediation beyond natural background levels is not required. [Select for Response Action Outcomes involving Child Care Facilities Only: However, to minimize potential direct contact at this Child Care Center an impermeable barrier should be installed over the surface of the outdoor play area in its entirety in accordance with Department guidance for presumptive remedies found at www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance_DRAFT.pdf. The

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Department recommends that any such barrier consists of impermeable materials, such as hard surfacing, poured rubber, or rubber matting, etc. Finally, the Department recommends that the Child Care Center maintain documentation that provides proof of installation and proper maintenance of the integrity of the barrier.]

Classification Exception Area Removal

Based upon the improvement in ground water quality, it has been determined that the ground water classification exception area and well restriction area established in the Department's [Date of Letter] letter are no longer required for the referenced remediation. Removal of the classification exception area and well restriction area is based upon sampling conducted on [Dates of Sampling] at the above referenced location which demonstrated that ground water has met the Ground Water Quality Standards specified at N.J.A.C. 7:9C .

Existing Classification Exception Area or Deed Notice from Prior Remediations

Please be advised that this Response Action Outcome does not address the contamination at this site covered under the [Select if applicable: *Classification Exception Area(s)* OR *Deed Notice(s)* OR *Classification Exception Area(s) and Deed Notice(s)*] for the case(s) covered under Department Program Interest # 00000.

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Child Care Building Interiors Not Addressed

Please be advised that this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. [Select one: As a result, any risks to human health presented by any building interior or equipment remains. The requirements in the Department of Children and Families licensing regulation requires you to contact the Department of Health and Senior Services, Indoor Environments Program to determine what steps, if any, are necessary to address the risks posed by the prior historical use. The Department of Health and Senior Services, Indoor Environments Program can be reached at 609-631-6749. Department of Health and Senior Services guidance can be found at www.nj.gov/health/eoh/tsrp. OR However, these issues were evaluated as part of an Indoor Environmental Health Assessment conducted pursuant to N.J.A.C. 8:50. Documentation related to the Indoor Environmental Health Assessment [Select one: has been OR will be] submitted to the Department of Health and Senior Services - Indoor Environments Program under separate cover.]

[Select if applicable: The only exception to this building interior exclusion is the release of specify contaminant from specify the AOC that discharged outside the building.]

Child Care Center Notices

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[Select one: The potable well at this location has been sampled within the past 3 years and it has been demonstrated that the potable water utilized at the Child Care Center does not contain contaminants above the Maximum Contaminant Levels established for any of the contaminants required to be tested pursuant to N.J.A.C. 7:10-5 in nontransient noncommunity water systems or private wells, including radiological contaminants, nitrates and coliform. OR I certify that the Child Care Center is connected to a public community water system.]

This RAO is based on my determination that [Select One: there is no impact to this Child Care Center from offsite contamination. OR the impact to the Child Care Center from an offsite contamination source has been mitigated.]

[Select one: The outdoor play area is located on-site, and is adjacent to/near (Briefly describe location, size, fence and construction of play area). {Add the following sentence if there is capped play area contamination: The integrity of the play area shall be maintained at all times. } OR The outdoor play area is located off-site. (Briefly describe size and construction of play area, and provide location identification (park name, etc.), address, block and lot, and ownership with description). {Add the following sentence if the play area is on public land: This site is not listed on the Department's Known Contaminated Site List (KCSL) as either an active or pending case. } OR There is no outdoor play area for this child care center.]

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Be advised that any relocation and/or expansion of the existing licensed Child Care Center into other portions of the building or play areas, on or off-site, requires a new RAO Letter

Child Care Center Specific - Multi-Tenant Situations

Please be advised that this Response Action Outcome is for the leasehold portion of the above referenced site only, including all play areas where the potential for direct contact with soil exists. It does not include the [Specify any known: Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility. The leasehold portion is the area defined by [Define the Area of the leasehold portion] and identified on the enclosed map. Relocation and/or expansion of the existing licensed Child Care Center into other portions of the multi-tenant facility requires a new Response Action Outcome determination.

Soils Only Response Action Outcome when Ground Water Contamination remains from that Area(s) of Concern or Site

This Response Action Outcome only applies to the soils at the referenced location. By issuing this Response Action Outcome, I have relied on both the implementation of the remedial action for soil and on the ground water data to support the determination that soil contamination is no longer affecting ground water. Please be advised that if changes in future ground water data no longer support this conclusion, additional soil remediation

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may be necessary. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination. Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

Known Onsite Contamination Source Not Yet Remediated

This Response Action Outcome specifically does not address the [Specify any known areas of concern at the site] contaminated with [Add contaminant type, i.e. lead, benzene, etc.].

This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable: --- This contamination is being addressed under Department Program Interest # .] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

Ground water Contamination due to Regional Historic Fill

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Please be advised that ground water contamination (specifically. [identify contaminants] at this site exists above the Ground Water Quality Standards (N.J.A.C. 7:9C) which may limit ground water use at this site. It has been determined that this contamination is solely related to regional historic fill and there is no other onsite source of contamination contributing to this ground water contamination. Based on ground water data collected as part of this remediation and provided to the Department, a Classification Exception Area (CEA) pursuant to N.J.A.C. 7:26E-4.7(b) is required for the footprint of this property. Since this contamination is from regional historic fill only, the Department will maintain the Classification Exception Area and a Remedial Action Permit for this contamination is not required. The duration of this Classification Exception Area is for an “indeterminate” period.

Ground Water Contamination not yet Investigated

This Response Action Outcome does not address the ground water contamination (specifically. [identify contaminants]) at this site. This contamination was reported to the Department and assigned the Department’s Hotline incident number 00-00-00-0000-00. Pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-4.3, a remedial investigation of ground water (including a background investigation pursuant to N.J.A.C. 7:26E-3.10 if an offsite source is being claimed) is required. In order to identify any onsite areas of concern that may be contributing to the noted contamination a preliminary assessment and site investigation (as applicable), pursuant to N.J.A.C. 7:26E-3

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should be conducted. [Select if Applicable This contamination is being addressed under Department Program Interest # _____.] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the contamination (not otherwise determined to be from an offsite source) within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. Be advised that ground water contamination exists above the Ground Water Quality Standards (N.J.A.C. 7:9C-1.7) which may limit ground water use at this site. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination.

Contamination Remains On-Site due to Off-site Contamination

Please be advised that contamination in the ground water at this site exists above the Ground Water Quality Standards (N.J.A.C. 7:9C-1.7) which may limit ground water use at this site. Based on completion of a preliminary assessment and site investigation (as applicable), pursuant to N.J.A.C. 7:26E-3, and completion of a background investigation pursuant to N.J.A.C. 7:26E-3.10, there is no onsite contribution to this contamination and I have confirmed the source of this contamination is from offsite. This aspect of the site was reported to the Department and assigned the Department's Hotline incident number 00-00-00-0000-00. [Select if applicable: This ground water contamination is being addressed under Department Program Interest # _____.] Any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination.

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Order of Magnitude Change to a Remediation Standard after approval of a Remedial

Action Workplan

Please be advised that this Response Action Outcome is based on the implementation and completion of the Remedial Action Workplan and any addenda in accordance with the terms of the [Select: [date] Department approval OR [date Remedial Action Workplan approved by ---Name LSRP---, Licensed Site Remediation Professional. Subsequent to the approval of the Remedial Action Workplan, the Department changed remediation standards as such, [list contaminants] exist on site above the current [Select as applicable: soil, ground water or surface water] remediation standards. However, as the standards for these contaminants did not change by an order of magnitude, additional remediation is not required at this time pursuant to N.J.S.A. 58:10B-(12)j.

Order of Magnitude Change to a Remediation Standard after Approval of a Final

Remediation Document

Please be advised that this Response Action Outcome is being issued for a site that is subject to a No Further Action Letter issued by the [Select: [date] Department OR [date Response Action Outcome prepared by ---Name LSRP---, Licensed Site Remediation Professional. Subsequent to the issuance of that final remediation document, the Department changed remediation standards. [list contaminants] exist on site above the

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current [Select as applicable: soil, ground water or surface water] remediation standards.

However, these contaminant concentrations are within an order of magnitude of the current remediation standards and as a result additional remediation is not required at this time pursuant to N.J.S.A. 58:10B-(13)e.

ISRA Specific - RCRA Situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome does not cover the [Specify the Known Area(s) of Concern] area regulated under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., and currently being addressed under a RCRA Closure Plan. The environmental impact of this area was not evaluated. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable This contamination is being addressed under Department Program Interest # .] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

ISRA Specific - Multi-Tenant Situations - Bureau of Case Assignment and Initial Notice Referral

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Please be advised that this Response Action Outcome is for the leasehold portion of the above referenced property only. The leasehold portion is the area defined by [Define the Area of the leasehold portion] and identified on the enclosed map. [Select One: It does not include any other areas of concern on the property. OR It does not include the [specify any known Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility including non-subject tenants. OR It does not include the [specify any known Contaminated Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility including non-subject tenants. This aspect of this site was reported to the Department and assigned the Department’s Hotline incident number(s) 00-00-00-0000-00. Please note that there is an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, on any “person responsible for conducting remediation” to remediate the remaining contamination, within specific regulatory and mandatory timeframes. and within the statutory timeframe specified at N.J.S.A. 58:10C-27. [Select if applicable : This contamination is being addressed under Department Program Interest # .]]

ISRA Specific - Landfill situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome does not cover or address the [Specify Landfill Name] sanitary landfill and the environmental impacts of the landfill were not evaluated under this ISRA case. This aspect of this site was reported to the Department and assigned the Department’s Hotline incident number(s) 00-00-00-0000-00.

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[Select if Applicable: This contamination is being addressed under Department Program Interest #.] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate any contamination associated with the landfill within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. Please consult www.nj.gov/dep/srp/srra/ for additional guidance.

[End APPLICABLE Notices]

In concluding that this remediation has been completed, I am offering no opinions concerning whether either primary restoration (restoring natural resources to their pre-discharge condition) or compensatory restoration (compensating the citizens of New Jersey for the lost interim value of the natural resources) has been completed.

Pursuant to N.J.S.A. 58:10C-25, the Department may audit this Response Action Outcome and associated documentation up to three years following issuance. Based on a finding by the Department that a Response Action Outcome is not protective of public health, safety and the environment, the Department can invalidate the Response Action Outcome. Other justifications for the Department's invalidation of this Response Action Outcome are listed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6, including, but not limited to, a Department audit following issuance of this document may be initiated at any time if: a) undiscovered contamination is found that was

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not addressed by the Response Action Outcome, b) if the Licensed Site Remediation Professional Board conducts an investigation of the Licensed Site Remediation Professional issuing the Response Action Outcome or, c) if the license of that person is suspended or revoked.

Thank you for your attention to these matters. If you have any questions, please contact me at (xxx)xxx-xxxx.

Sincerely,

Name,

Licensed Site Remediation Professional #

Enclosure(s): Child Care Center map (including all play areas) (as applicable for Child Care Centers)

**c: Local, County Environmental Health Act Agency and Regional Health Department(s)
Mayor/Clerk/Town Council, City of [City]
Municipal Clerk**

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Local Construction Code Official (Child Care Center applicable for Madden Bill

Subject Sites in need of local construction permits)

Case Manager (If assigned)

ISRA Authorized Agent (as applicable)

Highlands Commission (as applicable)

Pinelands Commission (as applicable)

NJDEP Bureau of Case Assignment and Initial Notice

**NJDEP Bureau of Enforcement and Investigations - (ACO, Remediation Agreement or
Child Care Center Applicable)**

**NJDEP-Bureau of Safe Drinking Water (Child Care Center Applicable when water
source is a private well or a non-community water system)**

**NJ Department of Children and Families (NJDCF) - Office of Licensing (Child Care
Center applicable)**

**NJ Department of Health and Senior Services (NJDHSS) (Child Care Center
applicable)**

Others

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7:26E. TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.1 Scope

(a) This chapter establishes the technical requirements to remediate a contaminated site and ensure that the remediation is protective of public health and safety and of the environment.

(b) The remediation performed pursuant to this chapter does not relieve any person from:

1. Complying with more stringent requirements or provisions imposed by any other Federal, State or local applicable statutes or regulations; or

2. Obtaining any and all permits required by Federal, State, or local statute or regulation, except as expressly provided herein.

(c) The person responsible for conducting the remediation shall conduct any additional remediation the Department determines is necessary to protect public health and safety and the environment from contamination.

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7:26E-1.2 Liberal construction

These rules, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 13:1K-15 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10B-1 et seq., and 58:10C-1 et seq.

7:26E-1.3 Applicability

These rules apply to any person to whom the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, apply.

7:26E-1.4 Severability

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

7:26E-1.5 General remediation requirements

(a) The person responsible for conducting the remediation shall conduct remediation pursuant to this chapter and N.J.A.C. 7:26C-1.2;

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(b) Any person conducting remediation pursuant to this chapter shall apply any available and appropriate technical guidance concerning site remediation as issued by the Department pursuant to N.J.A.C. 7:26C-1.2(a)3. The Department's guidance can be found on the Department's website at www.nj.gov/dep/srp/srra/guidance.

(c) The person responsible for conducting the remediation of a site shall remediate:

1. To comply with the Remediation Standards, N.J.A.C. 7:26D; or

2. To comply with the standards or criteria developed by the Department under N.J.S.A. 58:10B-12a for that site prior to June 2, 2008, provided:

i. A remedial action workplan or a remedial action report containing standards or criteria developed for the site under N.J.S.A. 58:10B-12a was submitted to the Department before December 2, 2008;

ii. The remedial action workplan or a remedial action report meets the requirements of N.J.A.C. 7:26E-5.6 or N.J.A.C. 7:26E-5.8, respectively, and is approved as written by a licensed site remediation professional; and

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iii. The standards or criteria developed by the Department under N.J.S.A. 58:10B-12a for the site are not greater by an order of magnitude, than the remediation standards otherwise applicable under N.J.A.C. 7:26D.

(d) All work being conducted at a site pursuant to this chapter shall be documented and included in reports which contain the information required pursuant to the reporting sections of N.J.A.C. 7:26E-1 through 5.

(e) The person responsible for conducting the remediation has a continuing obligation to ensure that the Department receives all complete, accurate and relevant information regarding remediation performed pursuant to this chapter.

(f) The person responsible for conducting the remediation shall provide site specific information and documents related to remediation at a site when, and in the manner, requested by the Department.

(g) All borings and wells must be installed and decommissioned pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules, N.J.A.C. 7:9D.

(h) The person responsible for conducting the remediation may return excavated soil from drill cuttings or test pit excavations to the original location provided that:

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- i. Drill cuttings are returned in accordance with the Well Construction and Maintenance; Sealing of Abandoned Wells rules, N.J.A.C. 7:9D;
 - ii. Neither free product nor residual product is present;
 - iii. The contamination present is addressed as part of the remediation of the area of concern in compliance with this chapter; and
 - iv. The replacement of the soil does not pose any additional threat to public health, safety, or the environment.
- (i) The person responsible for conducting the remediation who is conducting remediation in the Pinelands shall do so consistent with the provisions of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. and any rules promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 4711, and shall:
1. Submit to the New Jersey Pinelands Commission copies of all final reports or workplans for preliminary assessments, site investigations, remedial investigations and remedial actions submitted to the Department pursuant to this chapter at the same time the document is submitted to the Department;

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2. Submit, for approval, a completed New Jersey Pinelands Commission application for development with a copy of the remedial action workplan or remedial design and construction documents to the New Jersey Pinelands Commission prior to implementing a remedial action;

3. Not commence any construction activity until the New Jersey Pinelands Commission approves the remediation in writing; and

4. Send the information required pursuant to this subsection to the New Jersey Pinelands Commission at the following address:

New Jersey Pinelands Commission
P.O. Box 359
15 Springfield Road
New Lisbon, NJ 08064

7:26E-1.6 General reporting requirements

(a) The person responsible for conducting the remediation shall:

1. Submit all documents, forms, spreadsheets and worksheets required in this chapter to the Department pursuant to N.J.A.C. 7:26C-1.6. All forms and spreadsheets are available on

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the Department's website at www.nj.gov/dep/srp/srra/forms. Except as specifically noted within this chapter, the forms, spreadsheets, and worksheets required by this section require information identifying the site, the responsible entity and the licensed site remediation professional, the certifications of the licensed site remediation professional and responsible entity submitting the data, and a summary of key data and conclusions, as applicable, associated with the technical information or document(s) with which they are required to be submitted;

2. Certify, and have the licensed site remediation professional certify, pursuant to N.J.A.C. 7:26C-1.5, all forms and documents prepared to pursuant to this chapter;
3. Submit a completed case inventory document worksheet available on the Department's website at www.nj.gov/dep/srp/srra/forms at the front of each remedial phase workplan and report required by this chapter, except for a preliminary assessment report where no areas of concern were identified;
4. Submit a quality assurance project plan prepared pursuant to N.J.A.C. 7:26E-2.2 with each remedial phase workplan and report required by this chapter, except for a preliminary assessment report and remedial action report;
5. Except where a final remediation document for unrestricted use is filed with the Department within one year after the earliest applicable trigger to remediate listed in

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N.J.A.C. 7:26C-2.2, submit all sampling data electronically in a summary table using the format outlined in the Site Remediation Program's "Electronic Data Interchange Manual," available at www.nj.gov/dep/srp/hazsite/docs/, in effect as of the date the document is submitted and include:

i. The following locational information:

(1) Horizontal data points reported in New Jersey state plane coordinates using the North American Datum of 1983 (NAD 1983), in accordance with the Department's Geographic Mapping and Digital Data Standards found in Appendix A of the General Practice and Procedure rules at N.J.A.C. 7:1D Appendix A, using units of U.S. survey feet; and

(2) Locational information collected in latitude and longitude converted to New Jersey state plane coordinates. Conversion programs are available at www.nj.gov/dep/srp/hazsite/help/software/;

ii. All vertical data points reported as depth below ground surface, and in mean sea level using the North American Vertical Datum of 1988 (NAVD 1988) in accordance with the Department's Geographic Mapping and Digital Data Standards found in Appendix A of the General Practice and Procedure rules at N.J.A.C. 7:1D Appendix A.

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iii. A metadata file for each submission of electronic data that contain locational information in accordance with the Department's Geographic Mapping and Digital Data Standards found in Appendix A of the General Practice and Procedure rules at N.J.A.C. 7:1D Appendix A; and

6. Submit a geographic information system (GIS) compatible site plan that includes the site boundaries and the location of all areas of concern as polygons. For assistance see www.nj.gov/dep/srp/guidance/techgis/.

