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Special Adoption

ENVIRONMENTAL PROTECTION

SITE REMEDIATION

Administrative Requirements for the Remediation of Contaminated Sites

Special Adopted Repeal and New Rules: N.J.A.C. 7:26B-1.5 and 4.1; 7:26C; and 7:26E-1.5, 1.7, 3.12 and 5.2; 7:14B-1.8; 7:26B-4.3 and 5.9; and 7:26E-1.9 and 7.2; 7:26D-7.5; and 7:26E-1.14 through 1.19

Special Adopted Amendments: N.J.A.C. 7:1E-5.7 and 6.5; 7:1I-1.5, 2.6 and 3.3; 7:1J-1.4, 2.7, and 6.3; 7:7A-5.4 and 15.4; 7:8-5.4; 7:9C-1.1 and 1.6; 7:14A-3.1, 7.4, 7.5 and 9.10; 7:14B-1.6, 1.7, 2.4, 3.5, 3.6, 3.8, 4.2, 5.5, 5.6, 7.2, 7.4, 8.3, 8.4, 8.5, 8.7, 9 and 10.2; 7:22-3.4, 3.11, 3.17, 4.11, and 4.17; 7:26B-1.4,1.6, 1.8 through 1.11, 3.3, 3.4, 4.2, 5.1, 5.3, 5.5, 6.1 through 6.5, 6.7, 8.1, 8.2 and 8.3; 7:26D-1.1, 1.5, 7.1, 7.3, 7.4, and 7:26D Appendix 5; 7:26E-1.2, 1.3, 1.4, 1.6, 1.8, 1.11, 1.12, 1.13, 2.1, 2.2, 3.1 through 3.5, 3.7, 3.9, 3.13, 4.1, 4.2, 4.4, 4.5, 4.6, 4.8, 5.1, 6, 7.1, 8, and 7:26E Appendix H; 7:38-1.4, 2.4, 6.6, 9.2 and 9.6; and 7:45-8.5

Special Adopted Repeals: N.J.A.C. 7:1J-6.9; 7:26B-2.2, 2.3, 3.1 and 7:26B Appendix A; 7:26D Appendix 6, and 7:26E Appendices B and F

Adopted: November 4, 2009, by the Department of Environmental Protection, Mark N. Mauriello, Acting Commissioner

Filed: November 4, 2009,

Authority: N.J.S.A. 13:1K-8; 58:10B-1-4, 8, 11-13, 17.1, 20, 26, 28, 29, 31; 58:10C-1 et seq.; and 58:23.11b, 11e2, 11f, 11g, 16.

Effective Date: November 4, 2009

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Expiration Date: May 4, 2011
DEP Docket Number: 18-09-11/739

These rules are adopted pursuant to P.L. 2009, c. 60 (the Act), effective May 7, 2009, which contains the new Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and related amendments to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act N.J.S.A. 58:23-11, et seq., and the Brownfield and Contaminated Site Remediation Act 58:10B-1 et seq., and pursuant to N.J.S.A. 58:10C-29, became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4). As required by N.J.S.A. 58:10C-29, the Department gave notice of its intention to adopt these rules by publishing a Notice of Intent to Adopt Interim Rules in the New Jersey Register on November 16, 2009 (see 41 N.J.R. 4324(a)). The interim rules will be effective immediately upon filing with the Office of Administrative Law, for a period not to exceed 18 months. They will be proposed to be readopted within that time period. That proposal will be subject to public comment and thereafter be adopted before the expiration date of the specially adopted interim rules.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. Following are analyses for each rule that is being amended by this special adoption.

Discharge of Petroleum and Other Hazardous Substances (DPOHS) rules, N.J.A.C. 7:1E

N.J.A.C. 7:1E is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. However, there

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are Federal standards or requirements to which a meaningful comparison can be made, and the Department has performed such comparison of the adopted amendments to N.J.A.C. 7:1E with analogous Federal regulations.

The effect of amending the DPOHS rules to add a cross-reference to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules is that the remediation of a discharge will have to be conducted according to the ARRCS rules, including the use of a licensed site remediation professional as applicable. To the extent that the Federal regulations do not require the use of a licensed site remediation professional, the addition of the requirement to comply with the ARRCS rules may be perceived as making the DPOHS rules more stringent than their Federal analogues.

The Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional. It is unlikely that the remediation of a discharge under the rules that existed prior to these amendments could be performed without the aid of a professional who is trained in site remediation. The Department has no data on whether fees to be charged by a licensed site remediation professional will be higher or lower than the fees currently charged by existing site remediation professionals. However, the underlying purpose of the Act is to help streamline the remediation process and the Department anticipates that added efficiencies may offset any costs that may result from the requirement to use a licensed site remediation professional.

Processing of Damage Claims Pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act rules, N.J.A.C. 7:1I

N.J.A.C. 7:1I is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, no further analysis is required.

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Processing of Damage Claims Pursuant to the Spill Compensation and Control Act rules, N.J.A.C. 7:1J

N.J.A.C. 7:1J is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

Freshwater Wetlands Protection Act (FWPA) rules, N.J.A.C. 7:7A

A comparison of the adopted amendments with the Federal regulations is appropriate in the case of the Freshwater Wetlands Protection Act rules, because the Department is also obligated under Federal law to ensure that its program is at least as stringent as the Federal 404 program. As discussed above in connection with the amendments to the DPOHS rules, to the extent that the Federal regulations do not require the use of a licensed site remediation professional, the addition of the requirement to comply with the ARRCs rules may be perceived as making the FWPA rules more stringent than their Federal analogues. However, as discussed above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional.

Stormwater Management rules, N.J.A.C. 7:8

There are no current, analogous Federal requirements for stormwater management planning; however, there are several Federal programs concerning stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) requires permits under Section 402 of that Act for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, rather than in the Stormwater Management

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rules. Section 319 of the Clean Water Act authorizes a Federal grant-in-aid program to encourage states to control nonpoint sources. The Department developed a management program for nonpoint source control under which the Department issues grants to local, regional, State, and interstate agencies as well as to nonprofit organizations to, for example, develop or monitor best management practices to control stormwater. Under Section 6217(g) of the Coastal Zone Management Act Reauthorization and Amendments of 1990 (CZARA), P.L. 101-508, the U.S. Environmental Protection Agency (EPA) has published "Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters" (CZARA 6217(g) Guidance). States may opt to participate or not participate in overall coastal zone management program, with no penalty for non-participation other than the loss of Federal grants for this program. No mandatory Federal standards or requirements for nonpoint sources pollution control are imposed. The CZARA 6217(g) Guidance includes management measures for stormwater runoff and nonpoint source pollution control from land development as well as many other source types. The Department has developed a coastal zone management program, including a component addressing coastal nonpoint pollution control. The Stormwater Management Rules at N.J.A.C. 7:8 are one means by which the Department implements its nonpoint pollution control program.

The Department has determined that the adopted amendments that now prohibit recharge of stormwater that is inconsistent with an approved remedial action workplan or landfill closure plan (as opposed to only plans approved by the Department) does not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Rather, this amendment takes into account that, with the adoption of the ARRCs rules, there will be plans that are approved by both the Department and by licensed site remediation professionals, thus making the two sets of rules consistent with each other. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

Ground Water Quality Standards, N.J.A.C. 7:9C

The Ground Water Quality Standards (GWQS) provide the basis for protection of ambient ground water quality in New Jersey by establishing constituent standards for ground

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water pollutants. These constituent standards are applicable to the development of effluent limitations and discharge requirements pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES), N.J.A.C. 7:14A; to develop minimum ground water remediation standards pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State. The authority for setting these standards comes solely from New Jersey law and has no Federal counterpart. The GWQS are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. The GWQS do not contain any standards or requirements that exceed those required by Federal law. The GWQS provides the associated ground water standards that are relevant to the New Jersey Underground Injection Control program, RCRA D, and RCRA C ground water monitoring programs at 40 CFR 144 through 146, 258, and 264. These Federal programs are implemented through the New Jersey Pollutant Discharge Elimination System program.

New Jersey Pollutant Discharge Elimination System (NJPDES), rules N.J.A.C. 7:14A

The NJPDES rules are developed partly under the National Pollutant Discharge Elimination System as authorized by the Federal Clean Water Act (including surface water and sludge management programs), under the underground injection control (UIC) program as authorized under the Federal Safe Drinking Water Act, and under ground water monitoring and corrective action portions of the municipal solid waste landfill and hazardous waste programs as authorized under the Resource Conservation and Recovery Act (RCRA).

The authority for regulating the types of discharges to ground water covered by subchapter 7 comes primarily from State statutes including N.J.S.A. 58:10A-1 et seq., and has no Federal counterpart (except in regard to injection wells as discussed below). N.J.A.C. 7:14A-7 is not promulgated under the authority of, or in order to implement, comply with, or participate in

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any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements (except as discussed below).

Some of the units regulated under N.J.A.C. 7:14A-7 are injection wells that are also regulated under N.J.A.C. 7:14A-8. An underground injection control (UIC) permit issued in accordance with N.J.A.C. 7:14A-8 is a DGW permit that is also subject to certain provisions of N.J.A.C. 7:14A-7. In addition, injection wells are regulated under USEPA rules for the Federal Underground Injection Control Program created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§300(f) et seq.). These USEPA rules are found mainly at 40 CFR Parts 144 through 148. To the extent that some N.J.A.C. 7:14A-7 provisions regulate injection wells, N.J.A.C. 7:14A-7 might be considered one of the means by which the Department participates in the UIC program established under Federal law. However, all NJPDES rule provisions that impose standards or requirements specific to injection wells are found in N.J.A.C. 7:14A-8 rather than in N.J.A.C. 7:14A-7. To the extent that some N.J.A.C. 7:14A-7 provisions affect injection wells, those provisions implement Federal UIC mandates; they do not go beyond them.

Underground Storage Tank Rules, N.J.A.C. 7:14B

Although there is a Federal Underground Storage Tank program pursuant to 42 U.S.C. 6991 regulates the operation, closure and upgrade of regulated underground storage tanks, there are no provisions in the Federal statute or regulations requiring a certification program for contractors performing services on underground storage tanks. The Federal rules at 40 CFR 280.20(e) encourage states to certify individuals to perform services on regulated underground storage tank systems.

N.J.A.C. 7:14B-1.7 contains certification statements to be signed by tank owners and consultants upon submission of documents to the Department. There is no Federal counterpart to this requirement. However, requiring certification does not increase any costs associated with the operation of an UST.

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New N.J.A.C. 7:14B-1.8, which requires an owner or operator of an underground storage tank to conduct all site investigation and tank closure activities required in this chapter in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using the services of a licensed site remediation professional, has no Federal counterpart. Accordingly, as discussed above in connection with the amendments to the DPOHS rules, to the extent that the Federal regulations do not require the use of a licensed site remediation professional, the addition of the requirement to comply with the ARRCs rules may be perceived as making the UST rules more stringent than their Federal counterpart. However, as discussed above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional.

Financial Assistance Programs to Environmental Infrastructure Facilities (FAPEIF) rules,
N.J.A.C. 7:22

The amendment to the FAPEIF rules do not exceed the standards imposed by Federal law. The Federal government provides monies to the State in the form of capitalization grants under the Environmental Infrastructure Financing Program, which is administered pursuant to the provisions of the rules contained within N.J.A.C. 7:22. Federal regulations have been adopted at 40 CFR Part 35, Subpart K, which establish requirements applicable to States for the implementation and management of State Revolving Funds (SRF). The regulations define eligible activities of the SRF and the types of projects that the SRF can finance, establish requirements that apply to recipients of SRF assistance, specify capitalization grant agreement requirements, environmental review requirements and financial requirements (including cash draw procedures, annual reports, audits and others). Extensive policy documents have also been issued by the US Environmental Protection Agency with respect to the SRF program including the "Initial Guidance for State Revolving Funds (January 1988)" which better defines the applicability of the project-level requirements and elaborates on other Federal laws that impact

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the SRF program. Other requirements applicable to SRF recipients are also included as conditions to the award of the Federal capitalization grant agreements. N.J.A.C. 7:22 is designed to achieve conformance with these Federal requirements and to protect the use of public funds to ensure the self-perpetuating nature of the SRF. The Department is updating those portions of the FAPEIF rule concerning disclosure of whether a site is being remediated to cross reference the Administrative Requirements for the Remediation of Contaminated Sites rules. The requirement that disclosure be made, however, is not changing.

Industrial Site Remediation Act (ISRA) Rules, N.J.A.C. 7:26B

The ISRA rules do not contain any standards or requirements that exceed those imposed by Federal law. ISRA was not enacted under the authority of, or in order to implement, comply with, or participate in, a program established under Federal law. Moreover, the ISRA rules do not incorporate Federal law, standards or requirements.

ISRA does, however, contain several references to remediation programs established by Federal law. These references grant equivalent status to those remediations performed under Federal law for the purpose of determining an owner or operator's compliance requirements pursuant to ISRA. The references to Federal law in these rules are not the type of references that require further analysis pursuant to Executive Order No. 27 or N.J.S.A. 52:14B-1 et seq. because they are incidental to the administration of the ISRA program. In fact, the inclusion of equivalent Federal approvals in these rules promotes the policy objectives outlined in Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. Therefore, the Department has determined that the amendments to the ISRA rules do not contain any standards or requirements which exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) rules, N.J.A.C. 7:26C

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The new ARRCs rules do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the ARRCs rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 CFR Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site, with or without Department oversight. Therefore, there are no Federal provisions with which to compare the provisions of the Administrative Requirements for the Remediation of Contaminated Sites rules. Based on this analysis, the Department has determined that the rules proposed for readoption with amendments do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Remediation Standards rules, N.J.A.C. 7:26D

The Remediation Standards, N.J.A.C. 7:26D, are adopted under the authority of the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. These State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department compared the adopted rules to the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) 42 U.S.C. §§9601 et seq., the Resource Conservation and Recovery Act (RCRA) of 1980; 42 U.S.C. §§6901, 6991 et seq., and the Federal Safe Drinking Water regulations 40 U.S.C. §§141, 142 and 143.

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The Department has determined that the amendments made to implement the Act do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

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

The Technical Requirements for Site Remediation, N.J.A.C. 7:26E were promulgated under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. and these State statutes all refer to or incorporate Federal law, Federal standards or Federal requirements. In addition, the EPA has delegated its Underground Storage Tank program to New Jersey pursuant to 40 CFR 280. Thus, in accordance with N.J.S.A. 52:14B-22 through 24 and Executive Order No. 27 (1994), the Department has compared this adoption to the Federal rules and associated guidance documents issued pursuant to the following Federal laws: the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) 42 U.S.C. §§9601 et seq. and the Resource Conservation and Recovery Act (RCRA) of 1980, 42 U.S.C. § 6901 and 6991 et seq.

The Department has determined that, with the exception of the provisions that are described in the following paragraphs, the Technical Requirements for Site Remediation and these adopted amendments, repeals and new rules do not require any specific action that is more stringent than any requirement of comparable Federal rules. The implementing regulations for the Federal laws listed above provide only generic procedural requirements on how to investigate and remediate contaminated sites. For example, the National Contingency Plan (NCP) 40 CFR 300, the implementing regulations for CERCLA, provides possible options for conducting the remedial investigation but the NCP does not detail the minimum steps that must be taken before an area of concern can be considered adequately evaluated.

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The Department has incorporated several amendments to the Technical Requirements for State Remediation that differentiate requirements for a site that is being remediated with a Licensed Site Remediation Professional from sites that are being remediated without a licensed site remediation professional, and establishes regulatory timeframes for the completion and submission of a receptor evaluation, and the submission of a preliminary assessment/site investigation report within 270 days of discovering a discharge or an Industrial Site Recovery Act triggering event. As discussed in the Federal Standards Analysis for the Administrative Requirements for the Remediation of Contaminated Sites rules provided above, the Department has determined that the rules that establish the Licensed Site Remediation Professional program do not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required. The establishment of regulatory timeframes for the completion of certain remedial work is more stringent than equivalent Federal programs. Like the Federal remediation programs, the Department allowed the remediation of contaminated sites to be conducted on site specific schedules. The Department has found that this practice has allowed cleanups to be dragged out unnecessarily and has prolonged the remediation process. As described in the section concerning the DPOHS rules above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional. However, the Department believes that there will be an overall cost savings associated with the time frames. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water and to soil off the property being remediated which often adds to the overall cost of remediation. If the remediation of contaminated sites is completed in a more timely manner, such sites can be put to better use and often can result in increased taxes for local and state government.

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The Department has adopted requirements for the person responsible for conducting remediation to submit information on reporting forms or submit technical reports with cover forms that will be provided by the Department. Because there are no equivalent requirements for the Federal remediation programs, this is considered a more stringent requirement. The Department has developed these forms as part of the licensed site remediation professional program and will allow the Department to more quickly and efficiently enter information about the person that is conducting remediation, and technical and administrative information about contaminated sites into its databases. The use of forms will help ensure that technical reports are delivered to the proper section within the Site Remediation Program so that they can be reviewed as effectively as possible. Again, as described above, the Department is unable at this time to determine whether the requirement that remediation be conducted using the services of a licensed site remediation professional will increase or decrease the cost of the remediation because no information is available regarding the cost of using a licensed site remediation professional.

The Department is working toward the submission of the majority of site remediation related information electronically so that the Site Remediation Program can be run as efficiently as possible and so that that same information can be easily shared with the public, the Federal and local governments and any other interested party.

Highlands Water Protection and Planning Area rules, N.J.A.C. 7:38

The Highlands Act delineates a contiguous area in the northwest of the State of New Jersey as the "Highlands Region" based on common physical and geographic features. It further divides the Region into two parts: the preservation and planning areas. The Highlands Act mandates that the Department's rules provide enhanced environmental standards for development in the preservation area to protect its important water, ecological and cultural resources. By inference, the planning area is deemed to have fewer critical resources and may be more suitable for development.

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The enhanced standards in the preservation area apply to all aspects of potential development. They include strict limitations on obtaining new sources of potable water and constructing new wastewater facilities, and preclude development in areas containing statutorily-identified, environmentally sensitive features. Further, the Highlands rules require a comprehensive analysis of the environmental impact of all project components.

A comprehensive regional approach to regulation is not common in Federal environmental regulation. The Federal Environmental Protection Agency (EPA) establishes one set of standards nationwide and then requires individual states to establish their own, comparable standards. States often retain the ability to devise more stringent or regional standards if appropriate. There is no requirement to apply all Federal standards to a single site in a comprehensive manner. That is, certain aspects of a proposed development may comply with a standard and be approved while other aspects may not comply and may be denied. There are no comprehensive Federal standards that apply specifically to the Highlands Region like the State rules readopted herein. Therefore, there is no basis for comparison between these rules in their entirety and any one specific Federal regulation. While some of the individual standards comprising a Highlands preservation area approval do have comparable Federal regulations, the Department has determined that the amendments made to implement the Act do not amend any provision that has a comparable Federal Regulation. No further analysis under Executive Order 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Rules for the Review Zone of the Delaware and Raritan Canal State Park, N.J.A.C. 7:45

There are no current, analogous Federal requirements for the regulation of a State Park as a recreation area, source of potable water and as an historic district; however, the Federal Clean Water Act does concern stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act, 33 U.S.C. §§1251 et seq., requires permits under Section 402 of that Act (33 U.S.C. §1342) for certain stormwater discharges. The Department's requirements to obtain such permits are set forth in the New Jersey Pollutant Discharge Elimination System Rules, N.J.A.C. 7:14A, rather than in Rules for the Review Zone of the Delaware and Raritan Canal State Park.

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Accordingly, the within rules do not conflict with, and are not more stringent than the Federal Clean Water Act. Therefore, Executive No. Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) do not require any further analysis.

Full text of the special adopted new rules and amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus], except for the proposed amendments to N.J.A.C. 7:26E Appendix H, where deletions indicated in cursive brackets {thus}):

CHAPTER 1E. DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES
SUBCHAPTER 5. DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

7:1E-5.7 Discharge response

(a) Any person responsible for a discharge shall:

1. (No change.)

2. Take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge by either:

i. (No change.)

ii. Remediating the discharge pursuant to the [Technical Rules for Site Remediation, N.J.A.C. 7:26E] Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and

3. (No change.)

(b) (No change.)

(c) Upon learning that a discharge of a hazardous substance has occurred, the Department may:

1. (No change.)

2. Take any other action to require any person responsible for the discharge to remediate the discharge pursuant to:

i. [The Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; and

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ii. (No change.)

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1E-6.5 Civil administrative penalty determination—general

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

(c) The Department may assess a civil administrative penalty, pursuant to the [Department Oversight] Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-[10]9, for a person's violation of an obligation to cleanup and remove a discharge pursuant to N.J.A.C. 7:1E-5.

CHAPTER 11. PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SANITARY LANDFILL FACILITY CLOSURE AND CONTINGENCY FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:1I-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as found at N.J.A.C. 7:26-1.4.

...

“Covenant not to sue” means a [document defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C] covenant pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31.

...

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

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["No further action letter" means a letter as defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C.]

...

SUBCHAPTER 2. CLAIMS GENERALLY

7:1I-2.6 Claims by responsible parties or by owners or operators of a sanitary landfill facility

(a) - (c) (No change.)

(d) No person who benefits from a covenant not to sue [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 for a remediation that involves the use of engineering controls at a sanitary landfill facility, or who acquired the sanitary landfill facility after the [Department issued a no further action letter] issuance of a final remediation document for a remediation at the sanitary landfill facility that involves the use of engineering controls and seeks payment for damages relating to the real property and remediation covered by the covenant not to sue, shall receive compensation from the Fund for damages proximately resulting from the very sanitary landfill facility for which they are an owner, operator, or otherwise responsible party.

(e) No person who benefits from a covenant not to sue [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 for a remediation that involves only the use of institutional controls at a sanitary landfill facility, or who acquired the sanitary landfill facility after the [Department issued a no further action letter] issuance of a final remediation document for a remediation at the sanitary landfill facility that involves only the use of institutional controls shall receive compensation from the Fund for damages proximately resulting from removing the institutional control at the very sanitary landfill facility for which they are an owner, operator or otherwise responsible party.

(f) Notwithstanding (b), (d) and (e) above, an owner or operator may be eligible for damages if such owner or operator can establish to the satisfaction of the Department that the claim satisfies one of the following requirements:

1. - 3. (No change.)

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4. The claimant acquired the sanitary landfill facility after the [Department issued a No Further Action letter] issuance of a final remediation document concerning the sanitary landfill facility or a portion of the sanitary landfill facility and all of the following apply:

- i. The remediation which is the subject of the [No Further Action letter] final remediation document involves the use of an institutional control only;
- ii. - iii. (No change.)

SUBCHAPTER 3. CLAIMS PROCEDURE

7:11-3.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. - 10. (No change.)

11. A statement that the claimant cannot benefit from a covenant not to sue [if one has been issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 for the sanitary landfill facility at issue and why;

12. - 13. (No change.)

14. A statement that the claimant is the owner of a sanitary landfill facility for which [the Department issued a no further action letter] a final remediation document was issued for the entire sanitary landfill facility or any part thereof, and that all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] final remediation document involved the use of an institutional control and not an engineering control;

ii. - iii. (No change.)

(b) The claimant shall submit to the Department the following types of information requested by the Department:

1. The location of the sanitary landfill facility which the claimant believes to be the proximate cause of the damages incurred, including the name of the site, the street address, the municipality, and the county, including without limitation the following:

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- i. - ii. (No change.)
- iii. Whether [the Department ever issued a no further action letter] a final remediation document was issued concerning the sanitary landfill facility or a portion thereof, and whether the remediation at the sanitary landfill facility involved an institutional control and/or engineering control;
- iv. Whether the [Department issued a] covenant not to sue pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 [concerning] applies to the sanitary landfill facility or a portion of the sanitary landfill facility;
- v. - vii. (No change.)
- 2. - 16. (No change.)
- (c) - (e) (No change.)

CHAPTER 1J. PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SPILL COMPENSATION AND CONTROL ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:1J-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...

“Covenant not to sue” means a [document defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C] covenant pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31.

...

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

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["No further action letter" means a letter as defined as such pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C.]

...

SUBCHAPTER 2. CLAIMS GENERALLY

7:1J-2.7 Claims by responsible parties or by owners or occupants of property from which discharge has emanated

(a) (No change.)

(b) If, after a discharge occurs, a person purchases or otherwise voluntarily acquires or obtains title to the land from which the discharge emanated, claims by such purchaser in connection with the discharge are ineligible for compensation from the Fund, unless such purchaser can establish to the satisfaction of the Department that the claim satisfies one of the following requirements:

1. - 2. (No change.)

3. The claimant acquired the subject property after the [Department issued a No Further Action letter] issuance of a final remediation document concerning the subject property or a portion of the subject property and all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] final remediation document involves the use of an institutional control only;

ii. - iii. (No change.)

