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ENVIRONMENTAL PROTECTION

NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

Regulations of the New Jersey Site Remediation Professional Licensing Board

Proposed Amendments: N.J.A.C. 7:26I-1.3, 2.3, 2.4, 2.5, 2.11, 2.12, 2.13, 2.14, 2.15, 3.3, 3.4, 3.5, 4.3, 4.4, 4.5, 5.1, 5.2, 5.4, 5.5, 6.3, 6.5, 6.7, 6.8, 6.9, 6.10, 6.15, 6.16, 6.18, 6.21, 6.24, 6.27, 7.1, 7.3, 7.5, 7.7, 7.8, 8.3, 9.1, and 9.2

Authorized By: New Jersey Site Remediation Professional Licensing Board, Paul Stofa, Chairperson.

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

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

DEP Docket Number: 06-22-09.

Proposal Number: PRN 2022-138.

A **public hearing** concerning this notice of proposal will be held on Tuesday, December 20, 2022, at 4:00 P.M.

The hearing will be conducted virtually through the Department of Environmental Protection's (Department) video conferencing software (Microsoft Teams). A link to the virtual public hearing will be provided on the website of the New Jersey Site Remediation Professional Licensing Board (Board) (www.nj.gov/l srpboard). The hearing will remain open until all testimony has been heard.

If you are interested in providing oral testimony at the virtual public hearing, please email the New Jersey Site Remediation Professional Licensing Board (Board) at srplboardcontact@dep.nj.gov no later than 12:00 P.M. on Friday, December 16, 2022, with your

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contact information (name, organization, telephone number, and email address). You must provide a valid email address so the New Jersey Site Remediation Professional Licensing Board can send you an email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer that can connect to Microsoft Teams. Please note that the New Jersey Site Remediation Professional Licensing Board will take oral testimony at the hearing by alphabetical order of the testifying person's last name, and that this hearing will be recorded. Written comments will be accepted through January 6, 2023.

The New Jersey Site Remediation Professional Licensing Board encourages electronic submittal of comments to srplboardrulecomments@dep.nj.gov. In the alternative, comments may be submitted on paper to:

Dana Haymes, Esq.
Regulatory Officer
New Jersey Site Remediation Professional Licensing Board
c/o Office of Enforcement Policy
PO Box 420, Mail Code 401-06
401 East State Street, 6th Floor – East Wing
Trenton, NJ 08625-0420

This notice of proposal may be viewed or downloaded from the Department's website at www.nj.gov/dep/rules and the Board's website at www.nj.gov/l srpboard.

The New Jersey Site Remediation Professional Licensing Board's proposal follows.

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Summary

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

Overview

The Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., established the Board to oversee the licensing and performance of site remediation professionals. The Board promulgated the regulations of the New Jersey Site Remediation Professional Licensing Board (Board Rules) to govern the licensing and conduct of Licensed Site Remediation Professionals (LSRPs).

Amendments to the SRRA were adopted on August 23, 2019. In light of the amendments to the SRRA, the Board reviewed the existing Board Rules at N.J.A.C. 7:26I for consistency with the amendments. As a result of its review, the Board is proposing to amend the existing Board Rules to be consistent with the amendments to the SRRA. In addition, as the Board Rules were promulgated in January 2016, the Board has identified certain errors and inconsistencies in the existing Board Rules, as well as certain provisions that are not completely clear in intention or meaning, and certain references to Department procedures that need to be modified. The Board is also proposing amendments to correct the identified errors and inconsistencies, clarify the identified provisions, and modify the identified procedures.

Stakeholder Process

In developing the proposed amendments, the Board placed high value on the input from stakeholders and members of the public, taking the following measures to provide forums for interested persons to meet with the Board.

- (1) Public Forum – The Board held a public forum on September 23, 2019. The purpose of this forum was to allow LSRPs and other interested persons the op-

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portunity to provide their views of the Board Rules and suggest amendments that they see as necessary or appropriate to improve the Board Rules. LSRPs and members of the public were invited to the public forum by a listserv sent on September 9, 2019, by announcements on the Board's website, and by direct emails. The list of recipients for the direct emails, including representatives of environmental groups, environmental justice advocates, and groups representing the regulated community, was developed in conjunction with the Department's Community Affairs Office.

(2) Monthly Board Meetings – Regular opportunities for input from stakeholders and members of the public are afforded at Board meetings conducted pursuant to the Senator Byron M. Baer Open Public Meetings Act at N.J.S.A. 10:4-6. Pursuant to the Act, all meetings are noticed in advance and open to the public. The Board has met at least once a month since November 15, 2010. The Board provides opportunity for public comment at each meeting and members of the public are encouraged to provide feedback and input on all of the Board's operations. Public comment at the Board's meetings has included comments on the proposed amendments to the Board Rules. Each proposed amendment in this notice of proposal has been explained conceptually by the Rules Committee Chairperson during the open session of Board meetings, and the public attendees at the meetings have been invited to comment both at the meetings and through written comment to the Board. Minutes of the meetings are available at <https://www.nj.gov/lrspboard/meetings/>.

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(3) Meeting with Key Stakeholder – On April 9, 2020, a stakeholder outreach meeting was held virtually with Rutgers New Jersey Agricultural Experiment Station – Office of Continuing Professional Education. The purpose of this meeting was to allow one of the main providers of continuing education for LSRPs to make suggestions for improvements to the process of applying for approval of continuing education credit for continuing education programs.

(4) Meeting with Key Stakeholder – On July 23, 2020, a stakeholder outreach meeting was held virtually with the Licensed Site Remediation Professional Association (LSRPA). The LSRPA is a non-profit professional membership organization established to provide information, education, and technical resources to LSRPs, other professionals involved in environmental remediation in the State of New Jersey, and students pursuing an education in a discipline related to environmental remediation. This meeting provided an opportunity for the membership organization of the primary group of stakeholders, LSRPs, to raise their collective concerns and provide their insights on amendments to the Board Rules.

