

COMPLIANCE NOTICE
(May 3, 2021)

POST-NO FURTHER ACTION COMPLIANCE NOTICE

The New Jersey Department of Environmental Protection (Department) is posting this Compliance Notice for the businesses and individuals who have received a limited restricted use or restricted use no further action letter (NFA) from the Department and therefore have an obligation to ensure the continued protectiveness of a remedial action that involves an institutional control, and if required, an engineering control, but who have not fulfilled these obligations. An institutional control includes a deed notice for residual soil contamination or a ground water classification exception area that the Department establishes for a contaminated ground water plume. An engineering control includes a cap, slurry wall, ground water pumping, or other physical means to either control the contamination or limit human exposure to the contamination. The remediation of a contaminated site may include both an institutional control and an engineering control. A remedial action that includes only an institutional control is defined as a limited restricted use remedial action. A remedial action that also includes an engineering control is defined as a restricted use remedial action.

For sites with institutional and/or engineering controls, the Department has included conditions in each no further action letter requiring the inspection, maintenance, and monitoring of each institutional and engineering control implemented as part of the remedial action for the contaminated site. For these contaminated sites, continued inspection, maintenance, and monitoring of each institutional and engineering control is required. The Brownfield and Contaminated Site Remediation Act (Brownfield Act, N.J.S.A. 58:10B-1 et seq.) requires the submission of a biennial certification to ensure that a remedial action which includes an institutional control or an engineering control remains protective of the public health and safety and the environment. See N.J.S.A. 58:10B-13.1a.(2)(a). The Site Remediation Reform Act (SRRA, N.J.S.A. 58:10C-1 et seq.), which became effective on enactment May 7, 2009, authorizes the Department to issue a remedial action permit as the mechanism to regulate compliance with this protectiveness obligation. See N.J.S.A. 58:10C-19a. For those persons who have received a no further action letter issued by the Department, the obligation to obtain a remedial action permit is required. See 58:10C-19b. A person's failure to comply with these requirements allows the Department to rescind the no further action letter and the covenant not to sue included in that letter and to take other enforcement actions. See N.J.S.A. 58:10B-13.1a.(2)(b) and N.J.S.A. 58:10B-13d.

The businesses and individuals, or legally, "persons," who have the dual obligation to submit these biennial certifications and to apply for a remedial action permit include any person who is a "person responsible for conducting the remediation" as the Site Remediation Reform Act defines that phrase. This includes the following persons:

1. any person who executes or is otherwise subject to an oversight document, such as an administrative order, or an administrative or judicial consent order, to remediate a contaminated site;
2. the owner or operator of an industrial establishment subject to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 through -32, for the remediation of a discharge at the industrial establishment;
3. the owner or operator of an underground storage tank subject to the Underground Storage of Hazardous Substances Act (UST Act), N.J.S.A. 58:10A-21 through -32, for the remediation of a discharge from a regulated underground storage tank;
4. any other person who either discharges a hazardous substance or is in any way responsible, pursuant

to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11g, for a hazardous substance that was discharged at a contaminated site; and

5. any other person who is remediating a contaminated site.

See N.J.S.A. 58:10C-2 and the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C-7.4(a)). Persons obligated to submit biennial certifications and apply for a remedial action permit include any person who owns a site, operates a business at a site, or is a tenant at a site, after another person has implemented a remedial action that includes an institutional control or an engineering control. The Department refers to such a person as a statutory permittee. See N.J.A.C. 7:26C- 1.4.

The Department has attempted to contact persons obligated to ensure the protectiveness of remedial actions. The purpose in posting this Enforcement Alert is an additional effort, prior to any enforcement action, to remind these persons of:

- i. Their obligations to ensure the protectiveness of remedial actions for which they are responsible; and
- ii. The Department's authority to initiate enforcement action(s) against them if they do not comply with these obligations.

You may access a report from the Department at <https://www13.state.nj.us/DataMiner>; select "Search By Category," select "Site Remediation," then go to the report group "Institutional Controls and Special Conditions," and select "Cases Requiring Remedial Action Permits." This report identifies all sites where:

- i. A person responsible for conducting the remediation implemented either a limited restricted use remedial action or restricted use remedial action;
- ii. Inspecting, monitoring, and maintaining an institutional control or an engineering control is required as part of that remedial action; and
- iii. The persons responsible for applying for a remedial action permit for that institutional control or engineering control have failed to do so.

