**Additional Notices Available for Response Action Outcomes (RAOs)**

(effective November 2016)

The rules for the preparation and issuance of Response Action Outcomes (RAOs) are established by the Administrative Requirements for the Remediation for Contaminated Sites (ARRCS) at N.J.A.C. 7:26C-6 and the Model Response Action Outcome Document included in Appendix D.

The Department is aware that the Model RAO Document does not address certain situations. When appropriate, the Department works with remediating parties and LSRPs to ensure that RAOs accurately reflect site-specific conditions and implemented remedial actions. The Department continues to develop guidance and policy for the remediation of all contaminated sites.

The document below is comprised of two sections. Section I provides the RAO Notices that can be inserted into the RAO, without prior Departmental approval, under the listed conditions. Section II provides the process to be used to modify the RAO Model or RAO Notices under all other conditions requiring prior Departmental approval.

**I. RAO Notices – no Department approval required**

The following RAO Notices may be used as described below without prior Department approval:

* In-Service Railroad Lines, Spurs and Sidings Not Remediated
* Historic Fill Not Remediated for RAO-A
* Soil Contamination From an Off-Site Source Not Remediated – General
* Soil Contamination From an Off-Site Source Not Remediated – Diffuse Anthropogenic Pollution
* Naturally Occurring Levels of Constituents in Ground Water
* Historically Applied Pesticides not Addressed
* Ground Water Contamination due to Regional Historic Fill (Ground Water confirmation sampling has not been conducted)
* Sediment Contamination From an Off-Site Source Not Remediated - General

**In-Service Railroad Line, Spurs and Sidings Not Remediated**

Use this Notice (indented below) when one or more railroad lines, spurs and/or sidings have not been investigated and/or remediated and will remain in service at the site.

“Please be advised that this Response Action Outcome does not include the remediation of contamination that may be present within, or directly adjacent to, the in-service railroad line, spur and/or siding at this site. Contamination that may be present may include, but is not limited to, polynuclear aromatic hydrocarbons, polychlorinated biphenyls (PCBs) and metals. Remediation of this area is not required while the railroad line, spur and/or siding remain in-service. Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate any contamination associated with the railroad line, spur and/or siding within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27 at such time that these areas are no longer in-service. Please consult [www.nj.gov/dep/srp](http://www.nj.gov/dep/srp) for additional guidance.”

**Known On-site Contamination Source Not Remediated - Historic Fill (Area of Concern RAO)**

The following Notice (indented below) should be used when an Area of Concern RAO is issued and historic fill has been identified at the site, but has not been remediated (Example: a clean UST closure or when remediation is limited to one or more AOCs).

“Please be advised that this Response Action Outcome does not include the remediation of contamination in the form of historic fill. In the event that an Entire Site RAO is to be issued, the historic fill must be remediated in accordance with N.J.A.C. 7:26E.”

**Soil Contamination From an Off-Site Source Not Remediated- General**

Use this Notice (indented below) when soil contamination that was caused by an off-site source has not been remediated. The person responsible for conducting remediation must ensure that a PA of the entire site and, if necessary, an SI for those AOCs that are likely sources of the onsite contamination has been completed, which documents that the source of contamination is from off-site, and that activities at the site did not contribute to the contamination.

“Please be advised that contamination in the soil at this site exists above the Department’s applicable soil Remediation Standards, N.J.A.C. 7:26D-4. Based on completion of a preliminary assessment and site investigation (PA/SI) of the entire site, as applicable, pursuant to N.J.A.C. 7:26E-3, I have confirmed that the source of this contamination is from an off-site source and that there is no on-site contribution to this contamination. This aspect of the site was reported to the Department and assigned the Department’s Hotline incident number(s) 00-00-00-0000-00. Any redevelopment on this site should take into consideration the potential for direct contact soil exposure.”

**Soil Contamination From an Off-Site Source Not Remediated - Diffuse Anthropogenic Pollution**

Use this Notice (indented below) when soil contamination that is identified is consistent with diffuse anthropogenic pollution (DAP) and has not been remediated. The person responsible for conducting remediation must ensure that a PA and, if necessary, SI for those AOCs that are likely sources of the on-site contamination has been completed that documents that the source of contamination is from off-site and that activities at the site did not contribute to the contamination.

The reference in the following Notice to Child Care Facilities should only be included in child care RAOs. It should not be included in non-child care RAOs.

“Please be advised that contamination in the soil at this site exists above the Department’s applicable soil Remediation Standards, N.J.A.C. 7:26D-4. Based on an evaluation of data and the Department’s “Diffuse Anthropogenic Pollution (DAP) Guidance,” it has been determined that surficial contamination that was identified during the evaluation of the site is consistent with DAP. This impact to soils at the site was not required to be reported to the Department’s Hotline and therefore no incident number was generated. Development or redevelopment on this site should take into consideration the potential for direct contact soil exposure to contaminants in soil caused by DAP. [$$Select for Response Action Outcomes involving Child Care Facilities Only: However, to minimize potential direct contact at this Child Care Center an impermeable barrier should be installed over the surface of the outdoor play area in its entirety in accordance with Department guidance for presumptive remedies found at [www.nj.gov/dep/srp/guidance/srra/presumptive\_remedy\_guidance.pdf](http://www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance.pdf). The Department recommends that any such barrier consists of impermeable materials, such as hard surfacing, poured rubber, or rubber matting, etc. Finally, the Department recommends that the Child Care Center maintain documentation that provides proof of installation and proper maintenance of the integrity of the barrier.$$]”

**Naturally Occurring Levels of Constituents in Ground Water**

Use this Notice (indented below) when exceedances of the New Jersey Ground Water Remediation Standards are caused by naturally occurring constituents found in ground water.