The Board has considered the suggestions and ideas presented at these forums throughout the process of preparing the proposed amendments.

The notice of proposal Summary below discusses the proposed amended rule text. In addition to the proposed rule changes discussed below, the Board proposes the following general amendments throughout existing N.J.A.C. 7:26I:

1. Adding “guidance,” where necessary, to reflect the Board’s authority to enforce the obligation of LSRPs to apply available and appropriate guidance;

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2. Removing “technical” before “guidance” wherever it occurs, to clarify that the LSRP must apply all available and appropriate guidance, whether technical, administrative, or some other category of guidance;

3. Adding “independent professional” before “judgment” to provide consistent use of the term “independent professional judgment”;

4. Changing the method for submitting notification of LSRP retention or dismissal to the Department from the use of forms available on the Department's website to “through the Department portal” to reflect the Department’s current practice;

5. Updating the name and mailing address of the Board to the current name and address; and

6. Typographic, grammatical, and punctuation amendments to correct errors and clarify existing rule text.

N.J.A.C. 7:26I-1 General Provisions

N.J.A.C. 7:26I-1 sets forth the general provisions of the Board Rules including the purpose and scope of the chapter, definitions, liberal construction, and severability.

The Board proposes to amend existing N.J.A.C. 7:26I-1.3 by revising the definition of “alternative verifiable learning format” to conform with current Board policy on the format of continuing education, which narrows the definition of “alternative verifiable learning format.” The proposed amendments broaden the definition of live format continuing education programs to include programs that are viewed simultaneously with their presentation from a remote location. The Board also proposes defining the term “retained” to conform with amendments to the SRRA, which added the definition of this term.

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N.J.A.C. 7:26I-2 Licensure

N.J.A.C. 7:26I-2 establishes the licensing program for site remediation professionals. In order to obtain an LSRP license, an individual must submit an application that demonstrates that he or she meets the eligibility requirements set forth in this subchapter. The Board will review and decide whether the applicant meets the eligibility requirements based on the application submitted pursuant to this subchapter. Any applicant who the Board determines has met the eligibility requirements may sit for the LSRP examination, which is administered by the Board. A passing score on the LSRP examination is required for the applicant to be issued a license. A license is issued for a term of three years and must be renewed by the LSRP every three years.

The Board proposes to amend existing N.J.A.C. 7:26I-2, as follows:

1. Change the heading at N.J.A.C. 7:26I-2.3 to “License required to perform remediation” to more accurately reflect the contents of this section;
2. Add proposed new N.J.A.C. 7:26I-2.3(b) to conform with the amendments to the SRRA and clarify that a person who is not an LSRP shall not perform remediation;
3. Add proposed new N.J.A.C. 7:26I-2.3(c) to conform with amendments to the SRRA and clarify that an LSRP shall not facilitate a non-LSRP remediating a site, unless an LSRP is overseeing the non-LSRP, and that an LSRP shall not remediate a site unless retained as the LSRP or working with a retained LSRP;
4. Amend N.J.A.C. 7:26I-2.4(a) to conform with amendments to the SRRA at N.J.S.A. 58:10C-7.d, which clarify the qualifications for an LSRP license and disqualify a person from eligibility for licensure if they have been convicted of or plead guilty to a crime that would qualify the person for registration pursuant to section 2 at P.L. 1994, c. 133 (N.J.S.A. 2C:7-2) or any other

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crime involving moral turpitude, or have had their professional license or professional certification revoked or surrendered in response to a disciplinary investigation in the previous 10 years. “Immediately” is changed to “within the five years” to also conform with amendments to the SRRA at N.J.S.A. 58:10C-7.d. Additionally, the work “administrative” is added to “technical requirements for site remediation” to accurately describe the scope of the Board-approved course and the words “three years” are changed to “36 months” and “date of” is added to “submission of the application” to provide more precise directions;

(e) Amend N.J.A.C. 7:26I-2.5(a) to correct directions for submission of an application for the LSRP license;

(f) Amend N.J.A.C. 7:26I-2.11(b) to conform with amendments to the SRRA at N.J.S.A. 58:10C-7.d, which clarify the qualifications for an LSRP license and disqualify a person from eligibility for licensure if they have been convicted of or plead guilty to a crime that would qualify the person for registration pursuant to section 2 at P.L. 1994, c. 133 (N.J.S.A. 2C:7-2) or any other crime involving moral turpitude, or have had their professional license or professional certification revoked or surrendered in response to a disciplinary investigation in the previous 10 years;

(g) Add proposed new N.J.A.C. 7:26I-2.11(i)2 to add directions for submission of an application for LSRP license renewal;

(h) Delete N.J.A.C. 7:26I-2.11(j) to remove the statement that “a pending hearing on the denial of a license renewal shall not extend the original expiration date of the license,” which is not in compliance with N.J.S.A. 52:14B-1 et seq.;

(i) Amend N.J.A.C. 7:26I-2.12(a) to remove the statement that an LSRP’s license shall expire “ninety days after the LSRP’s receipt of the Board’s annual license fee invoice, if the LSRP fails to

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pay the annual license fee within that 90-day period,” which is not in compliance with N.J.S.A. 52:14B-1 et seq.;

(j) Add proposed new N.J.A.C. 7:26I-2.12(b) to provide an option for an LSRP to surrender his or her license prior to the expiration date;

(k) Amend recodified N.J.A.C. 7:26I-2.12(d)2 to clarify the requirements for an LSRP to maintain and preserve data, documents, records, and information when a license is expired;

(l) Amend N.J.A.C. 7:26I-2.13(f)3 to clarify the requirements for an LSRP to maintain and preserve data, documents, records, and information when a license is suspended;

(m) Amend N.J.A.C. 7:26I-2.14(f)3 to clarify the requirements for an LSRP to maintain and preserve data, documents, records, and information when a license is revoked; and

(n) Amend N.J.A.C. 7:26I-2.15(a)6 to clarify the requirements for an LSRP to maintain and preserve data, documents, records, and information when a license is inactivated.