Note: The report contains tabs at the top of the page where the user can switch from cases requiring Ground Water Remedial Action Permits to cases requiring Soil Remedial Action Permits.

What needs to be done?

1. Pursuant to N.J.S.A. 58:10B-12o, person(s) responsible for conducting the remediation and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Act, N.J.S.A. 58:10-23.11 et seq. and received a final remediation document (NFA or Response Action Outcome (RAO)) with an engineering and/or institutional control is obligated to inform the Department in writing, on a form available from the Department (see www.nj.gov/dep/srp/srra/forms), within 14 calendar days after its name or address changes. The person(s) referenced in this paragraph shall inform the Department of any name or address change if it has not already done so.
2. The person responsible for conducting remediation and any subsequent owner, operator or tenant of a site that has an institutional and/or engineering control must retain the services of a Licensed Site Remediation Professional to prepare and submit to the Department a Remedial Action Permit Application with the appropriate initial application fee(s) and past annual fees (see fee section below) and provide the information required in N.J.A.C. 7:26C-7, using the form and instructions

available at www.nj.gov/dep/srp/srra/forms. A list of Licensed Site Remediation Professionals is available at <https://www13.state.nj.us/DataMiner>; select "Search By Category," select "Site Remediation," then go to the report group "Licensed Site Remediation Professional Information," and select "Licensed Site Remediation Professional List."

3. The person responsible for conducting remediation and any subsequent owner, operator or tenant of a site that has an institutional and/or engineering control must, with the assistance of a Licensed Site Remediation Professional, prepare and submit to the Department, in accordance with the requirements in N.J.A.C. 7:26C-7, a biennial certification of the protectiveness of each remedial action that includes the use of either an institutional control and/or an engineering control via submission of a Remedial Action Protectiveness/Biennial Certification Form and fee (see fee section below).

This alert is not an enforcement action; however, in the coming year, the Department will be increasing its enforcement in response to noncompliance with these biennial certification and remedial action permit obligations. These efforts may include revoking the no further action letter/covenant not to sue and the assessment of civil administrative penalties. The failure to retain a Licensed Site Remediation Professional, failure to apply for a remedial action permit, and failure to pay annual remedial action permit fees collectively carry a minimum per day penalty of \$30,000 plus 100 percent of the outstanding annual remedial action permit fees.

Fees:

Below are the respective Remedial Action Protectiveness/Biennial Certification Form fees, the Remedial Action Permit Initial Application fees, and all past due Remedial Action Permit Annual Fees that are required to be submitted. Payment of these fees is due at the time the application(s) and form(s) are submitted to the Department. The fee structure noted is applicable for all Remedial Action Permit Initial Applications, the Remedial Action Protectiveness/Biennial Certification Form, and all Remedial Action Permit Annual Fees submitted on or before June 30, 2021. Remedial Action Permit Initial Applications and the Remedial Action Protectiveness/Biennial Certification Form will be subject to the fees applicable to Fiscal Year 2021 plus an additional Annual Remediation Fee.

Submitted on or before June 30, 2021:

If a Soil Remedial Action Permit Initial Application and Remedial Action Protectiveness/Biennial Certification Form is due, then please submit a check* for \$4,470.

This amount includes the following fees:

- Soil Remedial Action Permit Initial Application: \$1,650
- Soil Remedial Action Protectiveness/Biennial Certification Form: \$375
- Soil Remedial Action Permit Annual Fees: \$165 (Fiscal Year 2015), \$205 (Fiscal Year 2016), \$255 (Fiscal Year 2017), \$320 (Fiscal Year 2018), \$400 (Fiscal Year 2019), \$550 (Fiscal Year 2020), and \$550 (Fiscal Year 2021)

If a Ground Water Remedial Action Permit Initial Application (Monitored Natural Attenuation) and Remedial Action Protectiveness/Biennial Certification Form is due, then please submit a check* for \$4,470.