(c) Notwithstanding (a)2 above, a claimant who is relieved from liability pursuant to N.J.S.A. 58:10-23.11g(d) is not eligible for compensation from the Fund if the claimant:

1. Benefits from a covenant not to sue [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 for a remediation that involves engineering controls at the property, or acquired the subject property after the [Department issued a no further action letter] issuance of the final remediation document for a remediation at the subject property that involves the use of engineering controls and seeks payment for damages relating to the real property and remediation covered by the covenant not to sue; or

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2. Benefits from a covenant not to sue [issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 for a remediation that involves only the use of institutional controls at the subject property, or acquired the subject property after the [Department issued a no further action letter] issuance of a final remediation document for a remediation at the subject property that involves only the use of institutional controls, if the damages claimed proximately result from removing the institutional controls from the subject property.

SUBCHAPTER 6. CLAIMS PROCEDURES

7:1J-6.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. - 8. (No change.)

9. A statement that the claimant cannot benefit from a covenant not to sue [if one has been issued by the Department] pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 for the subject property and why;

10. (No change.)

11. A statement that the claimant is the purchaser of a subject property for which [the Department issued a No Further Action letter] a final remediation document has been issued for the entire property or any part thereof, and that all of the following apply:

i. The remediation which is the subject of the [No Further Action letter] final remediation document involved the use of an institutional control and not an engineering control;

ii. - iii. (No change.)

(b) The claimant shall submit to the Department any of the following types of information requested by the Department:

1. - 17. (No change.)

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18. Any other information which the Department deems necessary to process the claim, including, but not limited to, the following:

i. Whether [the Department ever issued a No Further Action letter] there is a final remediation document concerning the subject property or a portion thereof, and whether the remediation at the subject property involved an institutional control and/or engineering control;

ii. Whether [the Department issued] a covenant not to sue exists pursuant to N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10C-31 concerning the subject property or a portion of the property; and

iii. (No change.)

(c) - (e) (No change.)

7:1J-6.9 [Remediation of discharge which is subject of claim

The Department may require the claimant to enter into an oversight document pursuant to the Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C, to review any information regarding the remediation of a discharge that is the subject of a claim. In the instance where the claimant has a compensable claim, the Department will waive oversight costs pursuant to N.J.A.C. 7:26C-9.] Reserved.

CHAPTER 7A. FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 5. ADOPTED GENERAL PERMITS

7:7A-5.4 General permit 4-Hazardous site investigation and cleanup

(a) General permit 4 authorizes activities in freshwater wetlands, transition areas, and State open waters, which are undertaken by the Department or expressly approved [in writing by the Department's Division of Remediation Management and Response] pursuant to the

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Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, for the investigation, cleanup or removal of:

1. – 2. (No change.)

(b) There is no acreage limit on activities under general permit 4. However, disturbance shall be the minimum that is necessary for compliance with the Department's [technical requirements for site remediation] Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and mitigation shall be performed for all disturbances of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit except that mitigation is not required to compensate for disturbance of wetlands of State open waters that have formed as a direct result of the remediation activities. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.

(c) The mitigation proposal required under (b) above may be incorporated into the document [by which the Department approves the cleanup] approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and/or it may be submitted as part of the General permit application. The Department shall not issue an authorization under general permit 4 until the mitigation proposal, or an equivalent document that ensures that the requirements of N.J.A.C. 7:7A-15 are met, is approved. Mitigation shall be performed prior to or concurrently with cleanup activities.

(d) (No change.)

SUBCHAPTER 15. MITIGATION

7:7A-15.4 Property suitable for mitigation and the criteria for addressing contaminated sites

(a) - (g) (No change.)

(h) The Department shall not approve mitigation in an area that contains contamination until all potential contaminated areas have been identified, and all remediation of the area(s) is completed so that there is no potential for the mitigation activities to result in the reintroduction of contamination to ecological communities or exposure of humans to contamination, and there is no potential for the mitigation site to be contaminated by the belated discovery of new areas of

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contamination requiring remediation. The Department will determine on a case by case basis whether it is feasible on a site containing contamination to conduct onsite mitigation.

1. If the Department determines that there is reason to suspect contamination on the proposed mitigation area, the site must be properly characterized and assessed to ensure there is no ecological risk associated with the proposal. To obtain this characterization, the mitigator shall [establish a memorandum of agreement with the Department's Division of Remediation Management and Response in accordance with N.J.A.C. 7:26C in order to obtain a review of the submitted data] remediate the site pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.

2. (No change.)

(i) (No change.)

CHAPTER 8. STORMWATER MANAGEMENT

SUBCHAPTER 5. DESIGN AND PERFORMANCE STANDARDS FOR STORMWATER MANAGEMENT MEASURES

7:8-5.4 Erosion control, groundwater recharge and runoff quantity standards

(a) This section contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge, and control stormwater runoff quantity impacts of major development.

1. (No change.)

2. The minimum design and performance standards for groundwater recharge are as follows:

i. - ii. (No change.)

iii. The following types of stormwater shall not be recharged:

(1) Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than 'reportable quantities'

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as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with [Department approved] a remedial action work plan approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or landfill closure plan; and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

(2) (No change.)

iv. (No change.)

3. (No change.)

(b) (No change.)

CHAPTER 9C. GROUND WATER QUALITY STANDARDS

SUBCHAPTER 1. GROUND WATER QUALITY STANDARDS

7:9C-1.1 Scope of chapter

(a) (No change.)

(b) This chapter provides the basis for protection of ambient ground water quality, through the establishment of constituent standards for ground water pollutants. These constituent standards are applicable to the development of: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A); ground water remediation standards; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including non-point and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1 et seq.), the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq., the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the Underground Storage of Hazardous Substances Act

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(N.J.S.A. 58:10A-21 et seq.), the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

7:9C-1.6 Exceptions to the classification system

(a) The Department may establish a Classification Exception Area only when the Department determines that constituent standards for a given classification are not being met or will not be met in a localized area due to: natural quality; localized effects of a discharge approved through a NJPDES permit action; pollution caused by human activity within a contaminated site as defined by the Department in the context of an applicable regulatory program (for example, Site Remediation Program [Oversight Document]); or an ACL as approved by the Department pursuant to NJPDES. In the context of an applicable regulatory program, the Department shall determine or describe appropriate boundaries for each Classification Exception Area and include the written description of the boundaries in the appropriate [oversight document or] permit action along with specifications as to which constituents the exception applies. Classification Exception Areas may only be established when constituent standards are not being met or will not be met due to the conditions set forth above and shall not be established for the purpose of sanctioning violations of constituent standards.

(b) - (c) (No change.)

(d) Where a discharge has resulted or will result in localized ground water quality that contravenes one or more constituent standards, the Department may define that area as a Classification Exception Area for specified constituents pursuant to (or in accordance with) a NJPDES permit action or [a Department-approved remedial action] the remediation of a contaminated site in the context of an applicable regulatory program. All other constituent standards shall apply within the Classification Exception Area. All designated uses in each Classification Exception Area will be suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents. The Department shall restrict or require the restriction of potable ground water uses within any Classification Exception Area

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where there is or will be an exceedance of the Primary Drinking Water Quality Standards (in N.J.A.C. 7:10). Where the Department defines the Classification Exception Area through a NJPDES permit action, the Classification Exception Area shall have the same life as the approved NJPDES permit action, after which the original classification, designated uses and constituent standards shall apply. Other regulatory actions creating the Classification Exception Area shall specify the longevity of the exception, after which the original classification, designated uses and constituent standards shall be applicable.

CHAPTER 14A. NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM SUBCHAPTER 3. DETERMINATION OF PERMIT FEES

7:14A-3.1 Fee schedule for NJPDES permittees and applicants

(a) - (j) (No change.)

(k) The fee for discharges to groundwater required for conducting remediation, as defined by N.J.A.C. 7:26E, of contaminated sites, and for any NJPDES discharge to groundwater permits issued by the Site Remediation Program, is calculated and billed through requirements specified in N.J.A.C. 7:26C-[9.3] 4.5.

(l) - (m) (No change.)

Table I - Table III (No change.)

SUBCHAPTER 7. REQUIREMENTS FOR DISCHARGES TO GROUNDWATER (DGW)

7:14A-7.4 Exemptions

(a) Persons responsible for the following discharges are exempt from the requirement to obtain a discharge to groundwater permit:

1. - 4. (No change.)

5. The following stormwater discharges, if such discharges are not through underground injection regulated under N.J.A.C. 7:14A-8, and do not require a permit under N.J.A.C. 7:14A-24.2(a)9:

i. (No change.)

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ii. Stormwater discharges from residential areas (including residential streets, parking lots, easements, and open space), or from commercial areas (other than areas of high pollutant loading), unless N.J.A.C. 7:14A-25.2(a) or (b) requires the operating entity to apply for a NJPDES permit for the discharge. For purposes of this subparagraph and N.J.A.C. 7:14A-8.5(b)9 and 24.2(c)3, high pollutant loading areas are commercial areas where solvents and/or petroleum products are loaded/unloaded, stored, or applied; commercial areas where pesticides are loaded and/or unloaded or stored; commercial areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the USEPA at 40 C.F.R. 302.4; commercial areas where recharge would be inconsistent with a [Department approved] remedial action work plan approved pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or a landfill closure plan; and commercial areas where the risk for spills of toxic material is high, such as gas stations and vehicle maintenance facilities; and

iii. (No change.)

7:14A-7.5 Authorization of discharges to ground water by permit-by-rule

(a) (No change.)

(b) Any person responsible for the discharges to ground water listed in (b)3i through vii below is deemed to have a permit-by-rule if the discharge occurs when:

1. A contaminated site, as defined in N.J.A.C. [~~7:26C-1.3~~]7:26E-1.8, is being remediated pursuant to the rules at N.J.A.C. 7:14B implementing the Underground Storage of Hazardous Substances Act (N.J.S.A. 13:1K-6 et seq.), the requirements of the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the requirements of the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11), or the [Procedures for Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C; and

2. - 3. (No change.)

(c) (No change.)

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SUBCHAPTER 9. GROUND WATER MONITORING REQUIREMENTS FOR SANITARY LANDFILLS

7:14A-9.10 Selection of remedy

(a) – (f) (No change.)

(g) When ground water contamination is known to have migrated outside the sanitary landfill boundary, the sanitary landfill shall [request to conduct] implement a cleanup in accordance with the [Procedures for Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C within 90 days unless it can be demonstrated that a source other than the MSWLF caused the contamination, or that the statistically significant increase resulted from an error in sampling, analysis, statistical evaluation, or from natural variation in ground water quality. A report documenting this demonstration shall be certified by a qualified ground water scientist or approved by the Department and placed in the records maintained by the facility.

CHAPTER 14B. UNDERGROUND STORAGE TANKS

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.6 Definitions

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

...

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

...

“Licensed site remediation professional” means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

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...

7:14B-1.7 Certifications

(a) – (f) (No change.)

(g) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who conducts or directs activities and prepares documents in accordance with N.J.A.C. [7:14B-8 .5 or] 7:14B-7.2(b), 7:14B-7.4, and 7:14B-9.5, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that the work was performed under my oversight and I have reviewed the report and all attached documents, and the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(h) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who prepares documents pursuant to N.J.A.C. [7:14B-8 .5 or] 7:14B-7.2(b), 7:14B-7.4, 7:14B-8 or 7:14B-9.5 for another certified subsurface evaluator who conducted or directed onsite activities, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I certify under penalty of law that the onsite work was performed by a certified subsurface evaluator. I am aware that there are significant civil and

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criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

7:14B-1.8 General Requirements

(a) The owner or operator of an underground storage tank system shall comply with the regulatory timeframes in this chapter or in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, when indicated and shall:

1. Conduct all site investigation and tank closure activities required by this chapter using the services of an individual certified in subsurface evaluation and/or closure in accordance with N.J.A.C. 7:14B-13 when site investigation and tank closure activities were initiated, as determined pursuant to Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.2(a), prior to November 4, 2009; or

2. Conduct all site investigation and tank closure activities required by this chapter in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using the services of a licensed site remediation professional, when site investigation and tank closure activities are initiated, as determined pursuant to N.J.A.C. 7:26C-2.2(b), on or after November 4, 2009.

7:14B-2.4 Changes to registration

(a)-(c) (No change.)

(d) Upon receipt of an amended New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to (a) above, the Department will remove an underground storage tank system from its registrant list when the Department receives a final remediation document.

SUBCHAPTER 3. FEES

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7:14B-3.5 Program fees and oversight [cost fees]costs

(a) The owner or operator of an existing, former or proposed underground storage tank system shall pay all required fees and costs pursuant to this chapter and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4, as applicable, and shall:

1. - 3. (No change.)

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

(d) The cost for the Department review of any remediation document not listed in (c) above shall be assessed pursuant to N.J.A.C. 7:26C-9.

(e) [The] When required, the owner or operator shall submit oversight [cost fees] costs pursuant to the provisions found in the [rules for Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-[9.3]4.5 and submit payment pursuant to N.J.A.C. 7:26C-[9.5]4.7. In addition, the Department may consider the failure to pay a fee to be a violation of the Act.

7:14B-3.6 Payment for Department services

[(a) All fees submitted in compliance with N.J.A.C. 7:14B-3.2 shall be made by check or money order, payable to "Treasurer, State of New Jersey," and submitted to:

New Jersey Department of Environmental Protection
Division of Remediation Support
Oversight Resources Allocation Element
PO Box 028
401 East State Street
Trenton, NJ 08625-0028

All other fee payments shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to the address at N.J.A.C. 7:14B-2.2(b).]

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(a) The person responsible for conducting the remediation shall make all payments of fees and oversight costs required by this subchapter:

1. By either:

i. Certified check, attorney check, money order, or personal check made payable to “Treasurer, State of New Jersey”; or

ii. E-check or credit card after the Department posts a notice for either on its website at www.nj.gov/dep/srp/srra or in the New Jersey Register that the Department’s portal for making payments by E-check or credit card is available.

2. Payments shall be mailed to the following address unless otherwise indicated on the first page of a billing invoice:

DEP/Bureau of Case Assignment & Initial Notice

PO Box 434

Trenton, NJ 08625-0434

(b) (No change.)

7:14B-3.8 Oversight cost review

To contest on oversight cost imposed pursuant to the [rules for Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites[,] rules at N.J.A.C. 7:26C-[9.3]4, the contestor shall follow the procedures found in N.J.A.C. 7:26C-[9.4]4.6.

SUBCHAPTER 4. UNDERGROUND STROAGE TANK SYSTEMS: DESIGN, CONSTRUCTION AND INSTALLATION

7:14B-4.2 Upgrading of existing underground storage tank systems

(a) All existing underground storage tank systems shall comply with one of the following requirements:

1.- 2. (No change.)

3. Closure requirements under N.J.A.C. 7:14B-9, including applicable

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requirements [for corrective action under] pursuant to N.J.A.C. 7:14B-8 and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C.

(b) – (f) (No change.)

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.5 Release response plan

(a) The owner or operator of an underground storage tank system shall prepare a release response plan which includes the following information:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline 1-877 WARN DEP or 1-877-927-6337, and any other appropriate local or State agencies;

2.- 3. (No change.)

4. The procedures to be followed [pursuant to N.J.A.C. 7:14B-8] in the event of a leak or discharge of a hazardous substance, pursuant to N.J.A.C. 7:14B-7.3 and 8, N.J.A.C. 7:26C-2, [or discharge from the facility] and N.J.A.C. 7:14B-9 if the underground storage tank system must be closed.

(b) – (c) (No change.)

7:14B-5.6 Recordkeeping

(a) Owners and operators shall maintain the following information until the owner [of] or operator receives the Department's written permission to discard the records pursuant to (c) below:

1. - 3. (No change.)

4. [Results of all site investigations and remedial investigations conducted pursuant to N.J.A.C. 7:14B-8 and 9] All remediation documents prepared or required pursuant to this chapter;

5. - 6. (No change.)

(b) – (d) (No change.)

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SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.2 Investigating a suspected release

(a) (No change.)

(b) If the investigation conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator shall [within 60 calendar days of discovery of a suspected release] in accordance with the schedule at N.J.A.C. 7:26E-3.3(e), conduct and complete a site investigation designed to confirm or disprove a suspected discharge in accordance with N.J.A.C. 7:26E-3.3. If a discharge is confirmed, the owner or operator shall initiate action pursuant to N.J.A.C. 7:14B-7.3. Documentation of an investigation in accordance with this section which disproves a suspected discharge shall be kept at the facility and made available for inspection by the Department for the operational life of the underground storage tank system.

7:14B-7.4 Unknown sources

If the [Department]owner or operator of a facility has information indicating that a facility may be the source of a discharge, the [Department shall require the] owner or operator of the facility shall[to] perform a site investigation of the underground storage tank system(s) at the facility in accordance with N.J.A.C. 7:26E-3.3 [and to],¹ prepare [90 calendar days after the Department's written request for a site investigation] a site investigation report in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3.13, and submit the report to the Department within the timeframe indicated at N.J.A.C. 7:26E-3.3(e). The [Department shall require the] owner or operator of a facility that is the suspected source of a discharge [to] shall perform additional investigation(s) as the Department determines to be necessary and shall remediate any discharge discovered during the additional site investigation(s).

SUBCHAPTER 8. REMEDIATION ACTIVITIES

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7:14B-8.3 Reporting requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall provide the local health department and the Department with a remedial investigation report prepared and presented pursuant to N.J.A.C. 7:26E-4.8, [accompanied by all applicable fees required in N.J.A.C. 7:14B-3] and shall pay all required fees and costs pursuant to this chapter and the Administrative Requirements for the Remediation of Contaminated Sites Rules at N.J.A.C. 7:26C-4, as applicable, within [120] 270 calendar days after the notification required by N.J.A.C. 7:14B-7.3(a) or by November 26, 2010, which ever is later.

1. (No change.)

(b) For all confirmed releases from an underground storage tank subject to regulation at 40 C.F.R. Part 280, the owner or operator shall report to the Department the source and cause of the confirmed release on a Confirmed Discharge Notification form available from the Department at <http://www.nj.gov/dep/srp/srra/forms/> in accordance with the timeframe applicable for submittal of the site investigation or remedial investigation report, regardless of whether the remediation is being conducted pursuant to N.J.A.C. 7:14B-1.8(a)1 or 2.

[(b) The] (c) As required pursuant to N.J.A.C. 7:14B-1.8, the report described in (a) above, and the form described in (b) above if applicable, shall be prepared either by an individual certified in subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or by a licensed site remediation professional. The report(s) shall include the name and address for both the owner and the operator.

[(c) In] (d) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, in addition to the requirements listed in (a) and (b) above, the owner or operator of an underground storage tank system which has discharged a hazardous substance shall submit one of the documents listed in [(c)1] (d)1 through 3 below, and all of the appropriate fees pursuant to N.J.A.C. 7:14B-3.5 with the remedial investigation report to the address specified in N.J.A.C. 7:14B-2.2(b):

1. - 3. (No change.)

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~~[(d) Within]~~ ~~(e)~~ When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, within 90 calendar days after the Department's approval of the remedial investigation workplan submitted pursuant to ~~[(c)2]~~ ~~(d)2~~ above, the owner or operator shall submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8 and ~~[(c)](d)~~ above that presents all the data and information collected in accordance with the approved remedial investigation workplan, or any other sampling conducted in accordance with N.J.A.C. 7:26E[.], accompanied by the applicable fee required in N.J.A.C. 7:14B-3.

1. – 3. (No change.)

~~[(e)](f)~~ If the Department determines at any time prior to the approval of a proposed request for no further action that additional sampling and analysis is required, the owner or operator shall conduct the additional sampling and analysis as required, which may include submission of a remedial investigation workplan in the time frame specified by the Department.

~~[(f)](g)~~ If the Department determines that any submittal made under this section is inadequate or incomplete, the Department shall provide the owner or operator with written notification of the deficiencies, and the owner or operator shall correct the deficiencies ~~[revise]~~ and resubmit the required information within 30 calendar days of receipt of the notification unless otherwise specified by the Department. If the revision does not address the deficiency(ies) to the Department's satisfaction, the Department shall disapprove the submittal and require the owner or operator to present a new submittal pursuant to ~~[(c)](d)~~ above and a new fee pursuant to N.J.A.C. 7:14B-3.5.

~~[(g)]~~ If the Department notes any deficiencies in any of the items submitted in accordance with (c)2 and 3 above, the Department may conditionally approve the submittal. Within the timeframe specified by the Department, the owner or operator shall, in writing, accept or reject the Department's conditions. If the owner or operator rejects any one of the Department's conditions, the owner or operator shall submit a revision to the remedial investigation workplan or remedial action workplan within 30 calendar days of receipt of the conditional approval, unless otherwise specified by the Department, addressing the noted deficiencies. If the revision does not address the deficiency(ies) to the Department's satisfaction, the Department shall

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disapprove the submittal and require a new submittal pursuant to (c)] above and a new fee pursuant to N.J.A.C. 7:14B-3.5.]

(h) [The] When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the owner or operator may request an extension of time to submit the remedial investigation report [in accordance with] required in ([d]e) above. The request shall be in writing and include a justification for such a change and outline a new detailed schedule for the submission of the report. All requests for extensions shall be [received by the Department at least 14 calendar days prior to any schedule deadline. The Department shall approve or disapprove the extension request in writing] submitted pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A. C. 7:26C-3.2(b).

(i) (No change.)

(j) If the Department approves a revised remedial investigation workplan submitted pursuant to [(c)](d) above, the owner or operator shall perform the additional work in accordance with the timeframes specified therein.

(k) If the Department determines that a remedial action for affected media at or emanating from any portion of the facility is necessary prior to full contaminant delineation due to a discharge posing an immediate threat to public health or the environment, the owner or operator shall[, within 45 calendar days of the request from the Department, submit to the Department a detailed remedial action workplan that shall be prepared and presented in accordance with N.J.A.C. 7:26E-6.2 and be specific to the discharge to the affected media identified by the Department] comply with N.J.A.C. 7:26E-1.14.

(l) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2, the owner or operator shall implement the remedial investigation and submit reports pursuant to the Administrative Requirements for the Remediation of Contaminated Sites Rules at N.J.A.C. 7:26C-2.4 and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4, within the timeframe specified at 8.3(a) above.

7:14B-8.4 Implementation of the remedial action requirements

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(a) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the following requirements shall apply:

[(a)]1. After written Department approval of the remedial action workplan, including any workplan amendments, the owner or operator shall implement the remedial action workplan and any amendments thereto in accordance with the timeframes specified therein. The owner or operator shall obtain any necessary permits in accordance with N.J.A.C. 7:26E-7[.];

[(b)]2. The owner or operator may request, in writing, an extension of time to complete implementation of the remedial action workplan. The request shall include a justification for such a change and outline a new detailed schedule for the submission of the remedial action report. All requests for extensions shall be received by the Department 14 calendar days prior to any schedule deadline. The Department shall approve or disapprove the extension request in writing[.];

[(c)]3. The owner or operator shall submit an amendment to the approved remedial action workplan at any time during the implementation of the workplan, if new information, such as a new discharge, becomes available which was not adequately addressed in the original workplan. All remedial action workplan amendments shall be accompanied by a revised schedule and the appropriate additional fee pursuant to N.J.A.C. 7:14B-3.5[.];

[(d)]4. The owner or operator of the facility shall submit progress reports to the Department in the time frame specified by the remedial action workplan approval letter. The progress reports shall contain the information required in accordance with N.J.A.C. 7:26E-[6.5]6.6 and the remedial action workplan approval letter[.]; and

[(e)]5. The Department may conduct inspections of the facility that is subject to a remedial action workplan to determine compliance with the workplan.

(b) When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)2, the owner or operator shall implement the remedial action and submit reports as required pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, pay all required fees and costs pursuant to N.J.A.C. 7:26C-4, and if necessary, submit any request for an extension of a regulatory timeframe in this subchapter in

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accordance with the procedures and timeframes at N.J.A.C. 7:26C-3.1(b).

7:14B-8.5 Remedial action reports

(a) When the owner or operator is conducting the remediation pursuant to N.J.A.C.

7:14B-1.8(a)1, the following requirements shall apply:

[(a)]1. After the remedial action workplan is fully implemented, the owner or operator of the facility shall submit a remedial action report to the Department. The remedial action report shall be prepared and presented in accordance with N.J.A.C. 7:26E-[6.6]6.7, and discuss all the data and information collected in accordance with the approved remedial action workplan. The remedial action report shall compare the proposed remedial actions described in the remedial action workplan and actual action undertaken to perform the remediation[.];

[(b)]2. If the Department notifies the owner or operator that the remedial action workplan has not been fully completed, the owner or operator of the facility shall correct any deficiencies, and amend the remedial action report, in the time frames specified by the Department[.]; and

[(c)]3. The Department shall issue a no further action determination to the owner or operator of the facility upon satisfactory completion of the remedial action workplan and submission of the remedial action report.

(b) When the owner or operator is conducting the remediation pursuant to N.J.A.C.

7:14B-1.8(a)2, the owner or operator shall implement the remedial action and submit reports, and address any deficiencies identified by the Department in accordance with N.J.A.C. 7:26C-2.4, and shall submit a response action outcome issued by the licensed site remediation professional hired by the owner or operator to conduct the remediation.

7:14B-8.7 Health and safety requirements

All remedial investigation and remedial action activities required under this chapter shall be undertaken in accordance with N.J.A.C. 7:26E-[1.9]1.10.

