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ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROGRAM

Administrative Requirements for the Remediation of Contaminated Sites; Technical

Requirements for Site Remediation

Timeframes, Vapor Intrusion and Form Names

Proposed Amendments: N.J.A.C. 7:26C-3.2, 3.3, 3.5 and 9.5; and 7:26E-1.8, 1.12, 1.14, 1.15, 1.17, 1.18, 3.2 and 3.3

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1K-6 et seq.; 58:10-23.11a et seq.; 58:10A-1 et seq.; 58:10B-1 et seq.; and 58:10C-1 et seq.

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

DEP Docket Number: 06-10-09.

Proposal Number: PRN 2010-235.

Submit written comments by December 3, 2010 to:

Leslie W. Ledogar, Esq.

Attn.: DEP Docket No. 06-10-09

Office of Legal Affairs

Department of Environmental Protection

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P.O. Box 402

Trenton, New Jersey 08625-0402

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

This rule proposal can 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.

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The Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., establishes an affirmative obligation for certain entities to remediate contaminated sites (see N.J.S.A. 58:10B-1.3). It also provides that in most instances, a remediation may proceed without prior Department approval as long as the remediation is conducted by or under the supervision of a licensed site remediation professional. SRRA also authorizes the Department to promulgate mandatory timeframes for certain remediation milestones. These milestones are set forth in SRRA at N.J.S.A. 58:10C-28 and they apply to the person responsible for conducting the remediation, whether or not that person is using a licensed site remediation professional, and whether the remediation was initiated prior to, on, or after the effective date of the Department's rules that established them (here, November 4, 2009). SRRA also provides that if a person responsible for conducting the remediation does not complete a remediation milestone within the mandatory timeframe established by the Department, the Department must exercise direct oversight of the site, phase or condition (see N.J.S.A. 58:10C-27).

On November 4, 2009, the Department adopted interim rules to implement the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and related statutory amendments. The interim rules include the new Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules, at N.J.A.C. 7:26C, and amendments to other rule chapters related to site remediation including the Technical Requirements for Site Remediation rules (Technical Requirements), N.J.A.C. 7:26E. Pursuant to SRRA, N.J.S.A. 58:10C-29, these interim rules became effective upon filing with the Office of Administrative Law, and will sunset

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18 months after the effective date of November 4, 2009 unless the Department readopts them in accordance with the Administrative Procedure Act.

In the interim rules, the Department established mandatory timeframes for the following four of the seven remediation milestones enumerated in SRRA, and set those timeframes at one year from a specific trigger date unique to that milestone: (1) submitting an initial receptor evaluation, (2) addressing immediate environmental concerns, (3) addressing the interim remedial measure for remediating free product, and (4) submitting the preliminary assessment and site investigation reports. See the ARRCS rules at N.J.A.C. 7:26C-3.3. The Technical Requirements establish regulatory timeframes for certain aspects of remediation, the achievement of which is designed to help the person responsible for conducting the remediation complete the statutorily specified remediation milestones within the mandatory timeframes set forth in the ARRCS rules.

Since the adoption of the interim rules, the Department has conducted extensive stakeholder outreach. During stakeholder input sessions, commenters uniformly expressed concern that persons responsible for conducting the remediation of sites will inevitably be subject to direct Department oversight because the mandatory timeframes established in the ARRCS rules at N.J.A.C. 7:26C-3.3 are too short. Additionally, although the Department provided a three-month “safety cushion” between the regulatory timeframes and mandatory timeframes so that the Department could work with the person responsible for conducting the remediation to ensure that the person does not run the risk of being placed in direct Department oversight, the concern

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remains that the regulatory timeframes established in the Technical Requirements as milestones to be completed on the way to meeting mandatory timeframes are also too short.

Therefore, the Department is proposing to amend the mandatory remediation timeframes established in the ARRCS rules at N.J.A.C. 7:26C-3.3 by extending them for one additional year, and is also proposing to amend the regulatory timeframes set forth in the Technical Requirements in order to afford the person responsible for conducting the remediation a full one-year “safety cushion.”

Stakeholders were also concerned that the definition of an immediate environmental concern for areas of concern involving indoor air in the Technical Requirements is too conservative to trigger an immediate environmental concern and is not consistent with the definition of immediate environmental concern in SRRA. The definition of “immediate environmental concern” for indoor air in SRRA is “confirmed contamination at the site of a nature that either dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure.” The definition in the Technical Requirements uses the indoor air screening levels contained in the Department’s Vapor Intrusion Guidance as the trigger for considering an area of concern involving indoor air to be an immediate environmental concern. In order to make the definition of immediate environmental concern in the Technical Requirements comport with the definition in SRRA, the Department is proposing to amend the trigger for an immediate environmental concern in indoor air in the Technical Requirements from an exceedance of the screening level to the exceedance of the rapid action level contained in or

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developed consistent with the Department's Vapor Intrusion Guidance published on the Department's website at <http://www.nj.gov/dep/srp/guidance/vaporintrusion/vig.htm>. In addition, the Department is proposing to add new requirements and related regulatory timeframes for the evaluation and mitigation of an immediate environmental concern condition affecting indoor air.