N.J.A.C. 7:26I-3 Fees

The SRRA, at N.J.S.A. 58:10C-5.g, empowers the Board to establish and collect fees for examination, licenses, renewals, or any other services required for the licensing of site remediation professionals. N.J.A.C. 7:26I-3 establishes fees to support the Board’s activities to administer services required for the licensing and oversight of site remediation professionals. All fees are calculated based on the Board’s average costs to perform the tasks associated with the fee (for example, the Board’s average costs to conduct the review of licensure applications).

The Board proposes to delete existing N.J.A.C. 7:26I-3.3(a)2, 3.4(a)2, and 3.5(b) to remove references to the fee amounts beginning in calendar year 2015. The Board proposes to delete existing N.J.A.C. 7:26I-3.5(f) to remove the statement that “an LSRP’s license shall immediately

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expire 90 days after the LSRP's receipt of the Board's annual license fee invoice if the LSRP fails to pay the annual license fee within that 90-day period," which is not in compliance with N.J.S.A. 52:14B-1 et seq.

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

N.J.A.C. 7:26I-4 establishes the continuing education requirements each LSRP must meet in order to ensure that he or she is informed of advances in scientific and technical aspects of site remediation, is current with State rules, and understands his or her professional and ethical responsibilities. An LSRP is required to earn 36 Continuing Education Credits (CECs) during the term of his or her license. The Board originally allocated these CECs between scientific and technical education, regulatory education, and ethical education, and required each LSRP to earn a specified number of CECs in each category during the three-year license term.

Continuing education providers must apply to the Board for CEC approval for each continuing education program. The Board reviews the application and determines the number and types of CECs to be awarded to each continuing education program based on criteria specified in the Board Rules.

The Board proposes to amend N.J.A.C. 7:26I-4 as follows:

(a) Add proposed new N.J.A.C. 7:26I-4.3(a) to add an additional category of education; specifically, "individual professional development of LSRPs," which would provide for training that would advance the ability of an LSRP to provide service to clients, including training in project management, communication both written and verbal, use of databases, and preparation of technical components of proposals and scopes of work;

(b) Amend recodified N.J.A.C. 7:26I-4.3(b) to clarify that nine of the 36 required continuing

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education credits may be distributed amongst any one or more of the categories of ethics education, regulatory education, scientific and technical education, and individual professional development of LSRPs;

(c) Amend recodified N.J.A.C. 7:26I-4.3(e) to include a cross-reference to N.J.A.C. 7:26I-4.5;

(d) Amend designation of N.J.A.C. 7:26I-4.3(a) to (b), N.J.A.C. 7:26I-4.3(b) to (c), 4.3(c) to (d), and 4.3(d) to (e) to account for the addition of new N.J.A.C. 7:26I-4.3(a);

(e) Add proposed new N.J.A.C. 7:26I-4.3(f) to limit to 18, the number of CECs that may be earned through credits that are verified by affidavit of the attendee;

(f) Add proposed new N.J.A.C. 7:26I-4.4(a)4iv to include reference to “individual professional development of LSRPs”;

(g) Add proposed new N.J.A.C. 7:26I-4.4(b)4 to establish the requirements for approval of a continuing education program for individual professional development credit;

(h) Amend existing N.J.A.C. 7:26I-4.4(c) to set forth the time period within which an application for approval of continuing education credit for a continuing education program must be submitted to the Board;

(i) Add proposed new N.J.A.C. 7:26I-4.4(c)12 to add to the application for approval of continuing education credits provision for an LSRP to verify attendance through an affidavit for a large format conference; and

(j) Add proposed new N.J.A.C. 7:26I-4.5(a) to list the type of activities that an LSRP may request for continuing education credit.

N.J.A.C. 7:26I-5 Audit Procedures

N.J.A.C. 7:26I-5 sets forth the requirement for the Board to randomly audit the submissions

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and conduct of an LSRP as a means to oversee the quality and integrity of the work and performance of the LSRP. The Board must calculate the number of LSRPs to be audited each year, which shall be equal to at least 10 percent of the total number of LSRPs in that year. The Board selects, randomly, the names of LSRPs to be audited. The purpose of the audit is to ensure that the LSRP has complied with the SRRA and the Board Rules, and the LSRP has not knowingly made any false statement, representation, or certification in any documents or information submitted to the Board or the Department.

The Board proposes to amend N.J.A.C. 7:26I-5 by amending existing N.J.A.C. 7:26I-5.5(f) to clarify the procedure to be followed when the outcome of an audit is a referral to the Professional Conduct Committee that the LSRP be further investigated.

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

N.J.A.C. 7:26I-6 establishes the rules of professional conduct that an individual shall follow in the performance of professional services as an LSRP. The guiding principle is that, at all times, in the performance of professional services, an LSRP's highest priority shall be the protection of public health and safety and the environment.