(b) The person responsible for conducting the remediation shall include, in each remedial phase workplan and report, the following information:

1. The physical setting of the site that includes a general description of soils, geology, hydrology, hydrogeology, and topography of the site and surroundings;

2. A description of any significant events or seasonal variations that may have influenced sampling procedures or analytical results;

3. A description of the results and implications of field measurements or area-specific changes in sampling protocol due to field conditions;

4. A list of:

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- i. All variances from the requirements of this chapter applied for pursuant to N.J.A.C. 7:26E-1.7; and
 - ii. All rationales submitted for deviations from any technical guidance pursuant to N.J.A.C. 7:26C-1.2(a)3;
5. The applicable regulatory timeframe, including:
 - i. Regulatory citation of the regulatory timeframe; and
 - ii. Calendar date of the regulatory timeframe;
6. A summary table(s), organized by area of concern, of all sampling results, including sample location, medium, sample depth, field and laboratory identification numbers, analytical results, and comparison to remediation standards, and the following:
 - i. Identification of each contaminant concentration exceeding a remediation standard;

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ii. Identification of each sample with a method detection limit or a practical quantitation level that exceeds a remediation standard, along with an explanation in the table key; and

iii. A report of all soils and solids sample results in milligrams per kilogram on a dry weight basis, aqueous sample results in micrograms per liter, and air results in micrograms per cubic meter;

7. For soil borings, test pits and monitoring wells:

i. Stratigraphic logs, which include soil/rock physical descriptions and field instrument readings detected during drilling for each soil boring, test pit and monitoring well;

ii. State permit numbers and as-built specifications, if applicable; and

iii. Monitoring well certification forms A (the well construction as built certification) and B (the well location certification) available on the Department's website at www.nj.gov/dep/srp/regs/guidance.htm. Form A requests such information as well owner and permit information, site identification information, and a summary of specific well construction information, and Form B requests such information as well location and elevation information and a land surveyor's certification.;

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8. Maps and figures, with map scale and orientation, including:
 - i. Site location, land use, receptor evaluation, and area of concern maps;
 - ii. Sample location map(s), that include the following:
 - (1) Field identification numbers for all samples;
 - (2) Sample locations, sample depths and contaminant concentrations plotted on the map; and
 - (3) If data for more than 25 samples are presented for an area of concern, soil, ground water and sediment contaminant isopleth maps and cross section diagram(s), including the horizontal and vertical distribution of contaminants in each media, with sample point location numbers and contaminant concentrations; and
 - iii. Ground water elevation contour maps showing the location of all monitoring wells, piezometers, or other ground water sampling points, for each set of static ground water level measurements for each aquifer;
9. A discussion of the usability of laboratory analytical data; and

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10. A description of the significance of information generated in the library search of tentatively identified compounds and unknown compounds.

7:26E-1.7 Variance from the technical requirements

(a) Except as provided in (b) below, the person responsible for conducting the remediation may vary from the technical requirements in N.J.A.C. 7:26E-1 through 5 provided that person submits the following technical information, and a variance form found on the Department's website at www.nj.gov/dep/srp/srra/forms, prior to varying from any technical requirement:

1. The regulatory citation for the technical requirement;
2. A description of how the proposed variance deviates from the cited regulatory requirement; and
3. The rationale for varying from the cited technical requirement that includes supporting information as necessary to document that the requested variance will:
 - i. Provide results that are verifiable and reproducible;
 - ii. Achieve the objectives of the cited technical requirement; and

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- iii. Further the attainment of the purpose of the specific remedial phase.
- (b) The person responsible for conducting the remediation shall not vary from any of the following applicable requirements:
1. A regulatory timeframe, site-specific expedited timeframe, or mandatory timeframe;
 2. A requirement to obtain or comply with a permit;
 3. A requirement to submit a document;
 4. A requirement to comply with a remediation standard;
 5. A requirement to comply with a quality assurance laboratory requirement; or
 6. A requirement to obtain the Department's prior approval.

7:26E-1.8 Definitions

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

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"Alkane" means any hydrocarbons that contain only carbon-hydrogen and carbon-carbon single bonds.

"Alternative fill" means material to be used in a remedial action that contains contaminants in excess of the most stringent soil remediation standards, site-specific alternative standards, or site-specific interim standards and does not contain free liquids. This also includes any material that contains contaminants in excess of criteria or action levels for contaminants without standards available on the Department's website at www.nj.gov/dep/srp. Alternative fill can be soil or non-soil.

"Aquifer" means "aquifer" as defined in the Ground Water Quality Standards, N.J.A.C. 7:9C-1.4.

"Area of concern" means any existing or former distinct location or environmental medium where any hazardous substance, hazardous waste, or pollutant is known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where any hazardous substance, hazardous waste, or pollutant has or may have migrated, including, but not limited to, each current and former:

1. Storage tank and appurtenance, including, without limitation each:

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- i. Above ground or underground storage tank and silo;
 - ii. Rail car;
 - iii. Piping, above and below ground pumping station, sump and pit; and
 - iv. Loading and unloading area;
2. Storage and staging area, including each:
- i. Storage pad and area;
 - ii. Surface impoundment and lagoon;
 - iii. Dumpster; and
 - iv. Chemical storage cabinet or closet;
3. Drainage system and area, including, without limitation each:
- i. Building floor drain and piping, sump and pit, including each trench and piping from each sink that potentially receives process waste;

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- ii. Roof leader (when process operations vent to roof);
 - iii. Drainage swale and culvert;
 - iv. Storm sewer collection system;
 - v. Storm water detention pond and fire pond;
 - vi. Surface water body;
 - vii. Leach field; and
 - viii. Dry well and sump;
4. Discharge and disposal area, including, without limitation each:
- i. Area of a discharge pursuant to N.J.A.C. 7:1E;
 - ii. Waste pile as defined by N.J.A.C. 7:26;

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iii. Waste water treatment, collection and disposal system, including, without limitation, each, septic system, seepage pit and dry well;

iv. Landfill;

v. Landfarm;

vi. Sprayfield;

vii. Incinerator; and

viii. Historic fill material area or any other fill area;

5. Other areas of concern, including, without limitation each:

i. Electrical transformer and capacitor;

ii. Hazardous substance storage or handling area;

iii. Waste treatment area;

iv. Discolored area or spill area;

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- v. Open area away from production operations;
 - vi. Area with stressed vegetation;
 - vii. Other discharge area;
 - viii. Underground piping including industrial process sewer;
 - ix. Compressor vent discharge;
 - x. Non contact cooling water discharge;
 - xi. Area that may have received floodwater or stormwater runoff from any area of concern; and
 - xii. Any area suspected of containing contaminants;
6. Environmental medium, including:
- i. Ground water;

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- ii. Surface water;

- iii. Sediment;

- iv. Soil, including soil vapor pore spaces; and

- v. Air.

"Building" means a permanent enclosed construction on land, having a roof, door(s) and usually window(s) that is or can be occupied by humans, and is utilized for activities such as residential, commercial, retail, or industrial activities.

"Change in use" means a change in the existing use at an area of concern to a school, child care center or residence. Change in use also applies if a school, child care center or residence moves from an upper floor to the lowest level floor in the building.

"Child care center" means any facility as defined as such at N.J.S.A. 30:5B-1 et seq.

"Clean fill" means material to be used in a remedial action that meets all soil remediation standards, site-specific alternative standards, or site-specific interim standards, does not contain extraneous debris or solid waste, and does not contain free liquids. This also includes any

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material that meets all criteria or action levels for contaminants without standards, available on the Department's website at www.nj.gov/dep/srp. This material can be soil or non-soil.

"Commissioner" means the Commissioner of the Department of Environmental Protection, or his or her authorized representative.

"Containment" means actions to limit or prevent discharges or the spread of contamination.

"Contaminated site" means all portions of environmental media and any location where contamination is emanating, or which has emanated there from, that contain one or more contaminants at a concentration above any remediation standard or screening criterion.

"Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant as defined pursuant to N.J.S.A. 58:10A-3.

"Contract laboratory program" or "CLP" means a program of chemical analytical services developed by the EPA to support the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. §§ 9601 et seq.

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"Currently known extent" or "CKE" means the aerial extent of ground water in which concentrations of one or more contaminants exceed any applicable ground water remediation standard.

"Day" means calendar day.

"Deed notice" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, at N.J.A.C. 7:26C-1.3.

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

"Diffuse anthropogenic pollutants" or "DAP" means contamination from broadly distributed contaminants, often arising from multiple sources. DAP generally arises from atmospheric deposition, but may also contain contributions from random, non-attributable, non-point sources.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance, hazardous waste or pollutant into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters, or natural resources within the jurisdiction of the State.

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"Discrete area discharge" means a discharge that only results in less than or equal to 300 cubic yards of contaminated soil. Historic fill is not a discrete area discharge.

"Ecological screening criteria" means the criteria used in an ecological evaluation to screen contaminants in surface water, sediment, and soil. The ecological screening criteria are available on the Department's website at www.nj.gov/dep/srp/guidance/ecoscreening.

"Effective water solubility" means the theoretical aqueous solubility of an organic constituent in ground water that is in chemical equilibrium with a separate phase mixed product (product containing several organic chemicals). The effective water solubility of a particular organic chemical can be estimated by multiplying its mole fraction in the product mixture by its pure phase solubility.

"Engineered response action" means an active engineered system that is designed and implemented to reduce the risk from contamination to humans to or below acceptable standards by remediating:

1. Exposure to contaminants; or
2. The source of a direct contact IEC.

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"Engineering control" means any physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. An engineering control may include, without limitation a cap, cover, building, dike, trench, leachate collection system, fence, physical access control, and ground water containment system including, without limitation, a slurry wall and a ground water pumping system.

"Environmental medium" means any component such as soil, air, sediment, ground water, or surface water.

"Environmentally sensitive natural resource" means an area defined at N.J.A.C. 7:1E-1.8(a), or an area or resource that is protected or managed pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50.

"EPA" means the United States Environmental Protection Agency.

"Explosive condition" means an atmosphere with a concentration of flammable vapors at or above 10 percent of the lower explosive limit.

"Final remediation document" means any document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, at N.J.A.C. 7:26C-6.

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"Free liquid" means a liquid as determined by the paint filter liquids test (SW-846 Method 9095B) or an equivalent method.

"Free product" means a separate phase material, present at a concentration greater than a contaminant's residual saturation point, as determined pursuant to the methodologies described in N.J.A.C. 7:26E-2.1(a)14. This definition applies to solids, liquids, and semi-solids.

"Full laboratory data deliverables" means those laboratory data deliverables listed in Appendix A, Section I, of this chapter.

"Geotextile fabric" means a permeable fabric made of woven or non-woven (needle punch or heat bonded) polyester or polypropylene which, when used in association with soil, has the ability to separate, filter, reinforce, protect, or drain.

"Ground water" means any water defined as such pursuant to the Ground Water Quality Standards, N.J.A.C. 7:9C-1.4.

"Ground water classification exception area" or "ground water CEA" means any such area defined by the Ground Water Quality Standards, N.J.A.C. 7:9C-1.6.

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"Hazardous waste" means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26G.

"Historic fill material" means non-indigenous material, deposited to raise the topographic elevation of the site, which was contaminated prior to emplacement, and is in no way connected with the operations at the location of emplacement and which includes, without limitation, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, or non-hazardous solid waste. Historic fill material does not include any material that is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag or tailings. In addition, historic fill material does not include a municipal solid waste landfill site.

"Immediate environmental concern" or "IEC" means a condition where any of the following types of contamination, or any of the following conditions related to a discharge, are found:

1. Contamination in a well used for potable purposes at a concentration above any Class II ground water quality standard pursuant to N.J.A.C. 7:9C – Appendix Table 1;

2. Contamination in indoor air at a level greater than the Department's vapor intrusion rapid action level as found at

http://www.nj.gov/dep/srp/guidance/vaporintrusion/vig_tables.pdf;

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3. Contamination that has migrated into an occupied or confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services;

4. Contamination in surface soil such that dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure; or

5. Any other condition that poses an immediate threat to the environment or to the public health and safety.

For the purpose of this definition, an “unacceptable human health exposure” is based on an evaluation of site specific conditions and the toxicity of the contaminant present. An oxygen-deficient atmosphere is defined as any atmosphere containing oxygen at a concentration below 19.5% at sea level and an acute health exposure means that an adverse human health impact could result from an exposure of less than 2 weeks to a contaminant. The potential for exposure is based on site-specific conditions, and therefore, the person responsible for conducting the remediation shall evaluate the reasonable likelihood of exposure.

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"Industrial establishment" means any establishment defined as such pursuant to the Industrial Site Recovery Act rule, N.J.A.C. 7:26B-1.4.

"Injury" means any adverse change or impact of a discharge on a natural resource or impairment of a natural resource service, whether direct or indirect, long term or short term, and that includes the partial or complete destruction or loss of the natural resource or any of its value.

"Institutional control" means a mechanism used to provide notice of residual contamination and therefore, the need to limit human activities at or near a contaminated site in order to ensure the effectiveness of the remedial action over time. Institutional controls may include, without limitation, structure, land, and natural resource use restrictions, well restriction areas, ground water classification exception areas, deed notices, and declarations of environmental restrictions.

"Interim response action" means an interim action implemented prior to the engineered response action with the goal of reducing the risk from contamination to humans to or below acceptable standards.

"Landfill" means a sanitary landfill as defined pursuant to the Solid Waste Rules at N.J.A.C. 7:26-1.4.

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"Licensed site remediation professional" or "LSRP" means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

"Light non-aqueous phase liquid" or "LNAPL" means a separate and immiscible phase liquid when in contact with water or air, can exist as a continuous phase (mobile) or a discontinuous mass (immobile) and is less dense than water at ambient temperature.

"Limited restricted use remedial action" means any remedial action for soil that requires the continued use of institutional controls but does not require the use of an engineering control in order to meet the established health risk or environmental standards.

"Loose fill surface" means a playground surfacing material as defined in the U.S. Consumer Product Safety Commission's Handbook for Public Playground Safety (Pub. No. 325 dated 2008; as amended and/or supplemented), incorporated herein by reference.

"Method detection limit" or "MDL" means the minimum concentration of a substance that can be measured and reported with a 99 percent confidence that the analyte concentration is greater than zero and is determined from the analysis of a sample in a given matrix containing the analyte.

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"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

"New construction" means the construction of a building or other site improvement including an addition to an existing building that will extend the footprint of the building.

"Non-targeted compound" means a compound detected in a sample using a specific analytical method that is not a targeted compound, a surrogate compound, a system monitoring compound, a deuterated monitoring compound or an internal standard compound.

"Person" means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

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

"Pinelands" means the Pinelands National Reserve and the Pinelands Area as defined by the Comprehensive Management Plan, N.J.A.C. 7:50.

"Pollutant" means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

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"Potable water" means any water defined as such by the Safe Drinking Water Act rules, N.J.A.C. 7:10-1.3.

"Practical quantitation level" or "PQL" means the lowest quantitation level of a given analyte that can be reliably achieved among laboratories within the specified limits of precision and accuracy of a given analytical method during routine laboratory operating conditions.

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any contaminant is required.

"Property boundary" means the boundaries of the municipal tax block and lot upon which an area of concern is located.

"Quality assurance" means the total integrated program for assuring the reliability of monitoring and measurement data, which includes a system for integrating the quality planning, quality assessment and quality improvement efforts to meet data end-use requirements.

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"Quality assurance project plan" or "QAPP" means a document that presents in specific terms the policies, organization, objectives, functional activities and specific quality assurance/quality control activities involved with the acquisition of environmental information designed to achieve the data quality goals or objectives of a specific project or operation.

"Quality control" means the application of procedures for attaining prescribed standards of performance in the monitoring and measurement process.

"Receptor" means a human or a natural resource.

"Reduced laboratory data deliverables" means the laboratory data deliverables listed in Appendix A, Section II.

"Remedial action" means those actions taken at a contaminated site as may be required by the Department, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any contaminant is remediated in compliance with the applicable remediation standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met.

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"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action.

"Remedial phase" means a distinct component of the remediation process. Such components include, without limitation, the preliminary assessment, site investigation, remedial investigation, and remedial action.

"Remediation" or "remediate" means all necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action; provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

"Remediation costs" means costs defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

"Remediation standards" means the standards defined as such pursuant to the Remediation Standards rules, N.J.A.C. 7:26D.

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"Reporting limit" means, for a compound analyzed by a particular method, the sample equivalent concentration (i.e., based on sample specific preparation and analysis factors) associated with the lowest concentration standard used in the calibration of the method.

"Residential type I" means any area not a residential type II.

"Residential type II" means an area under the control or authority of an entity or person, other than the occupant, who has the legal authority to preclude anyone from disturbing an engineering control.

"Residual product" means a separate phase material present in concentrations below a contaminant's residual saturation point, retained in soil or geologic matrix pore spaces or fractures by capillary forces, as determined pursuant to the methodologies described in N.J.A.C. 7:26E-2.1(a)14. This definition applies to solids, liquids, and semi-solids.

"Residual saturation point" means the saturation point below which non-aqueous phase liquid becomes discontinuous and is immobilized by capillary forces, and fluid drainage will not occur.

"Restricted use remedial action" means any remedial action for soil that requires the continued use of engineering and institutional controls in order to meet the established health risk or environmental standards.

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"School" means a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1.

"Semivolatile organic compound" means a compound amenable to analysis by the extraction of the sample with an organic solvent.

"Site investigation" means 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 of excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

"Soil" means the unconsolidated mineral and organic matter on the surface of the earth that has been subjected to and influenced by geologic, biologic, and other environmental factors.

"Soil gas" means vapors or gases present in unsaturated pore spaces of subsurface material.

"Surface water" means water defined as surface water pursuant to the Surface Water Quality Regulations, N.J.A.C. 7:9B.

"Surface Water Quality Standards" means the standards at N.J.A.C. 7:9B.

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"Target analyte list" or "TAL" means the list of inorganic compounds/elements designated for analysis as contained in the version of the EPA Contract Laboratory Program Statement of Work for Inorganics Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis, incorporated herein by reference. For the purpose of this chapter, a Target Analyte List scan means the analysis of a sample for Target Analyte List compounds/elements.

"Target compound list plus 30" or "TCL + 30" means the list of organic compounds designated for analysis (TCL) as contained in the version of the EPA "Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date on which the laboratory is performing the analysis, and up to 30 non-targeted organic compounds (plus 30) as detected by gas chromatography/mass spectroscopy (GC/MS) analysis incorporated herein by reference. For the purposes of this chapter, a Target Compound List + 30 scan means the analysis of a sample for Target Compound List compounds and up to 15 non-targeted volatile organic compounds and up to 15 non-targeted semivolatile organic compounds using GC/MS analytical methods. Non-targeted compound criteria shall be pursuant to the version of the EPA "Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date on which the laboratory is performing the analysis.

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"Targeted compound" means a hazardous substance, hazardous waste, or pollutant for which a specific analytical method is designed and/or used to detect that potential contaminant both qualitatively and quantitatively.

"Technical guidance" means the various guidelines that the Department publishes, after stakeholder input, that reflect the generally accepted technical practices necessary to meet the statutory and regulatory requirements applicable to the remediation of a contaminated site.

"Tentatively identified compound" or "TIC" means a non-targeted compound detected in a sample using a GC/MS analytical method which has been tentatively identified using a mass spectral library search. Alkane compounds attributed to a petroleum product will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound. An estimated concentration of the TIC is also determined.

"Underground storage tank" or "UST" means a regulated underground storage tank as defined pursuant to the Underground Storage Tank rules, N.J.A.C. 7:14B-1.6.

"Unitary material" means a playground surfacing material as defined in the U.S. Consumer Product Safety Commission's Handbook for Public Playground Safety (Pub. No. 325 dated 2008; as amended and/or supplemented).

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"Unknown compound" means a non-targeted compound that cannot be tentatively identified.

Based on the analytical method used, the estimated concentration of the unknown compound may be determined.

"Unrestricted use remedial action" means any remedial action for soil that does not require the continued use of either engineering or institutional controls to meet the established health risk or environmental standards.

"Vapor concern" means a condition where contamination in indoor air exists at a level greater than the Department's vapor intrusion indoor air screening level but less than or equal to the Department's vapor intrusion rapid action level. Vapor intrusion indoor air screening levels and vapor intrusion rapid action levels may be found at:

http://www.nj.gov/dep/srp/guidance/vaporintrusion/vig_tables.pdf

"Vapor intrusion" means the migration of volatile chemicals from the subsurface into overlying buildings through subsurface soils or preferential pathways (such as underground utilities).