I. Proposed Amendments to the Administrative Requirements for the Remediation of Contaminated Sites Rules

N.J.A.C. 7:26C-3.3 establishes mandatory remediation timeframes for submitting preliminary assessment and site investigation reports, submitting the initial receptor evaluation report, initiating immediate environmental concern source control, and installing a light non-aqueous phase liquid (LNAPL) free product interim remedial measure. The Department proposes to amend all of the mandatory timeframes set forth in N.J.A.C. 7:26C-3.3(a) from one year to two years, beginning on either March 1, 2010 or on the date of a triggering event for the specific provision. Examples of triggering dates include the date remediation was commenced, immediate environmental concern condition was initially reported to the Department, or LNAPL was discovered. Both the Department and stakeholders have found that the currently codified mandatory timeframes do not take into account site-specific circumstances that may cause an unavoidable delay in achieving the timeframes. Additionally, extending these mandatory timeframes will serve as a bridge between the interim rules and the final rule to be adopted in

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2012 to allow for the Department to collect more data concerning the time it actually takes in different circumstances to achieve the remediation goals enumerated in the mandatory timeframe provisions of SRRA.

In addition, the Department proposes to amend N.J.A.C. 7:26C-3.3(a)1 to add a phrase that clarifies that it is pursuant to the Industrial Site Recovery Act (ISRA, N.J.S.A. 13:1K-6 et seq.) that a preliminary assessment and site investigation are required, and that it is pursuant to the Underground Storage of Hazardous Substances Act (UST Act, N.J.S.A. 58:10A-21 et seq.) that a site investigation, only is required.

The Department proposes to amend N.J.A.C. 7:26C-3.3(a)1i, recodified (a)3i, and recodified (a)4i, deleting the language differentiating the start date for the mandatory timeframe for cases where remediation was initiated prior to or on or after November 4, 2009. The Department has determined that all cases will have the same start date for the mandatory timeframes, regardless of when remediation is initiated.

The Department proposes to recodify from N.J.A.C. 7:26C-3.3(a)1 the phrase “and the initial receptor evaluation” to new N.J.A.C. 7:26C-3.3(a)2, and expanding new N.J.A.C. 7:26C-3.3(a)2 to require that the initial receptor evaluation report is to include only the information known at the time the report is submitted. The Department separated the mandatory timeframe for the initial receptor from the mandatory timeframes for the preliminary assessment and/or site investigation reports to emphasize that these are two distinct mandatory timeframes. Because of

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the addition of this new paragraph, the Department proposes to recodify N.J.A.C. 7:26C-3.3(a)2 and 3 as (a)3 and 4.

At recodified N.J.A.C. 7:26C-3.3(a)3, the Department proposes to delete the phrase “complete the delineation of the immediate environmental concern contaminant source” at the beginning of the paragraph. The Department is making this change to acknowledge that it is not always possible to fully delineate the source of contamination that has resulted in an area of immediate environmental concern within the two year timeframe. However, receptors must be addressed pursuant to the Technical Requirements at N.J.A.C. 7:26E-1.14; receptor control is mandated to occur within 60 days after the person responsible for conducting the remediation identifies the immediate environmental concern condition.

The Department proposes to amend recodified N.J.A.C. 7:26C-3.3(a)4 by adding the phrase “free product” to reflect that the mandatory timeframe for installation of an LNAPL recovery system applies to the presence of free product, not residual product. The person responsible for conducting the remediation is still required to address any residual product at the site, pursuant to N.J.A.C. 7:26E-6.1(d). In addition, the Department proposes to replace the phrase “recovery system” with the phrase “interim remedial measure” to clarify that the actions required at recodified N.J.A.C. 7:26C-3.3(a)4 are being taken as part of an interim remedial action to address the LNAPL free product. A recovery system may be required for the residual product in a subsequent remedial phase.

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N.J.A.C. 7:26C-9, Enforcement, establishes the procedures for the Department to issue administrative orders and to assess civil administrative penalties. N.J.A.C. 7:26C-9.5 establishes grace periods that apply to minor violations prior to the assessment of a civil administrative penalty. The Department proposes to amend the table of violations and penalties at N.J.A.C. 7:26C-9.5(b) as follows:

- Amend the base penalty for the violation of N.J.A.C. 7:26C-3.3(a)1, the requirement to submit a preliminary assessment and site investigation report, from \$8,000 to \$20,000, so that the penalty for violation of this mandatory timeframe both reflects the seriousness of this violation and is consistent with the penalty amounts associated with other similar penalties in the rule for violation of other mandatory timeframes noted in paragraphs (a)2 through 4;
- Add a violation for existing N.J.A.C. 7:26E-1.14(b)4. It should be noted that the table currently has a violation for N.J.A.C. 7:26E-1.14(b)4, but that based on the description of the violation, this violation is actually for existing N.J.A.C. 7:26E-1.14(b)5. As noted below, this error is being corrected as a recodification within the table. The violation for N.J.A.C. 7:26E-1.14(b)4 is classified as a non-minor violation with a base penalty of \$20,000; this classification and base penalty are identical to those for the other subsections in N.J.A.C. 7:26-1.14(b); and

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- Comport the description of the violation with the rule text, including updating citations to the rule text to reflect proposed recodifications within the various rules. This includes the violations for N.J.A.C. 7:26C-3.3(a)2, 3, and 4, and N.J.A.C. 7:26E-1.12(b)2, 1.14(b)5, and 1.14(d).