The Board proposes the following amendments at N.J.A.C. 7:26I-6:

(a) Amend existing N.J.A.C. 7:26I-6.3(a) to add "the rules adopted by the Board pursuant to section 6 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-6)" at proposed new N.J.A.C. 7:26I-6.3(a)6 in order to clarify that LSRPs are expected to know and apply the Board Rules;

(b) Amend existing N.J.A.C. 7:26I-6.3(c) to add "independent professional" before "judgment" and to add "scientific, technical, or other" before "rationale" to clarify these terms;

(c) Add proposed new N.J.A.C. 7:26I-6.3(f) to state that an LSRP shall not provide under-

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ground storage tank services for an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq., or an unregulated heating oil tank system unless the LSRP is authorized in accordance with N.J.A.C. 7:14B-13 and 16;

(d) Amend existing N.J.A.C. 7:26I-6.7 to add “or LSRP relying upon work performed by others” to the section heading;

(e) Amend existing N.J.A.C. 7:26I-6.8(a) to clarify how an LSRP shall apply independent professional judgment and demonstrate that independent professional judgment was applied;

(f) Amend existing N.J.A.C. 7:26I-6.9 to conform with the amendments to the SRRA at N.J.S.A. 58:10C-16.1 that eliminate the necessity to conduct remediation of a condition that the LSRP identifies to be an immediate environmental concern in a building that is not occupied and will be demolished and the reporting requirements thereof;

(g) Amend existing N.J.A.C. 7:26I-6.10 to conform with the amendments to the SRRA at N.J.S.A. 58:10C-16.k that specify that an LSRP retained to perform remediation at a site or any portion of a site who obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred at any location on the site, must report the discharge to the person responsible for conducting the remediation of the discharge, the Department, and any other LSRP that is working on the contaminated site of the discharge;

(h) Amend existing N.J.A.C. 7:26I-6.16 by changing “LSRP” to “site remediation professional, licensed or not,” to clarify that an LSRP is responsible for violations committed by a site remediation professional that he or she supervises or whose work he or she reviews whether or not the site remediation professional is licensed and to add “or should know” to clarify the standard of knowledge concerning a violation;

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(i) Amend existing N.J.A.C. 7:26I-6.18(b) to clarify that an LSRP shall inform a client of timeframes for each site for which he or she has been retained;

(j) Amend existing N.J.A.C. 7:26I-6.21(a) to add “proposal” to “description of qualifications, experience, or ability to provide services” in which any LSRP shall not misrepresent or omit facts;

(k) Amend existing N.J.A.C. 7:26I-6.24(a) to conform with amendments to the SRRA at N.J.S.A. 58:10C-16.h prohibiting an LSRP from certifying a document submitted to the Department unless the LSRP makes a good faith and reasonable effort to determine that the information in the submission is true, accurate, and complete;

(l) Add proposed new N.J.A.C. 7:26I-6.24(d) to conform with amendments to the SRRA at N.J.S.A. 58:10C-16.h prohibiting an LSRP from knowingly making “any false statement, representation, or certification in any document or information submitted to the Board or the Department”;

(m) Amend existing N.J.A.C. 7:26I-6.27(a) to conform with amendments to the SRRA at N.J.S.A. 58:10C-20 to clarify that, for each contaminated site for which the LSRP has been retained, they shall maintain and preserve all data, documents, records, and information concerning the remediation that the LSRP has managed, supervised, or performed, and concerning the work performed by other persons, that the LSRP has reviewed and evaluated or relied upon, and to include the date that the LSRP completes his or her obligations with respect to any remedial action permit to clarify the length of time that an LSRP shall maintain the data, documents, records, and information; and

(n) Add proposed new N.J.A.C. 7:26I-6.27(c) to add the responsibility of the LSRP to submit an electronic copy of the data, documents, records, and information specified at N.J.A.C.

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7:26I-6.27(a) to the Department at the time the response action outcome is submitted to the Department.

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

N.J.A.C. 7:26I-7 establishes the procedures for disciplinary proceedings including the filing of complaints, investigation of complaints by the Board, actions the Board may take relative to complaints and violations, and hearing requirements. Any person may file a complaint with the Board. N.J.A.C. 7:26I-7 describes the Board's authority to investigate the complaint and to render a decision with respect to the complaint. Once a decision is made, the Board will publish information regarding the complaint on the Board website. Upon a finding of violation, the Board may take any one or more of several actions, up to and including, suspension and revocation of the LSRP's license, issuing civil penalties, and petitioning the Attorney General to bring a criminal action.

Upon the Board's determination to issue an administrative order, suspend or revoke a license or impose another sanction, or assess a civil administrative penalty, the Board will provide the violator with notice regarding the decision, as well as information regarding the opportunity and procedures to request a hearing.

The Board proposes to amend N.J.A.C. 7:26I-7 by amending N.J.A.C. 7:26I-7.5(h) to remove the direction to the Complaint Review Team to recommend a disciplinary action and to add N.J.A.C. 7:26I-7.7(a)7 to add "issue a letter of warning or admonition" to the list of the Board's actions in response to a violation. The Board also proposes changing the heading of N.J.A.C. 7:26I-7.8 to add "and other sanctions" to license suspension and revocation to recognize that the Board can impose sanctions other than suspension and revocation, and adding, at N.J.A.C.

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7:26I-7.8(a)5, a cross-reference to N.J.A.C. 7:26I-6.27.

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

In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.A.C. 7:26I-8 provides for adjudicatory hearing requests in response to the denial of an individual's application for an LSRP license renewal, the issuance of an administrative order, the determination that an LSRP's license shall be suspended or revoked, or another sanction shall be imposed, or the assessment of a civil administrative penalty.

The Board proposes only minor wording amendments at N.J.A.C. 7:26I-8.

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

N.J.A.C. 7:26I-9 prohibits retaliatory action against an LSRP for certain actions that he or she may take in order to fulfill his or her duties and responsibilities. Likewise, an LSRP may not take retaliatory action against any person who brings a complaint about the LSRP to the Board or who cooperates with the Board during the conduct of an audit or an investigation of the LSRP.

The Board is proposing only minor wording amendments at N.J.A.C. 7:26I-9.

Social Impact

The remediation of contaminated sites and the resulting protection of public health and safety and the environment has wide-ranging social benefits. The persons entrusted to perform and document site remediation are Licensed Site Remediation Professionals. The intent of the Board Rules is to ensure that all Licensed Site Remediation Professionals are held to uniformly high standards of education, experience, and conduct both in obtaining their licenses and when performing site remediation as licensed professionals. The proposed amendments to the Board Rules provide clarity and consistency between the Board Rules, the SRRA, and Board practices, thus,

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enabling Licensed Site Remediation Professionals to understand the obligations and requirements they have as licensed professionals, so that they may better accomplish their work of site remediation and thereby ensure the protection of public health and safety and the environment.