"Visible contamination boundary marker" means a demarcation that consists of a synthetic, durable material that can be easily seen when uncovered while digging.

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"Volatile organic compound" means a compound amenable to (but not exclusively by) analysis using a purge and trap technique.

"Widespread contamination" means contamination that is not a discrete area discharge.

7:26E-1.9 Green and sustainable practices

The Department encourages the use of green and sustainable practices during the remediation of contaminated sites.

7:26E-1.10 Control of ongoing sources and implementation of interim remedial measures

(a) As a first priority, the person responsible for conducting the remediation shall:

1. Have a continuing responsibility to identify the need for any interim remedial measure necessary to remove, contain, or stabilize a source of contamination to prevent contaminant migration and to protect the public health and safety and the environment; and
2. Include in each remedial phase report a description of each interim remedial measure implemented and each interim remedial measure that is planned.

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(b) Whenever LNAPL is measured greater than 0.01 feet in a collection point (e.g., sump, monitoring well, surface water, excavation), the person responsible for conducting the remediation shall, within 60 days after LNAPL is discovered:

1. Report the presence of LNAPL to the Department on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms. Information to be supplied by filling out the form includes:

- i. Site identification information;
- ii. A summary of the information describing the type of LNAPL observed and how the LNAPL was discovered;
- iii. The name of the responsible entity and a certification statement; and
- iv. The name of the licensed site remediation professional and a certification statement;

2. Initiate LNAPL recovery to the extent practicable, and report the status of the actions taken within this timeframe on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms. Information to be supplied by filling out the form includes:

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- i. Site identification information;

- ii. A summary of the information describing the type of LNAPL observed, how the LNAPL was discovered, and initial recovery efforts;

- iii. The name of the responsible entity and a certification statement; and

- iv. The name of the licensed site remediation professional and a certification statement.

(c) Within one year after LNAPL is discovered pursuant to (b) above, the person responsible for conducting the remediation shall:

1. Complete the delineation of the LNAPL;

2. Initiate implementation of an LNAPL interim remedial measure to prevent LNAPL migration, reduce LNAPL contaminant mass to the extent practicable and initiate monitoring of the interim remedial measure; and

3. Document the actions taken pursuant to this section and submit to the Department an LNAPL interim remedial measure report with a form available on the Department's website at www.nj.gov/dep/srp/srra/forms.

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7:26E-1.11 Immediate environmental concern requirements

(a) The person responsible for conducting the remediation shall, upon the identification of any immediate environmental concern (IEC):

1. Immediately call the Department's hotline at 1-877 WARNDEP or 1-877-927-6337 and immediately notify the case manager if one is assigned;

2. Address the IEC impacts as follows:

i. Within five days after identifying a potable water IEC:

(1) Provide an interim response action to address any potable well impacted by contamination from the site that exceeds any Class II ground water quality standard; and

(2) Provide a copy and explanation of the analytical results from the potable well to the property owner, occupant (if applicable), and designated local health department;

ii. Within 14 days after identifying a vapor intrusion IEC:

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- (1) Provide an interim response action to address any building subject to the vapor intrusion that exceeds the Department's rapid action level (RAL) available on the Department's website at www.nj.gov/dep/srp/srra/guidance; and
 - (2) Provide a copy and explanation of the vapor intrusion analytical results to the property owner, occupant (if applicable), and designated local health department;
- iii. Within five days after identifying a direct contact IEC:
 - (1) Provide an interim response action to address any human exposure to the contamination from the site via direct contact; and
 - (2) Provide a copy and explanation of the direct contact analytical results to the property owner, occupant (if applicable), and designated local health department;
3. Within 14 days after identifying an IEC, submit the following to the Department:
 - i. A completed form found on the Department's website at www.nj.gov/dep/srp/srra/forms. Information to be supplied by filling out the form includes:

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- (1) Site identification information;
- (2) A summary of the information describing the type of IEC reported, the contaminant source, and the type of submittal being made;
- (3) The name of the responsible entity and a certification statement; and
- (4) The name of the licensed site remediation professional and a certification statement;

ii. A completed spreadsheet, found on the Department's website at www.nj.gov/dep/srp/srra/forms, which contains all test results and actions taken to remediate the IEC. Information to be supplied by filling out the form includes:

- (1) Site identification information;
- (2) Property location and ownership information;
- (3) Analytical results;
- (4) A summary of the immediate response actions; and
- (5) The name of the licensed site remediation professional and license number;

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iii. A map indicating the location of the site, the locations of the impacted receptors, and sample locations; and

iv. A copy of the documentation required by (a)2i(2), (a)2ii(2) or (a)2iii(2) above;

4. Within 14 days after receipt of the IEC analytical data from the laboratory, submit all IEC analytical results to the Department with full laboratory data deliverables with the form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

5. Provide routine updates to the Department on the progress of addressing the IEC on a schedule set by the Department's IEC case manager;

6. Within 60 days after identifying any IEC:

i. For a potable water IEC:

(1) Implement an engineered response action by providing water treatment or an alternative water supply to address the contamination in wells with contaminant concentrations exceeding any Class II ground water quality standard. If water treatment is the selected engineered response action, a post installation sample is required and results must be reported to the property owner, occupant (if applicable),

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and designated local health department. The engineered response action must provide potable water to the entire building that the impacted potable well serves; and

(2) Identify and sample all potable wells, pursuant to N.J.A.C. 7:26E-1.14, within a 500 foot radius of the impacted potable well when the ground water flow direction is not known and within 500 feet side gradient and down gradient and 250 feet up gradient of the impacted well when the ground water flow direction is known. If additional impacted potable wells are identified, continue to identify and sample all potable wells pursuant to this subparagraph.

ii. For a vapor intrusion IEC:

(1) Implement an engineered response action by installing a vapor remedial action system for each building where the indoor air results exceed the Department's rapid action level. Post-installation sampling is required and the results must be reported to the property owner, occupant (if applicable), and designated local health department; and

(2) Identify and sample all buildings within 100 feet of the impacted building, identify any additional buildings at risk and conduct additional vapor intrusion investigations pursuant to N.J.A.C. 7:26E-1.15.

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iii. For a direct contact IEC:

(1) Implement an engineered response action that prevents physical human contact with contaminants; and

(2) Identify and sample all areas of concern and evaluate for direct contact threats to nearby humans;

7. Within 120 days after identifying any IEC, submit to the Department an IEC engineered response action report that includes the following:

- i. An updated form found on the Department's website at www.nj.gov/dep/srp/srra/forms;
- ii. A description of all remediation performed in response to the IEC, detailing the interim response actions and engineered response actions that have been completed, including the date that each action is conducted pursuant to (a)6 above;
- iii. A summary of all analytical data related to the IEC and the engineered response action;
- iv. All maps and figures related to the IEC and the engineered response action;

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- v. An updated spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms; and
 - vi. A GIS compatible map of the currently known extent of ground water contamination, the vapor intrusion area, or the direct contact area, as applicable;
8. Within one year after identifying any IEC, identify all contaminant source areas contributing to the IEC, initiate control of all IEC contaminant source areas, and submit to the Department an IEC source control report that includes the following:
- i. An updated form found on the Department's website at www.nj.gov/dep/srp/srra/forms;
 - ii. A detailed description of the all contaminant source areas identified, results of the updated receptor evaluation, the engineered response action taken at the receptor(s), and actions being implemented to remediate the IEC contaminant source;
 - iii. An updated spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms;
 - iv. All maps and figures related to the IEC;

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v. A GIS compatible map of the currently known extent of ground water contamination, the vapor intrusion area, or the direct contact area, as applicable;

vi. A data usability determination;

vii. A monitoring plan for any engineered response action;

viii. A monitoring plan for the wells or buildings located near the wells or buildings that are impacted by the IEC; and

ix. A schedule for the completion of the remedial investigation and submission of the remedial investigation report, in light of the existence of the IEC, in a time period shorter than the timeframe allowed by N.J.A.C. 7:26E-4.10; and

9. Until the Department issues a remedial action permit that includes the IEC, provide annual monitoring and maintenance reports to the Department that detail the monitoring of contaminated properties and receptors and monitoring conducted for wells and buildings that are located near the wells and buildings that are impacted by the IEC.

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7:26E-1.12 Receptor evaluation - general and reporting requirements

(a) Except as provided in (b) below, the person responsible for conducting the remediation shall conduct a receptor evaluation pursuant to the requirements of this section through N.J.A.C.

7:26E-1.16 and submit a receptor evaluation pursuant to this section.

(b) The person responsible for conducting the remediation who completes an unrestricted use remedial action is not required to conduct a receptor evaluation, except as pursuant to N.J.A.C.

7:26E-1.16, when a final remediation document is filed with the Department within one year after the earliest applicable requirement to remediate, listed at N.J.A.C. 7:26C-2.2.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation for a contaminated site, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, one year after the earliest applicable requirement to remediate listed at N.J.A.C. 7:26C-2.2. The person responsible for conducting the remediation shall include in the initial receptor evaluation the information that is known by that person at the time the report is submitted. Information to be supplied by filling out the form includes:

1. Site identification information;
2. A description of the known contamination;

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3. A summary of the on-site and surrounding property use and the receptor evaluation;
4. The name of the responsible entity and a certification statement; and
5. The name of the licensed site remediation professional and a certification statement.

(d) The person responsible for conducting the remediation shall update the receptor evaluation when:

1. The known concentration or extent of contamination in any medium increases;
2. A new area of concern is identified;
3. A new receptor is identified; or
4. A new exposure pathway is identified.

(e) The person responsible for conducting the remediation shall submit an updated receptor evaluation on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms with the following documents, as applicable:

1. An IEC source control report, pursuant to N.J.A.C. 7:26E-1.11(a)8;

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2. A remedial investigation report, pursuant to N.J.A.C. 7:26E-4.9; and

3. A remedial action report, pursuant to N.J.A.C. 7:26E-5.8.

(f) The person responsible for conducting the remediation shall also send a copy of each receptor evaluation to the following according to the regulatory timeframes in this section:

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

2. The designated local health department.

7:26E-1.13 Receptor evaluation - land use

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of land use that includes:

1. The identification of all current land uses at the site and of each property located within 200 feet of the property boundary;

2. The address of each residence, school, child care center, park, playground or other recreation area that is identified at the site and within 200 feet of the property boundary;

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3. A map that shows the location of the site, the land use at the site and each property within 200 feet of the property boundary pursuant to (a) above, and the location of each residence, school, child care center, park, playground or other recreation area land use that is identified pursuant to (a)1 above; and

4. The identification and description of any proposed changes of land use at the site and of each property located within 200 feet of the property boundary that the municipality has approved, with a map depicting the location of the change in relation to the areas being remediated.

7:26E-1.14 Receptor evaluation - ground water

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water quality standard, as follows:

1. Within 90 days after ground water contamination is detected, conduct a well search to identify wells that may be impacted by contamination from the site as follows:

i. Conduct a file search of all available Department, county and local records and identify all wells located within one-half mile of each point of ground water

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contamination, and all irrigation, industrial wells, and wells with water allocation permits located within one mile of each point of ground water contamination;

ii. If there are any potable or irrigation wells within one-half mile of each point of ground water contamination, conduct a door-to-door survey to determine the existence of any unpermitted potable or irrigation wells within a 500 foot radius of each known point of ground water contamination when the ground water flow direction is not known and within 250 feet up gradient, 500 feet side gradient and 500 feet down gradient and of each known point of ground water contamination when the ground water flow direction is known;

iii. For each well, other than a monitoring well, located pursuant to (a)1i or ii above, identify the type (potable, irrigation, industrial, etc.), status (i.e., active, inactive, properly decommissioned pursuant to N.J.A.C. 7:9D), and the construction of each well;

iv. Generate a map of all well locations, except monitoring wells, borings, and other non-pumping wells, and document well information on a spreadsheet available on the Department's web site at www.nj.gov/dep/srp/srra/forms;

v. Document all sources used in conducting the well search, including the names of any agency that was unable to provide the information requested; and

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vi. For each point of ground water contamination, determine if the ground water contamination is located within a well head protection area, available on the Department's website at www.state.nj.us/dep/njgs/geodata;

2. Within 120 days after ground water contamination is detected at the site above any Class II ground water quality standard, the person responsible for conducting the remediation shall:

i. Notify the Department, on a form and spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms, at the time that the person contacts property owners or tenants for the purpose of gaining access to conduct sampling, but no later than seven days prior to the scheduled sampling date to conduct potable well sampling.

Information to be supplied by filling out the form and spreadsheet includes:

(1) Site identification information;

(2) A description of the planned sampling activities, including sampling location and date(s) sampling was conducted;

(3) The name of the responsible entity and a certification statement; and

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(4) The name of the licensed site remediation professional and a certification statement;

ii. Sample each potable well identified by the well search that is located within 500 feet of any point of ground water contamination if ground water flow direction is not known, or if ground water flow direction is known, limit sampling to wells 250 feet up gradient, 500 feet side gradient and 500 feet down gradient from any point of ground water contamination;

iii. Sample each irrigation well that may be utilized for potable purposes and is identified within 500 feet of any point of ground water contamination if ground water flow direction is not known, or if ground water flow direction is known, limit sampling to wells 250 feet up gradient, 500 feet side gradient and 500 feet down gradient from any point of ground water contamination identified by the well search when there are concerns about exposure or when information about the characteristics of the plume is needed; and

iv. When ground water contamination is located within a Tier I well head protection area, sample each community and non-community supply well within the Tier 1 well head protection area, unless pre-treatment analytical results for the chemicals of concern in ground water are available from sampling completed within the last three months; and

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3. Every two years after the first trigger for a well search pursuant to (a)1 above, update the well search pursuant to (a)1i, to identify if new wells have been installed.

(b) If any contaminant is identified in excess of any Class II ground water quality standard pursuant to N.J.A.C. 7:26D-2.2(a)1 in any potable or irrigation well that may be utilized for potable purposes, then the person responsible for conducting the remediation shall conduct all actions pursuant to N.J.A.C. 7:26E-1.11, according to the schedule therein.

(c) If no contaminant is detected in any potable well sample in excess of any Class II ground water quality standard, then the person responsible for conducting the remediation shall, within 30 days after receipt of the analytical results from the laboratory:

1. Submit all analytical results to the Department with full laboratory data deliverables and a form and spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms;

2. Provide a copy and explanation of all ground water analytical results to each property owner, occupant (if applicable), and designated local health department of the analytical results; and

3. Provide the Department with a copy of the documentation required by (c)2, above. The documentation shall be submitted pursuant to N.J.A.C. 7:26E-1.6(a).

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7:26E-1.15 Receptor evaluation - vapor intrusion

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of the vapor intrusion pathway pursuant to this section when any of the following conditions exist:

1. A volatile organic ground water contaminant is identified at a concentration greater than the vapor intrusion ground water screening level available on the Department's website at www.nj.gov/dep/srp/srra/guidance:

- i. Within 30 feet of a building and it is petroleum hydrocarbon based ; or
 - ii. Within 100 feet of a building and it is not petroleum hydrocarbon based;
2. Free product is identified:
- i. Within 100 feet of a building and it is not petroleum hydrocarbon based; or
 - ii. Within 30 feet of a building and it is petroleum hydrocarbon based; or
3. When any of the following conditions is identified:

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i. Soil gas or indoor air contamination is detected at concentrations that exceed the soil gas or indoor air screening levels available on the Department's website at www.nj.gov/dep/srp/srra/guidance;

ii. A wet basement or sump in a building contains free product or ground water containing any volatile contaminant;

iii. Methane generating conditions are present that may cause an oxygen deficient environment or explosion; or

iv. Any other information that indicates that human health and safety may be impacted via the vapor intrusion pathway.

(b) Within 60 days after determining the need to conduct a receptor evaluation of the vapor intrusion pathway pursuant to (a) above, the person responsible for conducting the remediation shall:

1. Identify all buildings and subsurface utilities located within the vapor intrusion investigation trigger distances where a receptor evaluation of the vapor intrusion pathway is required pursuant to (a) above;

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2. Determine the specific use and construction for each building identified, including whether each building has a basement, crawl space, or is constructed on a slab, and the approximate square footage of each building footprint;

3. Determine the specific use, depth of the invert, diameter, and construction specifications of all subsurface utilities identified;

4. Identify whether a landfill is located on or adjacent to the site and whether methane generating conditions are present;

5. Determine the flow direction of the shallow ground water pursuant to N.J.A.C. 7:26E-4.3; and

6. Determine, pursuant to N.J.A.C. 7:26E-2.1(a)14, whether free product is present at each ground water sampling location.

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to paragraph (a) above, the person responsible for conducting the remediation shall:

1. Notify the Department on a form and spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms at the time that person contacts property owners and occupants for the purpose of gaining access to conduct sampling, but no later than seven days

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prior to the scheduled sampling date to conduct a vapor intrusion investigation. Information to be supplied by filling out the form and spreadsheet includes:

- i. Site identification information;
 - ii. A description, location and date of the planned sampling activities;
 - iii. The name of the responsible entity and a certification statement; and
 - iv. The name of the licensed site remediation professional and a certification statement;
2. Conduct a vapor intrusion investigation by collecting an appropriate number of samples in appropriate locations;
 3. Evaluate the results of the vapor intrusion investigation by assessing the multiple lines of evidence, including a comparison of the analytical results to the Department's screening levels; and
 4. Determine if the vapor intrusion pathway is complete for each building being investigated.

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(d) Except as provided in (e), (f), and (g) below, within 30 days after receipt of the analytical data concerning vapor intrusion sampling conducted pursuant to (c) above, the person responsible for conducting the remediation shall:

1. Submit all vapor intrusion analytical results with maps and figures related to the vapor intrusion sampling to the Department with full laboratory data deliverables and a form and spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms;

2. Provide a copy and explanation of the vapor intrusion analytical results to the property owner, occupant (if applicable), and designated local health department where a vapor intrusion investigation was conducted; and

3. Provide the Department with a copy of the explanation of the vapor intrusion analytical results submitted pursuant to (d)1, above.

(e) When any indoor air results are greater than the Department's vapor intrusion indoor air screening levels, but less than or equal to the Department's vapor intrusion rapid action level (i.e., a vapor concern), and are determined to be related to a discharge, the person responsible for conducting the remediation shall:

1. Within 14 days after receipt of the analytical results:

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i. Submit notification of the exceedance of the vapor intrusion indoor air screening levels on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

ii. Submit all vapor intrusion analytical results with maps and figures related to the vapor intrusion sampling to the Department with full laboratory data deliverables and a form and spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms; and

iv. Provide a copy and explanation of the vapor intrusion analytical results to the property owner, occupant (if applicable), and designated local health department where a vapor intrusion investigation was conducted, and provide the Department with a copy of the explanation of the vapor intrusion analytical results submitted pursuant to (e)1ii, above.

2. Within 60 days after receipt of the analytical data, submit a plan to the Department to address the exposure with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, which includes a schedule for, and a description of:

i. The actions proposed; and

ii. A monitoring plan to evaluate the effectiveness of the proposed action;

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3. Within 120 days after receipt of the analytical data, implement the plan; and

4. Within 180 days after receipt of the analytical data, submit a vapor intrusion response action report to the Department, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, which includes:
 - i. A description of all actions that have been completed, including the date that each action that was conducted;

 - ii. A summary of all analytical data related to the vapor intrusion investigation and response;

 - iii. All maps and figures related to the vapor intrusion investigation and response; and

 - iv. A GIS compatible map of the currently known extent of ground water contamination or a map of the vapor intrusion area;

5. Provide routine updates on the progress of the case as requested by the Department's case manager;

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6. Identify and sample all buildings within 100 feet of the impacted building, identify any additional buildings at risk and conduct additional vapor intrusion investigations pursuant to this section.