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND

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CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 Out-of-service underground storage tank systems

(a) The owner or operator of an underground storage tank system which is out-of-service shall:

1. Notify the Department of such in writing, on a form obtained from the Department within [30] 5 calendar days of the tank becoming out of service. The information shall include;

i. – iv. (No change.)

2. – 5. (No change.)

(b) – (d) (No change.)

(e) An individual certified in subsurface evaluation or a licensed site remediation professional shall be involved as follows:

1. An individual certified in subsurface evaluation in accordance with N.J.A.C. 7:14B-13 shall be on site during the removal or abandonment-in-place of the underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities[.] when those activities were initiated prior to November 4, 2009; and

2. A licensed site remediation professional shall supervise all tank closure and site investigation activities required under this section, and shall ensure that those activities are conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, when those activities are initiated on or after November 4, 2009.

7:14B-9.2 Closure requirements for underground storage tank systems containing hazardous substances which are not hazardous wastes

(a) The owner or operator of an underground storage tank system containing hazardous substances which are not hazardous wastes who intends to close the underground storage tank system shall:

1. Notify the Department and all applicable municipal and county health departments of

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the closure activity in writing on forms provided by the Department at least 30 calendar days prior to the anticipated closure date. This notification shall include:

- i. - iii. (No change.)
- iv. The certification numbers and categories of service of the business firm(s) performing the closure activities and subsurface evaluation required pursuant to N.J.A.C. 7:14B-13 or the license number of the licensed site remediation professional, if applicable;

- v. (No change.)
2. - 4. (No change.)
- (b) (No change.)
- (c) [The] When the owner or operator is conducting the remediation pursuant to N.J.A.C. 7:14B-1.8(a)1, the owner or operator of an underground storage tank system may choose to submit a closure plan to the Department for review. The appropriate fees pursuant to N.J.A.C. 7:14B-3.5 shall accompany the closure plan. [A variance from the site investigation requirements of N.J.A.C. 7:26E may be requested pursuant to N.J.A.C. 7:26E-1.6(d) and included with the closure plan.]

- (d) The owner or operator of an underground storage tank system shall ensure the system is closed by [an] either:
- 1. An individual certified for closure in accordance with N.J.A.C. 7:14B-13 when closure was initiated prior to November 4, 2009; or
 - 2. A licensed site remediation professional when closure is initiated on or after November 4, 2009.

7:14B-9.3 Closure requirements for underground storage tank systems containing hazardous wastes

- (a) – (b) (No change.)
- (c) The owner or operator of an underground storage tank system shall ensure the system is closed by [an] either:
 - 1. An individual certified for closure in accordance with N.J.A.C. 7:14B-13 when closure was initiated prior to November 4, 2009; or

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2. A licensed site remediation professional when closure is initiated on or after November 4, 2009.

(d) An individual certified in subsurface evaluation or a licensed site remediation professional shall be involved as follows:

1. An individual certified in subsurface evaluation in accordance with N.J.A.C. 7:14B-13 shall be on site during the removal or abandonment-in-place of the underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities[.] when those activities were initiated prior to November 4, 2009; and

2. A licensed site remediation professional shall supervise all tank closure and site investigation activities required under this section, and shall ensure that those activities are conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, when those activities are initiated on or after November 4, 2009.

7:14B-9.4 Change in service to a nonregulated substance

(a) The owner or operator of a regulated underground storage tank system in which the substance being stored is being changed to a substance not regulated by this chapter shall:

1. - 2. (No change.)

3. Submit a site investigation report prepared and presented in accordance with N.J.A.C. 7:26E-3.13 within [120] 270 calendar days after the tank cleaning.

(b) Should a discharge of hazardous substances be identified during (a) above, the owner or operator shall notify the Department's Environmental Action Hotline in accordance with N.J.A.C. 7:14B-7.3(a) and shall conduct [a remedial investigation] remediation in accordance with the requirements of the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. [7:14B-8] 7:26C.

(c) The owner or operator shall submit a New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.5(c) that documents the change of substance.

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7:14B-9.5 Reporting and recordkeeping requirements

(a) The owner or operator of an underground storage tank shall, within [120]270 calendar days of initiation of closure activities, such as breaking ground for removal or cleaning for abandonment, submit to the Department a site investigation report prepared and presented in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3.13, accompanied by the appropriate fees required pursuant to N.J.A.C. 7:14B-3.5 and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4, as applicable.

(b) As required pursuant to N.J.A.C. 7:14B-1.8, [The] the report described in (a) above shall be prepared either by an individual certified in subsurface evaluation pursuant to N.J.A.C.7:14B-13 or by a licensed site remediation professional. The report shall include the name and address for both the owner and the operator, the underground storage tank system, facility registration number, and all applicable case numbers or tank closure approval numbers.

(c) (No change.)

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.2 Permits required in wellhead protection areas

(a) (No change.)

(b) Prior to submitting a permit application for the upgrade or substantial modification of underground storage tank systems in wellhead protection areas, a site investigation of the underground storage tank system shall be performed in accordance with the requirements of N.J.A.C. 7:26E.

1. If the site investigation report indicates that a discharge has occurred, the Department shall not issue a permit for the upgrade of the underground storage tank system unless owner or operator:

i. (No change.)

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- ii. Submits a remedial investigation report/remedial action workplan in accordance with the requirements of the Technical Requirements for Site Remediation rules at N.J.A.C. [14B-8 and] 7:26E; and
- iii. (No change.)

CHAPTER 22. FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE FACILITIES

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.4 Definitions

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

...

"Final remediation document" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

"Licensed site remediation professional" means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

...

"Remedial action activities" means all actions that are required in a remedial action workplan developed pursuant to N.J.A.C. 7:26E and approved by the Department or by a licensed site remediation professional that are considered water quality-related.

...

7:22-3.11 Application procedures

- (a) - (c) (No change.)
- (d) The following must be submitted when applying for a Fund loan, as applicable:
 - 1. - 4. (No change.)

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5. A complete Project Report/Facilities Plan, which must include:

i. - vii. (No change.)

viii. For remedial action activities, the following items shall also be submitted:

(1) A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to [an oversight document] the Administrative Requirements for Site Remediation rules, N.J.A.C. 7:26C, including, as applicable, case number, program interest number, Known Contaminated Site List number, name and license number of licensed site remediation professional, [and] or the name of the Department case manager as applicable for the case; and

(2) (No change.)

ix. (No change.)

6. - 24. (No change.)

(e) - (g) (No change.)

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, permits, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1. - 32. (No change.)

33. For land acquisition and conservation projects, the recipient shall also comply with the following:

i. - iii. (No change.)

iv. The recipient shall submit a [no further action letter] final remediation document issued [by the Department] pursuant to N.J.A.C. 7:26C-[2.]6, if a preliminary assessment report or site investigation report prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

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v. - vi. (No change.)

34. (No change.)

(b) - (g) (No change.)

SUBCHAPTER 4. ENVIRONMENTAL INFRASTRUCTURE TRUST PROCEDURES AND REQUIREMENTS

7:22-4.11 Application procedures

(a) - (c) (No change.)

(d) The following must be submitted when applying for a Trust loan, as applicable:

1. - 4. (No change.)

5. A complete Project Report/Facilities Plan, which must include:

i. - vii. (No change.)

viii. For remedial action activities, the following items must also be submitted:

(1) A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to [an oversight document] the Administrative Requirements for Site Remediation rules, N.J.A.C. 7:26C, including, as applicable, case number, Program Interest number, Known Contaminated Site List number, name and license number of licensed site remediation professional and the name of the Department case manager for the case; and

(2) (No change.)

ix. (No change.)

6. - 24. (No change.)

(e) - (g) (No change.)

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, permits, terms and conditions which may be applicable to particular loans,

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are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1. - 32. (No change.)

33. For land acquisition and conservation projects, the recipient shall also comply with the following:

i. - iii. (No change.)

iv. The recipient shall submit a [no further action letter] final remediation document issued [by the Department] pursuant to N.J.A.C. 7:26C-[2.]6, if a preliminary assessment report or site assessment prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

v. - vi. (No change.)

34. (No change.)

(b) - (g) (No change.)

CHAPTER 26B. INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.4 Definitions

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

...

“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

...

“Licensed site remediation professional” means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

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...

“Remediation agreement” means a document the Department [issues] issued before November 4, 2009 for the transfer of an industrial establishment prior to the completion of the remediation.

“Remediation certification” means a certification prepared pursuant to N.J.A.C. 7:26B-4.3 which, when submitted to the Department by the owner or operator of an industrial establishment, authorizes the owner or operator to transfer ownership or operations prior to the approval of a negative declaration or remedial action workplan.

...

“Response action outcome” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules N.J.A.C. 7:26C-1.3.

7:26B-1.5 Forms and submissions

[Any forms or applications required by this chapter may be obtained from and returned to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection
401 East State Street
PO Box 432
Trenton, NJ 08625-0432]

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, by downloading it from the Department’s website at www.nj.gov/dep/srp/srra/forms or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

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New Jersey Department of Environmental Protection

Bureau of Case Assignment and Initial Notice

401 East State Street, 5th floor

PO Box 434

Trenton, New Jersey 08625-0434

Telephone: (609) 292-2943

(b) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and

2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

7:26B-1.6 Certifications and signatories

[(a)] Any person submitting an application, workplan, report, or other submission to the Department pursuant to ISRA and this chapter shall include [the] a certification [provided at (c) below, as applicable. The person submitting the certification provided at (c) below shall sign the certification in accordance with (e) below] that is executed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C.

7:26C-1.5.

[(b) Any person submitting a remediation agreement application or remediation agreement amendment application to the Department pursuant to ISRA and N.J.A.C. 7:26B-4 shall include the certifications provided at (d)1, 2 and 3 below in addition to the certification required pursuant to (a) above, prior to the Department's issuance of the remediation agreement or a remediation

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agreement amendment. The person submitting the certifications provided at (d) 1, 2 and 3 below shall sign the certifications in accordance with (e) below.

(c) The following certification is for any application, workplan, report or other request to the Department pursuant to ISRA and this chapter:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 t seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13."

(d) The following certifications are for any remediation agreement application or remediation agreement amendment application submitted to the Department pursuant to ISRA and N.J.A.C. 7:26B-4:

1. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I am fully aware of the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 et seq., as it pertains to the remediation of the industrial establishment subject to this remediation agreement. Specifically, I am fully aware of the responsibilities of the owner or operator of the industrial establishment to remediate the site in accordance with ISRA and this chapter. I acknowledge that a remediation agreement has been requested to allow the transaction referenced in the remediation agreement application to proceed prior to completion of all ISRA compliance requirements and that the person entering into the remediation agreement is agreeing to comply with all ISRA requirements. I further acknowledge that the execution of a remediation agreement shall not release {Person} from any responsibilities {Person} has pursuant to ISRA and this chapter."

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2. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I acknowledge that the transaction and industrial establishment that are the subject of this remediation agreement is a transfer of ownership or operations of an industrial establishment as defined by ISRA and N.J.A.C. 7:26B. I further acknowledge that {Person} is subject to penalties for violations of ISRA and this N.J.A.C. 7:26B. I am fully aware of {Person's} responsibilities to allow the Department access to the subject industrial establishment and of the requirements to prepare and submit any documents relevant to the remediation of the subject industrial establishment as required by the Department."

3. The purchaser, transferee, or lessee of the industrial establishment shall execute the following certification:

"I hereby certify that {Person} is the transferee and/or new lessee of the industrial establishment subject to this remediation agreement. I have read this application and am aware of the requirements and conditions of ISRA and the remediation agreement. {Person} expressly agrees to allow the Department, seller, previous owner, previous operator, any other person subject to the remediation agreement, and any of their respective agents or assignees the right to enter the industrial establishment after the ISRA-subject transaction has taken place and/or the lease has been executed for completion of the remediation of the industrial establishment. Additionally, I acknowledge and understand that if a restricted use or limited restricted use remedial action is warranted at the subject industrial establishment, institutional controls and engineering controls as defined in N.J.S.A. 13:1K-6 et seq., N.J.S.A. 58:10B-1 et seq., N.J.A.C. 7:26C, N.J.A.C. 7:26E and N.J.A.C. 7:26B may be necessary."

(e) The certifications required by (a) and (b) above shall be executed as follows:

1. For a corporation or limited liability company, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

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3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official; or

4. By a duly authorized representative of the corporation, partnership, sole proprietorship, municipality, state or Federal or other public agency, as applicable. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described in (e)1, 2 or 3 above and the authorization meets the following criteria:

i. The authorization specifies either an individual or a position having responsibility for the overall operation of the industrial establishment or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

ii. The written authorization is submitted to the Department; and

iii. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(f) All signatures required by this section shall be notarized.]

7:26B-1.8 No further action letter and ISRA authorization [letter]

(a) [The] In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

(b) [The Department's issuance of a no further action letter pursuant to ISRA and this chapter may include an authorization for the owner or operator to close operations or transfer ownership

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or operations of the industrial establishment as designated in the General Information Notice pursuant to N.J.A.C. 7:26B-3.2.

(c) The Department may authorize a] An owner or operator is authorized to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, [through the issuance of an authorization letter] without, or prior to the issuance of, [a no further action letter] a final remediation document in the following circumstances:

1. [The Department's issuance of a remediation agreement or remediation agreement amendment] The owner's or operator's submission of a remediation certification pursuant to N.J.A.C. 7:26B-4.3;

2. - 3. (No change.)

4. The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e); [and]

5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d); and

6. The Department's approval of a de minimus quantity exemption pursuant to N.J.A.C. 7:26B-5.9.

(d) Recodify as (c) (No change in text.)

7:26B-1.9 Right of entry and inspection

(a) (No change.)

(b) The buyer or transferee of the industrial establishment that has been sold subsequent to obtaining an approved remedial action workplan or remediation agreement from the Department, or the owner or operator of the industrial establishment that has submitted a remediation certification shall:

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1. Allow the Department and/or its authorized representatives, upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records related to environmental issues, and to take samples from the site, photograph the site and the buildings and to make copies of the records; where the Department takes samples from the site, the buyer [or], transferee or owner or operator shall be provided with split samples upon his or her request; and

2. Allow access to the transferred premises by the duly authorized representatives of the seller or transferor to implement a duly approved remedial action workplan, or comply with the conditions of a remediation agreement or remediation certification.

(c) (No change.)

7:26B-1.10 Liability for ISRA compliance

(a) Except as provided in (d) below and notwithstanding [(f)] (e), [(g)] (f) and [(h)] (g) below, both the owner and operator are strictly liable without regard to fault, for compliance with ISRA and this chapter.

(b) An owner or operator shall not transfer ownership or operations of an industrial establishment until:

1. The Department has issued a no further action letter, or a licensed site remediation professional has issued a remedial action outcome, for the industrial establishment pursuant to [N.J.A.C. 7:26B-1.8(a)] N.J.A.C. 7:26C-6;

2. The Department has approved or a licensed site remediation professional has certified a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);

3. The owner or operator has executed prior to November 4, 2009 a remediation agreement or remediation agreement amendment [issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b);], or on or after November 4, 2009 has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3;

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4. (No change.)

(d) - (h) Recodify as (c) – (g) (No change in text.)

7:26B-1.11 Civil penalties

(a) (No change.)

(b) The Department may assess a civil administrative penalty, pursuant to the [Oversight] Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-[10] 9, against any person who violates the requirements of this chapter to remediate contamination.

(c) – (d) (No change.)

SUBCHAPTER 2 APPLICABILITY

7:26B-2.2 Reserved.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26B-2.2.

[7:26B-2.3 De minimis quantity exemption

(a) An owner or operator who is granted a de minimis quantity exemption from the Department shall be exempt from the provisions of this chapter, except as provided at N.J.A.C. 7:26B-8.1, based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.

(b) The owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject

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industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons; and

3. The total quantity of hydraulic or lubricating oil, in the aggregate, does not exceed 220 gallons at any one time during the owner's or operator's period of ownership or operation.

(c) The total quantity of hazardous substances or hazardous wastes at an industrial establishment may be a combination of both (b)1 and 2 above; however, in the aggregate, the total quantity shall not exceed 500 pounds or 55 gallons.

(d) The total quantity of hazardous substances at an industrial establishment having the NAICS number of 424210, 446110, 446120, or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above shall submit:

1. A completed de minimis quantity exemption application (see N.J.A.C. 7:26B-2.2(a)1 for application contents summary), certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5; and

2. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.] Reserved.

SUBCHAPTER 3 GENERAL INFORMATION NOTICE

7:26B-3.1 [Prenotice filing conference

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The Department shall, upon request of any owner or operator of an industrial establishment with an impending closing of operations or transfer of ownership or operations of an industrial establishment, meet with the owner or operator to discuss compliance with the provisions of ISRA and this chapter.] Reserved.

7:26B-3.3 General information notice

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), on a General Information Notice form available from the Department, which is certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided [at N.J.A.C. 7:26B-1.5] on the form, which includes the following:

1. – 9. (No change.)

10. A schedule for submission to the Department of the preliminary assessment report, receptor evaluation, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, remedial action report, as applicable, and any other information required by this chapter, as follows:

i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3, and in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.15; or

ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department; except that no schedule may allow for more time than is established in the timeframes set forth in either the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3;

(b) (No change.)

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(c) [The] For a General Information Notice submitted to the Department prior to November 4, 2009, the Department shall review the General Information Notice, and shall respond in writing to the authorized agent as follows:

1. - 2. (No change.)

(d) For a General Information Notice submitted to the Department on or after November 4, 2009, the owner or operator shall comply with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.

7:26B-3.4 Revisions to the general information notice or withdrawal of required notice by an owner or operator

(a) An owner or operator may withdraw the notice required pursuant to N.J.A.C. 7:26B-3.2(a) if the owner or operator determines [it is no longer necessary to obtain a no further action letter or authorization letter from the Department. Such withdrawal, stating the reason for the withdrawal, shall be made in writing and certified in accordance with N.J.A.C. 7:26B-1.6] that none of the transactional events listed in N.J.A.C. 7:26C-3.2(a) will occur; provided, however, that any such owner or operator may have statutory liability for conducting the remediation pursuant to other statutes, including, without limitation, the Site Remediation Reform Act, N.J.S.A. 58:10C. The withdrawal of the notice does not alter or affect any statutory liability of the owner or operator for conducting the remediation.

(b) (No change.)

SUBCHAPTER 4. REMEDIATION AGREEMENT AND REMEDIATION CERTIFICATION

7:26B-4.1 Remediation agreement

[(a) An owner or operator requesting that the Department enter into a remediation agreement to allow the transfer of ownership or operations of the industrial establishment to occur prior to

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the Department's approval of a negative declaration or remedial action workplan for the industrial establishment shall submit a remediation agreement application to the Department at the address provided at N.J.A.C. 7:26B-1.5 which includes the following:

1. A completed general information notice pursuant to N.J.A.C. 7:26B-3.3, if not previously submitted;
2. A detailed description of the transaction;
3. Identification of the person(s) responsible for compliance with the remediation agreement, ISRA and this chapter;
4. A detailed cost estimate for remediation of the industrial establishment in accordance with N.J.A.C. 7:26C-7;
5. Identification of the type of remediation funding source(s) to be submitted in an amount equal to the cost estimate in (a)4 above, pursuant to the remediation funding source requirements of N.J.A.C. 7:26C-7;
6. The certifications by the owner, operator, transferee and/or lessee, as applicable, in accordance with N.J.A.C. 7:26B-1.6;
7. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1; and
8. Any additional information requested by the Department from a specific owner or operator.

(b) The Department shall send two original remediation agreements to the authorized agent within 14 calendar days after the Department's receipt of the information required pursuant to (a) above. The owner or operator of the industrial establishment or other authorized signatory shall sign both originals and return one executed original remediation agreement to the Department in accordance with the time schedule provided in the remediation agreement.

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(c) The language for the remediation agreement shall conform to the language in the standard remediation agreement pursuant to Appendix A, incorporated herein by reference, to the greatest extent practicable, as determined by the Department.]

An owner or operator who entered into a remediation agreement with the Department prior to November 4, 2009 shall remediate the industrial establishment in accordance with that agreement and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

7:26B-4.2. Remediation agreement amendment

[(a)] An owner or operator of an industrial establishment [may request] who, prior to November 4, 2009, entered into an amendment to the remediation agreement [to allow a transfer of ownership or operations, subsequent to the transaction described in the remediation agreement, to occur prior to the Department's approval of a negative declaration or remedial action workplan for the industrial establishment] shall proceed to remediate the industrial establishment pursuant to the terms of the remediation agreement and the remediation agreement amendment, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

[(b) An owner or operator requesting an amendment to the remediation agreement pursuant to (a) above shall submit a remediation agreement application in accordance with N.J.A.C. 7:26B-4.1, to the Department at the address provided at N.J.A.C. 7:26B-1.5.

(c) The Department shall send two original remediation agreement amendments to the authorized agent within 14 calendar days after the Department's receipt of the information required pursuant to (b) above. The owner or operator shall sign both originals and return one executed original remediation agreement amendment to the Department in accordance with the time schedule provided in the remediation agreement amendment.]

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N.J.A.C. 7:26B-4.3 Remediation Certification

(a) An owner or operator of an industrial establishment who wishes to transfer ownership or operations of the industrial establishment prior to completion of all applicable requirements of ISRA and this chapter shall submit to the Department a completed Remediation Certification form, available at the Department's website at www.nj.gov.dep/srp/srra/forms, that includes the following:

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;

2. A certification by the owner or operator of the industrial establishment describing:

i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;

ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;

iii. The requirement of the owner or operator to perform the remediation the Department requires;

iv. The requirement of the owner or operator to allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A.13:1K-10;

v. The requirement of the owner or operator to comply with the provisions of the Site Remediation Reform Act, N.J.S.A. 58:10C, and this chapter; and

vi. The requirement of the owner or operator to prepare and submit any document the Department requires for the remediation of the industrial establishment;

3. Evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with N.J.A.C. 7:26B-6.4; and

4. Evidence of the payment of all applicable fees in accordance with N.J.A.C. 7:26B-8.

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SUBCHAPTER 5. [EXPEDITED] ALTERNATE COMPLIANCE OPTIONS

7:26B-5.1 Expedited review

(a) [An] In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.

(b) – (d) (No change.)

7:26B-5.3 Regulated underground storage tank waiver

(a) – (b) (No change.)

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed regulated underground storage tank waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department, at the address provided at N.J.A.C.

7:26B-1.5, which includes the following:

1. – 2. (No change.)

3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance, pursuant to N.J.A.C. 7:26B-5.3(d), with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B for all underground storage tanks at the industrial establishment that are covered by that act; [and]

4. A copy of proof of financial responsibility pursuant to N.J.A.C. 7:14B-15; and

4. Recodify as 5. (No change in text.)

(d) – (e) (No change.)

7:26B-5.5 Limited site review

(a) [The] In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior

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to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a limited site review in accordance with (c) below.

(b) - (e) (No change.)

7:26B-5.9 De minimis quantity exemption

(a) An owner or operator to whom the Department grants a de minimis quantity exemption is exempt from the provisions of this chapter, except as provided at N.J.A.C. 7:26B-8.1, based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.

(b) The owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

3. The total quantity of hydraulic or lubricating oil, in the aggregate, does not exceed 220 gallons at any one time during the owner's or operator's period of ownership or operation; and

4. The industrial establishment is not contaminated above any standard set forth in the Remediation Standards, N.J.A.C. 7:26D.

(c) The total quantity of hazardous substances or hazardous wastes at an industrial establishment may be a combination of both (b)1 and 2 above; however, in the aggregate, the total quantity shall not exceed 500 pounds or 55 gallons.

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(d) The total quantity of hazardous substances at an industrial establishment having the NAICS number of 424210, 446110, 446120, or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above shall submit:

1. A completed de minimis quantity exemption application form, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5; and

2. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.

SUBCHAPTER 6. REMEDIATION PROCEDURES

7:26B-6.1 Preliminary assessment, site investigation and remedial investigation

(a) (No change.)

(b) The owner or operator shall complete the preliminary assessment [report] in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3[.2] and submit a preliminary assessment report and a negative declaration, if applicable, within [35 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a)] the timeframe indicated at N.J.A.C. 7:26E-3.1(e).

(c) The owner or operator shall complete a site investigation [report], if applicable, in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3[.13] and submit a site investigation report and a negative declaration, if applicable, within [120 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a)] the timeframe indicated at N.J.A.C. 7:26E-3.3(e).

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(d) The owner or operator shall complete a remedial investigation workplan, if applicable, in accordance with N.J.A.C. 7:26E-4.2 within [180] 270 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B- 3.2(a).

(e) The owner or operator shall complete the remedial investigation report in accordance with N.J.A.C. 7:26E-4.8 and submit a negative declaration, if applicable, within [300] 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) [or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan, whichever occurs last].

7:26B-6.2 Soil remedial action and remedial action workplan

(a) [The] Except as provided in (h) below, the owner or operator required to conduct a soil remedial action at the industrial establishment or at any area of concern shall not implement a remedial action prior to the Department's approval of a remedial action workplan for the site unless;

1. The owner or operator is remediating the industrial establishment pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4; or

2. The soil remedial action satisfies the criteria established in (b) below.

(b) – (g) (No change.)