Note that use of this Notice primarily applies to metals, and excludes anthropogenic background contamination including, but not limited to, synthetic organic chemicals such as petroleum byproducts/hydrocarbons, chlorinated compounds, and any compound that cannot be considered naturally occurring, including on-site source.

“Please be advised that concentrations of [$$Insert specific materials$$] were detected in the ground water at this site above the Department’s Ground Water Remediation Standards (N.J.A.C. 7:26D-2). However, these concentrations are associated with naturally occurring levels of these constituent(s) in the ground water. Pursuant to N.J.S.A. 58:10B, remediation beyond naturally occurring levels is not required. Development or redevelopment on this site should take into consideration the potential for exposure to constituents that exceed the Ground Water Quality Standards (N.J.A.C. 7:9C).”

**Historically Applied Pesticides Not Addressed**

Use this Notice (indented below) anytime pesticides may have been historically applied at a site but were not investigated as part of the remediation.

This Notice should not be used in situations where the manufacturing, mixing, or other handling of these chemicals resulted in a discharge to the environment. This Notice also would not be appropriate for properties going through a change of use to residences, schools, child care centers, and/or playgrounds.

“Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of contaminants that may exist from the historical application of pesticides. As a result, any risks presented by the historical application of pesticides may remain. An evaluation of historical pesticides should be completed if there is a land use change to residences, schools, child care centers and playgrounds. This exclusion does not apply if the pesticide contamination is from a discharge due to manufacturing, mixing, or other handling of these chemicals and not from application.”

**Ground Water Contamination due to Regional Historic Fill (Ground Water confirmation sampling has not been conducted)**

Use this Notice (indented below) when ground water sampling was not conducted but it is assumed that ground water contamination is present onsite, and that the source of the contamination is solely from regional historic fill that extends beyond the boundaries of the property. Pursuant to N.J.A.C. 7:26E-4.7 and N.J.A.C. 7:26C-7.3, the person conducting the remediation does not have to obtain a remedial action permit for the RAO to be issued. The person conducting remediation shall prepare and submit the CEA Fact Sheet for the footprint of the property. The Department will establish and maintain a “Virtual CEA.” Biennial certifications are not required.

“Please be advised that ground water contamination at this site may exist above the Ground Water Quality Standards (N.J.A.C. 7:9C), which may limit ground water use at this site. Ground water sampling has not been conducted at this site, but based on the observed presence of historic fill (through methods including, but not limited to, sampling, physical characterization, and/or mapping), it is concluded that contamination related to regional historic fill may be present in the ground water underlying the site. It has been determined that this presumed contamination is solely related to regional historic fill and there is no other on-site source of contamination contributing to this presumed ground water contamination. Based on these presumptions and conclusions, a Classification Exception Area (CEA) pursuant to N.J.A.C. 7:26E-4.7(b) is required for the footprint of this property. Since the source of this presumed contamination is from regional historic fill only, the Department will maintain the Classification Exception Area, and a Remedial Action Permit for this contamination is not required. The duration of this Classification Exception Area is for an “indeterminate” period.”

**Sediment Contamination From an Off-Site Source Not Remediated - General**

Use this Notice (indented below) when on-site sediment is contaminated from an off-site source. This Notice can only be used once a preliminary assessment and site investigation (PA/SI) has been conducted that confirms that the source of the sediment contamination is off-site and is not related to the site being evaluated. Once this evaluation has been completed, the off-site source must be reported to the Department and the incident number must be included in the below notice. Only utilize another site’s identifying information if that other site is known to be the source of the sediment contamination and is physically conducting an investigation/remediation on the site for which this Notice is being utilized.

“Please be advised that contamination in the sediment at this site exists above ecological screening criterion, Lowest Effects Levels (LELs) and Severe Effects Levels (SELs). Based on completion of a preliminary assessment and site investigation (PA/SI) of the entire site, as applicable, pursuant to N.J.A.C. 7:26E-3, I have confirmed that the source of this contamination is from an off-site source and that there is no on-site contribution to this contamination. This aspect of the site was reported to the Department and assigned the Department’s Hotline incident number 00-00-00-0000-00. **[$$**Select only if there is a verified **known** off-site source: **This sediment contamination is being addressed under Department Program Interest #\_\_\_\_\_\_\_\_\_\_.$$]**  Any redevelopment on this site should take into consideration the potential for ecological exposure to contaminated sediment.”

**II. Approval Process for Modification of the RAO Model or RAO Notices**

Remediating parties and LSRPs must receive the Department’s approval PRIOR to making any changes to the RAO model language other than the RAO Notices referenced in Section I above. The procedures for the Department’s approval are outlined herein:

1. Contact both the Assistant Director and Bureau Chief of the Bureau of Inspection and Review by email to request changes to the model RAO language.
2. Include an explanation of why the change(s) is necessary in the email. Prepare the proposed language and attach it to the email.
3. The Department will provide its acceptance, rejection or suggested modification of the proposed change(s) via email.
4. After the Department accepts the change(s), it is strongly recommended that the LSRP include a description of the change and document the Department’s approval in the case record such as in appropriate sections of the Remedial Action Report (RAR) and Case Inventory Document (CID).