(f) When any indoor air results are greater than the Department's vapor intrusion rapid action level, the person responsible for conducting the remediation shall:

1. Immediately notify the Department of an immediate environmental concern; and
2. Conduct all actions required pursuant to N.J.A.C. 7:26E-1.11;

(g) When any indoor air results are greater than the Department of Health and Senior Services notification levels for indoor air available on the Department's website at www.nj.gov/dep/srp/srra/guidance, the person responsible for conducting the remediation shall:

1. Immediately notify the Department of the immediate environmental concern;
2. Immediately notify the New Jersey Department of Health and Senior Services, Consumer and Environmental Health Services, Indoor Environments Program at 609-826-4950; and
3. Conduct all actions required pursuant to N.J.A.C. 7:26E-1.11.

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(h) Within 14 days of receipt of the analytical results, the person responsible for conducting the remediation shall submit on a CD in Adobe Portable Document Format (PDF), all indoor and ambient air analytical results, including all maps and figures related to the indoor air sampling, and a sample location spreadsheet to the New Jersey Department of Health and Senior Services, Consumer, Environmental and Occupational Health Service, PO Box 360, Trenton, NJ 08625-0360.

(i) If the person responsible for conducting the remediation identifies potentially explosive conditions in a building or subsurface utility, the person responsible for conducting remediation shall immediately:

1. Call 911 and report potentially explosive conditions to the local emergency response agency;
2. Notify the Department of the emergency condition at 1-877-WARNDEP or 1-877-972-6337; and
3. Notify the New Jersey Department of Health and Senior Services, Consumer and Environmental Health Services, Indoor Environments Program at 609-826-4950.

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7:26E-1.16 Receptor evaluation - ecological

(a) The person responsible for conducting the remediation shall conduct an ecological

receptor evaluation as follows:

1. Determine if any environmentally sensitive natural resource, other than ground water:

i. Are present on the site or area of concern;

ii. Are adjacent to the site or area of concern; or

iii. May be, have been, or are impacted by contamination from the site or area of concern; and

2. Determine if any contaminant concentration is present at the site or area of concern that exceeds any ecological screening criterion or any aquatic surface water quality standard.

(b) If an environmentally sensitive natural resource is identified pursuant to (a)1 above and contaminant concentrations are present at the site or area of concern that exceed any ecological screening criterion or any aquatic surface water quality standard, then the person responsible for

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conducting the remediation shall conduct a remedial investigation of ecological receptors pursuant to N.J.A.C. 7:26E-4.8.

(c) If no environmentally sensitive natural resource is identified pursuant to (a)1 above, or if no contaminant concentration at the site or area of concern exceeds any ecological screening criterion or any aquatic surface water quality standard, then a remedial investigation of ecological receptors is not required.

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that all sampling and laboratory analysis are conducted as follows:

1. Laboratories or companies involved in any laboratory or field activity that provide data of known quality must have all applicable certifications for the specific parameters or categories for which certification exists pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measures, N.J.A.C. 7:18;

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2. For the analysis of samples for parameters or categories of parameters for which certification is not available pursuant to N.J.A.C. 7:18, the person responsible for conducting the remediation shall ensure that the selected laboratory is capable of performing the analysis and meeting the data quality objectives specified in the site specific QAPP prepared pursuant to N.J.A.C. 7:26E-2.2. At such time as certification for the affected parameters or categories of parameters is codified in N.J.A.C. 7:18, the procedures in N.J.A.C. 7:18 shall be followed;

3. Derive the reporting limit for a compound analyzed by a particular method from the lowest concentration standard used in the calibration of the method as adjusted by sample specific preparation and analysis factors (for example, sample dilutions and percent solids);

4. Use the analytical method(s) that have analytical sensitivity sufficient to accurately measure concentrations to meet the data quality objectives detailed in the site-specific QAPP;

5. Perform sample matrix cleanup methods, where necessary, to reach the analytical sensitivity specified in the site specific QAPP;

6. Analyze all samples for petroleum products using the Department's Extractable Petroleum Hydrocarbon Methodology, "Analysis of Extractable Petroleum Hydrocarbon Compounds (EPH) in Aqueous and Soil/Sediment/Sludge Matrices" dated October, 2008 Revision 3 August 2010 which can be found on the Department's website at www.nj.gov/dep/srp/guidance/srra/eph_method.pdf as amended and/or supplemented.

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7. Use canister-based collection techniques for the analysis of air samples when analyzed by NJDEP Method LLTO-15, incorporated herein by reference, which can be found at on the Department's website at

www.state.nj.us/dep/srp/guidance/vaporintrusion/newmethod2007/llto15.pdf or USEPA

Method TO-15 found on the USEPA's website at www.epa.gov/ttn/amtic/airtox.html;

8. Collect non-aqueous samples to be analyzed for volatile organics using the following procedures:

i. USEPA Method 5035A found on the USEPA's website at

www.epa.gov/sam/method22.htm, incorporated herein by reference; or

ii. Alternative procedures specified in a site specific QAPP;

9. Analyze all potable water samples as follows:

i. For organic contaminants, use the version of USEPA 500 series methods in effect on the date of analysis, incorporated herein by reference; and

ii. For inorganic contaminants, use the version of USEPA 200 series methods in effect on the date of analysis, incorporated herein by reference. As an alternative, lead

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may be analyzed by the Standard Methods for the Examination of Water and Wastewater version of Method 3113B in effect on the date of analysis;

10. When aqueous and non-aqueous samples are taken for hexavalent chromium analysis:

i. Measure the pH and Eh of each sample and quality control sample, with the pH and Eh data included and plotted in the full data deliverables using the graph in USEPA SW-846 Method 3060A incorporated herein by reference, as amended and supplemented; and

ii. Use a site sample for the quality control analyses so the reduction/oxidation effects of the site matrix can be properly evaluated using USEPA SW-846 Method 3060A;

11. If conventional analytical methods are not available or not suitable for a contaminant, then analysis of indicator parameters may be acceptable if accompanied by a technical rationale provided in the applicable phase report that is submitted to the Department (for example, pH may be used as an indicator parameter for acid or base discharges);

12. Follow all quality assurance/quality control procedures specified in the site specific QAPP;

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13. Report, in the applicable remediation phase report submitted to the Department, all solid sample analysis results, including without limitation, soils and sediments, on a dry weight basis, except for those results required by the method to be otherwise reported;

14. Determine if either free product or residual product is present in any environmental media using direct observation, enhanced field observation methods, field instrumentation measurements, or laboratory analytical data;

i. For contaminants that are in their pure phase and are at standard state conditions (20 degrees Celsius to 25 degrees Celsius and one atmosphere pressure), and that have densities greater than water, free or residual product shall be considered to be present if the contaminant is detected in ground water at concentrations equal to or greater than one percent of the water solubility of the contaminant if ground water contains only that organic contaminant; or

ii. If a mixture of such contaminants is present, then the effective water solubility of the contaminant shall be estimated for this determination; and

15. Laboratory data deliverables, as listed in Appendix A, shall be as follows unless otherwise specifically required pursuant to a NJPDES permit:

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i. Full laboratory data deliverables shall be submitted for all potable water, vapor intrusion (sub-slab, indoor and ambient), polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans sample analyses, and all hexavalent chromium soil sample analyses;

ii. Reduced laboratory data deliverables shall be submitted for all other analyses; and

iii. Upon request by the Department, the person responsible for conducting the remediation shall submit additional analytical information.

(b) Field screening methods are limited as follows:

1. Field screening methods for all sampling matrices (soil, water, air, interior surfaces) shall only be used under the following conditions:

i. For contaminant delineation if contaminant identity is known or if there is reasonable certainty that a specific contaminant may be present (for example, benzene, toluene, ethyl benzene, xylene in the case of sampling for a gasoline release); or

ii. To bias sample location to the location of greatest suspected contamination; and

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2. Field screening methods shall not be used to verify contaminant identity or clean zones. However, where 10 or more samples are required for initial characterization sampling at an area of concern, field screening methods may be used to document that up to 50 percent of sampling points within the area of concern are not contaminated.

(c) The following requirements apply for selection of analytical parameters for all environmental media:

1. Samples for all environmental media shall be analyzed for:

i. The contaminants that may be present as determined during the preliminary assessment and/or from any other information obtained during the remediation; or

ii. The Target Compound List plus TICs/Target Analyte List (TCL + TICs/TAL), hexavalent chromium, extractable petroleum hydrocarbons (EPH), and pH when contaminants are unknown or not well documented;

2. Initial potable water samples shall be analyzed for the compound list specified in the analytical method utilized plus TICs. All results are to be reported in the applicable remediation phase report submitted to the Department;

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3. Initial vapor intrusion samples (sub-slab, indoor air, and ambient air) shall be analyzed for the compound list in Table A of the NJDEP Method LLTO-15, plus TICs. In addition, when vapor intrusion samples (sub-slab, indoor air or ambient air) are taken due to petroleum contamination other than all gasolines or light petroleum distillates, the samples shall be analyzed for naphthalene and 2-methyl naphthalene in addition to any other site specific contaminant that may be present. All results are to be reported; and

4. Based on sampling conducted pursuant to (c)1 through 3 above, the person responsible for conducting the remediation may, during future sampling events, sample for fewer contaminants than for which the person initially sampled. The person responsible for conducting the remediation shall include the technical rationale for the reduced list in the applicable remedial phase report submitted to the Department.

(d) The person responsible for conducting the remediation shall analyze samples for petroleum hydrocarbons contamination as follows:

1. For all petroleum storage and discharge areas, analyze all samples pursuant to the requirements in Table 2-1;

2. For contaminants, where Table 2-1 indicates that additional analytical parameters are required, conduct the additional analyses on sample(s) with the highest EPH concentration(s), with a minimum of one sample; and

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3. For all matrices where sheen or odor indicates the potential presence of EPH from an unknown source, analyze all samples as unknown EPH pursuant to the requirements in Table 2-1.

(e) If tentatively identified compounds or unknown compounds are detected, the TIC or unknown compound shall be evaluated.

<u>TABLE 2-1</u>		
ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS		
Petroleum Product	Soil/Sediment	Water
Leaded Gasoline, Aviation Gasoline	VO+TICs ¹ including 1,2-dibromoethane and 1,2-dichloroethane, Lead	VO+TICs ¹ , including 1,2-dibromoethane and 1,2-dichloroethane
Unleaded Gasoline	VO+TICs ² , Tertiary butyl alcohol	VO+TICs ² , Tertiary butyl alcohol

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<u>TABLE 2-1</u>		
ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS		
Petroleum Product	Soil/Sediment	Water
Light Petroleum Distillates (Naphtha, Stoddard Solvent, Paint Thinner, etc.)	VO+TICs ²	VO+TICs ²
Kerosene, Jet Fuel	VO+TICs ² , Naphthalene, 2-Methyl Naphthalene	VO+TICs ² , SVO+TICs ³
Fuel Oil No. 2, Diesel Fuel	EPH ⁴ . Analyze 25 percent of samples where EPH is detected over 1,000 mg/kg for 2-Methyl Naphthalene and Naphthalene ⁸	VO+TICs ² , SVO+TICs ³

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<u>TABLE 2-1</u>		
ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS		
Petroleum Product	Soil/Sediment	Water
Fuel Oil Nos. 4 & 6, Hydraulic Oil, Cutting Oil, Lubricating Oil	EPH ⁴ . Analyze 25 percent of samples where EPH is detected over 100 mg/kg for PAH ^{5,8}	VO+TICs ² , SVO+TICs ³
Crude Oil	EPH ⁴ , VO+TICs ² , SVO+TICs ³ , TAL Metals ⁶	VO+TICs ² , SVO+TICs ³ , TAL Metals ⁶ , Ammonia (Total)
Waste Oil, Unknown Petroleum Hydrocarbons	EPH ⁴ . Analyze 25 percent of samples where EPH is detected for VO+TICs ² , SVO+TICs ³ , PCBs, TAL Metals ^{6,8}	VO+TICs ² , SVO+TICs ³ , TAL Metals ⁶

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<u>TABLE 2-1</u>		
ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS		
Petroleum Product	Soil/Sediment	Water
Waste Vehicular Crankcase Oil	EPH ⁴ . Analyze 25 percent of the samples where EPH is detected for VO+TICs ² , SVO+TICs ³ , PCBs, and Lead ⁸	VO+TICs ² , SVO+TICs ³ , Lead
Mineral Oil	EPH ⁴	EPH ⁴
Dielectric Fluid, Dielectric Mineral Oil, Transformer Oil	EPH ⁴ and PCBs. Analyze 25 percent of those samples where EPH is detected for PAH ^{5,8}	EPH ⁴ and PCBs

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<u>TABLE 2-1</u>		
ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS		
Petroleum Product	Soil/Sediment	Water
Manufactured Gas Plant (MGP) Sites	EPH ⁴ , VO+TICs ² , PAH ⁵ , TAL Metals ⁶ , Cyanide, Phenolics ⁷	EPH ⁴ , VO+TICs ² , PAH ⁵ , TAL Metals ⁶ , Ammonia (Total), Cyanide, Phenolics ⁷

Footnotes

1. EPA Target Compound List volatile organic compounds excluding 1,2-Dibromo-3-chloropropane and 1,4-Dioxane with a library search of the 15 highest TICs.

Tentatively Identified Compounds (TICs) for volatiles - Identify up to 15 organic compounds of greatest concentration which are not surrogates, internal standards, individual alkanes, or targeted compounds listed under TCL. Alkane concentrations attributed to the petroleum product contamination will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.

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2. EPA Target Compound List volatile organic compounds excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane, and 1,4-Dioxane with a library search of the 15 highest TICs.

Tentatively Identified Compounds (TICs) for volatiles - Identify up to 15 organic compounds of greatest concentration which are not surrogates, internal standards, individual alkanes, or targeted compounds listed under TCL. Alkane concentrations attributed to the petroleum product contamination will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.

3. EPA Target Compound List semivolatile organic compounds excluding phenol and substituted phenols with a library search of the 15 highest TICs that are not alkanes unless otherwise specified by analytical protocol.

Tentatively Identified Compounds (TICs) for semivolatiles - Identify up to 15 organic compounds of greatest concentration which are not surrogates, internal standards, individual alkanes, or targeted compounds listed under TCL. Alkane concentrations attributed to the petroleum product contamination will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.

4. Extractable Petroleum Hydrocarbons.

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5. EPA Target Compound List Polynuclear Aromatic Hydrocarbons.
6. EPA Target Analyte List (TAL) Metals.
7. EPA Target Compound List phenol and substituted phenols.
8. Conduct the additional analyses on sample(s) with the highest EPH concentration(s), with a minimum of one sample.

7:26E-2.2 Quality assurance project plan

(a) The person responsible for conducting the remediation shall prepare and follow a quality assurance project plan for all sample and data collection.

(b) The person responsible for conducting the remediation shall include the following in a quality assurance project plan:

1. Problem definition;
2. Site specific project and data quality objectives;
3. Sample design and rationale, including where samples will be taken;

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4. Names and contact information of the following project specific personnel:
 - i. Project manager;
 - ii. Quality assurance coordinator;
 - iii. Health and safety coordinator;
 - iv. Identification of laboratory(ies) that will be used for sample analyses including certification number(s); and
 - v. Laboratory contact;
5. A sample summary table containing (at a minimum) the following:
 - i. Matrix type;
 - ii. Analytical parameters;
 - iii. Number of samples for each matrix;

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- iv. Frequency of sample collection;

- v. Number and frequency of field/trip blanks; and

- vi. Number and frequency of duplicate samples;

- 6. A detailed description of sampling methodologies for each matrix tested along with standard operating procedures references;

- 7. Field documentation procedures;

- 8. A list of all field instrumentation being utilized;

- 9. Inclusion of a reference to a standard operating procedure that describes the operation of all field instrumentation being utilized including:
 - i. Calibration procedures;

 - ii. Calibration check procedures;

 - iii. Proper usage;

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- iv. Data recording;
 - v. Preventative maintenance; and
 - vi. A detailed description of field quality assurance/quality control procedures;
10. A detailed description of sample handling and chain-of-custody procedures;
11. A detailed description of field storage and transport procedures;
12. A sample container/preservation/holding time table including:
- i. Sample volumes to be collected per matrix;
 - ii. Sample containers used per matrix;
 - iii. Sample preservation required per method and matrix; and
 - iv. Sample holding times;
13. An analytical methods summary table listing all analytical methods to be used to analyze all samples;

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14. Project compounds summary including:

- i. List of compounds by method and matrix;
- ii. Project action limits by method and matrix; and
- iii. Project quantitation limits denoting analytical sensitivity requirements by method and matrix;

15. Measurement performance criteria and quality control samples to be used by method and matrix;

16. Quality assurance and quality control requirements for analysis;

17. Laboratory data deliverable formats to be used;

18. Procedure for review (verification and usability procedures) including data assessment versus stated data quality objectives of laboratory data;

19. A discussion of how corrective action procedures are to be implemented and documented relative to potential deviations to the project quality objectives;

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20. A detailed description of the laboratories quality assurance/quality control procedures; and

21. Data and records management and archive procedures.

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

7:26E-3.1 Preliminary assessment

(a) The purpose of a preliminary assessment is to determine whether contaminants are or were present at a site or have migrated or are migrating from a site, and thus whether additional remediation is necessary at a site due to the presence of any potentially contaminated areas of concern.

(b) The person responsible for conducting the remediation shall conduct a preliminary assessment when that person:

1. Is required to submit a completed Industrial Site Recovery Act General Information Notice to the Department pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and its implementing rules at N.J.A.C. 7:26B;

2. Wants a final remediation document for the entire site;

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3. Is remediating a site or portion of a site for use as a child care center, or for use as a public school, private school or charter school;

4. Is conducting an evaluation of a child care center pursuant to Department of Community of Affairs Act, N.J.S.A. 52:27D-130.4, and the Manual of Requirements for Child Care Centers, N.J.A.C. 10:122-5.2(i), as part of the license application or renewal for the child care center; or

5. Is ordered to do so by a court or the Department.

(c) The person responsible for conducting the remediation who is subject to (b) above, shall conduct a preliminary assessment, which shall include, at a minimum, the results of research conducted on the following topics:

1. A diligent search from the time the site was naturally vegetated to the present, including an investigation of all documents that are reasonably likely to contain information related to the site, which documents are in a person's possession, custody or control, or in the possession, custody or control of any other person from whom the person conducting the search has a legal right to obtain such documents;

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2. Inquiries of current and former employees and agents whose duties include or included any responsibility for hazardous substances, hazardous wastes, or pollutants, and any other current and former employees or agents who may have knowledge or documents relevant to the inquiry;

3. An evaluation of site specific operational and environmental information, both current and historic collected pursuant to (c)1 and 2 above; and

4. A site inspection to verify the above findings.

(d) If a potentially contaminated area of concern is identified during the preliminary assessment, the person responsible for conducting the remediation who is subject to (b) above shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.15.

