

Administrative Guidance Regarding Compliance with Remedial Action Report Timeframes
(April 4, 2017)

As remedial investigations are concluded, sites will enter the remedial action phase. This will subject these sites to regulatory and mandatory timeframes for submission of the remedial action report (see the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-5.8, and the Administrative Requirements for the Remediation of Contaminated Sites, ARRCs, N.J.A.C. 7:26C-3). Completion of the remedial action in accordance with N.J.A.C. 7:26E-5.8(a) means:

1. Implementing all remedial actions required to address the contaminated site, pursuant to the requirements of this subchapter;
2. Submitting a remedial action report for all remedial actions at the contaminated site to the Department pursuant to N.J.A.C. 7:26E-5.7; and
3. Ensuring that a licensed site remediation professional submits a final remediation document to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-6.2.

Depending on the extent to which areas of concern are remediated, the remedial action report must document the status of each area of concern by using one of the following scenarios:

- The achievement of all applicable remediation standards resulting in the submission of the remedial action report and issuance of an unrestricted use Response Action Outcome (see N.J.A.C. 7:26E-5.7(b)6ii); or
- Contamination above the applicable remediation standards remains at the site, but it is documented that the remedial action (whether active or passive remedial action) is operating as designed (see N.J.A.C. 7:26E-5.7(b)6i), resulting in the submission of applicable remedial action permit application(s) concurrent with submission of the remedial action report.

As required by Site Remediation Reform Act, the Department was tasked with establishing mandatory remediation timeframes for completion of the remedial action phase to effectuate a timely remediation. To comply with this requirement, the Department established both regulatory and mandatory timeframes.

The regulatory timeframe for a remedial action report for soil only cases is within three years from the date that the remedial investigation report is due; for cases involving remediation of all other contamination, the regulatory timeframe is within five years from the date that the remedial investigation report is due. If an extension to the regulatory remedial action timeframe is requested, and not denied by the Department, up to two additional years may be added to the due date in both impacted media scenarios before the mandatory timeframe is exceeded. The mandatory timeframe for a remedial action report for soil only cases is within five years from the date that the remedial investigation report is due; for cases involving remediation of all other contamination, the mandatory timeframe is within seven years from the date that the remedial investigation report is due.

Persons responsible for conducting remediation (PRCR) may request extensions of both the regulatory and mandatory remedial action report submission timeframes in accordance with N.J.A.C. 7:26C-3.2 and N.J.A.C. 7:26C-3.5, respectively. Regulatory timeframe extension requests are automatically approved unless otherwise denied by the Department. Mandatory timeframe extension requests are reviewed and either denied or approved by the Department in writing.

The Department recognizes that extensions may be necessary to submit a remedial action report that achieves one of the required scenarios. The extension request form requires a justification that documents the cause(s) for additional time and the steps taken to minimize the delay.

To assist the regulated community, the following provides some remedial action extension guidance:

1. The selection and implementation of a remedial action that cannot achieve the applicable remedial action report submission objectives within the applicable timeframe is not an acceptable justification for an extension request. The selected remedial action must be chosen to meet the applicable remedial action report due date;
2. Waiting until the applicable remedial action report submission timeframe is up to determine that the remedial action is not working is not an acceptable justification for an extension request and any such extension request will be denied;
3. Waiting until the applicable remedial action report submission timeframe is up to begin the application process for required permits or delays in acquiring a required permit due to submittal of deficient permit applications are not acceptable justifications for extension requests and any such extension requests will be denied. Administratively and technically complete permits applications should be submitted timely to the Department; and
4. If the initial remedial action is not working, as part of any extension request, the Department will want to see that the person responsible for conducting the remediation submitted a timely revised remedial action work plan or remedial action work plan addendum pursuant to N.J.A.C. 7:26C-5.5(c). Please note that the submission of a revised RAW or addendum itself does not extend the site specific regulatory or mandatory remedial action report due date. As part of any extension justification, a summary discussion of the data collected pursuant to N.J.A.C. 7:26E-5.5(b)6 should be submitted in order to verify that timely and aggressive action was taken to revise or modify the remedial action in order to meet the applicable timeframe. As a general indicator, if the remedial action has been implemented for two years (or sooner as decided by the LSRP) and expected results are not being achieved, a re-evaluation of the

selected remedy should occur. Depending on the difficulty/complexity of the site, multiple iterations of remedial action work plan revisions may be necessary.

If the selected remedy cannot result in the submission of a remedial action report that accomplishes the objectives noted above by the mandatory timeframe (including any approved extension requests), the site will trigger direct oversight at which point the Department will exercise its authority to direct the remediation pursuant to N.J.A.C. 7:26C-14. In addition, the site is subject to penalties of up to \$20,000/day for failing to meet the applicable timeframes and up to \$25,000/day for failing to comply with any subsequent provisions of direct oversight.

Additionally, pursuant to the Regulations of the New Jersey Site Remediation Professional Licensing Board, the retained licensed site remediation professional is required to inform the person responsible for conducting the remediation in writing when a regulatory timeframe will not be met (see N.J.A.C. 7:26I-6.8(b)), and both the person responsible for conducting the remediation and the Department when a mandatory timeframe will not be met (see N.J.A.C. 7:26I-6.8(c)). Written notification to the Department should be made via the "Notice of Failure to Comply with a Mandatory or Expedited Site-specific Remediation Timeframe" form available at www.nj.gov/dep/srp/srra/forms, in accordance with the provided instructions.

Having five to seven years available to complete the remedial action is sufficient time to either achieve the applicable remediation standards or be able to document that the selected remedial action is successful. Understanding the Department's position concerning extension requests related to the submission of the remedial action report will hopefully result in either an on-going or an early-on re-evaluation of the selected remedy in order to meet the applicable timeframe, justified extension requests and avoid the triggering of direct oversight.