Economic Impact

There are three groups that are affected by the Board Rules: LSRPs, persons responsible for conducting remediation, and the Department.

(1) *LSRPs*. Individuals who obtain a license as an LSRP must pay the associated fees, including the application fee, license renewal fee, and annual license fee. The application fee is assessed when a person applies for an LSRP license, the license renewal fee is assessed when the LSRP renews his or her license once every three years, and the annual license fee is assessed annually.

An additional cost to LSRPs is for continuing education to fulfill the license renewal requirements. The amount charged for continuing education varies by provider, but is approximately \$50.00 to \$100.00 per continuing education credit, for a total cost of \$1,800 to \$3,600 for each LSRP during the three-year term of his or her license. While the costs of continuing education are an expense made obligatory by the license, most site remediation professionals pursue continuing education regardless of license requirements in order to stay up to date with regulations and advances in scientific and technical knowledge and practices. The proposed amendments are broadening the definition of live format continuing education programs to include programs that are viewed simultaneously with their presentation from a remote location. This may benefit LSRPs by allowing them to save time and money associated with travel to the training location and may also allow the continuing education providers to offer their programs to more LSRPs, thereby

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reducing the cost. Overall, the proposed amendments are not expected to significantly impact the costs or benefits for LSRPs or course providers.

(2) *Persons responsible for conducting remediation.* LSRPs have costs associated with their license, including the application fee, license renewal fee, and annual license fee. Any increase in fees could be passed along to their clients. However, compared to the typical costs for site remediation services, and considering the typical number of clients each LSRP has, the impact from fees attributable to licensure costs is minimal. The benefit to persons responsible for conducting remediation is that remediation proceeds more efficiently with a retained LSRP. Ultimately, remediation costs less and takes less time to complete when remediated by an LSRP, thereby returning property to more productive use more quickly. The proposed amendments are not expected to significantly impact the fees and, therefore, will not impact the costs or benefits for persons responsible for conducting remediation.

(3) *The Department of Environmental Protection.* The Department provides staffing resources to the Board in the areas of information technology, fiscal analysis, review of applications, and secretarial assistance. In addition, the Department provides three full-time staff members and two hourly employees to assist the Board in fulfilling its duties. The Department also provides office facilities for the above personnel, as well as meeting facilities and Board website hosting. However, the salary and overhead costs incurred by the Department to perform Board functions are reimbursed by the Board from revenue collected from fees, including the application fee, license renewal fee, and annual license fee. The proposed amendments are not expected to significantly impact staffing requirements for the Board and, therefore, will not impact the costs or benefits for the Department.

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Environmental Impact

The proposed amendments will have a positive environmental impact because they will enhance the ability of LSRPs to meet their required standards of professional performance in providing their professional services and perform remediation that is protective of public health, safety, and the environment.

Federal Standards Statement

The proposed amendments are not mandated by Federal law and do not contain standards comparable to any Federal standards. Accordingly, no further analysis is required.

Jobs Impact

The Board anticipates that the proposed amendments will not significantly alter the existing requirements for obtaining or renewing a site remediation professional license, so they will not have an impact on job creation or loss in New Jersey. Accordingly, no further analysis is required.

Agricultural Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Board has determined that the proposed amendments will not have an impact on the agricultural industry. Accordingly, no further analysis is required.

Regulatory Flexibility Statement

In accordance with N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, the Board has determined that the proposed amendments will not have an impact on reporting, recordkeep-

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ing, or compliance requirements of small businesses, as defined in the Regulatory Flexibility Act, including businesses employing LSRPs. Accordingly, no further analysis is required.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, the Board has determined that the proposed amendments will not have an impact on the average costs associated with housing in the State or on the affordability of housing. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, the Board has determined that the proposed amendments will not have an impact on housing production in Planning Areas 1 or 2, or within designated centers. Accordingly, no further analysis is required.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board has determined that the proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:26I-1.3 Definitions

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

"Alternative verifiable learning format" means any [format of] continuing education [alternative to in-person attendance including, but not limited to, videotape, audiotape, remote place viewing, on-line internet computer presentation, satellite simulcast, teleconferencing, videoconferencing, internet computer self-study, or other alternative format the Board authorizes.] **that is presented in a format that does not provide the ability to interact with the instructor or other participants during the presentation.**

...

“Retained” means hired, individually or through a firm or other person, by or on behalf of a person responsible for conducting remediation, to perform, manage, or supervise remediation, or to periodically review and evaluate remediation performed by other persons.

...

SUBCHAPTER 2. LICENSURE

7:26I-2.3 [Proscription] **License required to perform remediation**

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

(b) Except as provided at subsection d. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3), a person who is not a licensed site remediation professional shall not perform remediation unless the remediation is managed, supervised, or periodically reviewed and evaluated by an

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LSRP.

(c) Except as provided at subsection d. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3), an LSRP shall not:

1. Facilitate, aid, assist, or cooperate with any person in retaining or arranging for the retention of any person who is not an LSRP to perform remediation, unless the remediation is managed, supervised, or periodically reviewed and evaluated by an LSRP retained for that purpose, and the Department has been notified of the retention; or

2. Manage, supervise, perform, engage, or participate in remediation, unless:

i. The LSRP has been retained by a person responsible for conducting the remediation, and the Department has been notified of the retention; or

ii. The remediation is being managed, supervised, or performed by another LSRP retained by the person responsible for conducting the remediation, and the Department has been notified of the retention of the other LSRP.

7:26I-2.4 Eligibility requirements

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

1. (No change.)

2. Has experience amounting to at least eight years of full-time professional experience in the field of site remediation, of which at least five years shall have occurred in New Jersey and at least three years shall have occurred in New Jersey [immediately] **within the five years** prior to

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submission of the application;

3. - 4. (No change.)