II. Proposed Amendments to the Technical Requirements for Site Remediation Rules

N.J.A.C. 7:26E-1, General Information, establishes the general requirements and information required for all phases of a remediation, and N.J.A.C. 7:26E-1.8 contains definitions. The Department proposes to amend the definition of “immediate environmental concern,” changing the vapor intrusion trigger to the rapid action level described in the Department’s Vapor Intrusion Guidance. The Department is making this change in response to stakeholder input and to comport the Department’s rules with the definition of “immediate environmental concern condition” in SRRA.

The Department proposes to define “rapid action level” as the phrase is defined in the Department’s Vapor Intrusion guidance.

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N.J.A.C. 7:26E-1.12 concerns control of ongoing sources and implementation of interim remedial measures. The Department proposes to amend N.J.A.C. 7:26E-1.12(b)2 by deleting the phrase “complete delineation of the free product.” The Department is making this change so that the actions of this regulatory timeframe mirror those of the matching statutory timeframe in the ARRCs rules proposed herein to be recodified as N.J.A.C. 7:26C-3.3(a)4. The Department also proposes to replace the phrase “recovery system” with the phrase “interim remedial measure,” an amendment that is identical to the amendment proposed in the ARRCs rules at recodified N.J.A.C. 7:26C-3.3(a)4. Additionally, the Department proposes to change the regulatory timeframe for completing certain tasks associated with the remediation of LNAPL from 270 days to one year, based on stakeholder input.

N.J.A.C. 7:26E-1.14 concerns immediate environmental concerns. The Department proposes to amend N.J.A.C. 7:26E-1.14(b)2 to include different regulatory timeframes for addressing immediate environmental concerns for vapor intrusion, as opposed to the regulatory timeframes for immediate environmental concerns for potable water and soils contaminated above acute concentrations. The Department proposes to amend N.J.A.C. 7:26E-1.14(b)2i and iii to better indicate the type of immediate environmental concern condition to which each subparagraph applies. Additionally, at N.J.A.C. 7:26E-1.14(b)2ii, the Department proposes to allow the person responsible for conducting the remediation 14 days to mitigate the infiltration of vapors into structures impacted by vapor intrusion. The Department recognizes that it is often difficult to gain access to a home or building in a short amount of time in order to implement the initial response actions required to mitigate vapor intrusion conditions (for example, sealing cracks in

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basements or floor slabs). The Department proposes to amend N.J.A.C. 7:26E-1.14(b)3 to allow the person responsible for conducting the remediation 14 days to submit certain information to the Department regarding the immediate environmental concern condition, rather than the current five days. The Department is making this change to comport with the change made in N.J.A.C. 7:26E-1.14(b)3.

The Department proposes to amend N.J.A.C. 7:26E-1.14(b)3iv, requiring the person responsible for conducting the remediation to submit all analytical results with full laboratory data deliverables for all immediate environmental concern conditions identified, not just potable water immediate environmental concern conditions. The Department believes that it is necessary for all such data to be submitted to ensure proper quality control and assurance of all immediate environmental concern conditions and to ensure that all decisions concerning immediate environmental concern conditions are based upon reliable, accurate data.

The Department proposes to amend N.J.A.C. 7:26E-1.14(b)4, extending the regulatory timeframe for the person responsible for conducting the remediation to submit the analytical results from indoor air sampling to the New Jersey Department of Health and Senior Services from five days to 14 days as a more reasonable timeframe for completing this task.

The Department proposes to amend N.J.A.C. 7:26E-1.14(b)5ii to state that a vapor intrusion immediate environmental concern condition exists if the concentration of a contaminant in indoor air exceeds a vapor intrusion rapid action level for a contaminant as listed in the

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Department's Vapor Intrusion Guidance , rather than the indoor air screening level listed in that same Guidance. Moreover, if a rapid action level for a particular contaminant is not included in the Vapor Intrusion Guidance, the person responsible for conducting the remediation will be required to contact the Department to develop a site-specific rapid action level. The Department is making these changes to reflect the proposed changes in the definition of immediate environmental concern. Lastly, it is required that the person responsible for conducting the remediation install a vapor mitigation system at each property where the indoor air sample concentrations exceed a rapid action level.