(h) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

7:26B-6.3 Groundwater or surface water remedial action workplan

(a) [The] Except as provided in (b) below, the owner or operator shall submit the remedial action workplan for any remedial action involving the remediation of groundwater or surface

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water for review and approval by the Department within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

(b) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

7:26B-6.4 Remediation funding source requirement

The owner or operator shall submit a remediation funding source in accordance with N.J.A.C. 7:26C-[7]5 upon the Department's approval or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment.

7:26B-6.5 Compliance with remediation schedules

(a) (No change.)

[(b) The owner or operator required to remediate an industrial establishment or any area of concern shall provide written notice to the Department at the address provided at N.J.A.C. 7:26B-1.5, at least 15 calendar days prior to the date of expected noncompliance upon the owner's or operator's finding that the remediation of the industrial establishment will not conform to the schedules established at (a) above. The notification shall include the following information:

1. A summary of remediation completed to date and the status of each area of concern;
2. The proposed remediation pursuant to N.J.A.C. 7:26E, to be conducted at each area of concern and the revised schedule of for the completion of proposed remediation; and
3. Any additional information which is relevant to the Department's evaluation of the proposed remediation schedule.]

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7:26B-6.7 Submission and review of a negative declaration

(a) [Unless otherwise provided by this chapter,] In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator, subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment, shall submit a negative declaration, executed and certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. The Department shall approve a negative declaration by the issuing a no further action letter.

(b) – (f) (No change.)

(g) An owner or operator who initiates remediation on or after November 4, 2009 and conducts remediation pursuant to N.J.A.C. 7:26C-2.4 is not required to comply with this section.

SUBCHAPTER 8. [FEE SCHEDULE AND DIRECT BILLING FEES] PROGRAM FEES AND OVERSIGHT COSTS

7:26B-8.1 Fee schedule

(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

- | | |
|--|------------|
| 1. [Applicability determination application | \$300.00 |
| 2.] Area of concern waiver application | \$150.00 |
| 3. - 12. Recodify as 2. – 11. (No change in text.) | |
| [13. Remediation agreement application | \$1,500.00 |
| 14. Remediation agreement amendment application | \$750.00] |
| 15. - 16. Recodify as 13. - 14. (No change in text.) | |

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(b) The cost for the Department review of any remediation document not listed in (a) above shall be assessed pursuant to N.J.A.C. 7:26C-[9] 4 and 5.

(c) – (e) (No change.)

(e) (No change.)

7:26B - 8.2 Oversight costs

The owner or operator conducting the remediation of an industrial establishment pursuant to ISRA and this chapter shall submit payment to the Department pursuant to the provisions found in the Administrative Requirements for the Remediation of Contaminated Sites rules [for Department Oversight of the Remediation of Contaminates Sites] at N.J.A.C. 7:26C-[9.3]4 [and submit payment pursuant to N.J.A.C. 7:26C-9.5].

7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules [for Department Oversight of the Remediation of Contaminates Sites] at N.J.A.C. 7:26C [9.3]-4.7, the contestor shall follow the procedures found in N.J.A.C. 7:26C[9.4]-4.8.

Appendix A Reserved.

CHAPTER 26C. DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED SITES.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26C.

CHAPTER 26C. ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES

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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope of the subchapter

(a) This subchapter establishes the administrative procedures and requirements for the remediation of a contaminated site, including:

1. General requirements, in N.J.A.C. 7:26C-1.2;
2. Definitions, in N.J.A.C. 7:26C-1.3;
3. Exemptions, N.J.A.C. 7:26C-1.4;
4. Certifications, N.J.A.C. 7:26C-1.5;
5. Forms and submissions, N.J.A.C. 7:26C-1.6;
6. Liberal construction, N.J.A.C. 7:26C-1.7
7. Severability, N.J.A.C. 7:26C-1.8.

7:26C-1.2 General requirements

(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with all applicable statutes, rules, and guidance, including but not limited to the Remediation Standards rules, N.J.A.C. 7:26D, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, this chapter and the Department's guidance at www.nj.gov.dep/srp/srra/guidance.

(b) Any person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4.

7:26C-1.3 Definitions

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

“Applicant” means any person that has applied to the Department for a loan or grant.

“Area of concern” means any location defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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“Authority” means the New Jersey Economic Development Authority.

“Child care center” means a facility, as defined at N.J.S.A. 30-5B-3.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection or his or her authorized representative.

“Conditional hardship grant” means a grant to an eligible owner or operator as provided in N.J.S.A. 58:10A-37.5.

“Contaminated site” means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E-1.8.

“Contamination” or “contaminant” means any discharged hazardous substance, hazardous waste or pollutant defined as such pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E-1.8.

“Day” shall mean a calendar day.

“Deed notice” means a document defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Department” means the New Jersey Department of Environmental Protection.

“Directive” means a document the Department issues pursuant to N.J.S.A. 58:10-23.11 et seq. and 13:1D-1 et seq. to, among other things, notify the recipient thereof that the Department has determined that it is necessary to clean up and remove or arrange for the cleanup and removal of a discharge and that the Department believes the recipient is a person who may be liable for the hazardous substance that was discharged.

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Engineering control” means a physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7-26E-1.8.

“Environmental medium” means any medium defined as such pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E-1.8.

“Environmental opportunity zone” means any qualified real property that has been designated by the governing body as an environmental opportunity zone pursuant to N.J.S.A 54:4-3.153.

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“Final remediation document” means a no further action letter or a response action outcome.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

“Hazardous substance” means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances rules, at N.J.A.C. 7:1E-1.7.

“Hazardous waste” means any hazardous waste as defined in the Hazardous Waste rules, at N.J.A.C. 7:26G-5.

“Immediate environmental concern” means a condition defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8

“Industrial establishment” means any place defined as such pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-1.4.

“Innovative remedial action technology” means a technology defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Institutional control” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Licensed site remediation professional” means an individual who has been issued a license pursuant to N.J.S.A. 58:10C.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Natural resources” means all resources defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7-26E-1.8.

“No further action letter” means a written determination by the Department that, based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no contaminants present at the site, at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any contaminants present at

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the site or that have migrated from the site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations have been obtained.

“Operator” means any person defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13-1K-6 et seq. or the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

“Oversight costs” means all cleanup and removal costs as defined by the Spill Compensation and Control Act, N.J.S.A.58:10-23.11b that the Department incurs in overseeing the remediation conducted by the person responsible for conducting the remediation or in overseeing the remediation conducted by a contractor on behalf of the Department, established pursuant to N.J.A.C. 7:26C-4.

“Person” means any individual or entity, including without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of or found within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

“Person responsible for conducting the remediation” means: (1) any person who executes or is otherwise subject to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order to remediate a contaminated site, (2) the owner or operator of an industrial establishment subject to N.J.S.A.13:1K-6 et seq. for the remediation of a discharge, (3) the owner or operator of an underground storage tank subject to N.J.S.A. 58:10A-21 et seq. for the remediation of a discharge, (4) any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance, pursuant to N.J.S.A. 58:10-23.11g, that was discharged at a contaminated site, or (5) any other person who is remediating a site.

“Petroleum” means petroleum defined pursuant to the Underground Storage Tanks rules, at N.J.A.C. 7:14B-1.6.

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“Pollutant” means any substance defined as such pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.

“Preliminary assessment” means a preliminary assessment as defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Public entity” means any State, county, municipality, or public school district, but shall not include any authority created by those entities.

“Regulated tank system” means an underground storage tank system defined pursuant to Underground Storage Tank rules, N.J.A.C. 7:14B.

“Remedial action” means an action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Remedial action workplan” or “RAW” means a plan defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8.

“Remedial investigation” means actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remediation agreement” means an agreement defined as such pursuant to the Industrial Site Recovery Act Regulations, at N.J.A.C. 7:26B-1.4.

“Remediation certification” means a certification defined as such pursuant to the Industrial Site Recovery Act Regulations, at N.J.A.C. 7:26B-1.4.

“Remediation costs” means all costs associated with the development and implementation of a remediation including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and legal, administrative and capital costs.

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“Response action outcome” or “RAO” means a written determination by a licensed site remediation professional that the site was remediated in accordance with all applicable statutes, rules and guidance, and based upon an evaluation of the historical use of the site, or of any area of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no contaminants present at the site, at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations have been obtained.

“Restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Restricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Sanitary landfill” or “landfill” means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that the term sanitary landfill shall not include any waste facility approved for disposal of hazardous waste regulated pursuant to N.J.A.C. 7:26G. A facility is a sanitary landfill regardless of when solid waste was deposited or whether the facility was properly registered, permitted, approved or otherwise authorized to conduct such activity, by the Department or other State agency.

“Site investigation” means those actions defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Small business” means a business entity that does not acquire property for development or redevelopment, and that, during the prior three tax years, employed not more than 50 full-time employees or the equivalent thereof, and qualifies as a small business concern within the meaning of the federal "Small Business Act," 15 U.S.C. 631 et seq.

“Spill Act” means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

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“Timely filing” means an application filed within the review time goals as set forth in the Permit Activity Report published on the Department’s website at <http://www.nj.gov/dep/opppc/reports.html> or in the specific rule concerning an application for a grant or loan.

“Underground storage tank” means an underground storage tank defined as such pursuant to the Underground Storage Tank rules, at N.J.A.C. 7:14B-1.6.

“Unregulated heating oil tank” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Unrestricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

7:26C-1.4 Exemptions

(a) The requirements of this chapter do not apply to any person who is:

1. Conducting due diligence in accordance with N.J.S.A. 58:10C-30d(2);
2. Remediating a landfill, unless:
 - i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;
 - ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, A Brownfield Redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27

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through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or

iii. The person conducting the remediation wants a final remediation document;

3. Responding to a discharge pursuant to a discharge prevention, containment, and countermeasures plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility;

4. Remediating a discharge pursuant to a New Jersey Pollutant Discharge Elimination System Underground Injection Control permit issued pursuant to N.J.A.C. 7:14A; or

5. Remediating a discharge from an unregulated heating oil tank, except that the requirements of N.J.A.C. 7:26C-4 and 13 shall apply to a person responsible for remediating a discharge from an unregulated heating oil tank.

(b) Unless notified in writing by the Department that additional remediation is necessary, a person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirement at N.J.A.C. 7:26C-2.4 to use the services of a licensed site remediation professional or to submit documents to the Department:

1. A petroleum surface spill of less than 100 gallons that does not reach the waters of the State of New Jersey;
2. A discharge that results from a passenger motor vehicle accident; or
3. A discharge that the Department refers to its Bureau of Emergency Response, to the New Jersey Office of Emergency Management, or to a County Environmental Health Agency.

7:26C-1.5 Certifications

(a) The person responsible for conducting the remediation of a site pursuant to N.J.A.C. 7:26C-2.3(b) and 2.4 shall:

1. Certify all submissions in accordance with certification instructions on the applicable form; and

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2. Ensure that each form submitted to the Department by the person or by a licensed site remediation professional on behalf of the person is certified by a licensed site remediation professional in accordance with the applicable form.

(b) The person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a) shall certify all submissions as follows:

1. For all documents that are required to be certified pursuant to the applicable provisions of the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, the person responsible for conducting the remediation shall include the following certification with the document.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. In addition to the certification requirement in (b)1 above, the person responsible for conducting the remediation of a site who is required to establish a remediation funding source pursuant to N.J.A.C. 7:26C-5 shall include the following certification with the remediation funding source instrument:

"I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in

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writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties."

(c) The certifications required in (a) and (b) above shall be signed and dated original certifications, not photocopies.

(d) The person submitting a certification required by either (a) or (b) above shall ensure that the certification is signed as follows:

1. For a corporation or a limited liability company, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official.

(e) A duly authorized representative of the person described in (d)1 through 3 above may sign the certification required in (a) or (b), above. A person is deemed to be a duly authorized representative only if:

1. The authorization is made in writing by a person described in (d) above;
 2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
 3. The written authorization is submitted to the Department along with the certification;
- and
4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new

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authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

7:26C-1.6 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, by downloading it from the Department's website at www.nj.gov.dep/srp/srra/forms or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
401 East State Street, 5th floor
PO Box 434
Trenton, New Jersey 08625-0434
Telephone: (609) 292-2943

(b) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and
2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

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7:26C-1.7 Liberal construction

These rules, being necessary to promote the public health and welfare, and protect the environment, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10B-1 et seq., and N.J.S.A. 58:10C-1 et seq.

7:26C-1.8 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. OBLIGATIONS OF THE PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION OF A CONTAMINATED SITE

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

1. Criteria for determining when a person has initiated remediation in N.J.A.C. 7:26C-2.2;
2. Requirements for a person who initiated remediation prior to November 4, 2009, in N.J.A.C. 7:26C-2.3;
3. Requirements for a person who initiated remediation on or after November 4, 2009, in N.J.A.C. 7:26C-2.4; and
4. Requirements for a person to retain records, in N.J.A.C. 7:26C-2.5.

7:26C-2.2 Criteria for determining when a person has initiated remediation

(a) A person has initiated remediation prior to November 4, 2009 only when the criteria in both 1 and 2 below have occurred prior to November 4, 2009.

1. A person has notified the Department of a discharge or an obligation to remediate prior

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to November 4, 2009, pursuant to:

- i. The Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E-5;
 - ii. The Underground Storage Tanks rules, N.J.A.C. 7:14B-7.3; or
 - iii. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2; and
2. The person has continuously conducted the remediation since the person notified the Department pursuant to one of the rules cited in (a)1 above.

(b) A person initiates remediation on or after November 4, 2009 when a person initiates or resumes remediation in response to any of the following which occur on or after November 4, 2009:

1. The person takes over the remediation from any other person or from the Department;
2. The person submits a document to the Department concerning a site for which the Department has rescinded a no further action letter or has invalidated a response action outcome, prior to the submission of the document;
3. The person discovers or becomes liable in any way for a discharge;
4. The owner or operator of a regulated tank system:
 - i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B; or
 - ii. Is required to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and N.J.A.C. 7:14B-9.2l;
5. The person is liable for compliance with the Industrial Site Recovery Act rules pursuant to N.J.A.C. 7:26B-1.10; or
6. When additional remediation or other activities would result in the need to file a new deed notice or replace a declaration of environmental restrictions, associated with the real property.

7:26C-2.3 Requirements for a person who initiated remediation prior to November 4, 2009

- (a) The person responsible for conducting the remediation who initiated remediation prior to

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November 4, 2009, shall conduct the remediation pursuant to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order, as applicable, and in accordance with all applicable statutes, rules, and guidance, including this chapter, and shall:

1. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;
2. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;
3. Provide the Department access to the contaminated site;
4. Submit to the Department all applicable documents and forms concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, applicable guidance, or upon request of the Department, and proceed with remediation only upon the Department's approval;
5. Meet the timeframes in this chapter, the Underground Storage Tank rules, N.J.A.C. 7:14B, Industrial Site Recovery Act rules, N.J.A.C. 7:26B, Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or Administrative Order, except that the mandatory remediation timeframes and the expedited site specific remediation time frames established pursuant to N.J.A.C. 7:26C-3 and the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, supersede any other conflicting remediation timeframes; and
6. Obtain and comply with all permits necessary for the remediation.

(b) Any person who initiated remediation prior to November 4, 2009 may elect to perform the remediation pursuant to N.J.A.C. 7:26C-2.4:

1. By submitting a request to the Department, on a Request to Proceed Without Department Pre-Approvals form available from the Department on its website at www.nj.gov.dep/srp/srra/forms, and the Department determines that all outstanding fees and costs not contested have been paid and approves that request; and
2. Upon receiving approval from the Department pursuant to (b)1 above, performs the remediation pursuant to N.J.A.C. 7:26C-2.4; and

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3. By maintaining any remediation funding source previously required to have been maintained under the applicable administrative consent order, remediation agreement administrative order, court order or directive, and by paying the remediation funding source surcharge, if required.

7:26C-2.4 Requirements for a person who initiated remediation on or after November 4, 2009

(a) Any person who initiates remediation on or after November 4, 2009 shall:

1. Hire a licensed site remediation professional;
2. Notify the Department, on a Licensed Site Remediation Professional Notification of Retention or Dismissal form available from the Department on its website at www.nj.gov.dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation. The person shall submit this notification within 45 days after the date:
 - i. Of the occurrence of the earliest of the events listed at N.J.A.C. 7:26C-2.2(b);
 - ii. The person receives written approval from the Department of that person's request to continue remediation without the Department's pre-approval pursuant to N.J.A.C. 7:26C-2.3(b); or
 - iii. The person receives written notification from the Department that the Department is taking direct oversight of the remediation of the site, area of concern, or site condition pursuant to N.J.S.A. 58:10C-27;
3. Conduct the remediation of the discharge:
 - i. Without prior Department approval, except if the Department has undertaken direct oversight of a site, area of concern or site condition pursuant to N.J.S.A. 58:10C-27;
 - ii. In accordance with all applicable statutes, rules and guidance; and
 - iii. Address all deficiencies identified by the Department in any submittals made by the person or by a licensed site remediation professional on behalf of the person.
4. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;
5. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;

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6. Provide the Department access to the contaminated site pursuant to N.J.A.C. 7:26C-8;
7. Provide the Department copies of all applicable documents concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and guidance, or upon request of the Department;
8. Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E; and
9. Obtain and comply with all permits necessary for the remediation.

7:26C-2.5 Record retention

(a) The person responsible for conducting the remediation shall maintain and preserve all data, documents and information concerning remediation of a contaminated site, including but not limited to, technical records and contractual documents, and raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or that person's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site.

(b) Upon the receipt of a written request from the Department, the person responsible for conducting the remediation shall submit to the Department all data and information, including technical records and contractual documents concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information were developed as part of the remediation. The person responsible for conducting the remediation may reserve its right to assert a privilege regarding such documents, except that no claim of confidentiality or privilege may be asserted with respect to any data related to site conditions, sampling or monitoring.

(c) The person responsible for conducting the remediation shall submit three electronic copies of all records referenced in (a) above, to the Department at the time of the issuance of a final remediation document.

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SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. Complying with, and requesting an extension from, regulatory timeframes pursuant to N.J.A.C. 7:26C-3.2;
2. Complying with mandatory remediation timeframes pursuant to N.J.A.C. 7:26C-3.3
3. Complying with expedited site specific remediation timeframes pursuant to N.J.A.C. 7:26C-3.4; and
4. Requesting an extension of mandatory or site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5

7:26C-3.2 Regulatory timeframes

(a) The person responsible for conducting the remediation shall comply with the regulatory timeframes established by all applicable statutes, rules and guidance, including but not limited to the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter.

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

1. Complete a Remediation Timeframe Extension Request form, available from the Department at www.nj.gov/dep/srp/srra/forms, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:
 - i. The end date of the regulatory timeframe;
 - ii. The amount of time beyond the end date of the regulatory timeframe needed to complete the required work, but not in an amount that would exceed any mandatory remediation timeframe in N.J.A.C. 7:26C-3.3 or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4;

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iii. A description of the cause or causes of the need for the extra time needed to complete the work; and

iv. The steps taken to minimize the extra time needed to complete the work; and
2. Submit any additional information the Department requests.

(c) The request for an extension of a regulatory timeframe submitted in accordance with (b), above shall be deemed to be approved by the Department unless the Department notifies the person in writing that the extension request is denied.

(d) If the person responsible for conducting the remediation expects to or has missed a regulatory timeframe that may result in the person exceeding a mandatory remediation timeframe as established in N.J.A.C. 7:26C-3.3, or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4, the regulatory timeframe extension request shall not be deemed to be approved pursuant to (c), above.

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation shall:

1. Submit the preliminary assessment, site investigation report, as applicable, and the initial receptor evaluation within one year from the later of the following dates:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b), occurs; and

2. Complete the delineation of the immediate environmental concern contaminant source, initiate immediate environmental concern contaminant source control and submit to the Department an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.14 no later than one year from:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii The date the person was required to report the immediate environmental concern to the Department pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.14; and

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3. Complete the installation of a LNAPL recovery system, initiate operational monitoring and submit an interim remedial action report, pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.12(b), no later than one year from the later of the following dates:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii. The date the person identified the presence of LNAPL free product;

(b) The timeframes set forth in (a) above shall not be extended based on the fact that a person other than the person who initiated the remediation assumes responsibility for the remediation pursuant to N.J.A.C. 7:26C-2.2(b)1.

(c) When the Department determines that a person responsible for conducting the remediation has failed to meet a mandatory remediation timeframe, that person shall become subject to direct oversight of the Department pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the mandatory remediation timeframe applies.

(d) A person responsible for conducting the remediation may request an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.4 Expedited site specific remediation timeframes

(a) The Department may establish an expedited site specific remediation timeframe that shall apply to a particular site, based upon the following criteria:

1. The risk to the public health and safety, or to the environment; and
2. The compliance history of the person responsible for conducting the remediation.

(b) The Department shall notify in writing the person responsible for conducting the remediation when the Department has established an expedited site specific remediation timeframe for a site for which the person is responsible for conducting the remediation.

(c) The person responsible for conducting the remediation shall comply with every expedited site specific remediation timeframe.

(d) When the Department determines that a person responsible for conducting the

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remediation has failed to meet an expedited site specific remediation timeframe, that person shall be subject to the direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the expedited site specific remediation timeframe applies.

(e) A person responsible for conducting the remediation may request an extension of an expedited site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

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

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

1. The person shall provide a written rationale for the request in a completed Remediation Timeframe Extension Request Form available from the Department at

www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:

i. The end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe;

ii. The amount of time beyond the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe needed to complete the required work;

iii. A description of the cause or causes for the extra time needed to complete the work; and

iv. The steps taken to minimize the extra time needed to complete the work; and

2. The person shall provide any other information the Department requests.

(b) The person responsible for conducting the remediation shall continue any remediation during the time that the Department reviews the extension request submitted pursuant to (b) above, unless the Department directs otherwise.

(c) An extension request submitted pursuant to (a) above shall be deemed to be granted in

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the following circumstances with limitations as indicated:

1. A delay by the Department in reviewing or granting a permit or required submittal, provided that:

i. The person responsible for conducting the remediation timely filed a technically and administratively complete permit application or submittal; and

ii. The period of extension shall equal the actual duration of the delay; or

2. A delay in the provision of Federal or state funding for remediation, provided that the person responsible for conducting the remediation timely filed a technically and administratively complete application for funding and that the period of extension shall equal the actual duration of the delay.

(d) The Department may grant an extension of a mandatory remediation timeframe or of an expedited site specific timeframe by granting the approval in writing if appropriate and adequate rationale has been provided pursuant to (a) above and when an extension is needed as a result of the following:

1. A delay in obtaining access to property in accordance with N.J.A.C. 7:26C-8, provided that the person responsible for conducting the remediation demonstrates that good faith efforts have been undertaken to gain access, access has not been granted by the property owner, and, after good faith efforts have been exhausted, a complaint was filed in the Superior Court to gain access;

2. Other site-specific circumstances that may warrant an extension, as the Department may determine, including but not limited to:

i. On-going litigation, the outcome of which will have a direct bearing on the person's ability to meet the mandatory remediation or expedited site specific timeframe; or

ii. The fact that the person is an owner of a small business who can demonstrate to the Department's satisfaction that he or she does not have sufficient monetary resources to meet the mandatory remediation or expedited site specific timeframe; or

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3. Other circumstances beyond the control of the person responsible for conducting the remediation, such as fire, flood, riot, or strike.

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. The payment of an annual remediation fee for the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4, pursuant to N.J.A.C. 7:26C-4.2;
2. The payment of the applicable individual fees for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.3;
3. The payment of remedial action permit fees, pursuant to N.J.A.C. 7:26C-4.4;
4. The methodology the Department will use to calculate its costs in overseeing remediation and the payment of those costs, pursuant to N.J.A.C. 7:26C-4.5;
5. The procedures by which a person may request a review of an oversight cost invoice from the Department, pursuant to N.J.A.C. 7:26C-4. 6; and
6. How a person is to make payments to the Department of the fees and costs in this subchapter, pursuant to N.J.A.C. 7:26C-4.7.

7:26C-4.2 Annual remediation fee for a person initiating remediation on or after November 4, 2009

(a) Except as provided in (h), below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4 shall submit the applicable annual remediation fee to the Department pursuant to this section.

1. A person subject to this section shall pay a nonrefundable annual remediation fee, which shall be the sum of the applicable category fee as determined pursuant to (a)2 below, and the total contaminated media fee as calculated pursuant to (a)3, below.