This amount includes the following fees:

- Ground Water Remedial Action Permit Initial Application (Monitored Natural Attenuation): \$990
- Ground Water Remedial Action Protectiveness/Biennial Certification Form: \$375
- Ground Water Remedial Action Permit Annual Fees: \$165 (Fiscal Year 2015), \$205 (Fiscal Year 2016), \$255 (Fiscal Year 2017), \$320 (Fiscal Year 2018), \$400 (Fiscal Year 2019), \$880 (Fiscal Year 2020), and \$880 (Fiscal Year 2021)

If a Ground Water Remedial Action Permit Initial Application (Active System) and Remedial Action Protectiveness/Biennial Certification Form is due, then please submit a check* for \$4,030.

This amount includes the following fees:

- Ground Water Remedial Action Permit Initial Application (Active System): \$550
- Ground Water Remedial Action Protectiveness/Biennial Certification Form: \$375
- Ground Water Remedial Action Permit Annual Fees: \$165 (Fiscal Year 2015), \$205 (Fiscal Year 2016), \$255 (Fiscal Year 2017), \$320 (Fiscal Year 2018), \$400 (Fiscal Year 2019), \$880 (Fiscal Year 2020), and \$880 (Fiscal Year 2021)

Submitted after June 30, 2021:

If a Soil Remedial Action Permit Initial Application and Remedial Action Protectiveness/Biennial Certification Form is due, then please submit a check* for \$5,130.

This amount includes the following fees:

- Soil Remedial Action Permit Initial Application: \$1,760
- Soil Remedial Action Protectiveness/Biennial Certification Form: \$375
- Soil Remedial Action Permit Annual Fees: \$165 (Fiscal Year 2015), \$205 (Fiscal Year 2016), \$255 (Fiscal Year 2017), \$320 (Fiscal Year 2018), \$400 (Fiscal Year 2019), \$550 (Fiscal Year 2020), \$550 (Fiscal Year 2021), and \$550 (Fiscal Year 2022)

If a Ground Water Remedial Action Permit Initial Application (Monitored Natural Attenuation) and Remedial Action Protectiveness/Biennial Certification Form is due, then please submit a check* for \$5,130.

This amount includes the following fees:

- Ground Water Remedial Action Permit Initial Application (Monitored Natural Attenuation): \$990
- Ground Water Remedial Action Protectiveness/Biennial Certification Form: \$375

Ground Water Remedial Action Permit Annual Fees: \$165 (Fiscal Year 2015), \$205 (Fiscal Year 2016), \$255 (Fiscal Year 2017), \$320 (Fiscal Year 2018), \$400 (Fiscal Year 2019), \$880 (Fiscal Year 2020), \$880 (Fiscal Year 2021), and \$660 (Fiscal Year 2022)

If a Ground Water Remedial Action Permit Initial Application (Active System) and Remedial Action Protectiveness/Biennial Certification Form is due, then please submit a check* for \$5,240.

This amount includes the following fees:

- Ground Water Remedial Action Permit Initial Application (Active System): \$990
- Ground Water Remedial Action Protectiveness/Biennial Certification Form: \$375

Ground Water Remedial Action Permit Annual Fees: \$165 (Fiscal Year 2015), \$205 (Fiscal Year 2016), \$255 (Fiscal Year 2017), \$320 (Fiscal Year 2018), \$400 (Fiscal Year 2019), \$880 (Fiscal Year 2020), \$880 (Fiscal Year 2021), and \$770 (Fiscal Year 2022)

* All checks should be made payable to "Treasurer State of New Jersey."

For more information, please refer to:

Remedial Action Permits for Soil Quick Reference Guide at:
www.nj.gov/dep/srp/srra/training/matrix/quick_ref/rap_soil.pdf

Remedial Action Permits for Ground Water Quick Reference Guide at:
www.nj.gov/dep/srp/srra/training/matrix/quick_ref/rap_gw.pdf

Questions regarding Soil or Ground Water Remedial Action Permit Applications, Remedial Action Protectiveness/Biennial Certification forms, and Annual Fee requirements can be addressed to the Bureau of Remedial Action Permitting at (609) 984-2556.