(e) If no potentially contaminated area of concern is identified during the preliminary assessment, no further remediation is required; except that the person responsible for conducting the remediation who is subject to (b) above, shall submit to the Department a preliminary assessment report pursuant to N.J.A.C. 7:26E-3.2, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms if:

1. The person responsible for conducting the remediation is required to submit a Industrial Site Recovery Act General Information Notice pursuant to the Industrial Site

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Recovery Act, N.J.S.A. 13:1K-6 et seq., and its implementing rules at N.J.A.C. 7:26B. The person responsible for conducting the remediation shall submit the preliminary assessment report and form within 90 days after the General Information Notice is required to be submitted to the Department; or

2. The provisions at (b)2 through 5 above apply.

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation to whom N.J.A.C. 7:26E-3.1(b) applies shall prepare a preliminary assessment report that includes:

1. A discussion of all the information identified and evaluated pursuant to N.J.A.C.

7:26E-3.1(c);

2. Scaled site plans detailing lot and block numbers, property and leasehold boundaries, current and historic structures, areas where fill or cover material has been brought on site, paved and unpaved areas, vegetated and unvegetated areas, all areas of concern and active and inactive wells;

3. Scaled historical site plans and facility as-built construction drawings, if available;

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4. A summary of the data and information evaluated and all phases of work for each particular area of concern that shall be integrated into a single discussion of that area;

5. An evaluation to determine if there is an order of magnitude difference between the concentration of any contaminant in any area of concern and any remediation standard applicable at the time of comparison to the area of concern if there is a prior final remediation document for the area of concern. If there is an order of magnitude difference, then the person responsible for conducting the remediation shall evaluate the protectiveness of any existing engineering or institutional controls on the area of concern and otherwise determine whether additional remediation may be required at the area of concern to ensure the area of concern remains protective of the public health, safety and the environment; and

6. A recommendation for each area of concern identified at the site, supported by a written rationale, that either:

i. Additional remediation is necessary because:

(1) The area of concern is potentially contaminated; or

(2) There is an order of magnitude change in an applicable remediation standard and the prior remediation is no longer protective of the public health and safety and

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the environment because it is not in compliance with the standard applicable at the time of the comparison; or

ii. Additional remediation is not necessary because the area of concern is not suspected to contain contaminants at concentrations above any applicable remediation standard or criterion.

7:26E-3.3 Site investigation

(a) The purpose of a site investigation is to determine if additional remediation is necessary because contaminants are present at the site or area of concern, or because contaminants have emanated or are emanating from the site or area of concern, above any applicable remediation standard or criterion.

(b) The person responsible for conducting the remediation shall conduct a site investigation when:

1. Any potentially contaminated area of concern is identified during a preliminary assessment required pursuant to N.J.A.C. 7:26E-3.1;
2. The person responsible for conducting the remediation is an owner or operator of an underground storage tank system that is required to conduct a site investigation pursuant to

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the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Underground Storage Tanks rules, N.J.A.C. 7:14B; or

3. A person is ordered to conduct a site investigation by a court or the Department.

(c) The person responsible for conducting the remediation to whom N.J.A.C. 7:26E-3.3(b) applies shall conduct a site investigation in accordance with this section and N.J.A.C. 7:26E-3.4 through 3.15, as applicable.

(d) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall:

1. Conduct a comparison of all site data with all remediation standards and criteria;
2. Identify as contaminated areas of concern those areas where site data demonstrate that contaminant concentrations exceed any remediation standard or criterion; and
3. Determine if any immediate environmental concern exists.

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7:26E-3.4 Site investigation - soil

(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall conduct a site investigation of soil by sampling the soil in each potentially contaminated area of concern that includes soil to determine if any contaminants are present above any soil remediation standard, and shall:

1. Collect a sufficient number of soil samples to evaluate for the presence of soil contamination, biasing soil sampling to the suspected location of greatest contamination, both horizontally and vertically;
2. Use appropriate sample collection methods, but shall not use composite soil sampling as part of the site investigation; and
3. Use appropriate analytical methods.

(b) If the concentration of any contaminant in the soil exceeds any soil remediation standard, then the person responsible for conducting the remediation shall conduct a remedial investigation of the soil pursuant to N.J.A.C. 7:26E-4.2.

7:26E-3.5 Site investigation - ground water

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(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall evaluate all potentially contaminated areas of concern to determine if ground water may have been or may be contaminated above any ground water remediation standard. If there is a potential that ground water has been or is contaminated by the area of concern, the person responsible for conducting the remediation shall conduct ground water sampling as follows:

1. Collect a sufficient number of ground water samples to evaluate for the presence of ground water contamination, biasing ground water sampling to the suspected locations of greatest contamination, both horizontally and vertically;
2. Use appropriate sampling methods; and
3. Use appropriate analytical methods.

(b) If the concentration of any contaminant in the ground water exceeds any ground water remediation standard, then the person responsible for conducting the remediation shall conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26-4.3.

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7:26E-3.6 Site investigation - surface water and sediment

(a) If surface water may have been or may be impacted by the site, the person responsible for conducting the remediation who is subject to N.J.A.C. 3.3(b) shall determine if there is any evidence that contamination from the site has reached the surface water.

(b) If there is evidence that contamination from the site has reached the surface water, then the person responsible for conducting the remediation shall conduct a site investigation of surface water and sediment to determine if there is any exceedance of any aquatic or human health based surface water quality standard, ecological screening criterion, or residential direct contact soil remediation standard and shall:

1. Collect a sufficient number of surface water and sediment samples to evaluate for the presence of contamination, biasing the sampling to the suspected locations of greatest contamination, both horizontally and vertically;
2. Use appropriate sampling methods; and
3. Use appropriate analytical methods.

(c) The person responsible for conducting the remediation shall evaluate the results of the surface water and sediment site investigation as follows:

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1. If any aquatic surface water quality standard or ecological screening criterion for surface water is exceeded, conduct a remedial investigation of ecological receptors pursuant to N.J.A.C. 7:26E-4.8;

2. If any human health based surface water quality standard is exceeded, conduct a remedial investigation of surface water pursuant to N.J.A.C. 7:26E-4.4;

3. If any ecological screening criterion for sediments is exceeded, conduct a remedial investigation of ecological receptors pursuant to N.J.A.C. 7:26E-4.8; and

4. If there is evidence of human exposure to the sediment, compare the sediment sample results to the residential direct contact soil remediation standard. If any residential direct contact soil remediation standard is exceeded, the person responsible for conducting the remediation shall conduct a remedial investigation of soil pursuant to N.J.A.C. 7:26E-4.2.

7:26E-3.7 Site investigation - building interiors

(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall conduct a site investigation of a building interior in order to determine whether:

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1. Contaminants inside the building have the potential to migrate to the environment outside the building; or

2. Contaminants outside the building have the potential to migrate into the building.

(b) If the concentration of any contaminant identified during this part of the site investigation exceeds any remediation standard outside the building, then the person responsible for conducting the remediation shall conduct additional remedial investigation necessary for the impacted media pursuant to N.J.A.C. 7:26E-4.

7:26E-3.8 Site investigation - natural background investigation of soil and ground water

(a) If during the site investigation, any hazardous substance, hazardous waste, or pollutant that may be naturally occurring is found in soil at any area of concern in excess of a soil remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the concentration of the hazardous substance, hazardous waste, or pollutant in soil may be due to natural background. This investigation shall be conducted by:

1. Collecting and analyzing a sufficient number of samples in appropriate locations of similar soil type on or near the site that have not been impacted by current or historical on-site or off-site activities to adequately determine that the concentration of the hazardous substance, hazardous waste, or pollutant in the soil may be due to natural background;

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2. Demonstrating that the distribution of the hazardous substance, hazardous waste, or pollutant in the soil does not follow a concentration gradient indicative of a discharge; and

3. Demonstrating that the concentration of the hazardous substance, hazardous waste, or pollutant in the soil is within ranges reported in appropriate references for soil background levels for New Jersey, if available.

(b) In lieu of conducting a natural background investigation of soil pursuant to (a) above, the person responsible for conducting the remediation may use a previously conducted natural background determination to establish natural background soil concentration provided:

1. The prior natural background determination was conducted consistent with (a) above; and

2. The prior natural background determination was conducted at a location near enough to the site such that it is appropriate to use the previous study for this purpose.

(c) If during the site investigation, a hazardous substance, hazardous waste, or pollutant is found in ground water in excess of the ground water remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the concentration

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of the hazardous substance, hazardous waste, or pollutant in ground water may be due to natural background. This investigation shall be conducted by:

1. Collecting and analyzing a sufficient number of samples in appropriate locations, both horizontally and vertically, on or near the site, that have not been impacted by current or historical on-site or off-site activities to adequately determine the concentration of the hazardous substance, hazardous waste, or pollutant in the ground water is due to natural background;

2. Demonstrating the distribution of the hazardous substance, hazardous waste, or pollutant in the ground water does not follow a concentration gradient indicative of a discharge; and

3. Demonstrating the concentration of the hazardous substance, hazardous waste, or pollutant in ground water is within ranges reported in appropriate references for ground water background levels for New Jersey, if available.

(d) In lieu of conducting a natural background investigation of ground water pursuant to (c) above, the person responsible for conducting the remediation may use a previously conducted natural background determination to establish natural background ground water concentration provided:

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1. The prior natural background determination was conducted in accordance with (c) above; and

2. The prior natural background determination was conducted at a location near the site such that it is appropriate to use the previous study for this purpose.

(e) To the extent that the person responsible for conducting the remediation concludes the presence of a hazardous substance, hazardous waste, or pollutant in soil or ground water is due to natural background conditions, then no further remediation is necessary.

7:26E-3.9 Site investigation - diffuse anthropogenic pollutants in soil

(a) If during the site investigation, a contaminant is found in soil at an area of concern in excess of a soil remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the contamination in the soil may be due to diffuse anthropogenic pollutants. This investigation shall be conducted by:

1. Establishing the extent to which the contaminant is a diffuse anthropogenic pollutant;

2. Collecting and analyzing a sufficient number of samples in appropriate locations on or near the site that have not been impacted by current or historical on-site or off-site activities in order to:

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- i. Adequately characterize the contaminant concentration; and
 - ii. Demonstrate the contaminant's distribution in the soil does not follow a concentration gradient indicative of a discharge; and
3. Conducting a preliminary assessment pursuant to N.J.A.C. 7:26E-3.1 and if necessary, a site investigation pursuant to N.J.A.C. 7:26E-3.3 to determine whether a source of the contaminant observed exists on site.
 - (b) The person responsible for conducting the remediation shall investigate areas of concern located in soil containing diffuse anthropogenic pollutants independently from the diffuse anthropogenic pollutants.
 - (c) To the extent that the person responsible for conducting the remediation concludes that contamination is due solely to diffuse anthropogenic pollutants, then the person responsible for conducting the remediation shall implement a remedial action pursuant to N.J.A.C. 7:26E-5.5.

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7:26E-3.10 Site investigation - determination of off-site source of contamination in soil and ground water

(a) If during the site investigation, a contaminant is found in soil or ground water in excess of any remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the contamination in soil or ground water is due to migration to the site from an off-site source. This investigation shall be conducted by:

1. Collecting and analyzing a sufficient number of samples in appropriate locations, both horizontally and vertically, at the property boundary or off site, if needed, in order to be upgradient of any on-site area of concern to adequately determine that there is an off-site source of the contaminant;
2. Collecting and analyzing a sufficient number of samples to demonstrate a contaminant migration pathway exists from the off-site source of contamination to the area of concern; and
3. Conducting a preliminary assessment pursuant to N.J.A.C. 7:26E-3.1 and if necessary, a site investigation pursuant to N.J.A.C. 7:26E-3.3 to determine whether a source of the contaminant observed exists on site.

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(b) The person responsible for conducting the remediation is not required to conduct further remediation of the contamination migrating onto the site.

7:26E-3.11 Site investigation - determination of off-site source of contamination in surface water and sediment

(a) If during the site investigation, a contaminant is detected in surface water or sediment in excess of an aquatic or human health based surface water quality standard, an ecological screening criterion, or a residential direct contact soil remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the contaminant concentration in surface water or sediment is due to an off-site source. This investigation shall be conducted by:

1. Collecting and analyzing a sufficient number of samples in appropriate locations to adequately determine that there is an off-site source of the contaminant; and
2. Conducting a preliminary assessment pursuant to N.J.A.C. 7:26E-3.1 and if necessary, a site investigation pursuant to N.J.A.C. 7:26E-3.3 to determine whether a source of the contaminant observed exists on site.

(b) The person responsible for conducting the remediation is not required to conduct further remediation of the contamination migrating onto a site.

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7:26E-3.12 Site investigation - landfills

(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall conduct a site investigation of any landfill at or suspected to be present at the site to determine whether a landfill is in fact present by:

1. Conducting a geophysical survey; and
2. Conducting a subsurface investigation.

(b) If a landfill is confirmed pursuant to (a) above, then the person responsible for conducting the remediation shall conduct a remedial investigation of the landfill and all contaminants that may be emanating or have emanated from the landfill pursuant to N.J.A.C. 7:26E-4.6.

(c) If a landfill and its location are known, then the person responsible for conducting the remediation shall conduct a remedial investigation of the landfill and all contaminants that may be emanating or have emanated from the landfill pursuant to N.J.A.C. 7:26E-4.6.

7:26E-3.13 Site investigation - historic fill material

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(a) If historic fill material is suspected to be present at a site, then the person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall determine whether historic fill material is present.

(b) If historic fill material is present, then the person responsible for conducting the remediation shall either:

1. Assume that the historic fill material is contaminated above the residential direct contact soil remediation standards and ground water is contaminated above the ground water remediation standards and conduct a remedial investigation pursuant to N.J.A.C. 7:26E-4.7;

or

2. Sample the historic fill material to determine if it is contaminated above the residential direct contact soil remediation standards pursuant to N.J.A.C. 7:26E-3.4 and sample ground water pursuant to N.J.A.C. 7:26E-3.5 to determine if contamination is present above any ground water remediation standard.

(c) The person responsible for conducting the remediation shall conduct a remedial investigation of historic fill material pursuant to N.J.A.C. 7:26-E-4.7 if contamination is identified above any remediation standard pursuant to (b) above.

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(d) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall conduct, independently of the historic fill material, a site investigation of each area of concern located within historic fill material.

7:26E-3.14 Site investigation report

(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall include the following in the site investigation report:

1. A presentation and discussion of all of the information identified or collected during the site investigation, pursuant to N.J.A.C. 7:26E-3.3 through 3.13;
2. The general reporting requirements referenced in 7:26E-1.6;
3. A presentation and discussion of all of the information identified or collected, pursuant to N.J.A.C. 7:26E-1.10 through 1.16;
4. A description of each area of concern that was investigated, including its operational history;

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5. A technical overview that presents a general profile of the site investigation results, including a summary of the overall nature of contamination identified, including, without limitation, the numbers of areas of concern requiring further remediation;

6. Findings and recommendations, including:

i. A discussion, by area of concern, of the specific findings of the site investigation analytical results;

ii. A discussion of the following items by area of concern:

(1) A detailed description, including dimensions, suspected and actual contamination, and suspected source of the contamination; and

(2) Recommendations for either additional remediation or no further remediation.

7:26E-3.15 Preliminary assessment and site investigation regulatory timeframes

(a) If no contaminated areas of concern are identified during the site investigation, no further remediation is required at the site, except that the person responsible for conducting the remediation shall submit to the Department:

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1. A preliminary assessment report and a site investigation report, prepared pursuant to this subchapter, and a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, no later than one year after the applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 for sites being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B;

2. A site investigation report, prepared pursuant to this subchapter, and a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, no later than one year after the applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 for sites being remediated pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and Underground Storage Tank rules, N.J.A.C. 7:14B;

3. A preliminary assessment report and a site investigation report, prepared pursuant to this subchapter, and a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, for sites when:

- i. The person wants a final remediation document for the entire site;
- ii. The person responsible for conducting the remediation is remediating a site or portion of a site for use as a child care center, or for use as a public school, private school or charter school;

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iii. A person is conducting an evaluation of a child care center pursuant to Department of Community of Affairs Act, N.J.S.A. 52:27D-130.4, and the Manual of Requirements for Child Care Centers, N.J.A.C. 10:122-5.2(i), as part of the license application or renewal for the child care center; or

iv. A person is ordered by a court or the Department; or

4. A site investigation report, prepared pursuant to this subchapter, and a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, for all other sites when:

i. The person wants final remediation document for the area of concern; or

ii. A person is ordered by a court or the Department.

(b) If a contaminated area of concern is identified during the site investigation, the person responsible for conducting the remediation shall conduct a remedial investigation pursuant to N.J.A.C. 7:26E-4, and shall submit to the Department:

1. A preliminary assessment report and a site investigation report, prepared pursuant to this subchapter, and forms found on the Department's website at www.nj.gov/dep/srp/srra/forms, no later than one year after the applicable requirement to

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remediate pursuant to N.J.A.C. 7:26C-2.2 for sites being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B; or

2. A site investigation report, prepared pursuant to this subchapter, and form found on the Department's website at www.nj.gov/dep/srp/srra/forms, no later than one year after the applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 for sites being remediated pursuant to or the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and Underground Storage Tank rules, N.J.A.C. 7:14B.

(c) The person responsible for conducting the remediation may request an extension of the applicable regulatory timeframe in (a) and (b) above, pursuant to the procedure outlined in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-3.2.

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) The purpose of a remedial investigation is to:

1. Delineate the horizontal and vertical extent of contamination to the remediation standard, in each environmental medium at a contaminated site;

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2. Delineate to the aquatic surface water quality standard and ecological screening criterion when contamination is observed:
 - i. In an environmentally sensitive natural resource; or
 - ii. In a contaminant migration pathway to an environmentally sensitive natural resource;
3. Update the receptor evaluation, pursuant to N.J.A.C. 7:26E-1.12, and determine if an immediate environmental concern or vapor concern exists;
4. Identify and characterize the migration pathways of contamination in air, soil, bedrock, sediment, ground water, surface water, structures and buildings at a contaminated site;
5. Collect and evaluate all data necessary to:
 - i. Evaluate the actual and potential ecological impacts of the contamination; and
 - ii. Identify any natural resource injury; and

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6. Identify the need for any interim remedial measures necessary to remove, contain, or stabilize a source of contamination to prevent contaminant migration and exposure to receptors, pursuant to N.J.A.C. 7:26E-1.10.

(b) The person responsible for conducting the remediation shall conduct a remedial investigation when:

1. The concentration of any contaminant exceeds any remediation standard;
2. The concentration of any contaminant exceeds any aquatic surface water quality standard or ecological screening criterion; or
3. A person is ordered to do so by a court or the Department.

(c) The person responsible for conducting the remediation shall conduct the remedial investigation pursuant to the requirements of this subchapter and within the applicable regulatory timeframe listed in N.J.A.C. 7:26E-4.10.