The Department proposes to amend the regulatory timeframe in N.J.A.C. 7:26E-1.14(d) for completing certain tasks associated with the mitigation of the immediate environmental concern condition from 270 days to one year. The Department determined that it was reasonable to extend the regulatory timeframe by three months to allow the person responsible for conducting the remediation additional time to complete the required tasks before the Department might initiate an enforcement action. The Department also proposes to add the phrase "either March 1, 2010 or" in the first line of the subsection to make this regulatory timeframe mirror those of the matching mandatory timeframe in the ARRCs rules at N.J.A.C. 7:26C-3.3(a)2. The Department also proposes to delete the phrase "complete the delineation of the IEC contaminant source" from N.J.A.C. 7:26E-1.14(d) so that this provision is consistent with the proposed amendments in N.J.A.C. 7:26C-3.3(a).

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N.J.A.C. 7:26E-1.15 concerns general and reporting requirements for the receptor evaluation. The Department proposes to amend N.J.A.C. 7:26E-1.15(b), which is an exemption from having to submit a receptor evaluation. Currently, if the person responsible for conducting the remediation completes an unrestricted remedial action and a final remediation document is issued by the Department within 270 days after initiating the remediation, the person responsible for conducting the remediation does not have to submit a receptor evaluation. The Department proposes to amend this subsection to change the regulatory timeframe from 270 days to one year, to change the term “unrestricted remedial action” to “unrestricted use remedial action,” and to add the concept that the final remediation document may be issued either by the Department or may be filed with the Department by an LSRP.

The Department proposes to amend the regulatory timeframe cited in N.J.A.C. 7:26E-1.15(c), from “November 26, 2010, or with the submittal of a site investigation report” to “March 1, 2011 or one year after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).” The Department is making this change to make the regulatory timeframe consistent with the mandatory timeframe for submitting an initial receptor evaluation.

The Department proposes to further amend N.J.A.C. 7:26E-1.15(c) to include the phrase “which shall contain the information that is known by the person responsible for conducting the remediation at the time the report is submitted.” The Department is making this change to acknowledge that not all information may be known or available at this stage of the remediation.

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N.J.A.C. 7:26E-1.18 concerns the requirements for the receptor evaluation for vapor intrusion. The Department proposes to amend N.J.A.C. 7:26E-1.18(c)2vi(1) and (2) by changing the reference to the vapor intrusion indoor air screening levels to the vapor intrusion rapid action levels to reflect the proposed amendments in the definition of immediate environmental concern. Specifically, the Department proposes to require at N.J.A.C. 7:26E-1.18(c)2vi(1) that an additional determination as to whether indoor air contaminants are also greater than the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii, and if so, then the requirement to determine whether the contaminants are likely to be associated with an on-site discharge or may be attributed to background sources is triggered. Similarly, at N.J.A.C. 7:26E-1.18(c)2vi(2), the Department proposes to substitute for indoor air screening levels the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii.

The Department proposes to amend N.J.A.C. 7:26E-1.18(f) by adding new paragraph (f)1. This new paragraph sets forth the requirements for how to proceed with the receptor evaluation when the concentration of contaminants in indoor air is greater than the indoor air screening levels but below the rapid action levels. The purpose of the initial 14-day regulatory timeframe is to ensure that the Department is made aware of the exceedances of the indoor air screening level, and that subsequent information will be submitted to the Department regarding the need to implement an engineered system response. The purpose of the initial 60-day regulatory timeframe is to allow for the determination of whether an engineered system response is necessary. For example, at a residential location, simply sealing cracks in the basement or floor slab may be sufficient to mitigate the vapor intrusion impacts, without the need for a full

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engineered system response. This regulatory timeframe will allow the person responsible for conducting the remediation to perform these actions and evaluate whether the actions mitigated the impacts and to determine whether additional mitigation is necessary to protect human health. The remaining regulatory timeframes are identical to those for the vapor intrusion immediate environmental concern. The Department believes that these regulatory timeframes are reasonable for performing these activities. The Department also proposes to recodify the latter portion of N.J.A.C. 7:26E-1.18(f) at proposed new paragraph (f)2.

Subchapter 3 concerns preliminary assessment and site investigation requirements. The Department proposes to amend N.J.A.C. 7:26E-3.2(a) to add a phrase that clarifies that it is pursuant to ISRA (N.J.S.A. 13:1K-6 et seq.) that a preliminary assessment is required. This is similar to the change noted above concerning the amendment to N.J.A.C. 7:26C-3.3(a)1.

The Department proposes to amend N.J.A.C. 7:26E-3.3(e) to add a phrase that clarifies that it is pursuant to ISRA (N.J.S.A. 13:1K-6 et seq.) and the UST Act (N.J.S.A. 58:10A-21 et seq.) that a site investigation is required. This is similar to the change noted above concerning the amendment to N.J.A.C. 7:26C-3.3(a)1.

The Department proposes to amend N.J.A.C. 7:26E-3.3(e)1 and 2 to change the regulatory timeframes for submitting a site investigation from either November 26, 2010 or 270 days after initiation of remediation to either March 1, 2011 or one year after initiation of remediation, to

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make this regulatory timeframe consistent with the proposed changes to all mandatory timeframes and the associated regulatory timeframes.