5. Has completed a Board-approved course on the State's rules and regulations concerning the **administrative and** technical requirements for site remediation no more than [three years] **36 months** prior to **the date of** submission of the application;

6. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related [criminal offense under] **crime pursuant to** Federal or state law, or any crime involving fraud, **breach of trust**, theft by deception, forgery, [or any similar or related offense under Federal or state law; and] **or any crime or offense that would qualify the person for registration pursuant to section 2 at P.L. 1994, c. 133 (N.J.S.A. 2C:7-2), or any other crime involving moral turpitude, or any similar or related offense pursuant to Federal or state law. For the purposes of this paragraph, a conviction or plea of guilty shall include a non vult, nolo contendere, no contest, or finding of guilt by a judge or jury; and**

7. Has not had a professional license or **professional** certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years **and has not surrendered a professional license or professional certification in response to a disciplinary investigation within the previous 10 years.**

7:26I-2.5 Application

(a) An applicant for the site remediation professional license shall submit or cause to be submitted directly to the Board the following items, **as per the instructions on the Board website at www.nj.gov/lsrpboard:**

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1. (No change.)

2. The application fee as set forth [in] at N.J.A.C. 7:26I-3;

3. A signed [and notarized affidavit attached to the application] **certification** that attests that all information provided in connection with the application is true to the best of the applicant's knowledge and belief, and that any omission, inaccuracy, or failure to make full disclosure may be deemed sufficient to deny licensure or to deny renewal of or suspend or revoke a license;

4. Three separate [letters of] references submitted directly to the Board by the writer of the reference on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lrspboard, from [each of the following] persons with personal knowledge of the applicant's training, experience, and professional conduct who are not related to the applicant[:]. **These persons may be an LSRP, a current or past employer of the applicant from any state, or another person of the applicant's choosing; and**

[i. An LSRP;

ii. A current or past employer of the applicant from any state; and

iii. A person of the applicant's choosing. This person may be an LSRP or current or past employer of the applicant who is different from the LSRP or employer who submitted a letter of reference pursuant to (a)4i or ii above; and]

5. (No change.)

(b) – (c) (No change.)

7:26I-2.11 Renewal of a license

(a) (No change.)

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

1. - 2. (No change.)

3. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related [criminal offense under] **crime** pursuant to Federal or state law, or any crime involving fraud, **breach of trust**, theft by deception, forgery, [or any similar or related offense under Federal or state law;] **or any crime or offense that would qualify the person for registration pursuant to section 2 at P.L. 1994, c. 133 (N.J.S.A. 2C:7-2), or any other crime involving moral turpitude, or any similar or related offense pursuant to Federal or state law. For the purposes of this section, a conviction or plea of guilty shall include a non vult, nolo contendere, no contest, or finding of guilt by a judge or jury;**

4. Has not had a professional license or **professional** certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years, **and has not surrendered a professional license or professional certification in response to a disciplinary investigation within the previous 10 years;** and

5. (No change.)

(c) – (h) (No change.)

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

1. (No change.)

2. Instructions for reapplying for license renewal, which shall include resubmission of a complete application as required at (c) and (d) above; and

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[2.] **3.** (No change in text.)

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

7:26I-2.12 Expiration of a license

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

1. The] expiration date stated on the license, if not renewed pursuant to N.J.A.C.

7:26I-2.11[; or].

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

(b) An individual may surrender his or her license to the Board. A license that is surrendered is considered to be expired, may not be renewed, and the provisions at (f) below do not apply.

[(b)] (c) (No change in text.)

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

1. (No change.)

2. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on **pursuant to N.J.A.C. 7:26I-6.27.**

Recodify existing (d)-(e) as **(e)-(f)** (No change in text.)

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7:26I-2.13 Suspension of a license

(a) – (e) (No change.)

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

1. (No change.)

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

3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on **pursuant to N.J.A.C. 7:26I-6.27.**

(g) (No change.)

7:26I-2.14 Revocation of a license

(a) – (e) (No change.)

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

1. (No change.)

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

3. Provide for the maintenance and preservation of all data, documents, records, and in-

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formation concerning remediation activities at each contaminated site he or she has worked on pursuant to N.J.A.C. 7:26I-6.27.

(g) (No change.)

7:26I-2.15 Inactivation of a license

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

1. (No change.)

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

i. - iii. (No change.)

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

3. (No change.)

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

5. He or she has submitted an LSRP Notification of Dismissal [as found on the Department website at www.nj.gov/dep/srp/srra/forms] **through the Department portal** for each contami-

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nated site for which the LSRP had submitted a Notification of Retention; and

6. He or she has provided for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on pursuant to N.J.A.C. 7:26I-6.27.

(b) – (g) (No change.)

SUBCHAPTER 3. FEES

7:26I-3.3 Application fee

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

1. (No change.)

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

[3.] **2.** (No change in text.)

(b) (No change.)

7:26I-3.4 Renewal fee

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

4. (No change.)

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

[3.] **2.** (No change in text.)

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(b) (No change.)

7:26I-3.5 Annual license fee

(4) (No change.)

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

Recodify existing (c)-(e) as **(b)-(d)** (No change in text.)

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

SUBCHAPTER 4. CONTINUING EDUCATION

7:26I-4.3 LSRP continuing education requirements

(a) The Board approves continuing education credit in the categories of ethics education, regulatory education, scientific and technical education, and individual professional development of LSRPs.

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

4. – 3. (No change.)

4. Nine [additional] continuing education credits [in any of the above areas of education.] **distributed amongst any one or more of the categories of ethics education, regulatory education, scientific and technical education, and individual professional development of LSRPs.**

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Recodify existing (b)-(c) as **(c)-(d)** (No change in text.)