2. The applicable category fee shall be assessed as follows:

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i. The fee for zero to one contaminated areas of concern where the number of contaminated areas of concern is undetermined, determined to be one, or where the site is limited to historic fill: \$450.00;

ii. The fee for:

(1) Two through ten contaminated areas of concern: \$900.00

(2) Any number of contaminated regulated underground storage tank system areas, excluding regulated heating oil tank systems, provided there are no other contaminated areas of concern at the site: \$900.00;

iii. The fee for eleven through twenty contaminated areas of concern, or one or more landfills: \$5,000.00; and

iv. The fee for more than twenty contaminated areas of concern: \$9,500.00

3. The total contaminated media fee is as follows. A fee shall be assessed for each separate contaminated medium that is present at the site as determined from the following list. The total contaminated media fee shall be the sum of the individual contaminated medium fees.

i. Ground water	\$1,400.00
ii. Surface water sediment	\$1,400.00
iii. Ground water contaminated above an applicable Surface Water Quality Standard that is an unpermitted discharge to surface water	\$1,400.00

4. The person responsible for conducting the remediation shall submit the first annual remediation fee and a completed Annual Remediation Fee Reporting form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the address noted on the form upon the earliest of the following:

i. The submittal of a preliminary assessment report;

ii. The submittal of a site investigation report;

iii. The submittal of the first remedial phase document; or

iv. 270 days after any event listed at N.J.A.C. 7:26C-2.2(b).

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5. For each subsequent year, the Department shall invoice the person responsible for conducting the remediation for the annual remediation fee on the anniversary date of the first year that the annual fee was submitted pursuant to (a)4 above.

(b) The person responsible for conducting the remediation shall identify all contaminated areas of concern individually and shall not combine contaminated areas of concern or contaminated media for the purpose of determining the amount of the annual remediation fee.

(c) The person responsible for conducting the remediation that receives an RAO for a contaminated area of concern may submit a new Annual Remediation Fee Reporting form 90 days prior to the annual remediation fee anniversary date.

(d) The person responsible for conducting the remediation that discovers an additional contaminated area of concern shall submit a new Annual Remediation Fee Reporting form 90 days prior to the annual remediation fee anniversary date.

(e) The person responsible for conducting the remediation shall continue to pay an annual remediation fee to the Department until a response action outcome for all of the contaminated areas of concern and contaminated media at the site have been filed with the Department.

(f) If the Department makes a determination that it will undertake direct oversight of a portion or condition of the site pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall pay the annual remediation fee every year and the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.5.

(g) If the Department makes a determination that it will undertake direct oversight of the entire site pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall continue to pay the annual remediation fee until it submits the first direct oversight document required by the Department and at that point shall pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.5.

(h) The person responsible for conducting the remediation does not have to pay the annual remediation fee in the following circumstances:

1. Upon receipt of notice from the Department that it has assigned a full time case manager to the entire site;

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2. If that person is remediating a child care center; or
3. If that person is the owner or operator of an unregulated heating oil tank system,

7:26C-4.3 Individual review fees

(a) The person responsible for conducting the remediation shall submit to the Department, at the address noted on the appropriate document submission form or questionnaire, provided by the Department at www.nj.gov/dep/srp/srra/forms, the applicable nonrefundable document review fee pursuant to this section each time that the person submits any of the following documents to the Department unless the person is subject to an annual remediation fee:

- | | |
|---|----------|
| 1. Preliminary assessment report | \$375.00 |
| 2. Site investigation report | \$750.00 |
| 3. Remedial action report for unregulated heating oil tank system | \$400.00 |
| 4. Biennial Certification | \$375.00 |

Unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification.

- | | |
|--|----------|
| 5. Child care center remedial action outcome or child care renewal certification | \$225.00 |
|--|----------|

(b) If the person responsible for conducting the remediation does not submit a document review fee with a document pursuant to this section, the Department will not review, or otherwise process, the submitted document.

(c) The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall pay the following fees, as applicable:

1. \$350.00 fee for a discharge to ground water proposal pursuant to N.J.A.C. 26C-13.5(b)1;
2. \$400.00 for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3; and

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3. All applicable fees pursuant to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A.

7:26-4.4 Remedial action permit fees

(a) The person responsible for conducting remediation shall submit to the Department the applicable remedial action permit fees as required by this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, pursuant to the following table:

<u>REMEDIAL ACTION PERMIT FEES</u>	<u>SOIL REMEDIAL ACTION PERMIT</u>	<u>GROUND WATER REMEDIAL ACTION PERMIT</u>
Remedial Action Permit Application Fee	\$550.00	\$750.00
Remedial Action Permit Modification Fee	\$550.00	\$750.00
Remedial Action Permit Transfer Fee	\$ 100.00	\$100.00
Remedial Action Permit Termination Fee	\$550.00	\$750.00

(b) For each year after it issues a remedial action permit, the Department shall invoice the permittees the amount of the annual remedial action permit fee.

1. The annual soil remedial action permit fee for a remedial action:
 - i. With a deed notice without engineering controls: \$100.00; and
 - ii. With a deed notice and engineering controls: \$250.00.
2. The annual ground water remedial action permit fee is as follows:
 - i. For a natural attenuation remedial action: \$250.00; and
 - ii. For any other ground water remedial action: \$750.00.

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(c) The permittees shall continue to pay the annual remedial action permit fee to the Department until the Department terminates the permit.

7:26C-4.5 Oversight costs

(a) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to this section whenever the Department assesses those costs against the person responsible for conducting the remediation that is subject to any of the following circumstances:

1. N.J.A.C. 7:26C-2.4, and the Department incurs those costs when a case manger is assigned pursuant to the criteria in N.J.S.A. 58:10C-21b or c;
2. N.J.A.C. 7:26C-2.3, unless a document review fee applies pursuant to N.J.A.C. 7:26C-4.3 or other applicable rules; or
3. N.J.S.A. 58:10C-27.

(b) The person responsible for conducting the remediation shall pay the Department's oversight costs by the date indicated on the invoice for the Department's oversight costs.

(c) The Department shall include the following information on the bill for the Department's oversight costs referenced in (b) above:

1. The case Program Interest ID and associated Job Code(s);
2. The name of each staff member performing work on the site during the respective two week pay period, with a work activity description;
3. The number of hours spent by each staff member working on the site; and
4. The dollar amount of the oversight costs calculated pursuant to (e) below.

(d) The Department shall send a bill based on the formula in (e) below to the designated fee billing contact for the person responsible for conducting the remediation periodically throughout the remediation.

(e) The Department shall calculate its oversight costs based upon the following:

Oversight Costs = direct program costs + indirect program costs + expenses

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or for persons signing the Developer's Certification found in Appendix A and for persons responsible for conducting the remediation of discharged substances at their primary residence:

Oversight Costs = direct program costs + expenses

where:

1. Direct program costs = (number of coded hours X hourly salary rate) X (1 + salary additive factor) X (1 + fringe benefit factor), where:

i. Number of coded hours represents the sum of hours each Departmental employee has coded to the site specific job number. Actual hours for all Departmental employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to Departmental employees' reimbursable "down time" salary expenses. Reimbursable "down time" expenses includes costs for vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive rate is the sum of the reimbursable "down time" expenses divided by the net Department regular salary for a given fiscal year. The net Department regular salary cost is calculated by subtracting the Department employees' reimbursable "down time" expenses from the Department's regular salary;

iv. The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, unemployment insurance, temporary disability insurance, unused sick leave,

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FICA and Medicare. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-state funded programs; and

2. Indirect program costs = (number of coded hours X hourly salary rate) X (indirect program cost rate factor)

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in Site Remediation. This indirect rate is developed by the Department on an annual basis in accordance with the applicable New Jersey Department of Treasury OMB Circular Letters and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments" (2 C.F.R. Part 225);

ii. The methodology for computing the indirect program cost rate involves the following basic processes:

(1) Identification of Site Remediation expenditures that cannot be assigned directly to a specific Site Remediation cost objective. These expenditures include indirect labor coded as such by employees, and approved by supervisors, on their timesheets. Also included are expenses such as the Site Remediation's proportionate share of costs associated with upper management offices, and individual costs such as rent, general equipment use charges, office supplies, training, etc. that cannot be identified to a specific Site Remediation cost objective.

(2) Site Remediation indirect expenditures identified above are adjusted for any expenses not allowed by the Federal Cost Principles such as interest expense.

(3) The adjusted Site Remediation's indirect expenditures are then reduced by the amount of any funds received by the Program from Federal Grants or New Jersey State Fee Reimbursements.

(4) The resulting total unreimbursed Site Remediation indirect expenditures is then divided by the total unreimbursed Site Remediation direct labor expenditures to arrive at the indirect program cost rate.

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7:26C-4.6 Oversight cost review

(a) The person responsible for conducting the remediation may contest an oversight cost the Department has assessed, pursuant to N.J.A.C. 7:26C-4.5, by submitting a written request to the Department, pursuant to (c) and (d), below, within 30 days after the billing date indicated on the oversight cost invoice that person received from the Department.

(b) The Department shall deny an oversight cost review request if the request is based on the following:

1. An employee's hourly salary rate;
2. The Department's salary additive rate, fringe benefit or indirect rate; or
3. Management decisions of the Department, including decisions regarding who to assign to case, how to oversee the case or how to allocate resources for case review.

(c) The person responsible for conducting the remediation shall submit an oversight cost review request to the Department at the following address:

New Jersey Department of Environmental Protection
Site Remediation
Office of Direct Billing and Cost Recovery
401 East State Street
PO Box 413
Trenton, NJ 08625-0413

(d) The person responsible for conducting the remediation shall include the following information in a request for an oversight cost review:

1. A copy of the invoice;
2. Payment of all uncontested charges, including salary, additives, and fringe and indirect rate calculations, as applicable, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;

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5. The name, mailing address, email address, and telephone number of the person making the request; and

6. Information supporting the request or other written documents relied upon to support the request.

(e) If any information or the payment required by (d) above is not included, the Department shall deny a request for an oversight cost review.

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a corrected invoice or have the revision in the next invoice, which shall be due and payable according to the corrected or next invoice.

(g) The Department may, if it determines that the factual issues involving an oversight cost dispute cannot be resolved informally, determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(h) If the Department does not determine the matter to be a contested case and, therefore, not subject to an adjudicatory hearing, the Department shall issue written notification for this determination. This determination shall be considered a final agency action.

(i) If the objector does not file a request for an oversight cost review within 30 days after the billing date shown on the invoice for the Department's oversight costs, the full amount of the oversight costs shall be due and owing. If the invoice is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-4.7.

7:26C-4.7 Payment of fees and oversight costs

(a) The person responsible for conducting the remediation shall pay all fees and costs pursuant to an invoice the Department issues or as otherwise required pursuant to this chapter.

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(b) The person responsible for conducting the remediation shall make all payments of fees and oversight costs required by this chapter:

1. By either:

i. Certified check, attorney check, money order, or personal check made payable to “Treasurer, State of New Jersey”; or

ii. E-check or credit card after the Department posts a notice for either on its website at www.nj.gov/dep/srp/srra or in the New Jersey Register that the Department’s portal for making payments by E-check or credit card is available; and.

2. By mailing payments to the following address unless otherwise indicated on the first page of a billing invoice:

New Jersey Department of Environmental Protection
Bureau of Case Assignment & Initial Notice
401 East State Street
PO Box 434
Trenton, NJ 08625-0434

(c) If the person responsible for conducting the remediation fails to pay any fee or cost pursuant to this chapter, the person responsible for conducting the remediation:

1. Shall pay interest on the unpaid fees beginning at the end of the period when payment is due as stated in an invoice issued by the Department, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey;

2. May be subject to enforcement pursuant to N.J.A.C. 7:26C-9, including penalties for each day the fee is not paid;

3. May have its property subject to a lien on all real and personal property of the person responsible for conducting the remediation, including a first priority lien on the property subject of the remediation; and

4. Shall not receive a final remediation document until all the costs and fees are paid in full.

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SUBCHAPTER 5. REMEDIATION FUNDING SOURCE

7:26C-5.1 Scope

(a) This subchapter establishes the requirements for:

1. Who has the obligation to establish and maintain a remediation funding source, in N.J.A.C. 7:26C-5.2;
2. The dollar amount that the person responsible for conducting the remediation has to establish and maintain in a remediation funding source, in N.J.A.C. 7:26C-5.3;
3. The financial mechanisms available as remediation funding sources, in N.J.A.C. 7:26C-5.4 through -5.9;
4. The annual cost reviews, in N.J.A.C. 7:26C-5.10;
5. The procedures for adjusting the amount of the remediation funding source, in N.J.A.C. 7:26C-5.11;
6. The disbursement of funds from a remediation funding source, in N.J.A.C. 7:26C-5.12;
7. The return of the remediation funding source, in N.J.A.C. 7:26C-5.13; and
8. The procedures the Department will use to draw on the funding in the remediation funding source when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.14.

7:26C-5.2 Establishing a remediation funding source

(a) Except provided in (b), below, the following persons responsible for conducting the remediation shall establish and maintain a remediation funding source pursuant to this subchapter:

1. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to ISRA, N.J.S.A. 13:1K-6 et seq.;
2. A person liable for cleanup and removal costs pursuant to the Spill Act, N.J.S.A. 58:10-23.11 et seq., if:
 - i. The Department has issued a Spill Act directive to that person;
 - ii. A State agency has issued an order to that person; or

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iii. That person has entered into an administrative consent order with a State Agency;
and

3. A person who has been ordered by a court to clean up and remove a discharge pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

(b) The following persons are not required to establish a remediation funding source pursuant to this subchapter:

1. A person who performs a remediation in an environmental opportunity zone;

2. A person who uses an innovative remedial action technology, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the innovative technology;

3. A person who implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the unrestricted use remedial action or the limited restricted use remedial action;

4. A government entity;

5. A person who undertakes a remediation at their primary or secondary residence;

6. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs a remediation at the licensed child care center; or

7. The person responsible for conducting a remediation at a public school or private school as defined in N.J.S.A.18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.

(c) Any person who is required to establish a remediation funding source shall establish and maintain a remediation funding source in an amount specified in N.J.A.C. 7:26C-5.3, until:

1. The Department or the licensed site remediation professional issues an unrestricted use or limited restricted use final remediation document for the site; or

2. The person responsible for conducting the remediation obtains a remedial action permit for an engineering control and submits to the Department evidence of compliance with

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the requirement to establish financial assurance pursuant to N.J.A.C. 7:26C-7 prior to the termination of the existing remediation funding source.

(d) Any person required to establish a remediation funding source that elects to apply for a loan and/or a grant from the Hazardous Discharge Site Remediation Fund to satisfy all or a portion of the remediation funding source requirements shall submit all the information required in N.J.A.C. 7:26C-11.2 to the Department.

(e) In the event the New Jersey Economic Development Authority denies the application for a loan and/or grant from the Hazardous Discharge Site Remediation Fund, the person required to establish a remediation funding shall establish the full amount of the remediation funding source in accordance with this subchapter within 14 days after the person's receipt of notice from the New Jersey Economic Development Authority that the application has been denied.

(f) Except as provided in (g), below, the person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter may use any one or any combination of the following instruments:

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-5.5;
3. A line of credit agreement in accordance with N.J.A.C. 7:26C-5.6;
4. A letter of credit in accordance with N.J.A.C. 7:26C-5.7
5. A self-guarantee in accordance with N.J.A.C. 7:26C-5.8; or
6. A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12.

(g) Notwithstanding (f), above, any person subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27 shall establish and maintain a remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4.

(h) The person responsible for conducting the remediation required to establish and maintain a remediation funding source shall submit evidence of the establishment of a remediation funding source to the Department no later than the following deadlines as applicable, unless the Department approves an extension of that deadline:

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1. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to ISRA, N.J.S.A. 13:1K-6 et seq., shall submit evidence of the remediation funding source:

i. No more than 14 days after either Department approval of a remedial action workplan or Department receipt of a remedial action workplan certified by a licensed site remediation professional; or

ii. Upon submission to the Department of a remediation certification pursuant to N.J.A.C 7:26B-4;

2. A discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., shall submit evidence of the remediation funding source according to the following:

i. As required by a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f;

ii. As required by an order the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11u, or the Water Pollution Control Act, N.J.S.A. 58:10A-10;

iii. Along with signed copies of an administrative consent order; or

iv. As required by a court.

3. A person who has received notice from the Department that the Department will undertake direct oversight of the remediation of the contaminated site pursuant to N.J.S.A. 58:10C-27 shall submit evidence of a remediation trust fund agreement established in accordance with N.J.A.C. 7:26C-5.4, no later than 30 days after receipt of such notification.

(i) Any person may establish, on behalf of any person required to establish a remediation funding source, any type of remediation funding source listed at (f)4 above except for a self-guarantee.

7:26C-5.3 Determination of remediation funding source amount

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(a) The person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter shall establish and maintain the remediation funding source in an amount that is equal to or greater than:

1. The amount calculated in a cost estimate of the implementation of the remediation, including the Department's fees and oversight costs, but excluding the estimated cost to operate, maintain and inspect engineering controls as part of a remedial action permit as provided in N.J.A.C. 7:26C-7, as approved by the Department or as certified by the licensed site remediation professional and the person responsible for conducting the remediation, as applicable;

2. The amount to which the person responsible for conducting the remediation has agreed in an administrative consent order, remediation agreement, or remediation certification;

3. The amount that the Department has required in an order or directive;

4. The amount that the Department requires when it undertakes direct oversight of remediation pursuant to N.J.S.A. 58:10C-27; or

5. The amount that a court has required.

(b) The person responsible for conducting the remediation shall, within 30 days after a request from the Department, submit a revised cost estimate if the Department determines that the documentation offered to support the cost estimate is incomplete, inaccurate or deficient, and shall submit any additional documentation that the Department requests to enable the Department to evaluate the cost of the remediation, including, but not limited to any workplans or reports that were used to determine the cost estimate submitted pursuant to (a)1 above.

7:26C-5.4 Remediation trust fund requirements

(a) Any person who is required or chooses to establish a remediation trust fund agreement as a remediation funding source pursuant to this subchapter shall submit to the Department the original remediation trust fund agreement. The remediation trust fund agreement must:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;

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2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
3. Specify that the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;
4. Indicate that the trustee may only disburse those funds from the remediation trust fund:
 - i. If the entire site or portion of the site is under direct oversight by the Department pursuant to N.J.S.A. 58:26C-27, the Department approves in writing be disbursed; or
 - ii. For all other sites, the Department or the licensed site remediation professional approves in writing be disbursed;
5. Specify that the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation approved by either the Department or the licensed site remediation professional; and
6. Identify the Department as the sole beneficiary of the remediation trust fund.

(b) Any person responsible for conducting the remediation that uses a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved or a licensed site remediation professional has certified, and confirming that the trust shall continue to exist for the next consecutive 12-month period.

7:26C-5.5 Environmental insurance policy requirements

- (a) Any person who chooses to establish an environmental insurance policy as a remediation funding source pursuant to this subchapter shall submit to the Department the original insurance policy. The environmental insurance policy must:
1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey;

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2. Include the applicable case number, the program interest name and program interest number (preferred ID), site name, and site address;

3. Indicate that the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department except for failure to pay the premium;

4. Specify that the issuer of the environmental insurance policy may revoke or terminate the policy for failure to pay the premium, but only after notifying the person who established the remediation funding source and the Department by certified mail of the decision to revoke or terminate the policy at least 120 days before termination, beginning from the date of receipt by the Department as shown on the signed return receipt;

5. Indicate that the insurer may only disburse those funds from the environmental insurance policy that the Department or the licensed site remediation professional approves in writing may be disbursed pursuant to N.J.A.C. 7:26C-5.12;

6. Indicate the funds in the environmental insurance policy will be utilized solely for the purposes of conducting the remediation; and

7. Specify that the Department, or another party that may subsequently be designated by the Department pursuant to N.J.A.C. 7:26C-5.13(d), may access the environmental insurance policy to pay for the cost of conducting the remediation.

(b) Any person responsible for conducting the remediation using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source, submit to the Department a written statement from the insurance company confirming the value of the environmental insurance policy in an amount that the Department has approved or a licensed site remediation professional has certified, and that the environmental insurance policy has been renewed for the next consecutive 12-month period.

7:26C-5.6 Line of credit requirements

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(a) Any person who chooses to establish a line of credit agreement as a remediation funding source pursuant to this chapter shall submit to the Department an original of a line of credit. The line of credit must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a federally regulated bank;
2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended for a period of at least one year;
4. Indicate that, if the issuer of the line of credit decides not to extend the line of credit beyond the then current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of a decision not at least 120 days before the current expiration date beginning from the date of receipt by the Department as shown on the signed return receipt;
5. Indicate that the person providing the line of credit shall only disburse those funds from the line of credit that the Department or licensed site remediation professional approves in writing to be disbursed pursuant to N.J.A.C. 7:26C- 5.12;
6. Indicate that the funds in the line of credit shall be utilized solely for the purposes of conducting the remediation; and
7. Specify that the Department, or another party that may subsequently be designated by the Department pursuant to N.J.A.C. 7:26C-5.13(d), may access the line of credit to pay for the cost of remediation.

(b) Any person responsible for conducting the remediation using a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved or a licensed site remediation professional has certified, and

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confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

7:26C-5.7 Letter of Credit

(a) Any person who chooses to provide a letter of credit as a remediation funding source to guarantee the availability of funds pursuant to this subchapter shall submit to the Department an original letter of credit. The letter of credit must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a federally regulated bank;
2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
3. Indicate that letter of credit is irrevocable, issued for a period of at least one year, and that it will be automatically extended for a period of at least one year;
4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and
5. Indicate that the Department may access the letter of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-5.13(d).

7:26C-5.8 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall complete and submit to the Department a Self-guarantee Remediation Funding Source Form available on the Department's website at www.nj.gov/dep/srp/srra/forms that contains the following information:

1. The applicable case number, the program interest name, and program interest number (preferred ID), site name and site address;

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2. Information that demonstrates that the estimated cost of the remediation that the Department has approved or that a licensed site remediation professional has certified does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;

3. Information that demonstrates that the individual or entity possesses the required cash flow and has sufficient net cash provided by operating activities, as defined by the American Institute for Certified Public Accountants, to pay for the remediation during the next 12-month period. Cash flow and net cash will be deemed sufficient if:

i. The individual's or entity's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made; and,

ii. The individual or entity possess a net cash provided by operating activities in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made;

4. Audited financial statements, in which the auditor expresses an unqualified opinion for the preceding fiscal year that ended closest in time to the date of the self guarantee statement, prepared in accordance with the American Institute for Certified Public Accountants guidelines, including but not limited to income statement, balance sheet and consolidated statement of cash flow; and

5. A statement from the chief financial officer or similar officer that the information in the written statement submitted pursuant to this subchapter is true to the best of the officer's information, knowledge and belief, and that it meets the requirements of N.J.S.A. 58:10B-3(f).

(b) A parent company may provide a self guarantee for a wholly owned subsidiary that is the person responsible for conducting the remediation when the wholly owned subsidiary does not have its own audited financial statements and its financial statements are reported through that parent company. The parent company must comply with all the requirements of this section.

(c) In the case of a special purpose entity created specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not

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available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant.

(d) The self-guarantee shall be valid for one year from the date of the submittal required in (a), above. Thereafter, the person shall:

1. Comply with the requirements of (a) above, and if applicable (b) and (c) above, annually, to provide a self-guarantee for each successive year that that person is required to maintain a remediation funding source and wishes to continue to provide a self-guarantee; and

2. Submit the information required by (a) above, and if applicable (b) and (c) above, to the Department 30 days prior to the date of expiration of the existing statement.

7:26C-5.9 Remediation funding source surcharge

(a) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter that elects to establish the remediation funding source by one or any combination of the following shall submit to the Department a remediation funding source surcharge pursuant to (b) below:

1. A remediation trust fund pursuant to N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy pursuant to N.J.A.C. 7:26C-5.5;
3. A line of credit pursuant to N.J.A.C. 7:26C-5.6; or
4. A letter of credit pursuant to N.J.A.C. 7:26C-5.7.

(b) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter and who is required to pay a surcharge pursuant to (a), above, shall submit the remediation funding source surcharge to the Department, and shall:

1. Pay, by cashier's or certified check payable to the Treasurer, State of New Jersey, a remediation funding source surcharge in an amount equal to one percent of the amount of the remediation funding source; and

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2. Submit the remediation funding source surcharge with the remediation funding source as required in N.J.A.C. 7:26C-5.2 and annually thereafter on the same date until the Department or a licensed site remediation professional issues a final remediation document.

7:26C-5.10 Remediation cost review

(a) The person responsible for conducting the remediation shall submit to the Department 365 days after the date that that person is required to submit a remediation funding source pursuant to N.J.A.C. 7:26C-5.2(h), and annually thereafter on the same calendar day, a detailed cost review on a Remediation Cost Review Form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that is certified by the person responsible for conducting the remediation and by the licensed site remediation professional if applicable, that includes the following:

1. A detailed summary of all monies spent to date to remediate the contaminated site;
2. A detailed estimate of the remaining costs to complete the remediation pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter, excluding the cost to operate, maintain and inspect engineering controls as part of a remedial action permit pursuant to N.J.A.C. 7:26C-7; and
3. An explanation of any changes from the most recently submitted cost review .

7:26C-5.11 Changes in the remediation funding source amount or type and return of the remediation funding source

(a) A person required to establish a remediation funding source pursuant to this subchapter who wishes to decrease the amount of the remediation funding source shall submit a Remediation Cost Review Form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, that provides a revised estimate of the cost of the remediation and that indicates why that cost is less than previously estimated.