III. Form Names

As part of the rulemaking effort to readopt the interim rules adopted by the Department on November 4, 2009 (see 41 N.J.R. 4467(a), December 7, 2009) that the Department anticipates filing in the near term, the Department is planning to propose a global amendment to delete the specific names of all forms from N.J.A.C. 7:14B, 7:26C and 7:26E. To that extent, the Department is proposing to similarly amend the form names in both the ARRCs rules and the Technical Requirements rules included in the rule text affected by the other amendments proposed herein. The proposed amendment will delete specific form names and instead direct the person responsible for conducting the remediation to the Department's website address www.nj.gov/dep/srp/srra/forms. The Department recognizes that the names of the various forms may change over time, forms may become obsolete, and new forms may be required. The Department does not want to have to amend rules each time a form name changes. Directing the person responsible for conducting the remediation to the website allows the Department greater flexibility to make such changes in the future. To ensure that the person responsible for conducting the remediation chooses the correct form, the Department had included on its webpage a table that lists each form by using a name that indicates the subject of the form and a cross reference to the citation in the New Jersey Administrative Code to which the form pertains.

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Also included on this table are the version number of the form and the date that the form was last updated, and a link to the downloadable version of that form. This webpage is updated appropriately as form names change, and forms are added or removed, and alerts concerning form updates appear at the top of the page.

Social Impact

It is critical to the health of our citizens and the environment, as well as to the health of our communities, to remediate contaminated sites in New Jersey as quickly as possible while maintaining the strict clean up standards the Department has always applied. The proposed amendments help accomplish this goal and thus will have a positive social impact on the citizens of New Jersey. The Site Remediation Reform Act established an affirmative obligation for certain persons to remediate contaminated sites, and granted the Department the authority to establish mandatory timeframes concerning when those persons are required to complete certain aspects of the remediation. The proposed amendments will have a positive social impact in that contaminated sites will be remediated in a timely manner but will more accurately reflect the actual time that it takes to complete these tasks. The amendments concerning immediate environmental concern vapor intrusion conditions will have a positive social impact because the person responsible for conducting the remediation will be better able to remediate worst-case contaminated sites first (that is, those with indoor air sample concentrations that exceed the vapor intrusion the rapid action level), rather than requiring that all vapor intrusion cases be

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treated the same. There is also positive social impact in that vapor intrusion conditions in which the vapor intrusion indoor air screening levels are exceeded will also require remediation. This will further New Jersey's safe and healthy communities goal by ensuring that all New Jersey communities are free from unacceptable human health and ecological risks due to direct exposure from hazardous substances that have been discharged at contaminated sites.

Economic Impact

The direct economic impact of the proposed amendments on the persons responsible for conducting the remediation of contaminated sites in New Jersey is expected to be positive, as the proposed amendments represent more realistic timeframes for completing the various tasks, and therefore will allow those persons to better allocate financial resources to remediate contaminated sites. Additionally, 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, the overall remediation will be less expensive. Additionally, the sooner such sites are remediated, the sooner they can be put to better use and often may generate more taxes for local and State government.

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Environmental Impact

Although the proposed amendments extend certain timeframes for remediation, they will have a positive environmental impact by allowing persons responsible for conducting the remediation to better allocate resources to remediate contaminated sites, and allow them to take a more studied approach to the remediation, and therefore implement a more effective remedial action. This means less human and ecological exposure to the contamination, thus less negative consequences to humans and our precious 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 each rule that is being amended by these proposed amendments:

Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C.

7:26C

The proposed amendments to the mandatory timeframes promulgated in the ARRCs rules 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

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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. 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.

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

The Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, were promulgated under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and these State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. In addition, the EPA has delegated its Underground Storage Tank program to New Jersey pursuant to 40 CFR 280. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department has compared these proposed amendments to the Federal rules and associated guidance documents issued pursuant to

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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 establishment of regulatory timeframes for the completion of certain remedial work is more stringent than equivalent Federal programs; the Federal programs do not establish remediation timeframes at all. Rather, the Federal remediation programs, allow the remediation of contaminated sites to be conducted on site specific schedules. Prior to the adoption of remediation timeframes, the Department also permitted remediation to proceed on site specific schedules, but has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. Accordingly, the Department established regulatory timeframes for the completion of remediation tasks that lead up to the mandatory remediation milestone so that the person responsible for conducting the remediation completes the statutorily mandated remediation milestones within the mandatory time frames set forth in the ARRCs rules. This ensures that site cleanups are not unnecessarily prolonged, and ensures that remediating parties are not unnecessarily pushed into the direct Department oversight program. 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. Additionally, if the remediation of contaminated sites is completed in a timelier manner, such sites can be put to better use and often can result in increased ratables for local and State government.

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Jobs Impact

The proposed amendments should have a positive impact on jobs in New Jersey. The remediation of sites requires the hiring of people skilled in fields such as environmental consulting and technology, as well as laboratory analysis. Additionally, by remediating sites in a timelier manner, the sooner such sites can be put to better use and potentially create jobs in New Jersey.