(d) The person responsible for conducting the remediation shall prepare and submit to the Department a remedial investigation work plan for approval that describes all the actions to be conducted to fulfill the purpose of (a) above and the requirements of (c) above when the remediation is being conducted:

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1. Partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation.;

2. At a site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601; or

3. At a Federal facility that seeks or is required to obtain the Department's remedial concurrence.

7:26E-4.2 Remedial investigation of soil

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

1. Within the property boundary:

i. Delineate the horizontal and vertical extent of all soil contamination that is associated with a site-related area of concern in both the saturated and unsaturated soil to:

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(1) The residential direct contact soil remediation standard; or

(2) The non-residential direct contact soil remediation standard if a remedial action will be implemented that will appropriately restrict the use of the entire property and the property owner has agreed to place a deed notice and engineering controls, as appropriate, on the property; or

ii. If the property owner has agreed to restrict the use of the entire property and to place a deed notice and an engineering control on the entire property, then delineation of the horizontal and vertical extent of all soil contamination associated with a site-related area of concern to a direct contact soil remediation standard is not required provided the requirements of (a)2 through 5 below are met;

2. Outside the property boundary, delineate the horizontal and vertical extent of all soil contamination associated with a site-related area of concern in both the saturated and unsaturated soil to the residential direct contact soil remediation standard;

3. For soil contamination associated with a site-related area of concern, delineate the horizontal and vertical extent of all soil contamination in the unsaturated zone which contains contaminants above the impact to ground water soil remediation standard without regard to the property boundary;

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4. Delineate the horizontal and vertical extent of free product and residual product in both the saturated and unsaturated zones without regard to the property boundary; and

5. Whenever historic fill material is present, conduct a remedial investigation of historic fill material pursuant to N.J.A.C. 7:26E-4.7.

(b) The person responsible for conducting the remediation shall conduct a remedial investigation of soil by:

1. Collecting a sufficient number of soil samples to delineate the horizontal and vertical extent of all soil contamination;

2. Collecting all soil samples using appropriate sampling methods; and

3. Analyzing all soil samples for the contaminants of concern using appropriate analytical methods.

(c) The person responsible for conducting the remediation may delineate soil contamination through post remedial action sampling, if appropriate.

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7:26E-4.3 Remedial investigation of ground water

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of contaminated ground water by:

1. Determining the direction of ground water flow in each contaminated aquifer or water bearing zone;
2. Characterizing the hydrogeology of the site;
3. Delineating the extent of free product and residual product;
4. Delineating the horizontal and vertical extent of all ground water contamination to the ground water remediation standard;
5. Developing and implementing a ground water monitoring program that will effectively monitor the ground water contaminant plume;
6. Determining contaminant fate and transport in ground water; and
7. Proposing a ground water classification exception area as part of the remedial investigation report pursuant to N.J.A.C. 7:26E-4.9(a)7;

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(b) The person responsible for conducting the remediation shall conduct a remedial investigation of ground water by:

1. Collecting a sufficient number of ground water samples to delineate the horizontal and vertical extent of all ground water contamination;
2. Collecting all ground water samples using appropriate sampling methods; and
3. Analyzing all ground water samples using appropriate analytical methods.

7:26E-4.4 Remedial investigation of surface water

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of surface water by:

1. Determining the source of contamination and the contaminant migration pathway;
2. Collecting a sufficient number of surface water samples to delineate the extent of the observed contaminants to the human health based surface water quality standards;
3. Collecting all surface water samples using appropriate sampling methods; and

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4. Analyzing all surface water samples using appropriate analytical methods.

7:26E-4.5 Remedial investigation of building interiors

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of building interiors by:

1. Delineating the extent of the contamination migrating to the environment from the building pursuant to N.J.A.C. 7:26E-4.1 through 4.4; and

2. For contaminants outside the building that have migrated into the building, obtaining all necessary data to remediate the contamination.

7:26E-4.6 Remedial investigation of landfills

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

1. Determining the physical extent, both horizontally and vertically, of the landfill contents without regard to the location of property boundaries;

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2. Characterizing the landfill contents;

3. Determining the type, extent, and condition of the landfill cap or cover including chemical analysis of soil; and

4. Delineating contaminants in all media emanating from or that have emanated from the landfill pursuant to N.J.A.C. 7:26E-4.

7:26E-4.7 Remedial investigation of historic fill material

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of historic fill material by:

1. Determining the horizontal and vertical extent of the historic fill material to the boundary of the property being investigated; and

2. Characterizing the fill material by identifying the physical characteristics of the historic fill material.

(b) The person responsible for conducting the remediation shall establish the extent of ground water contamination from the historic fill material as follows:

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1. For sites where the historic fill material extends beyond the property boundary, submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, using the footprint of the property as the boundaries of the ground water classification exception area; or

2. For sites where the extent of historic fill material is contained within the property boundaries, either:

i. Conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26E-4.3 to identify the extent of the contaminant plume and submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, identifying the known extent of the ground water contamination associated with the historic fill; or

ii. Submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, using the footprint of the property as the boundaries of the ground water classification exception area.

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(c) The person responsible for conducting the remediation shall conduct a remedial investigation of each area of concern located within or situated upon the historic fill material independently of the remedial investigation of the historic fill material itself.

(d) If at any time during the remedial investigation of historic fill material the person responsible for conducting the remediation encounters any material that does not meet the definition of historic fill material because it includes material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag, tailings or is otherwise not historic fill material, then the person responsible for conducting the remediation shall conduct a remedial investigation of each such area as a separate area of concern.

7:26E-4.8 Remedial investigation of ecological receptors

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of ecological receptors by determining if a contaminant migration pathway exists from the site or area of concern to the environmentally sensitive natural resource.

(b) If a contaminant migration pathway has been identified pursuant to (a) above, the person responsible for conducting the remediation shall determine if contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource exceed any ecological screening criterion or any aquatic surface water quality standard.

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(c) If contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource exceed any ecological screening criterion or any aquatic surface water quality standard, then the person responsible for conducting the remediation shall:

1. Delineate the horizontal and vertical extent of the contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource to any applicable ecological screening criterion and aquatic surface water quality standard; and

2. Conduct an ecological risk assessment for each contaminant of ecological concern to determine:

i. The past, current and future impacts of the contamination on ecological receptors;

ii. The ecological risk-based remediation goals; and

iii. The risk management strategies to be implemented;

3. Not implement any remedial action without the Department's prior written approval of the final remediation goal if the final remediation goal is something other than the ecological screening criterion.

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(d) If a contaminant migration pathway is not identified or if contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource do not exceed any ecological screening criterion or any aquatic surface water quality standard, no further ecological evaluation is required pursuant to this section.

7:26E-4.9 Remedial investigation report

(a) The person responsible for conducting the remediation shall prepare a remedial investigation report that presents and discusses all of the information required to be identified or collected pursuant to N.J.A.C. 7:26E-4.1 through 4.8, and shall include the following:

1. The general reporting requirements referenced in N.J.A.C. 7:26E-1.6;
2. A presentation and discussion of all of the information identified or collected, pursuant to N.J.A.C. 7:26E-1.10 through 1.16 and an updated receptor evaluation on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;
3. A description of each interim remedial measure implemented pursuant to N.J.A.C. 7:26E-1.10;

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4. A description of each area of concern being investigated, including its operational history unless this information has already been provided;

5. A technical overview that presents a general profile of the remedial investigation results, including a summary of the overall nature of contamination on the site;

6. Findings and recommendations, which shall include;

i. A discussion, by area of concern, of the specific findings, including the remedial investigation analytical results;

ii. A discussion of the following items by area of concern:

(1) A detailed description, including dimensions, contaminants and suspected source of the contamination; and

(2) A determination whether remedial action is required for each area of concern;

7. A proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, for the area of the ground water contaminated by discharges at the site; and

8. The applicable regulatory timeframe for the remedial investigation.

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(b) The person responsible for conducting the remediation shall submit to the Department a remedial investigation report, along with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, according to the applicable regulatory timeframe in N.J.A.C. 7:26E-4.10.

7:26E-4.10 Remedial investigation regulatory timeframes

(a) The person responsible for conducting the remediation shall complete the remedial investigation and submit a remedial investigation report by May 7, 2014 for a site where a discharge was discovered prior to May 7, 1999.

(b) Except as provided in (e) below or N.J.A.C. 7:26E-1.11(a)8ix, or as extended under (c) and (d) below, the person responsible for conducting the remediation shall complete the remedial investigation and submit to the Department a remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9 by the earliest applicable regulatory timeframe as follows:

1. The person responsible for conducting the remediation who is remediating the industrial establishment pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, shall complete the remedial investigation and submit a remedial investigation report as follows:

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- i. For the remediation of an industrial establishment with only soil contamination:
 - (1) By March 1, 2015, where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred between May 7, 1999 and March 1, 2010; or
 - (2) Within three years after the earliest applicable requirement to submit a preliminary assessment and site investigation report pursuant to N.J.A.C. 7:26E-3.15(b)1 where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred on or after March 2, 2010;
- ii. For the remediation of an industrial establishment with contaminants in soil and/or any other medium:
 - (1) By March 1, 2017, where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred between May 7, 1999 and March 1, 2010;
 - (2) Within five years after the earliest applicable requirement to submit a preliminary assessment and site investigation report pursuant to N.J.A.C. 7:26E-3.15(b)1 where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred on or after March 2, 2010; or
- iii. As ordered by a court or the Department;

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2. The person responsible for conducting the remediation who is remediating a discharge from the underground storage tank pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and Underground Storage Tank rules, N.J.A.C. 7:14B, shall complete the remedial investigation and submit a remedial investigation report as follows:

i. For the remediation of an UST discharge that only resulted in soil contamination:

(1) By March 1, 2015, where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred between May 7, 1999 and March 1, 2010; or

(2) Within three years after the earliest applicable requirement to submit a site investigation report pursuant to N.J.A.C. 7:26E-3.15(b)2 where the earliest requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred on or after March 2, 2010; and

ii. For the remediation of an UST discharge with contaminants in soil and/or any other medium :

(1) By March 1, 2017, where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred between May 7, 1999 and March 1, 2010; or

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- (2) Within five years after the earliest applicable requirement to submit a site investigation report pursuant to N.J.A.C. 7:26E-3.15(b)2 where the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred on or after March 2, 2010; or
 - iii. As ordered by a court or the Department; or
- 3. For all other cases not included in (a) or (b)1 and 2, above, the person responsible for conducting the remediation shall complete the remedial investigation and submit a remedial investigation report as follows:
 - i. For the remediation of a discharge that only resulted in soil contamination:
 - (1) By [insert the effective date of the rule plus 3 years], when the earliest requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred between May 7, 1999 and [insert the effective date of the rule]; or
 - (2) Within three years after the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 when the earliest applicable requirement to remediate occurred on or after [insert the effective date of the rule];

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ii. For the remediation of discharges with contaminants in soil and/or any other medium:

(1) By [insert the effective date of the rule plus 5 years] when the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 occurred between May 7, 1999 and [insert the effective date of the rule]; or

(2) Within five years after the earliest applicable requirement to remediate pursuant to N.J.A.C. 7:26C-2.2 when the earliest applicable requirement to remediate occurred on or after [insert the effective date of the rule]; or

iii. As ordered by a court or the Department.

(c) The person responsible for conducting the remediation may extend the applicable regulatory timeframe based on the site conditions associated with the site undergoing remediation as follows:

1. A one-time, one year extension of the regulatory timeframe for completing the remedial investigation and submitting a remedial investigation report that is listed in (b) above, may be sought for any of the following site conditions:

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i. Access to real property, that is not owned or controlled by the person responsible for conducting the remediation, is required, or contamination has impacted an environmentally sensitive natural resource;

ii. Ground water contamination exists in a consolidated aquifer or a dense non-aqueous phase liquid exists in ground water; or

iii. Ground water contamination exists in more than one aquifer or there are two or more distinct ground water contaminant plumes; and

2. A one-time, one year extension of the regulatory timeframe for completing the remedial investigation and submitting a remedial investigation report that is listed at (b)2 and 3 above, may be sought when the person responsible for conducting the remediation wants a final remediation document for the entire site and the site does not include an industrial establishment that the owner or operator is required to remediate pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B.

(d) If the person responsible for conducting the remediation seeks to extend the submittal date for the remedial investigation report pursuant to (c) above, the person responsible for conducting the remediation shall notify the Department at least 30 days prior to the submittal date for the remedial investigation report established pursuant to (b) above, using a form

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available on the Department's website on www.nj.gov/dep/srp/srra/forms. Information to be supplied by filling out the form includes:

1. Site identification information;
2. Reason for the extension request;
3. The name of the responsible entity and a certification statement; and
4. The name of the licensed site remediation professional and a certification statement.

(e) Any person responsible for conducting remediation that is not subject to liability under N.J.S.A. 58:10-23.11g and is one of the following, is exempt from the regulatory timeframes outlined in (b) above:

1. A non-profit organization that meets the definition set forth at 26 U.S.C. §501(c)3, unless that organization is established by or funded by another person that is subject to liability under N.J.S.A. 58:10-23.11g for that site; or
2. A governmental entity that is exempt from liability pursuant to N.J.S.A. 58:10-23.11g.d(4).

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(f) The person responsible for conducting the remediation may request an extension of the applicable regulatory timeframe in (b) above, pursuant to the procedure outlined in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-3.2.

SUBCHAPTER 5. REMEDIAL ACTION

7:26E-5.1 Remedial action requirements

(a) The purpose of a remedial action is to implement a remedy that removes, treats, or isolates contamination, and that is protective of the public health, safety and the environment.

(b) The person responsible for conducting the remediation shall implement a remedial action when:

1. The concentration of any contaminant exceeds any applicable remediation standard;
2. The concentration of any contaminant exceeds any aquatic surface water quality standard or any ecological screening criterion; or
3. That person is ordered to do so by a court or the Department.

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(c) The person responsible for conducting the remediation shall conduct the remedial action within the applicable regulatory timeframe listed in N.J.A.C. 7:26E-5.9 by:

1. Implementing all remedial actions required to address the contamination at a site, pursuant to the requirements of this subchapter;
2. Submitting a remedial action report for all remedial actions at the site to the Department pursuant to N.J.A.C. 7:26E-5.8; and
3. Causing a licensed site remediation professional to submit a final remediation document to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-6.2.

(d) The person responsible for conducting the remediation shall ensure that each remedial action:

1. Is protective of public health, safety and the environment;
2. Uses any required engineering and institutional controls in conjunction with a remedial action permit, whenever a restricted use remedy or a limited restricted use remedy is implemented to remediate a site;

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3. Does not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one medium to another;

4. Complies with all applicable remediation standards in effect at the time the remedial action workplan was approved by the Department or a licensed site remediation professional, provided, however, that if an applicable numeric remediation standard decreases by an order of magnitude or more prior to the issuance of a final remediation document for the site being remediated, the person responsible for conducting remediation shall conduct all additional remedial action necessary to comply with the revised remediation standard;

5. Complies with applicable Federal, State, and local laws and regulations, including, without limitation, the provisions of the Pinelands Protection Act, P.L. 1979, c.111 (N.J.S.A. 13:18A-1 et seq.), any rules promulgated pursuant thereto, and the provisions of section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 4711; and

6. Does not in itself cause a natural resource injury.

(e) The person responsible for conducting the remediation shall treat or remove free product and residual product to the extent practicable, or contain free product and residual product when treatment or removal is not practicable. Monitored natural attenuation of free product and residual product is prohibited.

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(f) The person responsible for conducting the remediation shall submit a remedial action workplan prepared pursuant to N.J.A.C. 7:26E-5.6 or a corrective measures study work plan prepared pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., to the Department for approval when the remediation is being conducted:

1. Partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation.;

2. At a site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601; or

3. At a Federal facility that seeks or is required to obtain the Department's remedial concurrence.

7:26E-5.2 Specific remedial action requirements

(a) The person responsible for conducting the remediation shall:

1. Select a remedial action that will prevent further exposure of any receptor to any residual contamination;

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2. Develop and implement a monitoring program that will effectively monitor the performance of the remedial action;

3. Demonstrate compliance with the remediation standard or ecological risk-based remediation goal established pursuant to N.J.A.C. 7:26E-4.8 by:
 - i. Collecting a sufficient number of samples in appropriate locations to confirm the effectiveness of the remedial action:

 - ii. Collecting samples using appropriate sampling methods; and

 - iii. Analyzing samples for the contaminants of concern using appropriate analytical methods;

4. File a deed notice pursuant to N.J.A.C. 7:26C-7.2 when implementing a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards; and

5. Obtain and comply with a remedial action permit pursuant to N.J.A.C. 7:26C-7 for a restricted use or limited restricted use remedial action.

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(b) The person responsible for conducting the remediation may incorporate alternative fill from an off-site source into a remedial action at an area of concern provided that:

1. The contaminants present in the alternative fill are also present at the receiving area of concern;

2. The maximum contaminant concentration in the alternative fill imported is less than the 75th percentile of the contaminant concentrations at the receiving area of concern; and

3. No alternative fill is imported in excess of the volume required for the remedial action without the prior written approval of the Department.

(c) The person responsible for conducting the remediation may use alternative fill from an on-site source as part of a remedial action at an area of concern provided that the contaminants present in the alternative fill are also present at the receiving area of concern.

(d) The person responsible for conducting the remediation shall ensure that all clean fill material meets the definition of clean fill pursuant to N.J.A.C. 7:26E-1.8.

(e) The person responsible for conducting the remediation shall not import hazardous waste as fill material.

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(f) The person responsible for conducting the remediation shall not use any fill containing free liquid.

(g) The person responsible for conducting the remediation shall prepare a fill use plan whenever alternative fill or clean fill is proposed as part of a remedial action and shall submit the fill use plan to the Department as part of the remedial action workplan required pursuant to N.J.A.C. 7:26E-5.6.

7:26E-5.3 Remedial action requirements for residences, schools, and child care centers

(a) For any remediation initiated on or after May 7, 2010, when new construction of, or a change in use to, a residence, a school, or child care center will occur, the person responsible for conducting remediation shall implement at that area of concern:

1. An unrestricted use remedial action;
2. A presumptive remedy consistent with (b) below, and Table 5-1 below; or
3. An alternative remedy.

(b) The person responsible for conducting the remediation shall implement a presumptive remedy that is an unrestricted use remedial action in the following two situations:

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1. A discrete area discharge; and

2. Widespread polychlorinated biphenyl contamination where the planned use is Residential Type I.

(c) When the person responsible for conducting the remediation determines not to use an unrestricted use remedial action or a presumptive remedy, the person responsible for conducting the remediation shall:

1. Propose an alternative remedy by preparing and submitting to the Department for approval a remedial action workplan pursuant to N.J.A.C. 7:26E-5.6 that includes the following information:

- i. An analysis describing how:

- (1) The presumptive remedy is impractical due to site conditions; or

- (2) The alternative remedy would be equally protective over time as the presumptive remedy;

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ii. A detailed description of the alternative remedy including specifications for engineering and institutional controls and a plan for monitoring of such controls; and

iii. An explanation of how the alternative remedy is protective of public health, safety and the environment; and

2. Obtain the Department's written approval prior to implementation of the alternative remedy.

(d) The person responsible for conducting the remediation shall submit a remedial action workplan pursuant to N.J.A.C. 7:26E-5.6 and obtain the Department's written approval at any area of concern:

1. Containing unexploded ordnance, polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, hexavalent chromium, or landfills; or

2. When treatment or removal of free product or residual product is not practicable.

(e) The construction of single family residences, schools, or child care centers is prohibited on a landfill that undergoes a remediation if engineering controls are required for the management of landfill gas or leachate.

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(f) For all new construction where a Residential Type I or Residential Type II building, school, or child care center is planned at a site where remediation was initiated on or after May 7, 2010, the person responsible for conducting the remediation shall install a vapor barrier and passive subsurface depressurization system suitable for conversion to an active system as a part of the new construction.

(g) For any existing building where conversion to a Residential Type I or Residential Type II building, school, or child care center is planned on a site where remediation was initiated on or after May 7, 2010, the person responsible for conducting the remediation shall conduct, prior to the change in use, a vapor intrusion investigation pursuant to N.J.A.C. 7:26E-1.15(c).