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(b) The person required to establish a remediation funding source pursuant to this subchapter may reduce the amount of the remediation funding source to the amount of the estimate submitted to the Department pursuant to (a) above upon either:

1. Receipt from the Department of written approval in response to a request submitted pursuant to (a) above provided, however, that the Department will respond to requests within 45 calendar days after the Department's receipt of the request; or

2. Submission to the Department of a Remediation Cost Review Form pursuant to (a) above, but only if that submission includes a certification by the licensed site remediation professional justifying the revised cost estimate.

(c) The person required to establish the remediation funding source pursuant to this subchapter shall increase the remediation funding source amount within 30 days after:

1. Submission to the Department of any remediation cost review, required pursuant to N.J.A.C. 7:26C-5.10, that indicates that the cost of remediation has increased to an amount greater than the existing remediation funding source;

2. Receipt of a demand from the Department to increase the amount of the remediation funding source to match the amount of the estimated costs; or

3. Receipt of written certification, with a copy provided to the Department, from a licensed site remediation professional that the estimated cost of the remediation has increased.

(d) The person responsible for conducting the remediation may decrease the amount of the remediation funding source, pursuant to (a) above, to the extent that the remediation includes:

1. An innovative remedial action technology;

2. A limited restricted use remedial action; or

3. An unrestricted use remedial action.

(e) The person responsible for conducting remediation that is required to establish a remediation funding source pursuant to this subchapter may at any time submit a written request to the Department on a Remediation Cost Review Form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, to substitute another type of remediation funding source specified in this subchapter for the existing remediation funding source. The Department shall

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return the original remediation funding source documents after such proof is provided that an acceptable alternate mechanism has been established.

(f) The Department shall return the remediation funding source to the person responsible for conducting the remediation when either the Department or a licensed site remediation professional has issued a final remediation document for the entire site pursuant to N.J.A.C. 7:26C-6.

7:26C-5.12 Disbursements from the remediation funding source

(a) Except those persons subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27, a person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter, and who has established a remediation trust fund, an environmental insurance policy or a line of credit, in satisfaction of the requirements of this subchapter, may submit, no more frequently than once every three months, a written request to use the remediation funding source to pay for the actual cost of remediation. The request may be submitted to the Department, or directly to the provider of the remediation funding source with a copy provided to the Department if the information specified in (a)2i-iv below is prepared and certified by a licensed site remediation professional if applicable, and must include the following information:

1. Identification of the site, including name, address, case number (if applicable), program interest name, program interest number (preferred ID), and status of the remediation;
2. Information related to remediation costs, prepared and certified by a licensed site remediation professional, if applicable, including:
 - i. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed under this request;
 - ii. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request;
 - iii. The total amount of disbursement being requested; and

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iv. An updated, detailed estimate of the cost of implementing the remaining remediation; and

3. A certification by the person responsible for conducting the remediation, and by the licensed site remediation professional, if applicable, that the disbursement request represents actual remediation costs of the subject site, incurred or to be incurred, and does not include legal fees.

(b) If the disbursement request is submitted to the Department rather than directly to the provider of the remediation funding source, within 30 days after the Department's receipt of the written request submitted pursuant to (a) above, the Department will respond to a disbursement request as follows:

1. The information submitted is complete and the disbursement amount represents actual remediation costs and, therefore, the disbursement is approved;

2. The information submitted is complete; however, the requested disbursement amount includes remediation costs that has neither been approved by the Department nor has been certified by a licensed site remediation professional, and therefore, the Department will only allow disbursement of funds for the approved remediation costs; or

3. The information submitted is incomplete, including a list of the missing information and a statement that the Department shall give no further consideration to the disbursement request until the requestor submits all the required information.

(c) If the disbursement request is submitted directly to the provider of the remediation funding source in accordance with (a) above, the person responsible for conducting the remediation shall provide the Department with notice of the disbursement or denial and the amount of the remaining remediation funding source within 30 days of disbursement or denial.

7:26C-5.13 Failure to perform the remediation

(a) The Department shall notify in writing the person required to establish a remediation funding source pursuant to this subchapter if the Department determines that the person has failed to perform the remediation as required. The person shall have 30 days after receipt of such

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notice, unless otherwise extended in writing by the Department, to perform any obligation not performed.

(b) The Department shall provide a copy of the notification required in (a), above, to the current owners and operators of the site when the person required to establish the remediation funding source has failed to remediate the site.

(c) Thirty calendar days after the person's receipt of the notification in (a), above, the Department may, in its sole discretion, perform the remediation of a site using the funds in the remediation funding source.

(d) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the moneys in the remediation funding source established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the monies to the petitioner.

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.1 Scope

(a) This subchapter establishes the requirements for:

1. Response action outcomes, in N.J.A.C. 7:26C-6.2;
2. No further action letters, in N.J.A.C. 7:26C-6.3;
3. Modification, rescission, and invalidation of final remediation documents, in N.J.A.C. 7:26C-6.4; and
4. Scope of a final remediation document and covenant not to sue, in N.J.A.C. 7:26C-6.5.

7:26C-6.2 Response action outcomes

(a) The licensed site remediation professional shall issue a response action outcome:

1. To the person who has conducted the remediation when, in the opinion of the licensed site remediation professional, the site or area of concern has been remediated pursuant to all applicable statutes, rules, and guidance, including but not limited to this chapter, the

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Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and the Remediation Standards rules, N.J.A.C. 7:26D;

2. After the Department has issued all remedial action permits required for the remedial action;

3. After all fees and oversight costs have been paid to the Department;

4. For an entire site or one or more areas of concern, including all areas to which a discharge originating at the site or area of concern may have migrated; and

5. According to specific tax block and lot or, if no block and lot are available, then other specific identification of the property that was remediated.

(b) The licensed site remediation professional shall:

1. Prepare the response action outcome pursuant to:

i. This section; and

ii. The Guidance for the Issuance of Response Action Outcomes (RAO) found on the Department's website at www.nj.gov/dep/srp/srra/guidance; and

2. File each response action outcome with the Department:

i. With a Response Action Outcome form available from the Department at www.nj.gov/dep/srp/srra/forms, when the licensed site remediation professional issues the response action outcome to the person who has conducted the remediation; and

ii. Three electronic copies, pursuant to N.J.A.C. 7:26C-1.6, of all data, documents and information concerning remediation, including but not limited to, technical records and contractual documents, raw sampling and monitoring data, whether or not the data and information relate in any way to the site or area of concern, including technical records and contractual documents, developed by the licensed site remediation professional, the licensee's divisions, employees, agents, accountants, contractors, or attorneys, or a prior licensed site remediation professional for the remediation to the extent that the subsequent licensed site remediation professional relied on the work of the earlier licensed site remediation professional.

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(c) The licensed site remediation professional shall base his or her opinion as to whether to issue the response action outcome on the following, in effect at the time of the response action outcome:

1. All applicable New Jersey statutes, including:
 - i. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; and
 - ii. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4; and
2. All applicable New Jersey rules, including, without limitation:
 - i. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
 - ii. The Remediation Standards rules at N.J.A.C. 7:26D; and
 - iii. Any other applicable standards adopted pursuant to law;
3. The Department's technical guidelines concerning site remediation at www.nj.gov/dep/srp/srra/guidance; and
4. If there is no specific requirement provided by any technical standard the Department has adopted, or the Department's guidance is not appropriate or necessary, the licensed site remediation professional may use the following additional technical guidance to make decisions regarding remediation, and shall specifically identify all such guidance used and set forth the rationale for such use:
 - i. Relevant guidance from the United States Environmental Protection Agency or other states; and
 - ii. Other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and of the environment.

(d) The licensed site remediation professional may rely on a remedial action workplan or other equivalent plan the Department has approved for a site for the remedial action to be implemented at that site.

(e) The licensed site remediation professional shall correct all deficiencies identified by the Department in the Department's inspection and review findings.

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(f) If the licensed site remediation professional issues a response action outcome that is based upon either a preliminary assessment or site investigation, the licensed site remediation professional shall certify that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standards in the Remediation Standards rules, at N.J.A.C. 7:26D;
2. The applicable ground water remediation standards in the Remediation Standards rules, at N.J.A.C. 7:26D; and
3. All other applicable remediation guidance, criteria, and standards.

(g) The licensed site remediation professional shall issue a response action outcome after the licensed site remediation professional has determined that the remediation has been completed pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, including, without limitation, the following, as applicable:

1. All contaminated soil has been remediated:
 - i. To the most stringent soil remediation standard; or
 - ii. Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard and the Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and
2. All contaminated groundwater has been remediated:
 - i. To the applicable ground water quality standard;
 - ii. The licensed site remediation professional has:
 - (1) Determined, based upon the most recent eight consecutive quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C, and that a natural attenuation ground water remedial action is therefore appropriate;

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(2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;

(3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and

(4) Determined that the Department has issued a ground water remedial action permit for the remediation, unless the site is in an area of regional historic fill; or

iii. The licensed site remediation professional has:

(1) Approved a ground water remedial action that utilizes an engineering control:

(2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;

(3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and

(4) Determined that the Department has issued a ground water remedial action permit for the remediation.

7:26C-6.3 No further action letters

(a) The Department will issue a no further action letter to the person responsible for conducting the remediation when that person is:

1. Remediating an unregulated heating oil tank; or
2. Subject to N.J.A.C. 7:26C-2.3 and completes the remedial action prior to May 7, 2012.

7:26C-6.4 Modification, rescission and invalidation of a final remediation document

(a) The Department may modify or rescind a no further action letter or invalidate a response action outcome under the following circumstances if it determines that the remedial action is no longer protective of public health and safety:

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1. A discharge that occurred prior to the issuance of a final remediation document is discovered after the issuance of the final remediation document and the remediation of that discharge should have been addressed in the remediation to which the final remediation document pertains;

2. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude and the person responsible for conducting the remediation fails to conduct further remediation;

3. A contaminant exposure pathway from a discharge that predates the final remediation document is identified after the issuance of the final remediation document and was not addressed in the remediation to which the final remediation document pertains;

4. Any person who is obligated to comply with the conditions of the final remediation document fails to do so;

5. The permittees fail to comply with a remedial action permit;

6. The Department concludes that the remediation was not performed in compliance with applicable statutes, rules and guidance; or

7. Other factors exist that demonstrate that the remediation is not protective of the public health, safety and the environment.

(b) The Department may invalidate a response action outcome when it determines that the person responsible for conducting the remediation:

1. Implemented a remedial action that will render the property unusable for future redevelopment or recreational use; or

2. Failed to implement a presumptive remedy or alternative presumptive remedy when required.

(c) Upon the Department's rescission of a no further action letter or the invalidation of a response action outcome, the person responsible for conducting the remediation shall perform all additional remediation, according to expedited site specific remediation timeframes, as the Department may require.

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7:26C-6.5 Scope of final remediation document and covenant not to sue

(a) The scope of a final remediation document is limited by the scope of the remediation addressed in that document. Likewise, the scope of a covenant not to sue that accompanies a final remediation document is also limited by the scope of the remediation addressed in the final remediation document.

(b) Any covenant not to sue that accompanies a final remediation document is without prejudice to any rights that the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund may have against the person responsible for conducting the remediation and any person in any way responsible for a discharge, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, with respect to liability for:

1. Cleanup and removal costs, damages (including primary and compensatory restoration damages and the costs of any natural resource damage assessments) and injunctive relief, for injury to, destruction of, or loss of natural resources;

2. Cleanup and removal costs, damages, and injunctive relief available to the Plaintiffs in the United States District Court for the District of New Jersey, in the case captioned NJDEP et al. v. Amerada Hess Corp. et al., C.A. No. 3:07-5284, and subsequently pending in the United States District Court for the Southern District of New York, captioned as In Re; Methyl Teritary Butyl Ether (“MTBE”) Products Liability Litigation, MDL No. 1358; and

3. Cleanup and removal costs, damages, and injunctive relief available to the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund in any litigation or claim pending as of the date of a final remediation document.

SUBCHAPTER 7. REMEDIAL ACTION PERMITS

7:26C-7.1 Purpose and scope

(a) The purpose of this subchapter is to establish a permit program for implementing remedial actions that require institutional or engineering controls, or that include operation and maintenance systems.

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(b) More specifically, this subchapter establishes:

1. A regulatory mechanism for the:
 - i. Operation and maintenance of certain remedial actions;
 - ii. Monitoring the effectiveness of certain remedial actions; and
 - iii. Submission of biennial certifications of engineering and institutional controls;
2. The permittees of a remedial action permit, pursuant to N.J.A.C. 7:26C-7.2;
3. Remedial action permits, N.J.A.C. 7:26C-7.3;
4. The general conditions that apply to each remedial action permit, pursuant to N.J.A.C. 7:26C-7.4;
5. The specific conditions that apply to each soil remedial action permit involving a deed notice, pursuant to N.J.A.C. 7:26C-7.5;
6. The specific conditions that apply to each ground water remedial action permit, pursuant to N.J.A.C. 7:26C-7.6;
7. The financial assurance requirements for a remedial action permit that include an engineering control, pursuant to N.J.A.C. 7:26C-7.7;
8. The procedures for transferring a remedial action permit, pursuant to N.J.A.C. 7:26C-7.8;
9. The procedures for the Department to modify a remedial action permit, pursuant to N.J.A.C. 7:26C-7.9; and
10. The procedures for the Department to terminate a remedial action permit, pursuant to N.J.A.C. 7:26C-7.10.

(c) A remedial action permit pursuant to this subchapter does not:

1. Authorize any person to discharge any pollutant or hazardous substance; or
2. Relieve any person from the obligation to comply with all other applicable Federal, State, and local laws, rules, and regulations.

7:26C-7.2 Permittees of remedial action permits

(a) Each of the following persons shall comply with this subchapter, including any applicable

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remedial action permit the Department issues pursuant to this subchapter:

1. The permittees for a remedial action permit include, without limitation, each of the following statutory permittees:

i. Each owner and operator of an underground storage tank facility who is liable for the remediation pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;

ii. Each owner and operator of an industrial establishment who is liable for the remediation pursuant to Industrial Site Remediation Act, N.J.S.A. 13:1K-6 et seq.;

iii. Any other person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for any hazardous substance that was discharged; and

iv. Any other person who is remediating a site; and

2. The permittees for a remedial action permit also include certain persons due to their position as owners, operators, or tenants of the property that is being, or has been remediated, including, without limitation, each of the following:

i. Each owner of the property, where the discharge occurred, at the time of implementation of the remedial action that includes an engineering or institutional control or operation and maintenance requirements for the remedial action; and

ii. Each subsequent owner, operator and tenant of the property of the discharge during that person's ownership or operation.

(b) If there is more than one person responsible for compliance with a remedial action permit pursuant to (a) above, each such person, as a co-permittee, is jointly and severally liable for:

1. Compliance with the conditions of a remedial action permit pursuant to this subchapter;

2. Payment of all remedial action permit fees pursuant to N.J.A.C. 7:26C-4;

3. Payment of penalties for violations of a remedial action permit pursuant to N.J.A.C. 7:26C-9; and

4. Maintenance of financial assurance for engineering controls pursuant to N.J.A.C.

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7:26C-7.8.

7:26C-7.3 Remedial action permits

(a) The Department will issue a remedial action permit pursuant to this subchapter whenever the Department receives, after January 15, 2010, any of the following as part of a remedial action:

1. A copy of a deed notice stamped as being properly recorded and a completed Soil Remedial Permit Application Form available from the Department at www.nj.gov/dep/srp/srra/forms; and
2. A ground water workplan that includes:
 - i. Natural attenuation as part of the remedial action;
 - ii. An engineering control as part of the remedial action; or
 - iii. Requirements for monitoring, maintenance and evaluation of any institutional or engineering control as part of the remedial action.

7:26C-7.4 General conditions applicable to all remedial action permits

(a) The permittees for a remedial action permit shall comply with all maintenance, monitoring, and evaluation requirements in any or all of the following that pertain to the remediation that is the subject of the permit:

1. Every remedial action workplan and remedial action report that either the Department or a licensed site remediation professional has approved;
2. Every final remediation document that either the Department or a licensed site remediation professional has approved; and
3. Any subsequent modification of any document referenced in (a)1 or 2, above, that either the Department or a licensed site remediation professional approves.

(b) The permittees shall:

1. Prepare and submit to the Department a biennial certification as required by this subchapter every two years following the anniversary of the date of the earliest of the following:

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- i. The date the owner of property records a deed notice as part of a remedial action;
 - ii. The date the Department establishes a ground water classification exception area pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E-8.3; or
 - iii. The date the Department or the licensed site professional approves a ground water remedial action report for a ground water remedial action;
2. If there is more than one remedial action permit for a site:
 - i. Submit a separate biennial certification for each remedial action permit; and
 - ii. Submit all of the biennial certifications at the same time, when the first biennial certification is due to the Department pursuant to (b)1, above, and biennially thereafter on that same date;
 3. Maintain financial assurance, if applicable pursuant to N.J.A.C. 7:26C-7.7; and
 4. Pay all applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.5 Specific conditions applicable to soil remedial action permits

- (a) The permittees of a soil remedial action permit shall comply with:
 1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.4;
 2. The conditions in each deed notice recorded for the property pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
 3. The biennial certification requirements pursuant to N.J.A.C. 7:26E-8.5(a) through (d);and
 4. All other conditions that the Department includes in the soil remedial action permit.

7:26C-7.6 Specific conditions applicable to ground water remedial action permits

- (a) The permittees of a ground water remedial action permit shall comply with:
 1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.4;
 2. The ground water monitoring reporting requirements in any remedial action workplan or remedial action report approved by either the Department or a licensed site remediation professional;

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3. The well restrictions associated with each ground water classification exception area for the site;
4. The biennial certification pursuant to N.J.A.C. 7:26E-8.6; and
5. All other conditions that the Department includes in the ground water remedial action permit.

7:26C-7.7. Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided in (b), below, the permittees for a remedial action permit for a remedial action that includes an engineering control shall:

1. Submit to the Department, on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.4(b)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls part of any remedial action at the site; and

2. Maintain financial assurance in accordance with the remediation funding source options established in N.J.A.C. 7:26C-5.4, 5.5, 5.6, and 5.7:

- i. In an amount equal to or greater than the cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit as most recently estimated based upon applicable guidance published by the Department or other sound basis for estimating those costs; and

- ii. Until the Department terminates the permit pursuant to N.J.A.C. 7:26C-7.10.

(b) The following persons are not required comply with this section:

1. A government entity;
2. A person who is not otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, who purchased a contaminated site prior to May 7, 2009, and is remediating, or has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g.d;
3. A person who undertakes remediation at that person's primary or secondary residence;

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4. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B who performs remediation at the licensed child care center;

5. The person responsible for performing remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.; and

6. The owner or operator of a small business who is responsible for performing a remediation at his or her business property.

(c) The remediation funding source surcharge payable in accordance with N.J.A.C. 7:26C-5.9 is not applicable to the financial assurance posted pursuant to this subsection.

(d) A permittee may change the amount of the financial assurance in accordance with N.J.A.C. 7:26C-5.11.

(e) A permittee may disburse monies from the funding posted in accordance with N.J.A.C. 7:26C-5.12.

(f) If any permittee fails to comply with the actions required pursuant to a remedial action permit or this subchapter, the Department, or another party as the Department may authorize, may draw on the financial assurance to achieve compliance.

7:26C-7.8 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.2(a)2), may, prior to changing such status, request that the Department transfer the permit to a new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-4.4 and has the burden of showing that its permittee status is so limited by law.

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a), above, the permittee shall, at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to

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transfer the permit by providing the following information on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department at www.nj.gov/dep/srp/srra/forms:

1. Contact information of the current permittee intending to transfer the permit;
2. Contact information of the prospective permittee, if any;
3. Site identification;
4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and
5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:
 - i. Is the new owner, operator, or tenant of or at the contaminated site;
 - ii. Has acknowledged in writing that it accepts its responsibility as a permittee; and
 - iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.8, if applicable.

(c) The Department shall not rescind a person's status as a permittee until all of the following occur:

1. The permittee requesting transfer of the permit complies with the notice requirements in (b), above;
2. The permittee requesting transfer of the permit actually terminates its status as subsequent owner, operator, or tenant; and
3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.7.

7:26C-7.9 Modification of specific requirements in a remedial action permit

(a) The Department may modify a remedial action permit as needed to protect the public health and safety and the environment.

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after any of the following, by submitting a completed Remedial Action Permit Form

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appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. A statement that the permittee has completed a protectiveness evaluation required in its permit and has determined that the remedial action is not adequately protective of the public health and safety and of the environment, and stating the reasons for coming to this conclusion;
2. The size, duration, or contaminants of a classification exception area need to be modified;
3. Any person proposes to change the engineering controls applicable to the site, as described in the deed notice filed for the property;
4. The municipality has revised the Lot and Block designations of the property; or
5. The permittee changes its name or address.

(c) To request modification of any remedial action permit pursuant to (b), above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit modification to the Department as follows:

1. The Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, which includes:
 - i. Identification of the contaminated site; and
 - ii. Identification and contact information of the applicant;
2. A copy of the following as applicable:
 - i. The filed copy of a new deed notice;
 - ii. A revised ground water classification exception area application; or
 - iii. A revised remedial action workplan; and
3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.10 Termination of a remedial action permit

(a) The Department may terminate a remedial action permit upon request of a permittee if the Department finds that the remedial action:

1. Meets all applicable remediation standards without the need for the remedial action

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permit; and

2. Is protective of the public health and safety and of the environment without the presence of the remedial action permit;

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, the following:

1. The name, address and telephone number of the permittee requesting termination of the permit;
2. The name, address and telephone number of the prospective permittee;
3. Site identification;
4. A detailed written rationale on why the permittee believes that the engineering or institutional controls, the remediation systems, or the remedial action implemented for the site no longer require oversight over time in order to be protective of the public health and safety and the environment;
5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix B to this chapter, and
6. Confirmation that the permittee requesting termination of the remedial action permit does not have any outstanding fees pursuant to N.J.A.C. 7:26C-4.

(c) Upon written notice that the Department has terminated a remedial action permit, the permittee may cease compliance with the remedial action permit that the Department has terminated and have the owner of the property file the termination of deed notice, if applicable.

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

This subchapter identifies the minimum requirements for the person responsible for conducting the remediation of real property not owned by that person, to obtain access to that property.

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7:26C-8.2 Site access

(a) The person responsible for conducting remediation shall take all appropriate actions, as outlined in (b) below, to obtain the access to property, not owned by that person, that is necessary to implement the remediation.

(b) The person responsible for conducting the remediation that requires access to the property of another shall send to each owner a written request, via certified mail, for access to the property. The person responsible for conducting remediation shall include the following information in the written request:

1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;
2. A site map indicating each area for which access is needed;
3. A description of the reason access is needed and the extent of access needed;
4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and
5. A request that the property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

(c) If the owner of the property does not respond, the person responsible for conducting the remediation shall send a second written request to the property owner by certified mail. The person responsible for conducting the remediation shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the property owner does not grant access, the person responsible for conducting the remediation shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The person responsible for conducting the remediation shall provide written confirmation to the Department of the filing of such action. Upon request by the Department, the person responsible for conducting the remediation shall

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submit a copy of the court order that indicates that the Superior Court denied access to the property.

(e) The person responsible for conducting the remediation shall provide to the Department all appropriate information as detailed in this section when applying for an extension of a regulatory, mandatory, or expedited site specific timeframe, pursuant to N.J.A.C. 7:26C-3.

(f) Nothing contained in this section shall be construed to relieve any person conducting the remediation of that person's obligations to conduct remediation at any portion of a site or area of concern to which the person has access.

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.1 Scope

(a) This subchapter governs administrative enforcement actions the Department may take for a person's violation of any of the following:

1. An administrative order issued pursuant to any of the Department's statutory authorities;
2. An administrative consent order;
3. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., including any of the following:
 - i. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; and
 - ii. A remediation agreement issued pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-4;
4. The Site Remediation Reform Act, N.J.S.A. 58:10C, and this chapter;
5. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Underground Storage Tanks Rules, specifically N.J.A.C. 7:14B-1.3, and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; or
7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.

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(b) This subchapter:

1. Identifies those violations where a grace period will be afforded;
2. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period;
3. Governs the procedures the Department will follow when it issues an administrative order;
4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; and
5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.

7:26C-9.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a rule, or a remedial action permit constitutes an additional, separate, and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Each day during which a violation continues constitutes an additional, separate, and distinct offense.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by any other statute or rule in connection with the violation for which the assessment is levied.

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty provisions may request in writing that the Department amend its document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-9. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

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7:26C-9.3 Administrative Orders

(a) Whenever the person responsible for conducting the remediation fails to comply with any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial action permit, or guidance the Department may issue an administrative order that:

1. Specifies the provision or provisions of any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial permit or guidance of which that person is in violation;
2. Cites the action or omission that caused the violation;
3. Requires compliance with such provision or provisions; and
4. Gives notice to that person of a right to an administrative hearing to contest a notice of an administrative order issued pursuant to this subchapter.