[(d)] **(e)** No more than 18 continuing education credits per [three year] **three-year** license term may be earned from Board-approved continuing education activities, **as described at N.J.A.C. 7:26I-4.5.**

(f) No more than 18 continuing education credits per three-year license term may be earned through credits that are verified by affidavit of the attendee.

Recodify existing (e)-(g) as **(g)-(i)** (No change in text.)

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

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

1. – 3. (No change.)

4. Constitutes an organized program of learning that includes subject matter related to the:

i. (No change.)

ii. Scientific and technical principles of site remediation; [and/or]

iii. Ethical obligations of LSRPs[.]; **and/or**

iv. Individual professional development of LSRPs.

(b) In addition to the requirements [in] **at** (a) above:

1. (No change.)

2. Continuing education approved for regulatory credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate site remediation in New Jersey in compliance with applicable statutes, [and] rules, **and guidance.**

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Approvable regulatory credit shall include education regarding understanding and complying with the broad range of statutory and regulatory requirements applicable to site remediation in New Jersey; [and]

3. Continuing education approved for scientific and technical credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate the scientific and technical components of site remediation. Approvable scientific and technical credit shall include education regarding site remediation, although it may include more general scientific and technical principles if they are clearly relevant to the scientific and technical components of site remediation[.]; **and**

4. Continuing education approved for individual professional development credit shall have educational content that is designed to advance the ability of an LSRP to provide service to clients. Approvable individual professional development credit shall include education regarding professional practice of LSRPs, including, but not limited to, project management, communication, both written and verbal, preparation of written reports, use of databases, and preparation of the technical components of proposals and scopes of work.

(c) The provider of a continuing education program or an LSRP may request Board approval of a continuing education program by submitting the application found on the Board website at www.nj.gov/lrspboard. The applicant shall submit a completed application[, including,] **within 90 days after the program was held for the first time, or for an LSRP, within 90 days after attending the program. Such application shall include**, but not be limited to:

1. – 3. (No change.)

4. A written statement describing the continuing education and establishing its relevance to

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the regulation of site remediation, scientific and technical principles of site remediation, [and/or] ethical obligations of LSRPs in New Jersey, **and/or individual professional development of LSRPs in New Jersey;**

5. – 10. (No change.)

11. For an alternative verifiable learning format program, an examination or other mechanism that the Board shall approve on an individual basis that an LSRP taking the program shall successfully complete in order to verify attendance and thereby earn continuing education credits[.]; **and**

12. For a large format conference that does not utilize sign-in and sign-out sheets, an affidavit from the LSRP applying for continuing education credit for attending the conference that enumerates the continuing education programs attended, the number of hours in 0.5-hour increments that the LSRP spent in each continuing education program, and the type of continuing education credit that is appropriate for each continuing education program.

(d) – (f) (No change.)

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

(a) An LSRP may request continuing education credit for the following continuing education activities:

1. Instructing a continuing education program that the Board has approved pursuant to N.J.A.C. 7:26I-4.4;

2. Preparing and giving a presentation; and

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3. Authoring a paper published in a professional publication or peer-reviewed proceedings of a conference.

Recodify existing (a)-(d) as **(b)-(e)** (No change in text.)

SUBCHAPTER 5. AUDIT PROCEDURES

7:26I-5.1 Purpose

(a) This subchapter:

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

2. (No change.)

(b) (No change.)

7:26I-5.2 Scope

(c) This subchapter establishes:

c. The Board's **audit selection** process [for selecting LSRPs for audit] at N.J.A.C.

7:26I-5.3;

2. – 4. (No change.)

7:26I-5.4 Audit review process

(c) – (h) (No change.)

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

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- c. Evaluate the LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto **and the LSRP's application of appropriate guidance**; and
- 2. (No change.)

7:26I-5.5 Outcome of an audit

- (c) – (e) (No change.)
- (f) Upon receiving a recommendation that the LSRP be further investigated, the Audit Committee shall [refer the audit to the Professional Conduct Committee, which shall convene a Complaint Review Team to commence an investigation pursuant to N.J.A.C. 7:26I-7.5.] **file a complaint pursuant to N.J.A.C. 7:26I-7.3.**

SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT

7:26I-6.3 Professional competency

- (c) An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate [technical] guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:
 - c. – 5. (No change.)
 - 6. The rules adopted by the Board pursuant to sections 5 and 6 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-5 and 6);**
- Recodify existing 6.-8. As **7.-9.** (No change in text.)
- (b) (No change.)

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

1. – 2. (No change.)

(d) – (e) (No change.)

(f) An LSRP shall not install, close, test the tank of, or analyze the corrosion protection system of an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq., or install, close, test the tank of, or analyze the corrosion protection system of an unregulated heating oil tank system, or otherwise provide underground storage tank services, unless he or she is authorized to do so in accordance with N.J.A.C. 7:14B-13 and 16.

7:26I-6.5 Notification of retention and release

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

1. – 2. (No change.)

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

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after terminating his or her position:

1. (No change.)
2. Submit a Notification of Dismissal [as found on the Department website at www.nj.gov/dep/srp/srra/forms] **through the Department portal.**

7:26I-6.7 Responsibility of successor LSRP **or LSRP relying upon work performed by others**

(a) – (c) (No change.)

7:26I-6.8 Exercise of independent professional judgment

(a) An LSRP shall exercise independent professional judgment, **apply appropriate guidance**, and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, and order adopted or issued pursuant thereto. **In the exercise of independent professional judgment an LSRP shall:**

- 1. Apply independent professional judgment to all actions during the entire course of the remediation;**
 - 2. Describe and document all decision-making;**
 - 3. Provide documentation of the scientific, technical, or other factors supporting his or her decision to vary from regulations or deviate from guidance when performing remediation;**
 - 4. Make decisions and conduct remediation free from outside influence that is not protective of public health and safety and the environment; and**
- c. **Be responsible for the decisions he or she makes even when the LSRP considers in-**

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formation, advice, and opinions of others.