Table 5-1

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**Presumptive Remedies for Soil Contamination at
Schools, Child Care Centers, and Residences**

Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Play Areas - Loose Fill Surface (e.g., mulch, sand, etc.)	Restricted Use	<p>Option #1.</p> <p><i>Barrier</i> - Minimum of one (1) foot clean loose fill material; <i>Buffer</i> - Minimum of one (1) foot clean loose fill material; <i>Demarcation</i> - Geotextile fabric; and <i>Inspection</i> - Quarterly.</p> <p>Option #2.</p> <p><i>Barrier</i> - Minimum of two (2) feet clean loose fill material; <i>Buffer</i> - Minimum of two (2) feet clean loose fill material; <i>Demarcation</i> - Visible contamination boundary marker or geotextile fabric; and <i>Inspection</i> - Semi-annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Play Areas - Unitary Material Surface (e.g., Tile, Rubber Mat, Artificial Turf)	Restricted Use	<p>Option #1.</p> <p><i>Barrier</i> - Proposed surface of unitary material and a minimum of six (6) inches crushed stone; <i>Buffer</i> - Minimum of six (6) inches crushed stone; <i>Demarcation</i> - Geotextile fabric; and <i>Inspection</i> – Annual.</p> <p>Option #2.</p> <p><i>Barrier</i> - Proposed surface of unitary material and a minimum of four (4) inches of concrete or asphalt; <i>Buffer</i> - Four (4) inches of sub base; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Annual.</p> <p>Option #3.</p> <p><i>Barrier</i> - Proposed surface of unitary material and a minimum of one (1) foot clean fill; <i>Buffer</i> - Minimum of one (1) foot clean fill; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Play Areas - Other Unpaved Playing Surfaces (e.g., athletic fields)	Restricted Use	<p>Option #1.</p> <p><i>Barrier</i> - Vegetative cover with a minimum of one (1) foot clean fill; <i>Buffer</i> - Minimum of one (1) foot clean fill; <i>Demarcation</i> - Geotextile fabric; and <i>Inspection</i> - Annual.</p> <p>Option #2.</p> <p><i>Barrier</i> - Vegetative cover with a minimum of two (2) feet clean fill; <i>Buffer</i> - Minimum of two (2) feet clean fill; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Concrete or Asphalt Surfaces (e.g., Driveways, Roadways, Parking, Walkways, Bicycle Paths, etc.)	Restricted Use	<p><i>Barrier</i> - Minimum of four (4) inches of concrete or asphalt; <i>Buffer</i> - Minimum of four (4) inches of sub base; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Building Footprint - New Construction	Restricted Use	<p>Option #1.</p> <p><i>Barrier</i> - Minimum of four (4) inches of concrete; <i>Buffer</i> - Minimum four (4) inches of sub base; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Annual</p> <p>Option #2 (for crawl spaces).</p> <p><i>Barrier</i> - Minimum of one (1) foot clean fill and vapor barrier; <i>Buffer</i> - Minimum of one (1) foot clean fill; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Semi-annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Building Footprint - Existing Construction	Restricted Use	<p>Option #1.</p> <p><i>Barrier</i> - Minimum of four (4) inches of concrete; <i>Buffer</i> - Minimum four (4) inches of sub base; <i>Demarcation</i> - Not required ; and <i>Inspection</i> – Annual.</p> <p>Option #2 (for crawl spaces and basements with a dirt floor).</p> <p><i>Barrier</i> - Minimum of one (1) foot clean fill and vapor barrier; <i>Buffer</i> - Minimum of one (1) foot clean fill; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Semi-annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Vegetative Cover (e.g., Lawn Areas)	Restricted Use	<i>Barrier</i> - Vegetative cover with a minimum of six (6) inches of clean fill; <i>Buffer</i> - Minimum of six (6) inches of clean fill; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Semi-annual.	Option #1. <i>Barrier</i> - Vegetative cover with a minimum of one (1) foot clean fill; <i>Buffer</i> - Minimum of one (1) foot clean fill; <i>Demarcation</i> - Geotextile fabric; and <i>Inspection</i> - Quarterly. Option #2. <i>Barrier</i> - Vegetative cover with a minimum of two (2) feet clean fill; <i>Buffer</i> - Minimum of two (2) feet clean fill; <i>Demarcation</i> - Visible contamination boundary marker or geotextile fabric; and <i>Inspection</i> - Semi-annual.

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Landscaped Areas	Restricted Use	<p>Option #1.</p> <p><i>Barrier</i> - Minimum of one (1) foot clean fill;*</p> <p><i>Buffer</i> - Minimum of one (1) foot clean fill;*</p> <p><i>Demarcation</i> - Geotextile fabric; and</p> <p><i>Inspection</i> - Semi-annual.</p> <p>Option #2.</p> <p><i>Barrier</i> - Minimum of two (2) feet of clean fill;*</p> <p><i>Buffer</i> - Minimum of two (2) feet clean fill;*</p> <p><i>Demarcation</i> - Visible contamination boundary marker; and</p> <p><i>Inspection</i> - Semi-annual.</p> <p>* Trees and shrubs can be planted within barrier and/or buffer layer(s), but must maintain a minimum of one (1) foot clean fill on all sides and below the extent of planted root ball of larger plant materials.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Maintenance Areas/Dumpsters and Compactor Pad/Other Areas Restricted to Workers	Restricted Use	<p><i>Barrier</i> - Minimum of four (4) inches of concrete or asphalt;</p> <p><i>Buffer</i> - Minimum of four (4) inches of sub base;</p> <p><i>Demarcation</i> - Visible contamination boundary marker; and</p> <p><i>Inspection</i> - Annual.</p>	Not Applicable.

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Historic Fill, DAP and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Underground Utility Corridors	Restricted Use	<p>Piping & Conduits Placed in Trenches:</p> <p><i>Barrier</i> - Clean fill from surface down to utility (minimum of one (1) foot);</p> <p><i>Buffer</i> - Minimum of one (1) foot of clean fill below and around the sides of the utility;</p> <p><i>Demarcation</i> - Visible contamination boundary marker along the bottom and sides of the trench; and</p> <p><i>Inspection</i> - Annual.</p> <p>Burial Cable may be installed within barrier and/or buffer layer(s) but a minimum of one foot clean fill must be maintained on sides and below installation.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential
Historic Fill and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Contamination at depths greater than 10 feet with 10 feet of clean material covering the contamination	Restricted Use	<p><i>Barrier</i> - Minimum of five (5) feet clean material;</p> <p><i>Buffer</i> - Minimum of five (5) feet clean material;</p> <p><i>Demarcation</i> - None Required; and</p> <p><i>Inspection</i> – Annual.</p>	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Contamination type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
Widespread PCBs	Any Use	Unrestricted Use or Restricted use	<p>Remove and/or treat all PCB contamination to a minimum of 10 mg/kg.</p> <p>For any PCB contamination greater than 0.2 mg/kg and less than or equal to 10 mg/kg apply Option # 1 or Option # 2:</p> <p>Option #1. <i>Barrier</i> - Minimum of six (6) inches asphalt or concrete; <i>Buffer</i> -Minimum of 18 inches clean fill; <i>Demarcation</i> - Visible contamination boundary marker; and <i>Inspection</i> - Annual.</p> <p>Option #2. <i>Barrier</i> - Minimum of 18 inches of clean fill; <i>Buffer</i> - Minimum of 10 inches of compacted soil pursuant to 40 CFR 761.61(a)7; <i>Demarcation</i> - Geotextile fabric; and <i>Inspection</i> - Semi-annual</p>	Remove and/or treat to unrestricted levels pursuant to N.J.A.C. 7:26E-5.3(b)2

7:26E-5.4 Remedial action requirements for historic fill material

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(a) Notwithstanding the presumptive remedies for residences, schools, and child care centers required pursuant to N.J.A.C. 7:26E-5.3(a), there is a rebuttable presumption pursuant to N.J.S.A. 58:10B-12h that the remedial action for soil contamination associated with historic fill material is the establishment of engineering and institutional controls pursuant to N.J.A.C. 7:26C-7.

(b) The ground water classification exception area established pursuant to N.J.A.C. 7:26E-4.7(b) shall remain effective indefinitely. However, a ground water remedial action permit is not required for the ground water classification exception area.

7:26E-5.5 Remedial action requirements for diffuse anthropogenic pollutants in soil

(a) Notwithstanding the presumptive remedies for residences, schools, and child care centers required pursuant to N.J.A.C. 7:26E-5.3(a), the person responsible for conducting the remediation of contamination associated with diffuse anthropogenic pollutants in soil shall:

1. Remediate the contaminated soil to an unrestricted use standard; or
2. Leave the contaminated soil in place and establish engineering and institutional controls, as appropriate, pursuant to N.J.A.C. 7:26C-7.

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7:26E-5.6 Remedial action workplan requirements

(a) The person responsible for conducting the remediation shall prepare and submit to the Department, at least 60 days prior to implementation, a remedial action workplan for each area of concern requiring a remedial action, unless a final remediation document for unrestricted use is filed with the Department within one year after the earliest applicable requirement to remediate, pursuant to N.J.A.C. 7:26C-2.2.

(b) The person responsible for conducting the remediation shall include the following in each remedial action workplan for each area of concern:

1. A summary of the findings and recommendations from the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9;

2. A description of any interim remedial measures previously implemented;

3. The identification of each area of concern where the remedial action will be implemented, including:

- i. The horizontal and vertical extent of the area to be remediated correlated to the extent of contamination; and

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ii. The volume of the contamination to be treated or removed for each environmental medium;

4. A detailed description of the remedial action and the remedial technology to be used for the area of concern, including the results of any bench scale, pilot test or design studies;

5. Identification of all applicable remediation standards;

6. A plan to evaluate the effectiveness of the remedial action;

7. A perimeter air monitoring and action plan to be implemented during a remedial action, if applicable, designed to monitor and control off-site excursion of dust, vapor and odors;

8. A list of all required permits;

9. A fill use plan that complies with N.J.A.C. 7:26E-5.2, if applicable;

10. A plan to restore the site after implementing the remedial action, if applicable; and

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11. The proposed completion date of the remedial action and a schedule of the remedial action for the initiation and completion of each remedial action task, pursuant to the required regulatory timeframe at N.J.A.C. 7:26E-5.9.

(c) The person responsible for conducting the remediation shall submit a revised remedial action workplan or remedial action workplan addendum prepared pursuant to this section:

1. When a remedial action does not perform as designed; or
2. To upgrade or change the selected remedial action.

7:26E-5.7 Permit identification and requirements for discharge to ground water proposals

(a) The person responsible for conducting remediation shall apply for and obtain all required permits prior to initiating the activity requiring the permit, permit modification, or certification, except that a Hazardous Waste Facility Permit issued pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Hazardous Waste rules, N.J.A.C. 7:26G, for hazardous waste treatment, storage, or disposal, is not required for any remediation conducted on site pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.

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(b) For each discharge to ground water that is subject to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-7.5(b), the person responsible for conducting the remediation shall submit a discharge to ground water proposal with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that shall include the following:

1. A summary of the remedial investigation of contaminated ground water, including the ground water flow direction and the nature and extent of contamination;
2. The concentrations of all contaminants expected to be present in the recovered ground water, prior to any treatment;
3. The type, location, volume and duration of the proposed discharge to ground water, and the potential effect that the proposed discharge would have on ground water or any other receptor;
4. A detailed description of how the discharge to ground water would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Surface Water Quality Standards, N.J.A.C. 7:9B, as applicable;
5. The chemical content of all fluids and substances to be discharged or placed into, or onto the ground to implement a remedial action;

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6. Specifications for the design of an underground injection system pursuant to N.J.A.C. 7:14A-8, as applicable;

7. A proposal to establish a ground water classification exception area for the area where the permitted discharge will exceed the Ground Water Quality Standards, N.J.A.C. 7:9C, outside of any existing ground water classification exception area, if applicable; and

8. A monitoring plan, including but not limited to, the monitoring wells to be sampled, the frequency of sampling for wells, and if applicable, monitoring of the fluid to be discharged, a list of all the analytes to be monitored, and a schedule for the submission of sampling results.

(c) When the discharge to ground water will exceed 180 days, the person responsible for conducting the remediation shall:

1. Prepare a public notice using the format in Appendix B;
2. Prior to publishing a public notice, the person responsible for conducting the remediation shall provide a copy of the discharge to ground water proposal prepared pursuant to (b) above and the public notice prepared pursuant to (c)1 above to:

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- i. The Department;
 - ii. The clerk for each municipality in which the contaminated site is located;
 - iii. The designated local health official for each municipality in which the contaminated site is located; and
 - iv. The Pinelands Commission, if the contaminated site is located within its jurisdiction as defined pursuant to N.J.S.A. 13:18A, at the address specified at N.J.A.C. 7:26E-1.5(i)4;
3. Publish the public notice of the discharge to ground water in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least 45 days prior to the proposed startup date of the ground water discharge; and
 4. Submit to the Department proof of publication for the public notice within 15 days after the notice is published, and provide the names and addresses of everyone that was sent a copy of the public notice and discharge to ground water proposal pursuant to (c)2 above.
- (d) The Department shall hold a public hearing on the discharge to ground water proposal if the Department determines that there is a significant degree of public interest in favor of holding a public hearing. The Department may hold a public hearing if it determines that a hearing is

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likely to clarify legal or factual issues regarding the discharge to ground water proposal and that oral testimony is essential to adequately express all issues and concerns. If the Department decides to hold a public hearing on the proposed discharge to ground water, the Department shall:

1. Publish a notice of a public hearing in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site at least 30 days prior to the hearing; and
2. Extend the public comment period to the close of the public hearing;

(e) The Department will consider comments received during the public comment period and the public hearing, respond to the comments when it issues the written decision to approve or reject the discharge to ground water proposal, and provide a copy of the decision to each commenter and to each person or entity to whom the notice was sent pursuant to (c) above.

7:26E-5.8 Remedial action report requirements

(a) The person responsible for conducting the remediation shall implement the remedial action and submit to the Department a remedial action report, along with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, pursuant to (b) below, and according to the applicable regulatory timeframe in N.J.A.C. 7:26E-5.9.

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(b) The person responsible for conducting the remediation shall present and discuss in the remedial action report all of the information identified or collected pursuant to N.J.A.C. 7:26E-5.1 through 5.7, along with all of the following:

1. The general reporting requirements in N.J.A.C. 7:26E-1.6;
2. A presentation and discussion of all of the information identified or collected, pursuant to N.J.A.C. 7:26E-1.10 through 1.16 and an updated receptor evaluation on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;
3. A summary of the findings and recommendations for each area of concern from the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9;
4. A description, by area of concern, of each remedial action implemented;
5. A list, by remedial action, of the remediation standards that apply to each remedial action;
6. Documentation, by area of concern, that each remedial action is effective in protecting the public health and safety and the environment by:

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- i. Providing an overview of the data to establish the remedial action is operating as designed; and
 - ii. Demonstrating compliance with the applicable remediation standards;
7. A remedial action permit application prepared pursuant to N.J.A.C. 7:26C-7, if applicable;
8. "As-built" diagrams for any permanent structures associated with the remedial action including, without limitation, caps or other structures associated with the remedial action and engineering controls, if applicable;
9. A detailed description of site restoration activities, if applicable;
10. The total remediation costs through the implementation of the remedial action;
11. Documentation of all types and quantities of waste generated by the remedial action, including copies of fully executed manifests or bill(s) of lading documenting any off-site transport of waste;
12. Documentation of the source, type, quantities, and location of each alternative fill and clean fill used as part of the remedial action at the site; and

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13. A description of each permit required and obtained to implement the remedial action.

7:26E-5.9 Remedial action regulatory timeframes

(a) The person responsible for conducting the remediation shall complete the implementation of the remedial action, within the applicable regulatory timeframe listed in (b) below, by:

1. Implementing all remedial actions required to address the contamination at a site, pursuant to the requirements of this subchapter;

2. Submitting a remedial action report for all remedial actions at the site to the Department pursuant to N.J.A.C. 7:26E-5.8; and

3. Causing a licensed site remediation professional to submit a final remediation document to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-6.2.

(b) The person responsible for conducting the remediation shall complete the implementation of the remedial action for a contaminated site within the following timeframes:

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1. For the remediation of a discharge that only resulted in soil contamination, within three years after the earliest applicable regulatory timeframe in N.J.A.C. 7:26E-4.10 to submit a remedial investigation report; or

2. For the remediation of all other contamination, within five years after the earliest applicable regulatory timeframe in N.J.A.C. 7:26E-4.10 to submit a remedial investigation report.

(c) Any person responsible for conducting remediation who is not subject to liability under N.J.S.A. 58:10-23.11g and is one of the following, is exempt from the regulatory timeframes outlined in (b) above:

1. A non-profit organization that meets the definition set forth at 26 U.S.C. §501(c)3 unless that organization is established by or funded by another person who is subject to liability under N.J.S.A. 58:10-23.11g for that site; or

2. A government entity that is exempt from liability pursuant to N.J.S.A. 58:10-23.11g.d(4).

(d) The person responsible for conducting the remediation may request an extension of the applicable regulatory timeframe in (b) above, pursuant to the procedure outlined in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-3.2.

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APPENDIX A - Laboratory data deliverables formats

I. Full Laboratory Data Deliverables are required for the following analytical data:

(a) Potable water data are to be submitted according to data deliverables listed in the version of the Professional Laboratory Analytical Services contract for potable water issued by the New Jersey Department of Treasury, Division of Purchase and Property in effect as of the date of sample analysis by the laboratory.

(b) Air (including sub-slab, indoor and ambient) analyzed by NJDEP Method LLTO-15 or USEPA Method TO-15.

Data are to be submitted according to the most recent update of the NJDEP-SRWML Low Level USEPA Method TO-15 (NJDEP-LL TO-15-3/2007 for Ambient Air, NJDEP Regulatory Data Report Format - Appendix 1 March 2007) in effect as of the date of sample analysis by the laboratory with the following exceptions and additions:

1. Additional deliverables for NJDEP Method LLTO-15 or USEPA Method TO-15:

- i. The terms "Laboratory Control Sample" and "Blank Spike" may be used in addition to "Reporting Limit Laboratory Control Sample";

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- ii. The paper copies contained in the extended data report (deliverable package) must not be reduced in size from its original format (Appendix 1, Section 2.4.6);
 - iii. The laboratory sample numbers must be in increasing sequential order with regards to laboratory identification (ID) number (Appendix 1, Section 4.2.8);
 - iv. In the sample data summary, the laboratory shall place sample packages in order of increasing sample number considering laboratory ID numbers (Appendix 1, Section 6.0);
 - v. The laboratory shall report all compounds detected other than those noted in Table 1 of Appendix 1 as Tentatively Identified Compounds (TICs) for all samples, blanks and clean canister certification data (Appendix 1, Section 6.11); and
 - vi. For TO-15 analyses only, the instrument run log for the continuing calibration shall start with the injection of the continuing calibration verification standard and end with the last sample analyzed within the 24 hour sequence (Appendix 1, Section 10.3).
2. For TO-15 analysis only, the following do not need to be included:

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- i. Initial Calibration Verification Sample Standard Summary (Appendix 1, Section 7.1.2);
 - ii. Initial Calibration Verification Sample Standard Form Summary and Raw Data (Appendix 1, Section 7.2);
 - iii. The Closing Continuing Calibration Verification analysis (Appendix 1, Section 7.3);
 - iv. Initial Calibration Verification Sample Standard Summary (Appendix 1, Section 9.1.6);
 - v. Standards Data- Initial Calibration Verification Sample Standard Summary and Closing Continuing Calibration Verification Summary (Appendix 1, Table 2); and
 - vi. Clean Canister Certification Data- Initial Calibration Verification Sample Standard Summary and Closing Continuing Calibration Verification Summary (Appendix 1, Table 2).
- (c) Air (including sub-slab, indoor and ambient) analyzed by methods other than NJDEP Method LLTO-15 or USEPA Method TO-15.