7:26C-9.4 Grace period applicability; procedures

(a) Each violation identified in the penalty table at N.J.A.C. 7:26C-9.4(c) by an “M” in the Type of Violation column, for which conditions at (c) below are satisfied, is a minor violation and is subject to a grace period, the length of which is indicated in the column with the heading “Grace Period.”

(b) Each violation identified in the penalty table at N.J.A.C. 7:26C-9.4(c) by an “NM” in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department shall provide a grace period for any violation identified as minor under this section, provided that the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department;

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3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for a violation of the same requirement within the preceding 12 month period; and

4. The person responsible for the violation has not been identified by the Department as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department will issue a notice of violation to the person responsible for a minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation and in addition, shall not consider the minor violation as an offense pursuant to N.J.A.C. 7:26C-9.2(b).

3. The person responsible for a violation shall submit to the Department, at the address indicated in the notice of violation, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26C-1.5(b)1, and signed by the person responsible for conducting the remediation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, certified in accordance with N.J.A.C. 7:26C-1.5, no later than one week before the end of the specified grace period and shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance.

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If the person is unable to meet this deadline due to extenuating circumstances, the person may still request the extension, which request shall explain the reason for the delay in requesting the extension. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose an additional risk to the public health, safety and the environment; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within the approved extension, if any, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation was issued pursuant to (d)1.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

7:26C 9.5 Civil administrative penalty determination

(a) The amount of a civil administrative penalty shall be determined as follows:

1. The Department shall identify the violation listed in the table in subparagraph (c) below;

2. The Department shall determine whether the violation is identified by an “M” or “NM” in the Type of violation column;

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3. For a violation identified by an “M” as minor in the “Type of Violation” column, the Department shall apply the provisions of N.J.A.C. 7:26C-9.4; and

4. For a violation identified by an “NM” as non-minor in the “Type of Violation” column, or for a violation that is identified by an “M” as minor in the “Type of Violation” column, but for which the conditions at N.J.A.C. 7:26C-9.3 are not satisfied, the Department:

i. Shall identify the corresponding base penalty dollar amount for the rule violated as listed in (c) below;

ii. Shall adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-9.6 (a), as applicable; and

iii. May multiply the penalty calculated pursuant to subparagraph (a)4 above by the number of days the violation existed.

(b) The following summary of rules contained in the “Subchapter and Violation” column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The “Citation” column lists the citation and shall be used to determine the specific rule to which the violation applies. In the “Type of Violation” column, “M” identifies a violation as minor and “NM” identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the “Grace Period” column. The “Base Penalty” column indicates the applicable base penalty for each violation.

Subchapter and Violation	Citation	Type of Violation	Grace Period Days	Base Penalty
<u>Discharges of Petroleum and Other Hazardous Substances N.J.A.C. 7:1E</u>				
Failure to conduct remediation in accordance with N.J.A.C. 7:26C.	7:1E-5.7(a)2ii	NM		\$20,000

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The Underground Storage Tank Regulations N.J.A.C. 7:14B

1 General Information

Failure to submit proper certifications.	7:14B-1.7(a)	M	30	\$4,000
Failure to conduct all site investigation and tank closure activity, using an individual certified in subsurface evaluation and/or closure in accordance with N.J.A.C. 7:14B-13 when required.	7:14B-1.8(a)1	NM		\$8,000
Failure to conduct all site investigation and tank closure activities in accordance with N.J.A.C. 7:26C-2.4, including using a LSRP, when required.	7:14B-1.8(a)2	NM		\$8,000
Failure to comply with the regulatory timeframes in this chapter.	7:14B-1.8(a)3	NM		\$8,000

3 Fees

Failure to pay fees or oversight costs.	7:14B-3.5(a)	M	30	20% of outstanding amount; \$1000 minimum
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7 Release Reporting and Investigation

Failure to perform an investigation of a suspected release, in accordance with 7:14B-7.2(a) within 7 days of discovery of the suspected release.	7:14B-7.1(a)	NM		\$8,000
Failure to perform a Site Investigation within the required timeframe, in accordance with N.J.A.C. 7:26E-3.3, when the 7-day investigation was inconclusive in confirming or disproving a suspected release.	7:14B-7.2(b)	NM		\$8,000
Failure to immediately report a confirmed discharge as required.	7:14B-7.3(a)	NM		\$8,000
Failure to perform the remedial actions set forth in N.J.A.C. 7:14B-8.	7:14B-7.3(c)	NM		\$8,000
Failure to implement the release response plan when a discharge has been confirmed.	7:14B-7.3(d)	NM		\$8,000
Failure to report a discharge of a reportable quantity of hazardous substances other than petroleum or waste oil to the National response Center per 40 CFR Part 302.	7:14B-7.3(e)	M	30	\$4,000

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Failure to perform a site investigation within the required timeframe in accordance with N.J.A.C. 7:26E-3.3 and submit a site investigation report in accordance with N.J.A.C. 7:26E-3.13 when required due to a suspected discharge.	7:14B-7.4	NM	\$8,000
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8 Remediation Activities

Failure to take immediate action upon confirming a release.	7:14B-8.1(a)	NM	\$8,000
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Failure to take immediate action to determine the source of the discharge upon confirming a release.	7:14B-8.1(a)1	NM	\$8,000
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Failure to take immediate action to cease use of the underground storage tank system upon confirming a release.	7:14B-8.1(a)2	NM	\$8,000
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Failure to take immediate action to mitigate any fire, safety or health hazard upon confirming a release.	7:14B-8.1(a)3	NM	\$20,000
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Failure to take immediate action to conduct a visual inspection to detect and mitigate the effects of evident discharges upon confirming a release.	7:14B-8.1(a)4	NM	\$8,000
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Failure to take immediate action to properly remove all hazardous substances from the underground storage tank system upon confirming a release.	7:14B-8.1(a)5	NM		\$20,000
Failure to take immediate action to repair, replace or close the underground storage tank system upon confirming a release.	7:14B-8.1(a)6	NM		\$8,000
Failure to take immediate action to comply with the reporting requirements at N.J.A.C. 7:14B-7.3 upon confirming a release.	7:14B-8.1(a)7	NM		\$8,000
Failure to perform a remedial investigation in accordance with N.J.A.C. 7:26E-4.	7:14B-8.2(a)1	NM		\$8,000
Failure to perform a remedial action in accordance with the requirements of N.J.A.C. 7:26E-6.	7:14B-8.2(a)2	NM		\$8,000
Failure to determine the classification of any wastes that are generated during the remedial investigation or remedial action.	7:14B-8.2(a)3	M	60	\$4,000

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Failure to remove all non-hazardous wastes from the site or treat soils on site in accordance with N.J.A.C. 7:26E-5 and 6, or reuse soils in accordance with N.J.A.C. 7:26E-6.2(b) upon Department approval, within six months after generation.	7:14B-8.2(a)4	M	90	\$4,000
Failure to remove all hazardous wastes from the site within 90 days of generation.	7:14B-8.2(a)5	M	30	\$4,000
Failure to submit the remedial investigation Report to the Department and local health agencies within the required timeframe.	7:14B-8.3(a)	NM		\$8,000
Failure to submit a Remedial Action Selection report prepared in accordance with N.J.A.C. 7:26E within the required timeframe.	7:14B-8.3(a)1	NM		\$8,000
For tanks subject to regulation at 40 C.F.R. Part 280, failure to report to the Department the source and cause of the confirmed release.	7:14B-8.3(b)	M	30	\$4,000
Failure to have a remedial investigation report prepared by a Department Certified Subsurface Evaluator or LSRP as required.	7:14B-8.3(c)	NM		\$8,000

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Failure to submit a request for No Further Action, a remedial investigation workplan, or a remedial action workplan with the remedial investigation report when required.	7:14B-8.3(d)	NM		\$8,000
Failure to submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8, within 90 days of the approval of the remedial investigation workplan when required.	7:14B-8.3(e)	NM		\$8,000
Failure to conduct additional sampling and analysis as required by the Department and/or submit a remedial investigation workplan in the timeframe required by the Department.	7:14B-8.3(f)	NM		\$8,000
Failure to revise inadequate or incomplete submittals and resubmit the required information to the Department within 30 days or in the timeframe specified.	7:14B-8.3(g)	M	30	\$8,000
Failure to provide the Department with 14 calendar days notice prior to initiation of remedial activities.	7:14B-8.3(i)	M	30	\$4,000
Failure to allow the Department site access to observe remedial activities.	7:14B-8.3(i)	NM		\$20,000

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Failure to perform additional work in accordance with the timeframes specified in a revised remedial investigation workplan.	7:14B-8.3(j)	NM		\$8,000
Failure to comply with N.J.A.C. 7:26E-1.14 when a discharge poses an immediate threat to public health or the environment.	7:14B-8.3(k)	NM		\$20,000
Failure to implement the remedial investigation and submit reports as required pursuant to N.J.A.C. 7:26C-2.4, and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4.	7:14B-8.3(l)	NM		\$8,000
Failure to implement the remedial action workplan within the timeframes approved by the Department and/or obtain all necessary permits to perform the remedial action workplan as required.	7:14B-8.4(a)1	NM		\$8,000
Failure to submit a revised remedial action workplan upon discovery of new information available which was not adequately addressed in the original workplan.	7:14B-8.4(a)3	M	30	\$8,000
Failure to submit progress reports, prepared in accordance with N.J.A.C. 7:26E-6.6, within the time schedule approved in the remedial action workplan.	7:14B-8.4(a)4	M	30	\$8,000

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Failure to implement the remedial action pursuant to N.J.A.C. 7:26C-2.4 and pay all required fees and costs pursuant to N.J.A.C. 7:26C-4.	7:14B-8.4(b)	NM		\$8,000
Failure to submit a complete remedial action report, prepared in accordance with N.J.A.C. 7:26E-6.7, upon full implementation of the remedial action workplan.	7:14B-8.5(a)1	NM		\$8,000
Failure to submit an amended remedial action report, in the time frame specified by the Department, that addresses the deficiencies of the initial Remedial Action Report.	7:14B-8.5(a)2	M	30	\$8,000
Failure to implement the remedial action, submit reports, and address any deficiencies identified by the Department in accordance with N.J.A.C. 7:26C-2.4, and submit a response action outcome issued by the LSRP.	7:14B-8.5(b)	NM		\$8,000
Failure to remediate a discharge of hazardous substances in accordance with the Technical Requirements for Site Remediation at N.J.A.C.7:26E.	7:14B-8.6	NM		\$8,000
Failure to conduct all remedial investigation and remedial action activities in accordance with N.J.A.C. 7:26E-1.9.	7:14B-8.7	NM		\$8,000

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Failure to empty and repair or close a tank system which has leaked a hazardous substance into the annular space created by the secondary containment system.	7:14B-8.8(a)	M	30	\$5,000
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Failure to submit to the Department a report which documents the investigation of the tank leak and its repair.	7:14B-8.8(b)	M	30	\$8,000
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9 Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems

Failure to notify the Department within 30 days that a tank system is out of service.	7:14B-9.1(a)	M	30	\$4,000
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Failure to follow the requirements of API Bulletin No. 1604 when a tank system is out of service for greater than 3 months.	7:14B-9.1(b)	M	30	\$8,000
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Failure to properly submit documentation to the Department for the extension of the 12-month out of service period.	7:14B-9.1(c)	NM		\$8,000
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Failure to close a tank system after it has been out of service for more than 12 months without the approval of the Department.	7:14B-9.1(d)	NM		\$8,000
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Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities, when required.	7:14B-9.1(e)1	NM		\$8,000
Failure to conduct tank closure and site investigation activities in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using a licensed site remediation professional, when required.	7:14B-9.1(e)2	NM		\$8,000
Failure to notify the Department and all applicable local and county health departments in writing at least 30 days prior to closing an underground storage tank system.	7:14B-9.2(a)1	M	30	\$4,000
Failure to comply with all applicable requirements of the New Jersey Uniform Construction Code regarding closing an underground storage tank system.	7:14B-9.2(a)2	M	30	\$4,000
Failure to include a copy of the Department notification with the application for a local demolition permit prior to closing an underground storage tank system.	7:14B-9.2(a)3	M	30	\$4,000

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Failure to submit a completed New Jersey Underground Storage Tank Registration Questionnaire and fees, if the tank is not already registered, at least 60 days prior to closing an underground storage tank system.	7:14B-9.2(a)4	M	30	\$8,000
Failure to develop and implement a closure plan pursuant to the procedures set forth in N.J.A.C. 7:26E-6.3(b).	7:14B-9.2(b)	NM		\$8,000
Failure to follow the closure requirements set forth in N.J.A.C. 7:26-9 for underground storage tank systems regulated by the New Jersey Hazardous Waste Regulations.	7:14B-9.3(a)			Defer to specific 7:26-9 violations and penalties
Failure to follow the closure requirements set forth in N.J.A.C. 7:14B-9.2 for underground storage tank systems containing hazardous wastes which are not subject to the New Jersey Hazardous Waste Regulations.	7:14B-9.3(b)	M	30	\$8,000
Failure to ensure the underground storage tank system is closed by an individual certified for closure per N.J.A.C. 7:14B-13 or a LSRP, as required, depending upon the date that closure was initiated.	7:14B-9.3(c)	NM		\$8,000

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Failure to ensure that an individual certified in subsurface evaluation is on site during the removal or abandonment-in-place of the underground storage tank system and makes all observations and decisions regarding site investigation and remedial investigation activities when required.	7:14B-9.3(d)1	NM	\$8,000
Failure to ensure that all tank closure and site investigation activities were conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using LSRP, when required.	7:14B-9.3(d)2	NM	\$8,000
Failure to empty and clean a tank prior to storing a non-hazardous substance.	7:14B-9.4(a)1	NM	\$8,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3, before the substance being stored was changed to a non-hazardous substance.	7:14B-9.4(a)2	NM	\$8,000
Failure to submit a site investigation report, prepared and presented in accordance with N.J.A.C. 7:26E-3.13, within the required timeframe.	7:14B-9.4(a)3	NM	\$8,000

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Failure to immediately notify the Department upon identification of a discharge during activities associated with N.J.A.C. 7:14B-9.4(a), and to conduct remediation.	7:14B-9.4(b)	NM		\$8,000
Failure to submit a New Jersey Underground Storage Tank Facility Certification Questionnaire that reflects the change of substance.	7:14B-9.4(c)	M	30	\$8,000
Failure to submit a site investigation report to the Department within the required timeframe.	7:14B-9.5(a)	M	30	\$8,000
Failure to insure the site investigation report is prepared by individual certified in subsurface evaluation per N.J.A.C. 7:14B-13 or a LSRP, as required, depending upon the date that closure was initiated.	7:14B-9.5(b)	NM		\$8,000
Failure to maintain and make available to the Department upon request all records generated per N.J.A.C. 7:14B-9.	7:14B-9.5(c)	M	30	\$4,000

10 Permitting Requirements for Underground Storage Tanks

Failure to obtain a permit from the Department prior to the repair, installation, substantial modification or upgrade of an underground	7:14B-10.1(a)1	NM		\$8,000
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storage tank system.

Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.	7:14B-10.1a)2	M	30	\$4,000
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$4,000
Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.	7:14B-10.2(a)	NM		\$8,000
Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.	7:14B-10.2(b)	M	60	\$4,000
Failure to submit a permit application on forms provided by the Department.	7:14B-10.3(a)	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or	7:14B-10.3(b)1	M	30	\$4,000

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upgrade which are signed and sealed by a New Jersey profession engineer.

Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system indicating the size and location of the tank systems, existing structures on the site, and distances from lot lines.	7:14B-10.3(b)2	M	30	\$4,000
Failure to submit information documenting soil permeability.	7:14B-10.3(b)3	M	30	\$4,000
Failure to submit required documentation of the depth to ground water.	7:14B-10.3(b)4	M	30	\$4,000
Failure to submit corrosion system designs which are properly certified.	7:14B-10.3(b)5	M	30	\$4,000
Failure to submit a detailed description of the upgrade, installation, or repair that is to be performed.	7:14B-10.3(b)6	M	30	\$4,000
Failure to submit documentation of the precision of the performance of the release detection monitoring method chosen pursuant to N.J.A.C. 7:14B-6.1, 6.2 and 6.3.	7:14B-10.3(b)7	M	30	\$4,000

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Failure to submit a scaled site diagram accurately indicating the locations of all sampling and monitoring points in relation to all underground storage tank systems at the facility.	7:14B-10.3(b)8	M	30	\$4,000
Failure to submit the required certification, signed by a Department certified subsurface evaluator, that the number and locations of all vapor or product monitoring points is sufficient to monitor the tank system.	7:14B-10.3(b)9	M	30	\$4,000
Failure to make the Department issued permit available for inspection by an authorized local, State or Federal representative and prominently display the permit at the facility site during the course of the permitted activity.	7:14B-10.5(a)	M	30	\$4,000
Failure to maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection by an authorized local, State or Federal representative.	7:14B-10.5(b)	M	30	\$4,000
Failure to contact the Department as required to obtain an emergency permit, and to submit a permit application within 14 calendar days of receipt of the emergency permit.	7:14B-10.6(b)	NM		\$8,000

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Failure to provide required information when requesting an emergency permit.	7:14B-10.6(c)	M	30	\$4,000
Failure to make the Department-issued emergency permit number available for inspection by an authorized local, State or Federal representative and prominently display the emergency permit number at the facility site during the course of the permitted activity.	7:14B-10.6(d)	M	30	\$4,000
Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.	7:14B-10.8(e)	NM		\$8,000

11 Municipal Ordinances

Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.	7:14B-11.1(b)	M	30	\$4,000
Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.	7:14B-11.2(a)	M	30	\$4,000

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Failure to submit to the Department a copy of the final ordinance.	7:14B-11.3(d)	M	30	\$4,000
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13 Certification of Individuals and Business Firms

Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.	7:14B-13.1(a)	NM		\$5,000
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Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-13.1(b)	M	30	\$4,000
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Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-13.1(c)	M	30	\$4,000
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Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.A.C. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-13.1(d)	NM		\$5,000
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Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-13.1(e)1	NM		\$5,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)2	NM		\$5,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-13.1(h)	M	30	\$4,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-13.1(j)	M	30	\$4,000
Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.	7:14B-13.1(k)	M	30	\$4,000

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Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-13.1(l)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to comply with the professional business practices described in N.J.A.C 7:14B-13.9	7:14B-13.1(m)	NM		\$5,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).	7:14B-13.6(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-13.6(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$5,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-13.6.	7:14B-13.7(f)	M	30	\$4,000

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Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-13.9(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-13.9(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-13.9(a)3	M	30	\$4,000

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Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to enter into a written contract with a client that contains all of the provisions of N.J.A.C 7:14B-13.9(b).	7:14B-13.9(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide a standard price list of the services that it provides upon request of the client.	7:14B-13.9(c)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-13.9(d)1	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-13.9(d)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of	7:14B-13.9(e)	NM		\$5,000

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hazardous substances or any suspected violation of this subchapter.

16 Certification of individuals and business firms for unregulated underground storage tank systems

Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tanks.	7:14B-16.2(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-16.2(b)	M	30	\$4,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-16.2(c)	M	30	\$4,000
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tanks are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-16.2(d)	NM		\$5,000

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Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-16.2(e)1	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-16.2(e)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.	7:14B-16.2(f)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to comply with the professional business practices described in N.J.A.C 7:14B-16.10.	7:14B-16.2(g)	NM		\$5,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit a list of the maximum price that	7:14B-16.2(g)1	M	30	\$3,000

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they will charge to perform those services for which he/she/it is certified.

Failure of an individual or business firm performing services on unregulated heating oil tanks to cooperate in any audit of their pricing and business practices.	7:14B-16.2(g)2	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit documentation of the cost to provide the services for which the Petroleum Underground Storage Tank Remediation and Upgrade Closure Fund is providing financial assistance.	7:14B-16.2(g)3	M	30	\$3,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification other than those created by passing an examination.	7:14B-16.2(i)	M	30	\$4,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-16.2(j)	M	30	\$4,000

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Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.	7:14B-16.2(k)	M	30	\$4,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-16.2(l)	M	30	\$4,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).	7:14B-16.7(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-16.7(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$5,000

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Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7.	7:14B-16.8(f)	M	30	\$4,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-16.9(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-16.9(b)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-16.10(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-16.10(a)2	NM		\$5,000

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Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-16.10(a)3	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to enter into a written contract with a client that contains all of the provisions of N.J.A.C 7:14B-16.10(b).	7:14B-16.10(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide a standard price list of services to the client.	7:14B-16.10(c)	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-16.10(d)1	M	30	\$4,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-16.10(d)2	NM		\$5,000

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<p>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.</p>	<p>7:14B-16.10(e)</p>	<p>NM</p>	<p></p>	<p>\$5,000</p>
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The Industrial Site Recovery Act Regulations N.J.A.C. 7:26B

1 General Information

<p>Failure to make all submissions in format as required.</p>	<p>7:26B-1.5</p>	<p>M</p>	<p>30</p>	<p>\$4,000</p>
<p>Failure to submit proper certifications.</p>	<p>7:26B-1.6</p>	<p>M</p>	<p>30</p>	<p>\$4,000</p>
<p>Failure to complete additional remediation and address deficiencies in submittals.</p>	<p>7:26B-1.7(b)</p>	<p>NM</p>	<p></p>	<p>\$8,000</p>
<p>Failure to allow the Department access to the site.</p>	<p>7:26B-1.9</p>	<p>NM</p>	<p></p>	<p>\$20,000</p>
<p>Prior to the transfer of an industrial establishment, failure to: obtain an authorization letter, no further action letter or remedial action workplan approval from the Department; obtain a response action outcome or certification of a remedial action workplan from a LSRP; execute a remediation</p>	<p>7:26B-1.10(b)</p>	<p>NM</p>	<p></p>	<p>\$8,000</p>

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agreement or submit a remediation certification.

Failure to amend a General Information Notice for any subsequent transfers of ownership or operations.	7:26B-1.10(c)	M	30	\$4,000
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3 General Information Notice

Failure to submit a General Information Notice within five calendar days after the occurrence of a transaction event.	7:26B-3.2(a)	NM		\$8,000
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Failure to remediate a site in accordance with ISRA.	7:26B-3.2(b)	NM		\$8,000
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Failure to submit a complete and accurate General Information Notice.	7:26B-3.3(a)	M	30	\$4,000
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Failure to comply with N.J.A.C. 7:26C-2.4 for a General Information Notice submitted to the Department on or after November 4, 2009.	7:26B-3.3(d)	NM		\$8,000
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Failure to submit revisions to the General Information Notice within 30 calendar days of discovery that the original is incorrect, inaccurate or incomplete.	7:26B-3.4(b)	M	30	\$4,000
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4 Remediation Agreement and Remediation Certification

Failure to conduct remediation in accordance with a Remediation Agreement.	7:26B-4.1	NM		\$8,000
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Failure to conduct remediation in accordance with a Remediation Agreement Amendment.	7:26B-4.2	NM		\$8,000
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Failure to submit a complete and accurate remediation certification.	7:26B-4.3	M	30	\$4,000
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6 Remediation Procedures

Failure to complete a preliminary assessment and submit a preliminary assessment report to the Department within the required timeframe.	7:26B-6.1(b)	NM		\$8,000
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Failure to complete a site investigation and submit a site investigation report to the Department within the required timeframe.	7:26B-6.1(c)	NM		\$8,000
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Failure to submit a remedial investigation workplan to the Department within the required	7:26B-6.1(d)	NM		\$8,000
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timeframe.