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

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

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

(e) (No change.)

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

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

1. Immediately verbally advise **and confirm, in writing, to** the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition **provided that the person is known to the LSRP;** and

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2. (No change.)

(b) If an LSRP obtains specific knowledge of a previously unreported condition in an unoccupied structure that in the LSRP's independent professional judgment constitutes an immediate environmental concern, and the person responsible for conducting the remediation provides to the Department a written certification from the property owner that the building is not occupied, will not be occupied, and will be demolished, then no further remediation relative to the immediate environmental concern in the unoccupied structure shall be required, provided the conditions of the certification are maintained. Nothing in this subsection shall be construed to limit the responsibility of an LSRP to comply with the notification requirements at (a) above, or the responsibility to report a discharge pursuant to N.J.A.C. 7:26I-6.10.

7:26I-6.10 Responsibility to report a discharge

(a) If an LSRP **retained to perform remediation at a site or any portion of a site** obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred [on a contaminated site for which he or she is responsible] **at any location on the site**, the LSRP shall:

1. – 3. (No change.)

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

(a) (No change.)

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

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1. The LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto **and the LSRP's application of appropriate guidance[.]; and**

2. (No change.)

(c) (No change.)

7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinates [LSRP]

(a) An LSRP shall be jointly responsible for a violation of any provision of this subchapter committed by another [LSRP] **site remediation professional, licensed or not**, whose work he or she supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another [LSRP] **site remediation professional, licensed or not**, under his or her supervision;

2. The LSRP knows **or should know** that the professional services constitute a violation of the SRRA, or any rule, regulation, or order adopted or issued pursuant thereto; and

3. (No change.)

7:26I-6.18 Duty regarding client communications

(a) (No change.)

(b) An LSRP shall inform a client of:

1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which [the client has hired] the LSRP **has been retained;**

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2. – 3. (No change.)

7:26I-6.21 Prohibition against misrepresentation

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

1. – 2. (No change.)

3. Make a statement that, in the Board's opinion, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules, or regulations, including the SRRA and any rule, regulation, [or] order, **or guidance** adopted or issued pursuant thereto.

7:26I-6.24 Certification

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP **makes a good faith and reasonable effort to determine that the information in the submission is true, accurate, and complete, and** has:

1. – 3. (No change.)

(b) – (c) (No change.)

(d) An LSRP shall not knowingly make any false statement, representation, or certification in any document or information submitted to the Board or the Department.

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

(a) An LSRP shall, **for each contaminated site for which he or she has been retained,** maintain

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and preserve all data, documents, records, and information concerning **the** remediation [activities at each contaminated site] **that** the LSRP has [worked on] **managed, supervised, or performed, and concerning the work performed by other persons that the LSRP has reviewed and evaluated or relied upon** including, but not limited to, technical records, contractual documents, raw sampling data, and monitoring data. This obligation exists whether or not the data, documents, records, and information concerning **the** remediation [activities at the contaminated site were] **was** developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors, or attorneys.

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

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

RAO for the site[.]; **or**

iii. The date that the LSRP completes his or her obligations with respect to any remedial action permit.

(b) (No change.)

(c) An LSRP shall submit to the Department an electronic copy of the data, documents, records, and information specified at (a) above at the time the response action outcome is submitted to the Department.

SUBCHAPTER 7. DISCIPLINARY PROCEEDINGS

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7:26I-7.1 Purpose

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

1. Investigate complaints against any person suspected of violating the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, **not applying appropriate guidance**, or knowingly making any false statement, representation, or certification in any document or information submitted to the Board or the Department;

2. – 3. (No change.)

7:26I-7.3 Filing of complaint

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

1. Violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto **or did not apply appropriate guidance**; or

2. (No change.)

(b) (No change.)

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

(a) – (d) (No change.)

(e) The Complaint Review Team shall take such actions it deems necessary to thoroughly investigate the allegations of the complaint. The Complaint Review Team may expand its investigation beyond the allegations of the complaint to investigate whether the subject of the complaint has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, **has not applied appropriate guidance**, or has knowingly made any false statement, representation, or

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certification in any document or information submitted to the Board or the Department.

(f) – (g) (No change.)

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

1. – 2. (No change.)

3. A statement of the Complaint Review Team's findings of fact; **and**

4. A statement of the Complaint Review Team's findings with respect to any violation(s);
and],

[5. A recommendation, if applicable, as to the type of disciplinary action along with a basis for this recommendation.]

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

(j) (No change.)

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

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

1. – 4. (No change.)

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5. Assess a civil administrative penalty; [or]
6. Petition the Attorney General to bring a criminal action[.]; **or**
- 7. Issue a letter of warning or admonition.**

(b) (No change.)

7:26I-7.8 License suspension or revocation **and other sanctions**

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

1. - 4. (No change.)
5. Order the LSRP to provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on **pursuant to N.J.A.C. 7:26I-6.27;**
6. – 7. (No change.)

SUBCHAPTER 8. ADJUDICATORY PROCEEDINGS

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

(a) (No change.)

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

1. – 2. (No change.)
3. Deliver all items specified [in] **at** (c) below to the following:

New Jersey Site Remediation Professional Licensing Board
c/o New Jersey Department of Environmental Protection

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Site Remediation Program

Office of the Assistant Commissioner

[P.O.] **PO** Box 420

Mail Code 401-06

401 East State Street

Trenton, NJ 08625-0420

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

SUBCHAPTER 9. PROHIBITION AGAINST RETALIATORY ACTION

7:26I-9.1 Purpose

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

(b) – (d) (No change.)

7:26I-9.2 Retaliatory action prohibited

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

2. (No change.)

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2. Provides notice to the Department, in writing, when in his or her **independent** professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced [in] **at** N.J.A.C. 7:26C-3 is unlikely to be met;

3. – 5. (No change.)

(b) (No change.)