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Deliverables are to be those as defined in I.(b) above where appropriate based on method specific procedures.

(d) Polychlorinated dibenzo-p-dioxins/Polychlorinated dibenzofurans (PCDDs/PCDFs)

Data are to be submitted according to the data deliverables defined in Section 2 - Reporting Requirements and Deliverables for each of the following method specific USEPA Region 2 Standard Operating Procedures (SOPs) incorporated herein by reference

www.epa.gov/region02/qa/documents.htm):

1. USEPA Method 1613B Region 2 SOP HW-25 Revision 3;
2. USEPA SW-846 Method 8290 Region 2 SOP HW-19 Revision 1; and
3. USEPA SW-846 Method 8280 Region 2 SOP HW-11 Revision 2.

(e) Hexavalent Chromium

The following information shall be provided. If data are contained in a laboratory notebook, instrument print out and/or chromatogram, then a copy of the pertinent laboratory note book page, instrument print out and/or chromatogram is to be submitted.

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1. Date of sampling;
2. Date of digestion;
3. Date of analysis;
4. Sample weight/volumes for all samples, initial calibration standards, calibration check standards, calibration blanks, preparation blanks/method blanks, pre-digestion (for soluble and insoluble) spike samples, post-digestion spike samples, duplicate analyses, and if performed, laboratory control samples;
5. pH of the sample digestate and standards, from both the preparative and analytical protocols;
6. Percent moisture log;
7. Digestion log (digestion temperature at 30 minutes and 60 minutes of at least one sample must be monitored and recorded) and color of digestates;
8. Absorbance readings for all samples, initial calibration standards, calibration check standards, calibration blanks, preparation blanks/method blanks, pre-digestion spike

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samples, post-digestion spike samples, duplicate analyses, and if performed, laboratory control samples;

9. Background readings for all samples, initial calibration standards, calibration check standards, calibration blanks, preparation blanks/method blanks, pre-digestion spike samples, post-digestion spike samples, duplicate analyses, and if performed, laboratory control samples;

10. All calibration curves (including a blank as one point of the curve) listing the concentration of the standards with their absorbance and the correlation coefficient calculated;

11. Calibration check standards results including the true values and the percent recoveries calculated;

12. Calibration blank results;

13. Preparation blank/method blank results;

14. If required, the pre-digestion spikes (for soluble and insoluble) analyses including the spike amount used and the spike recoveries;

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15. Post-digestion spike analysis results including the spike amount used and the spike recoveries;

16. Duplicate analysis results including the relative percent difference;

17. Laboratory Control Sample (LCS) results including the true value and the calculated percent recovery;

18. Eh-pH graph from Method 3060A for all nonaqueous samples plotting the pH and Eh data for each sample with each sample clearly labeled on the graph; and

19. Final concentrations corrected for percent moisture.

(f) USEPA/CLP Analyses

Data deliverables are defined in each Statement of Work offered by the USEPA.

(www.epa.gov/superfund/programs/clp/) As such, data are to be submitted according to the data deliverables listed in the Statements of Work used by the laboratory and in effect as of the date of sample analysis by the laboratory. Additionally, mass spectral negative proofs¹ are required where applicable, "clean" soil method blanks² for nonaqueous samples are not permitted, and laboratory internal chain of custody documentation is required.

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¹ A negative proof is a mass spectrum offered as evidence to support an analyst's decision to negate the presence of a contaminant which has been qualitatively identified and reported by the instrument's data system.

² Method blanks for nonaqueous samples shall consist of performing the entire analytical procedure without any actual sample being present. The appropriate amount of sodium sulfate as specified in the current Statements of Work for Organics would be substituted as the "sample" for the semivolatile and pesticide/aroclor fractions.

(g) Extractable Petroleum Hydrocarbons

Data are to be submitted according to data deliverables listed in the Department's Extractable Petroleum Hydrocarbon Methodology, "Analysis of Extractable Petroleum Hydrocarbon Compounds (EPH) in Aqueous and Soil/Sediment/Sludge Matrices" in effect as of the date of sample analysis by the laboratory. (www.nj.gov/dep/srp/guidance/srra/eph_method.pdf)

(h) Methods other than (a) through (g) above:

In the absence of a method-defined data deliverable, the laboratory may use the applicable deliverables of a USEPA Statement of Work that is procedurally similar to the method employed.

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II. Reduced Laboratory Data Deliverables

(a) General Requirements

1. The data deliverable package shall be bound and paginated with margins, bindings and of reproduction quality such that all pages are legible;

2. Title/Cover Page:

The format for quality assurance/quality control (QA/QC) documentation shall be simplified as much as possible for ease of review and reference. The report shall begin with a cover page that includes the laboratory certification number, if applicable, main laboratory phone number, signature of laboratory director, facility name, address and date of report preparation and date of sampling and receipt. The report shall include a summary table that cross-references the field ID number to the laboratory ID number for each sample;

3. Table of Contents;

4. Chain of Custody;

5. Methodology Review:

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The Methodology Review shall list method numbers and revision, with a detailed discussion of any method modification;

6. Laboratory Chronicle:

The laboratory chronicle shall detail actual sample holding times and specify the sample condition upon receipt at the laboratory (including sample temperature and pH when pH adjustment is required);

7. Conformance/Non-Conformance Summary:

A conformance/non-conformance summary shall be completed and signed by the laboratory. This summary shall state that the laboratory has reviewed the QA/QC measures for sample analysis and has identified any deviations from the acceptable performance criteria or results.

(b) Gas chromatography/mass spectrometry (GC/MS) Requirements for each analytical fraction

1. Analytical Results Summary Form - An analytical results summary form shall be submitted for each sample and for each GC/MS analytical fraction (i.e., volatiles and

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semi-volatiles). Each form shall contain the following information: date sample collected, date sample received, date sample extracted, date sample analyzed, sample weight/volume/units, sample ID numbers, sample delivery group (SDG), sample matrix, level, sample moisture content, dilution factor, GC column used, list of analytes, method detection limit, practical quantitation level and detected analyte concentrations;

2. Tentatively Identified Compound (TIC) Summary - Each TIC shall be identified by compound name or class (if it can be determined) and Chemical Abstract Service (CAS) number along with its retention time and estimated concentration;

3. Tuning Results Summary Form - Tuning results for all initial and continuing calibrations that are associated with all samples shall contain the following information: laboratory file ID, instrument ID, injection date and time, the m/e (mass to ion charge) listing for the key ions, the reported ion relative abundance, the ion abundance criteria and a listing of all standards, blanks, QC samples and field samples (including date, lab file ID and time of analysis) associated with the tune;

4. Method Blank Results Summary Form - An analytical results form shall be submitted for all method blanks associated with all field samples for all analytical fractions. Each form shall contain the information listed in Section II (b) 1 above, as well as a listing of all field and QC samples associated with each method blank. In addition, a separate form for TICs shall be submitted which contains the information listed in Section II(b)2 above;

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5. Calibration Summary - A summary of all initial and continuing calibrations that are associated with all samples and blanks shall be submitted for each GC/MS analytical fraction. The following information shall be provided for each initial calibration: instrument ID, calibration date and time, listing of standard concentrations used, laboratory file ID for each calibration standard, listing of all associated field samples, QC samples and blanks, retention times for each target analyte and surrogate compound, listing of the relative response factor (RRF) for each target analyte and surrogate compound, the average RRF for each target analyte and surrogate compound, and percent relative standard deviation for each target analyte and surrogate compound. The following information shall be provided for each continuing calibration: instrument ID, calibration date and time, date and time of the associated initial calibration, the standard concentration used, the laboratory file ID for the calibration standard, listing of all associated field samples, QC samples and blanks, retention times for each target analyte and surrogate compound, the average RRF for each target analyte and surrogate compound from the associated initial calibration, the RRF for each target analyte and surrogate compound from the continuing calibration and the percent difference for each target analyte and surrogate compound;

6. Surrogate Compound Recovery Results Summary - If required by the analytical method, a summary form shall be submitted which contains the following information for all field samples, method blanks and QC samples for each GC/MS analytical fraction:

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sample ID number, sample matrix, surrogate compound names, concentration of surrogate compounds used, surrogate compound recoveries and QC limits for each surrogate compound;

7. Matrix Spike/Matrix Spike Duplicate Results Summary - If required by the analytical method, a summary form shall be submitted for each sample matrix and each GC/MS analytical fraction which contains the following: sample ID number for the sample selected for spiking, list of compounds being spiked, concentration of each spiked compound, matrix spike concentration, matrix spike percent recovery, matrix spike duplicate concentration, matrix spike duplicate percent recovery, relative percent difference and QC limits for percent recovery and relative percent difference;

8. Internal Standard Summary - A summary form shall be submitted which contains the following information for all standards, field samples, method blanks and QC samples for each analytical fraction: sample ID number, ID of laboratory calibration standard, internal standard compound names, concentration of internal standards compounds, retention times of each internal standard, area of each internal standard, and QC criteria (where applicable) for internal standard areas and retention times;

9. Chromatograms - The total ion chromatograms for all field samples and method blanks shall be submitted. All peaks on the chromatograms shall be identified as either an internal standard, surrogate compound, target compound or non-target compound. All

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peaks on a chromatogram shall also be associated with retention times, either directly on the chromatogram or identified and cross-referenced in tabular form.

(c) GC Requirements

1. Analytical Results Summary - An analytical results form shall be submitted for each sample. Each form shall contain the information contained in Section II(b)1 above;
2. Method Blank Results Summary - An analytical results form shall be submitted for all method blanks as well as a listing of all field and QC samples associated with each method blank. Each form shall contain the information contained in Section II(b)4 above;
3. Standards Summary - A summary form containing GC standards information for all associated samples shall be submitted for both primary and confirmation (if applicable) analyses. This summary shall contain the following information: instrument ID number, GC column used and notation if primary or confirmation analysis, date and time of standard(s) analysis, listing of all associated field, QC and method blank samples, listing of target compounds, retention time windows of each target compound and calibration factor for each target compound;

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4. Surrogate Compound Recovery Results Summary - If required by the analytical method, a summary form shall be submitted which contains the following information for all field samples, method blanks, and QC samples: sample ID number, sample matrix, surrogate compound names, concentration of surrogate compounds used, surrogate compound recoveries and QC limits for each surrogate compound;
5. Matrix Spike/Matrix Spike Duplicate Results Summary - If required by the analytical method, a summary form shall be submitted for each sample matrix which contains the information contained in Section II(b)7 above;
6. Retention Time Shift Summary - If required by the analytical method, a summary form containing retention time shift results shall be submitted for both the primary and confirmation (if applicable) analyses. The form shall contain the following information: instrument ID number, GC column used and notation if primary or confirmation column analysis, name of retention time shift marker compound, list of all field samples, method blanks and QC samples, date and time of analysis of all field samples, method blanks and QC samples, percent difference of the retention time shift and QC limits for the retention time shift;
7. Chromatograms - The primary analysis chromatograms and confirmation analysis chromatogram (when applicable) for all field samples and method blanks shall be submitted. All peaks on the chromatogram attributable to target and surrogate

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compounds shall be identified as such along with the retention time for each peak. The reference standard chromatogram for all multi-peak target compounds (e.g., toxaphene, PCBs) for both the primary and the confirmation analysis (when applicable) shall also be submitted.

(d) Metals Requirements

1. Analytical Results Summary - An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample ID number (laboratory and/or field ID), laboratory SDG number, sample matrix, date sample collected, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes, detected analyte concentrations and method detection limits;
2. Blank Results Summary - A blank results form shall be submitted for all instrument calibration blanks and reagent blanks associated with all field and QC samples. Each form shall contain the following information: a list of all target analytes, matrix of the reagent blank, concentration units of the reagent blank, reported concentration of all target analytes found in all calibration and reagent blanks and method detection limits;
3. Calibration Summary - A calibration summary shall be submitted for all initial calibration standards and continuing calibration standards associated with field samples,

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blanks and QC samples. Each form shall contain the following information: laboratory SDG number, initial and continuing calibration source, list of all target analytes, the true concentration for the initial and continuing calibration standards, the reported (or found) concentrations for the initial calibration standards and continuing calibration standards, the percent recovery for each initial calibration standard and continuing calibration standard and the percent recovery QC limits for each target analyte. In addition, this form shall also list the method detection limit and instrument detection limit for each target analyte;

4. ICP Interference Check Sample Results Summary - If metals analysis is being conducted by ICP methodology, results of the interference check samples analysis shall be reported. The following information shall be reported: laboratory SDG number, interference check sample source, instrument ID number, list of all target analytes in the interference check sample, the true concentration of analytes in the interference check sample, the reported concentrations of analytes found in the interference check sample for both the initial and final check samples analyses, the percent recovery of the target analytes found in the initial and final check samples analyses and the QC control limits for percent recovery values;

5. Spike Sample Results Summary - A summary of the spike sample analysis shall be submitted. The following information shall be reported: laboratory SDG number, ID number of the sample chosen for spiking, sample matrix, percent solids, the concentration

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of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte;

6. Duplicate Sample Results Summary - A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: laboratory SDG number, ID number of the original sample and the duplicate samples, sample matrix, percent solids, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyses and the QC limit for relative percent difference for each target analyte;

7. Laboratory Control Sample Results Summary - When specified by the analytical method, the results of the laboratory control (quality control) sample shall be submitted. The following information shall be reported: laboratory SDG number, control sample matrix, list of all target analytes, the true concentration for each analyte in the control sample, the reported concentration for each target analyte in the control sample, the percent recovery for each target analyte and the QC limit for percent recovery for each target analyte;

8. Serial Dilution Summary - If required by the analytical method, a summary of the serial dilution results shall be submitted. The following information shall be reported: laboratory SDG number, ID number of the original sample and the serial dilution sample,

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sample matrix, results of the original sample analysis, results of the serial dilution sample analysis, the percent difference of each target analyte compared to the original target analyte results and the QC limit for percent difference for each target analyte;

9. Internal Standard Summary - A summary form shall be submitted for each ICP/MS analytical run which contains the following information: laboratory SDG number, date analyzed, method reference, sample ID number, ID of laboratory calibration standard, calibration and method blanks ID, QC sample ID, internal standard compound names, percent recoveries of internal standard compounds, and QC criteria for internal standard areas;

10. Analysis Run Log - The following information shall be reported: laboratory SDG number, instrument ID number, date and time of sample analysis, any dilution factors used, the analytical run sequence of all samples, standards and blanks and the list of all target analytes;

11. Digestion Log - The following information shall be reported: date of sample digestion, laboratory SDG number, batch number, matrix, sample numbers, initial weight/volume, final volume and digestion method.

(e) General Chemistry Requirements

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1. Analytical Results Summary - An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample ID number (laboratory and/or field ID), sample matrix, date sample collected, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes and detected analyte concentrations and method detection limits;
2. Calibration Summary - A calibration summary shall be submitted for all initial calibration standards and check standards associated with field samples, blanks and QC samples. Each form shall contain the following information: list of all target analytes, the true concentration for the initial calibration standards and check standards, the reported (or found) concentrations for the initial calibration standards and check standards, the percent recovery for each initial calibration standard and check standard and the percent recovery QC limits for each target analyte;
3. Blank Results Summary - A blank results form shall be submitted for all method blank samples associated with all field and QC samples. Each form shall contain the following information: list of all target analytes, matrix of the method blank, concentration units of the method blank, reported concentration of all target analytes found in all method blanks;
4. Spike Sample Results Summary - A summary of the spike sample analysis shall be submitted. The following information shall be reported: ID number of the sample chosen

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for spiking, sample matrix, the concentration of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte;

5. Duplicate Sample Results Summary - A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: ID number of the original sample and the duplicate sample, sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyses and the QC limit for relative percent difference for each target analyte;

6. Laboratory Control Sample Results Summary / Quality Control Check Standard Summary - When specified by the analytical method, the results of the laboratory control (quality control check) sample shall be submitted. The following information shall be reported: control sample matrix, list of all target analytes, the true concentration for each analyte in the control sample, the reported concentration for each target analyte in the control sample, the percent recovery for each target analyte and the QC limit for percent recovery for each target analyte.

APPENDIX B - Model public notice for a discharge to ground water proposal

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The model public notice in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to publication in appropriate local newspapers. As provided at N.J.A.C. 7:26E-5.7(c), the wording of this model public notice shall not be otherwise changed or modified.

Public Notice

Take notice that, as part of the remediation of [Site Name] at [street address], Block: _____ Lots: _____, in [Municipality], [_____] County, a proposal has been submitted to the New Jersey Department of Environmental Protection (Department) to discharge to ground water in accordance with a permit issued pursuant to the provisions of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., its implementing regulations the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A; the Ground Water Quality Standards, N.J.A.C. 7:9C; and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The Department's Site Remediation Program is reviewing the proposal to discharge to ground water for the purpose of remediating a contaminated site with the program interest # [_____].

Brief description of the proposed discharge: [Include a description of the site including the remedial action, type of discharge (e.g., treated ground water or in situ bioremediation), discharge unit (e.g., injection well, overland flow, lagoon, etc.) and treatment proposed and the name and description of the formation receiving the discharge]. A copy of this public notice has

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been sent to the Municipal Clerk and designated local health official for [Municipality, County or region].

A copy of the discharge to ground water proposal is available from the person responsible for conducting the remediation [include the name and address of the person conducting the remediation], or as part of the administrative record which is on file at the offices of the Department, Site Remediation Program, located at 401 East State Street, Trenton, Mercer County, New Jersey [or add alternate location]. The file may be reviewed under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq. Information regarding the OPRA procedures is available at www.state.nj.us/dep/opra/oprainfo.html.

Interested persons may submit written comments regarding the discharge to ground water proposal to the Department at the address listed below and to the owner or operator of the facility at [name and address of person/contact submitting discharge to ground water proposal]. All comments shall be submitted within 30 calendar days after the date of this public notice, or the end of any public hearing that the Department may schedule that occurs after that date. All persons who believe that the discharge to ground water proposal is inappropriate, must raise all reasonably ascertainable issues and submit in writing to the Department all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. The Department will consider all public comments that relate to the discharge to ground water proposal, provided that the Department receives the comments by the close of the public comment period. After the close of the public comment

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period, the Department will render a decision regarding the proposed discharge to ground water.

The Department will respond to all significant and timely comments with its decision regarding the discharge to ground water proposal. Each person who has submitted written comments will receive notice of the Department's decision.

Any person may request in writing that the Department hold a non-adversarial public hearing on the discharge to ground water proposal. This request shall state the nature of the issues to be raised in the proposed hearing and shall be submitted within 30 calendar days of the date of this public notice to the address cited below. A public hearing will be conducted whenever the Department determines that there is a significant degree of public interest in the discharge to ground water decision. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

Comments and written requests for a non-adversarial public hearing shall be sent to:

NJ Department of Environmental Protection

Site Remediation Program

Bureau Case Assignment and Initial Notice

Mail Code 401-05H

401 East State Street

P.O. Box 420

Trenton, NJ 08625-0420

ATTN: DGW proposal