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 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 ability to harm human health and the environment the same as a discharge at any other type of site, and thus must be remediated in accordance with all environmental rules and statutes. Therefore, the proposed amendments may have an impact on the agricultural community in New Jersey. To the extent that a discharge occurs on a farm, the extension of the mandatory and regulatory remediation timeframes will allow the farmer additional time to remediate that discharge. To the extent that the discharge impacts indoor air quality, the

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amendments concerning when and at what level indoor air quality must be mitigated comports the requirement to respond with the risks associated with exposure to hazardous vapors.

Regulatory Flexibility Analysis

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

The need to remediate a site is based on the contamination present, regardless of the type of business involved. A discharge of a hazardous substance endangers public health, safety and welfare, and cannot be correlated to the size of the business. Therefore, there are no exemptions from the proposed amendments for small businesses.

The various compliance requirements and their associated costs are discussed in the Summary, Economic Impact and Federal Standards Analysis above. In order to comply with the requirements of the rules to which these amendments are proposed, it is likely that small businesses will need to engage the services of consultants and/or professional engineers. The

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proposed amendments that extend the remediation timeframes will likely have a positive impact on small businesses because the small businesses will not have to pay a premium to their consultants or engineers to ensure that the current timeframes are met.

The proposed amendments concerning vapor intrusion thresholds will also likely have a positive impact on small businesses. Stakeholders, including small businesses, expressed concern that the triggers for qualifying an area or condition at a site as an immediate environmental concern due to the existence of hazardous vapors in indoor air were too conservative and not consistent with the definition of immediate environmental concern in SRRA. In response to these concerns, the proposed amendments change the trigger for an immediate environmental concern in indoor air from an exceedance of the Indoor Screening Level to an exceedance of the Rapid Action Level contained in or developed consistent with the Department's Vapor Intrusion Guidance are less stringent. If indoor air contamination is detected at levels above the Indoor Screening Level but below the Rapid Action Level, remediation will still be required, but the small business will have an additional period of time during which to conduct this remediation.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which 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

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State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' impact on smart growth and the implementation of the State Plan. The Governor's order on smart growth calls for conservation of New Jersey's natural resources, revitalization of its urban centers, and protection of the quality of the State's environment, while promoting beneficial economic growth, development and renewal.

The proposed amendments support the principles of smart growth by promoting efficient and timely cleanups of contaminated sites by replacing Department oversight of remediation with the licensing of private sector remediation services. The proposed extensions of various timeframes more realistically reflect the time that it takes to achieve the affected remediation milestones while ensuring that remediations are conducted in a timely manner, thereby ensuring that sites are quickly returned to beneficial use.

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. Because these amendments concern the remediation of sites contaminated by a discharge of a hazardous substance, the Department has determined that the amendments will impose an insignificant impact because there is an extreme unlikelihood that the amendments will evoke a change in the average costs associated with housing.

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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 types and number of housing units to which the proposed rule will apply; the increase or decrease in the availability of affordable housing which will be affected by the regulation; and whether the proposed rule will affect in any manner new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. Because these rules concern the remediation of sites contaminated by a discharge of a hazardous substance, the Department has determined that the proposed amendments will impose an insignificant impact because there is an extreme unlikelihood that the amendments will evoke a change in the housing production, including new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

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CHAPTER 26C

ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.2 Regulatory timeframes

(a) (No change.)

(b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:

1. Complete a [Remediation Timeframe Extension Request] form, [available from the Department] **found on the Department's website** at www.nj.gov/dep/srp/srra/forms, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:

i. - iv. (No change.)

2. (No change.)

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

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation 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, N.J.S.A. 58:10A-21 et seq., [Submit] submit the preliminary assessment[,] and/or site investigation report, as applicable, [and the initial receptor evaluation] within [one] two years from the later of the following dates:

i. March 1, 2010 [if remediation was initiated prior to November 4, 2009]; or

ii. (No change.)

2. Submit the initial receptor evaluation report containing the information required by N.J.A.C. 7:26E-1.16 through 1.19 known at the time the report is submitted within two years from the later of the following dates:

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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) occurs;**

[2.]**3.** [Complete the delineation of the immediate environmental concern contaminant source, initiate] **Initiate** immediate environmental concern contaminant source control and submit [to the Department] 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, no later than [one] **two** years from the later of the following dates:

i. March 1, 2010 [if remediation was initiated prior to November 4, 2009]; or

ii. (No change.)

[3.] **4.** Complete the installation of a light non-aqueous phase liquid (LNAPL) [recovery system] **free product interim remedial measure**, initiate operational monitoring and submit an [interim remedial action] **LNAPL Free Product Interim Remedial Measures** report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), [no later than one year] **within two years** from **the later of the following dates**:

i. March 1, 2010 [if remediation was initiated prior to November 4, 2009]; or

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ii. (No change.)

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

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

(a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:

1. The person shall provide a written rationale for the request in a completed [Remediation Timeframe Extension Request Form available from the Department] **form found on the Department's website** at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:

i.- iv. (No change.)

2. (No change.)

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

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SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

(a) (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.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period</u> <u>Days</u>	<u>Base Penalty</u>
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Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C

...

3 Remediation Timeframes and Extension Requests

...

Failure to comply with the mandatory timeframe for submittal of a preliminary assessment and site investigation report.	7:26C-3.3(a)1	NM	[\$8,000] \$20,000
Failure to comply with the mandatory timeframe for submittal of an initial receptor evaluation report.	7:26C-3.3(a)[1]2	NM	\$20,000
Failure to comply with the mandatory timeframe for [delineation of the immediate environmental concern contaminant source,] initiation of immediate environmental concern contaminant source control and submittal of Immediate Environmental Concern Contaminant Source Control Report.	7:26C-3.3(a)[2]3	NM	\$20,000

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<p>Failure to comply with the mandatory timeframe for [delineation of light non- aqueous phase liquid (LNAPL) free product,] completion of light non- aqueous phase liquid (LNAPL) recovery system installation, initiation of LNAPL recovery system monitoring, and submittal of interim remedial action report.</p>	<p>7:26C-3.3(a)[3]4</p>	<p>NM</p>	<p>\$20,000</p>
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...

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

1 General Information

...

<p>Failure to complete [LNAPL delineation,] installation of [recovery system] LNAPL interim remedial measure, initiate operational monitoring and submit report within the required timeframe.</p>	<p>7:26E-1.12(b)2</p>	<p>NM</p>	<p>\$20,000</p>
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...

<p>Failure to submit indoor air data to DHSS within the required timeframe.</p>	<p>7:26E-1.14(b)4</p>	<p>NM</p>	<p>\$20,000</p>
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Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.14(b)[4]5	NM	\$20,000
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...

Failure to initiate control of the IEC contaminant source using the Department's guidance[, complete the delineation of the IEC contaminant source,] and submit an IEC contaminant source control report with the required form within the required timeframe.	7:26E-1.14(d)	NM	\$20,000
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CHAPTER 26E

TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.8 Definitions

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

...

“Immediate environmental concern” means a condition at a contaminated site where any of the following types of contamination or any of the following conditions related to the discharges at the site are found at the site:

1. (No change).

2. Contamination in indoor air at a level greater than any vapor intrusion [indoor air screening] **rapid action** level [described] **included in or developed consistent with** the Department's Vapor Intrusion Guidance;

3. - 5. (No change.)

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...

“Rapid action level” means a level for indoor air defined in the Department’s Vapor Intrusion Guidance that triggers an immediate environmental concern condition.

...

7:26E-1.12 Control of ongoing sources and implementation of interim remedial measures

(a) (No change.)

(b) The person responsible for conducting the remediation shall follow the Department's Light Non-aqueous Phase Liquid (LNAPL) Free Product Interim Remedial Measures guidance concerning free product removal as follows:

1. Within 60 days after either March 1, 2010 or LNAPL is identified, whichever is later, initiate the recovery of free product and notify the Department on a form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**; and

2. Within [270 days] **one year** after either March 1, 2010 or LNAPL is identified, whichever is later, [complete delineation of the free product; and] complete the installation of [a] **an LNAPL [recovery system] interim remedial measure**, initiate operational

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monitoring, and submit [an] **a** Free Product Interim Remedial Measures Report with a form, **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, to the Department that documents the actions taken pursuant to this subsection.

7:26E-1.14 Immediate environmental concern requirements

(a) (No change.)

(b) The person responsible for conducting the remediation that identifies an IEC condition shall:

1. (No change.)

2. [Within five days after identifying the IEC condition, mitigate] **Mitigate** the IEC impacts as applicable as follows:

i. [Provide] **For potable water immediate environmental concerns, within five days after identifying the IEC condition, provide** bottled water to the residents of each property where contaminant concentrations exceed any remediation standard for Class II ground water;

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ii. [Mitigate] **For vapor intrusion immediate environmental concerns, within 14 days after identifying the IEC condition, mitigate** the infiltration of vapors into structures impacted by vapor intrusion; **and**

iii. [Restrict] **For soils contaminated above acute levels, within five days after identifying the IEC condition, restrict** access to soil contaminated above acute levels;

3. Within [five] **14** days after identifying the IEC condition, submit the following to the Department:

i. A completed [IEC Response Action] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**;

ii. A completed IEC Information Spreadsheet [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**;

iii. (No change.)

iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)16, with [a Potable Water Data] **an appropriate form for the type of IEC condition** [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**;

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4. Within [five] **14** days after identifying the IEC condition submit the analytical results from all indoor air sampling to the New Jersey Department of Health and Senior Services at the following address:

NJDHSS
Indoor Environments Program
135 E. State Street
PO Box 369
4th Floor
Trenton, NJ 08625-0369; and

5. Within 60 days after identifying the IEC condition, implement the following IEC engineered system response actions:

- i. (No change.)
- ii. [Install a vapor mitigation system at each property where contaminant concentrations exceed any applicable vapor intrusion indoor air screening level that is available in the Department's Vapor Intrusion Guidance] **When contaminant concentrations in indoor air are detected above the indoor air screening level, determine whether the contaminant concentrations also exceed the rapid action**

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levels listed in the Department's Vapor Intrusion Guidance, or, if no rapid action level exists for a contaminant in the Department's Vapor Intrusion Guidance, contact the Department to have a site-specific rapid action level determined for the contaminant, and if the rapid action level is exceeded install a vapor mitigation system at each property where indoor air levels exceed the rapid action level; and

iii. (No change.)

(c) Within 120 days after identifying the IEC condition, the person responsible for conducting the remediation shall submit an IEC engineered system response action report with an updated [IEC Response Action] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, that includes the following:

1. - 5. (No change.)

(d) Within [270 days] **one year** after **either March 1, 2010 or** identifying the IEC condition, the person responsible for conducting the remediation shall initiate control of the IEC contaminant source using the Department's IEC Guidance[, complete the delineation of the IEC contaminant source,] and submit an IEC contaminant source control report, with an updated [IEC Response Action] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms** that includes descriptions of each of the following:

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1. - 3. (No change.)

7:26E-1.15 Receptor evaluation--general and reporting requirements

(a) (No change.)

(b) The person responsible for conducting the remediation who completes an unrestricted **use** remedial action is not required to conduct a receptor evaluation when a final remediation document is **either** issued **by the Department** or is filed with the Department **by a licensed site remediation professional** within [270 days] **one year** after initiating the remediation.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation, on a [Receptor Evaluation] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**, by [November 26, 2010, or with the submittal of a site investigation report] **March 1, 2011 or one year after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b)**, whichever is later, **which shall contain the information that is known by the person responsible for conducting the remediation at the time the report is submitted.**

(d) The person responsible for conducting the remediation shall submit an updated receptor evaluation report on a [Receptor Evaluation] form [available from the Department] **found on the**

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Department's website at www.nj.gov/dep/srp/srra/forms with the following documents, as applicable:

1. - 2. (No change.)

(e) (No change.)

7:26E-1.17 Receptor evaluation - ground water

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

(c) If no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)16 with the [Full Laboratory Data Deliverables] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms**; and

2. (No change.)

(d) (No change.)

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7:26E-1.18 Receptor evaluation - vapor intrusion

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

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. (No change.)

2. Implement the Vapor Intrusion Guidance, including, but not limited to:

i. - v. (No change.)

vi. Evaluate the results of indoor air sampling as follows:

(1) If the results are greater than the Department's vapor intrusion indoor air screening level, the person shall determine whether **the** contaminants are **also greater than the rapid action levels as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii, and if so determine whether the contaminants are** likely to be associated with a discharge at the site or may be attributed to background sources;

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(2) If the results are greater [then] **than** the vapor intrusion [indoor air screening] **rapid action level as determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii**, the person shall immediately notify the Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14;

(3) If the results are greater [then] **than** the Department's Health Department Notification Levels for indoor air the person shall immediately notify:

(A) - (B) (No change.)

(4) (No change.)

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

(f) If the person responsible for conducting the remediation determines that no IEC condition exists, but the vapor intrusion pathway is still of concern, the person shall:

1. If the results are between the indoor air screening level and the rapid action level determined pursuant to N.J.A.C. 7:26E-1.14(b)5ii:

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i. Within 14 days of receipt of data showing exceedances of the indoor air screening levels, notify the Department of the exceedances on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

ii. Within 60 days of receipt of data showing exceedances of the indoor air screening levels, submit a plan to the Department to mitigate the exposure;

iii. Within 120 days of receipt of data showing exceedances of the indoor air screening levels, implement the plan; and

iv. Within 180 days of receipt of data showing exceedances of the indoor air screening levels, submit a mitigation response action report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

(1) A description of all mitigation actions that have been completed, including the date that each action that was conducted;

(2) A summary of all analytical data related to the vapor intrusion investigation and mitigation response; and

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(3) All maps and figures related to the vapor intrusion investigation and mitigation response; or

2. If the results are below the indoor air screening levels, or are above the indoor air screening levels but below the rapid action levels and a determination has been made that a mitigation system is not necessary, complete a vapor intrusion investigation as part of the site investigation or remedial investigation, as applicable.

(g) - (h) (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation **who is required to conduct a preliminary assessment pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.**, shall prepare a preliminary assessment report which:

1. - 6. (No change.)

(b) (No change.)

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7:26E-3.3 Site investigation

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

(e) The person responsible for conducting the remediation **who is required to conduct a site investigation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or the New Jersey Underground Storage of Hazardous Substances, N.J.S.A. 58:10A-21 et seq.,** shall complete the site investigation and submit a site investigation report with a [Preliminary Assessment/Site Investigation] form [available from the Department] **found on the Department's website at www.nj.gov/dep/srp/srra/forms** by the later of the following:

1. By [November 26, 2010] **March 1, 2011**; or
2. [Two hundred seventy days] **One year** after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).