Failure to complete a remedial investigation and submit a remedial investigation report to the Department within the required timeframe.	7:26B-6.1(e)	NM		\$8,000
Commenced a remedial action which does not meet the criteria in N.J.A.C. 7:26B-6.2(b) without the Department's approval of a remedial action workplan.	7:26B-6.2(a)	NM		\$8,000
Failure to submit, within the required timeframe, a certification that there are no areas of concern at the industrial establishment where hazardous substances have migrated or are migrating from, involving remediation of groundwater or surface water, and a summary and schedule of completed and proposed soil remedial actions.	7:26B-6.2(c)	NM		\$8,000
Failure to certify the notification referenced in 7:26B-6.2(c).	7:26B-6.2(d)	M	30	\$4,000
Failure to submit a notification in accordance with N.J.A.C. 7:26E-1.4.	7:26B-6.2(e)	NM		\$8,000
Failure to submit progress reports when required.	7:26B-6.2(f)	M	30	\$8,000

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Failure to submit a remedial action workplan to the Department within the required timeframe.	7:26B-6.2(g)	NM	\$8,000
Failure to submit a remedial action workplan to the Department within the required timeframe when conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.	7:26B-6.2(h)	NM	\$8,000
Failure to submit a ground water or surface water remedial action workplan within the required timeframe for Department approval.	7:26B-6.3(a)	NM	\$8,000
Failure to submit a ground water or surface water remedial action workplan to the Department within the required timeframe when conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.	7:26B-6.3(b)	NM	\$8,000
Failure to submit a Remediation Funding Source upon the Department's approval or LSRP's certification of a remedial action workplan.	7:26B-6.4	NM	\$5,000
Failure to remediate a site in accordance with a schedule.	7:26B-6.5	NM	\$8,000

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Failure to submit all workplans and reports documenting completion of remediation.	7:26B-6.6	M	30	\$8,000
Failure to submit a negative declaration.	7:26B-6.7	NM		\$8,000
8 Program fees and oversight costs				
Failure to pay fees and oversight costs.	7:26B-8	M	30	20% of outstanding amount; \$1000 minimum

Remediation Agreements

Failure to submit workplans and reports that comply with N.J.A.C. 7:26E and that conform to the Department's comments, in accordance with the remediation agreement.	specific remediation agreement paragraphs	NM		\$8,000
Failure to implement approved workplans in accordance with approved schedule and the conduct of additional work required by the Department, in accordance with the remediation agreement.	specific remediation agreement paragraphs	NM		\$8,000
Failure to comply with RFS requirements in a remediation agreement.	specific remediation	NM		\$8,000

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	agreement paragraphs			
Failure to comply with any other administrative requirements of a remediation agreement, including but not limited to payment of oversight costs and fees; payment of RFS surcharge; submittal of cost review.	specific remediation agreement paragraphs	M	30	\$4,000

The Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C

1 General Requirements

Failure to conduct remediation in accordance with all applicable statutes, rules, and guidance.	7:26C-1.2(a)	NM		\$8,000
Failure to conduct additional remediation using the services of a LSRP when notified by the Department.	7:26C-1.4(b)	NM		\$8,000
Failure to properly certify all submissions.	7:26C-1.5	M	30	\$4,000
Failure to submit forms, applications and documents as required.	7:26C-1.6	M	30	\$4,000

2 Obligations of the Persons Responsible for Conducting the Remediation of a Contaminated Site

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Failure to conduct remediation as required.	7:26C-2.3(a)	NM	\$20,000
Failure to conduct remediation as required.	7:26C-2.4	NM	\$20,000
Failure to retain records as required and to submit them upon issuance of final remediation document and/or upon request.	7:26C-2.5	NM	\$8,000

3 Remediation Timeframes and Extension Requests

Failure to remediate the site or area of concern pursuant to the schedules in 7:14B, 7:26B, 7:26C, 7:26E or an ACO or RA.	7:26C-3.2(a)	NM	\$8,000
Failure to comply with the mandatory timeframe for submittal of a preliminary assessment and site investigation report.	7:26C-3.3(a)1	NM	\$8,000
Failure to comply with the mandatory timeframe for submittal of an initial receptor evaluation report.	7:26C-3.3(a)1	NM	\$20,000
Failure to comply with the mandatory timeframe for delineation of the immediate environmental concern contaminant source, initiation of immediate environmental concern contaminant source control and submittal of Immediate	7:26C-3.3(a)2	NM	\$20,000

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Environmental Concern Contaminant Source
Control Report.

Failure to comply with the mandatory timeframe for delineation of LNAPL free product, completion of LNAPL recovery system installation, initiation of LNAPL recovery system monitoring, and submittal of interim remedial action report.	7:26C-3.3(a)3	NM	\$20,000
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Failure to comply with an expedited site-specific timeframe established by the Department.	7:26C-3.4(c)	NM	\$20,000
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4 Fees and Oversight Costs

Failure to pay the annual remediation fee.	7:26C-4.2(a)	NM	20% of outstanding amount; \$1000 minimum
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Failure to accurately identify contaminated areas of concern/media for the purpose of determining the amount of the annual remediation fee.	7:26C-4.2(b)	NM	\$4,000
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Failure to submit a new Annual Remediation Fee Reporting Form within the required timeframe prior to the annual remediation fee anniversary date, when additional contaminated areas of concern/media are discovered.	7:26C-4.2(d)	NM		\$4,000
Failure to pay the annual remediation fee every year and the Department oversight costs per N.J.A.C. 7:26C-4.5, as required, when the Department has determined that it will undertake direct oversight of a portion or condition of the site pursuant to N.J.S.A. 58:10C-27.	7:26C-4.2(f) and (g)	NM		20% of outstanding amount; \$1000 minimum
Failure to pay document review fees as required.	7:26C-4.3(a)	M	30	20% of outstanding amount; \$1000 minimum
Failure to pay the required fee related to a discharge from an unregulated heating oil tank system.	7:26C-4.3(c)	M	30	20% of outstanding amount; \$1000 minimum

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Failure to submit the required remedial action permit annual fee.	7:26C-4.4(b)	M	30	20% of outstanding amount; \$1000 minimum
Failure to pay annual remedial action permit fee	7:26C-4.4(c)	M	30	20% of outstanding amount; \$1000 minimum
Failure to pay oversight costs as required.	7:26C-4.5	M	30	20% of outstanding amount; \$1000 minimum

5 Remediation Funding Source Requirements

Failure to establish and maintain a remediation funding source in an amount equal to the cost of the remediation for a period of not less than the actual time to complete the remediation when required.	7:26C-5.2(c)	NM		\$8,000
Failure to submit the required confirmation of the value of the RFS, or renew a self guarantee, when required 30 days prior to expiration.	7:26C-5.4(b), 5.5(b), 5.6(b), 5.8(d)	M	30	\$4,000

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Failure to pay the annual RFS surcharge.	7:26C-5.9(b)	M	30	\$4,000
Failure to submit an annual cost review.	7:26C-5.10(a)	M	30	\$4,000
Failure to increase the RFS within 30 days of a determination that remediation costs are greater than the amount of the established RFS.	7:26C-5.11(c)	NM		\$4,000
Failure to submit information regarding disbursements.	7:26C-5.12(c)	M	30	\$4,000

6 Final Remediation Documents

Failure to conduct additional remediation when required by the Department subsequent to the rescission of a no further action letter or the invalidation of a response action outcome.	7:26C-6.4(b)	NM		\$8,000
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7 Remedial Action Permits

Failure to comply with general conditions applicable to all remedial action permits including the submittal of a biennial certification, maintenance of a RFS, if applicable, and payment of applicable fees.	7:26C-7.4(a)-(b)	NM		\$8,000
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Failure to comply with conditions applicable to a soil remedial action permit, including general conditions, deed notice conditions, and biennial certification requirements.	7:26C-7.5	NM		\$8,000
Failure to comply with conditions applicable to a ground water remedial action permit, including general conditions, ground water monitoring reporting requirements, well restrictions associated with each ground water classification exception area, and biennial certification requirements.	7:26C-7.6	NM		\$8,000
Failure to submit to the Department, on the same schedule as biennial certification submittal, an estimate of the future costs to operate, maintain, and inspect all engineering controls.	7:26C-7.7(a)1	NM		\$8,000
Failure to maintain financial assurance as required pursuant to a remedial action permit.	7:26C-7.7(a)2	NM		\$8,000
8 Access				
Failure to send written requests for access as required to each property owner.	7:26C-8.2(b) and (c)	M	30	\$4,000

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Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.	7:26C-8.2(d)	M	30	\$4,000
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Failure to use either an appropriately certified subsurface evaluator or a licensed site remediation professional to perform the remediation of a discharge from an unregulated heating oil tank system.	7:26C-13.2(a)	NM		\$8000
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Failure to submit the required information.	7:26C-13.3	M	30	\$4000
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Failure to obtain the required approvals when conducting remediation of an unregulated heating oil system	7:26C-13.5(b)	NM		\$8000
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Administrative Consent Orders

Failure to submit workplans and reports that comply with N.J.A.C. 7:26E and that conform to the Department's comments, in accordance with an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
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Failure to implement approved workplans in accordance with approved schedule and the conduct of additional work required by the Department, in accordance with an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
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Failure to comply with RFS requirements in an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
Failure to comply with any other administrative requirements of an administrative consent order, including but not limited to payment of oversight costs and fees; payment of RFS surcharge; submittal of cost review.	specific administrative consent order paragraphs	M	30	\$4,000

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

1 General Information

Failure to comply with this chapter and guidance when conducting remediation pursuant to any of the applicable statutes.	7:26E-1.3(a)	NM		\$8,000
Failure to remediate to the applicable standards.	7:26E-1.3(c)	NM		\$8,000
Failure to conduct remediation consistent with the requirements of Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. and any rules promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.	7:26E-1.3(d)	NM		\$8,000

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Failure to comply with notification requirements.	7:26E-1.4(a)-(e)	NM		\$8,000
Failure to provide a copy of the remedial action workplan or updates or status reports if requested by the municipality.	7:26E-1.4(f)	M	30	\$4,000
Failure to provide public notice of remediation activities at the site using either a sign or notification letters.	7:26E-1.4(h)	NM		\$8,000
Failure to comply with all requirements when using a sign for public notification.	7:26E-1.4(i)	M	30	\$4,000
Failure to comply with all requirements when using notification letters for public notification.	7:26E-1.4(j)	M	30	\$4,000
Failure to obtain the Department's prior approval, comply with guidance, and send additional notification of excess fill material as required.	7:26E-1.4(k)	NM		\$8,000
Failure to send, update, publish fact sheet, and notify affected property owner as required, when contamination migrates off site.	7:26E-1.4(l)	M	30	\$4,000
Failure to notify adjoining property owner of soil contamination via certified mail.	7:26E-1.4(m)	M	30	\$4,000

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Failure to include the rationale for an alternative public notification plan with the applicable remedial phase report.	7:26E-1.4(p)	M	30	\$4,000
Failure to conduct additional public outreach when the Department determined there is substantial public interest.	7:26E-1.4(q)	NM		\$8,000
Failure to make submissions to, and/or get approvals from, Pinelands Commission.	7:26E-1.4(s)	M	30	\$4,000
Failure to submit proper certifications and to submit forms and submissions as required.	7:26E-1.5	M	30	\$4,000
Failure to submit workplans and reports in the proper format and in a timely manner.	7:26E-1.6	M	30	\$4,000
Failure to include in the applicable remedial phase report the rationale for varying from a technical requirement or guidance.	7:26E-1.7(a)	NM		\$8,000
Failure to conduct remediation pursuant to the regulatory timeframes established in this chapter and submit all documents, forms, and other submissions as required in this chapter.	7:26E-1.9(a)	NM		\$8,000

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Failure to comply with the Site Remediation Program's guidance documents in effect at the time that the work was conducted.	7:26E-1.9(b)	NM		\$8,000
Failure to properly submit required documents.	7:26E-1.9(d)	M	30	\$4,000
Failure to prepare or implement a health and safety plan.	7:26E-1.10	NM		\$8,000
Failure to implement an interim response measure to contain or stabilize contamination.	7:26E-1.12(a)	NM		\$20,000
Failure to notify the Department of the discovery of LNAPL and initiate free product recovery as required.	7:26E-1.12(b)1	NM		\$20,000
Failure to complete LNAPL delineation, installation of recovery system, and submit report within the required timeframe.	7:26E-1.12(b)2	NM		\$20,000
Failure to complete the installation of a recovery system, initiate operational monitoring, and submit required information concerning LNAPL recovery within required timeframe.	7:26E-1.12(b)4	NM		\$20,000
Failure to conduct remediation with the Department's oversight in situations where such oversight is required.	7:26E-1.13	NM		\$8,000

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Failure to address an IEC condition in accordance with the Department's IEC Guidance.	7:26E-1.14(a)	NM	\$20,000
Failure to immediately notify the Department upon the discovery of an IEC condition.	7:26E-1.14(b)1	NM	\$20,000
Failure to mitigate the IEC impacts within the required timeframe.	7:26E-1.14(b)2	NM	\$20,000
Failure to submit the required information within the required timeframe.	7:26E-1.14(b)3	NM	\$20,000
Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.14(b)4	NM	\$20,000
Failure to submit an IEC engineered system response action report with the required form within the required timeframe.	7:26E-1.14(c)	NM	\$20,000
Failure to initiate control of the IEC contaminant source using the Department's guidance, complete the delineation of the IEC contaminant source, and submit an IEC contaminant source control report with the required form within the required timeframe.	7:26E-1.14(d)	NM	\$20,000

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Failure to conduct an initial receptor evaluation, pursuant to N.J.A.C. 7:26E-1.15(a) within the applicable required timeframe.	7:26E-1.15(c)	NM		\$20,000
Failure to update a receptor evaluation and submit it as required.	7:26E-1.15(d)	NM		\$20,000
Failure to send a copy of each receptor evaluation to local officials as required.	7:26E-1.15(e)	NM		\$20,000
Failure to properly conduct a receptor evaluation concerning land use, ground water use, vapor intrusion and ecological receptors.	7:26E-1.16-1.19	NM		\$20,000

2 Quality Assurance for Sampling and Laboratory Analysis

Failure to use a laboratory that has the appropriate certification and capabilities.	7:26E-2.1(a)1	NM		\$8,000
Failure to use appropriate methods for sampling, sample management, sample matrix cleanup, analysis and reporting as required.	7:26E-2.1(a)3-18	M	60	\$4,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	M	30	\$4,000

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Failure to analyze samples for contaminants which may be present, or to analyze for the Target Compound List plus TICs/Target Analyte List (TCL + TICs/TAL), hexavalent chromium, petroleum hydrocarbons (PHC), and pH when contaminants are unknown or not well documented.	7:26E-2.1(c)1	M	60	\$4,000
Failure to analyze samples for parameters as needed to develop a site-specific standard or criterion and an alternative remediation standard for the soil inhalation pathway.	7:26E-2.1(c)3	M	60	\$4,000
Failure to conduct sampling pursuant to Department's Guidance for Characterization of Concrete and Clean Material Certification for concrete and other building material that will be recycled.	7:26E-2.1(c)4	M	60	\$4,000
Failure to analyze samples for petroleum hydrocarbons contamination (PHC) pursuant to the Department's guidance and as required.	7:26E-2.1(d)	M	60	\$4,000
Failure to further address tentatively identified compounds, as required.	7:26E-2.1(e)	M	60	\$4,000
Failure to prepare a quality assurance project plan, as required.	7:26E-2.2(a)	M	30	\$8,000

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3 Preliminary Assessment and Site Investigation

Failure to properly conduct preliminary assessment in accordance with N.J.A.C. 7:26E-3.	7:26E-3.1(b)	NM	\$8,000
Failure to conduct a preliminary assessment and/or site assessment pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers when conducting an evaluation of a child care center pursuant to N.J.S.A. 52:27D-130.4.	7:26E-3.1(c)	NM	\$8,000
Failure to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.13 when potentially contaminated areas of concern are identified.	7:26E-3.1(d)	NM	\$8,000
Failure of a person who is required to submit an ISRA general information notice, pursuant to N.J.A.C. 7:26B-3 within the required timeframe.	7:26E-3.1(e)	NM	\$8,000
Failure to submit a preliminary assessment report that conforms to N.J.A.C. 7:26E-3.2	7:26E-3.2	NM	\$8,000
Failure to conduct a site investigation that satisfies all the listed requirements	7:26E-3.3(b)	NM	\$8,000

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Failure to conduct a comparison of all site data with the Department's applicable remediation standards pursuant to the Department's guidance, to determine if contaminated areas of concern are present.	7:26E-3.3(d)	NM		\$8,000
Failure to complete the site investigation and submit a site investigation report with the required form within the applicable required timeframe.	7:26E-3.3(e)	NM		\$8,000
Failure to properly select sample locations, and to properly collect and analyze samples pursuant to N.J.A.C. 7:26E-2.1 et seq.	7:26E-3.4	M	60	\$4,000
Failure to conduct necessary site investigation of building interiors.	7:26E-3.5	M	30	\$4,000
Failure to satisfy site investigation requirements for soil sampling, as listed.	7:26E-3.6(a)	M	30	\$4,000
Failure to conduct site investigation of soil according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.	7:26E-3.6(c)2	M	60	\$4,000
Failure to conduct site investigation of ground water when required by measured soil	7:26E-3.7(a)	M	60	\$4,000

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contamination at an area of concern.

Failure to properly locate ground water sampling points, implement QA/QC measures, and utilize proper sampling methods when conducting a site investigation of ground water.	7:26E-3.7(c)1-3	M	60	\$4,000
Failure to collect the required number of ground water samples.	7:26E-3.7(d)	M	30	\$4,000
Failure to properly evaluate ground water site investigation sampling results.	7:26E-3.7(e)	M	30	\$4,000
Failure to resample ground water to confirm the presence of contamination.	7:26E-3.7(e)2	M	60	\$4,000
Failure to determine groundwater flow direction upon the confirmation of groundwater contamination.	7:26E-3.7(e)3	M		\$4,000
Failure to commence a potable water investigation within 30 calendar days after property acquisition.	7:26E-3.7(f)	NM		\$20,000
Failure to conduct a background investigation that supports a position that the presence of a ground water contaminant in excess of the applicable	7:26E-3.7(g)	M	90	\$4,000

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remediation standard is due to background ground water contamination.

Failure to evaluate evidence of discharges to surface water or sediment.	7:26E-3.8(a)	M	30	\$4,000
Failure to properly conduct site investigation of surface water and sediment.	7:26E-3.8(b)	M	60	\$4,000
Failure to satisfy the site investigation requirements related to bulk storage tanks and appurtenances as listed.	7:26E-3.9(a)1-6	M	30	\$4,000
Failure to properly conduct site investigation of all pads and all storage and staging areas over permeable cover.	7:26E-3.9(b)	M	30	\$4,000
Failure to properly conduct site investigation of all surface impoundments.	7:26E-3.9(c)	M	30	\$4,000
Failure to properly conduct site investigation of all drainage systems.	7:26E-3.9(d)	M	30	\$4,000
Failure to properly conduct site investigation of all discharge and waste disposal systems and areas.	7:26E-3.9(e)	M	30	\$4,000

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Failure to properly conduct site investigation of any area of concern not addressed pursuant to previous requirements.	7:26E-3.9(f)	M	30	\$4,000
Failure to satisfy the baseline ecological evaluation requirements as part of the site investigation.	7:26E-3.11(a)	M	60	\$4,000
Failure to conduct a proper site investigation when a landfill may be present.	7:26E-3.12(a)	M	60	\$4,000
Failure to conduct a proper site investigation when a historic fill may be present.	7:26E-3.12(b)	M	60	\$4,000
Failure to submit a site investigation report that includes information on site history, physical setting, technical overview and findings and recommendations.	7:26E-3.13(b)	M	30	\$4,000
Failure to submit a site investigation report that includes the required data and related information.	7:26E-3.13(c)	M	30	\$4,000
Failure to submit a site investigation report that includes the required maps and diagrams.	7:26E-3.13(d)	M	30	\$4,000

Sub 4 Remedial Investigations

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Failure to conduct a RI in accordance with sub 4, including delineation of contamination to the applicable remediation standard in all media pursuant to the Department's guidance , determination of off site migration of contamination, and evaluation of impacts to human and ecological receptors.	7:26E-4.1(b)	M	90	\$4,000
Failure to submit a remedial investigation workplan that conforms to the general requirements of this section.	7:26E-4.2(a)	M	30	\$4,000
Failure to include all the required information in a remedial investigation workplan.	7:26E-4.2(b)	M	30	\$4,000
Failure to conduct a remedial investigation of soil at a contaminated site.	7:26E-4.3(a)	NM		\$8,000
Failure to conduct the remedial investigation of soil according to general technical requirements.	7:26E-4.3(b)	M	90	\$4,000
Failure to conduct a remedial investigation of ground water when required.	7:26E-4.4(a)	NM		\$8,000
Failure to provide information necessary to support a position that ground water sampling is not necessary.	7:26E-4.4(b)	M	30	\$4,000

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Failure to conduct a remedial investigation of ground water according to general technical requirements.	7:26E-4.4(c)	M	90	\$4,000
Failure to collect ground water samples using acceptable professional methods such as those described in the then effective NJDEP Field Sampling Procedures Manual, or to gain Department approval of an alternate method.	7:26E-4.4(d)	M	30	\$4,000
Failure to properly locate all ground water sampling points.	7:26E-4.4(e)	M	30	\$4,000
Failure to collect the appropriate number of ground water samples.	7:26E-4.4(f)	M	30	\$4,000
Failure to comply with requirements for monitoring wells and piezometers.	7:26E-4.4(g)	M	30	\$4,000
Failure to evaluate the results of the initial ground water analyses.	7:26E-4.4(h)	M	30	\$4,000
Failure to properly perform confirmation ground water sampling.	7:26E-4.4(h)2	M	60	\$4,000

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Failure to fully investigate confirmed groundwater contamination and potential impacts, or to conduct a background investigation that supports a position that groundwater contamination is from an offsite source.	7:26E-4.4(h)3	M	30	\$4,000
Failure to delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including free and residual product.	7:26E-4.4(h)3i	M	90	\$4,000
Failure to confirm ground water flow direction.	7:26E-4.4(h)3ii	M	30	\$4,000
Failure to adequately characterize the impacted aquifer.	7:26E-4.4(h)3iii	M	60	\$4,000
Failure to provide documentation for ground water flow system model.	7:26E-4.4(h)3iv	M	30	\$4,000
Failure to properly perform a well search.	7:26E-4.4(h)3v	NM		\$20,000
Failure to properly sample potable and supply wells which are suspected to be contaminated.	7:26E-4.4(h)3vi	NM		\$20,000
Failure to properly evaluate any surface water body potentially impacted by contaminated ground water.	7:26E-4.4(h)3vii	NM		\$20,000

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Failure to properly evaluate any subsurface utilities, basements or other structures potentially impacted by vapor hazards related to contaminated ground water.	7:26E-4.4(h)3viii	NM		\$20,000
Failure to properly evaluate current and potential ground water uses for the 25 year planning horizon.	7:26E-4.4(h)3ix	M	30	\$4,000
Failure to properly conduct soil gas studies when required.	7:26E-4.4(i)	M	30	\$4,000
Failure to properly conduct a remedial investigation of surface water, wetlands and sediment.	7:26E-4.5(a)	NM		\$8,000
Failure to properly conduct the remedial investigation of surface water, wetlands and sediment in accordance with the general technical requirements.	7:26E-4.5(b)	M	30	\$4,000
Failure to properly document a position that a remedial investigation of surface water is not necessary.	7:26E-4.5(c)	M	30	\$4,000
Failure to conduct a surface water investigation as required.	7:26E-4.5(d)	M	30	\$4,000

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Failure to conduct the remedial investigation of landfills as required.	7:26E-4.6(a)	NM		\$8,000
Failure to conduct the remedial investigation of historic fill as required.	7:26E-4.6(b)	M	30	\$4,000
Failure to conduct an ecological risk assessment according to general technical requirements.	7:26E-4.7(a)	M	60	\$4,000
Failure to present the results of an ecological risk assessment in a ecological risk assessment report that conforms to the specific requirements.	7:26E-4.7(b)	M	30	\$4,000
Failure to submit a complete remedial investigation report.	7:26E-4.8	M	30	\$4,000

5 Remedial Action Selection

Failure to establish remedial action objectives/goals as required.	7:26E-5.1(b)	M	30	\$4,000
Failure to select a remedial action that reduces contamination to below all applicable remediation standards or eliminates exposure to contamination above the applicable remediation standard based on the current and future land use for the site and all listed standards rule and guidelines.	7:26E-5.1(c)	NM		\$8,000

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Failure to select a remedial action that also considers other listed factors.	7:26E-5.1(d)	NM		\$8,000
Failure to include in a report information that supports the use of an innovative remedial action technology.	7:26E-5.1(e)	M	30	\$4,000
Failure to submit a feasibility study instead of a remedial action selection report when the person responsible for conducting the remediation that is remediating a site is subject to direct Department oversight.	7:26E-5.1(f)	M	30	\$4,000
Failure to comply with the Department's requirements for use of engineering and institutional controls at N.J.A.C. 7:26E-8.	7:26E-5.1(g)	NM		\$8,000
Failure to select the required remedial action if new construction of, or a change in use to, a residence, a school or child care center will occur at a site that is undergoing remediation.	7:26E-5.1(i)	NM		\$8,000
Implemented an alternative remedy for a site that will be used as a residence, a school, or a child care center without the Department's prior written approval.	7:26E-5.1(j)	NM		\$8,000

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Failure to submit a remedial action selection report with the remedial action workplan when required.	7:26E-5.2(a)	M	30	\$4,000
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Failure to include all required information in the remedial action selection report.	7:26E-5.2(b)	M	30	\$4,000
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6 Remedial Action

Failure to notify the Department and the local governing body pursuant to N.J.A.C. 7:26E-1.4.	7:26E-6.1(a)	NM		\$8,000
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Failure to ensure that each remedial action implemented at a contaminated site meets all listed requirements.	7:26E-6.1(b)	NM		\$8,000
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Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.	7:26E-6.1(d)	NM		\$20,000
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Failure to establish institutional controls for a restricted use or a limited use remedy.	7:26E-6.1(e)	NM		\$8,000
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Failure to conduct the remediation of historic fill pursuant to N.J.A.C. 7:26E-6.2(c), or for other fill material pursuant to N.J.A.C.7:26E-5.1.	7:26E-6.1(f)	M	30	\$4,000
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Failure to prepare and submit a remedial action workplan that includes all required information in the required format.	7:26E-6.2(a)	M	30	\$8,000
Implemented a soil remedial action without the prior Department approval of a remedial action workplan when such approval is required	7:26E-6.2(b)	NM		\$8,000
Failure to include in the remedial action workplan a reuse soil plan pursuant to the Department's Guidance for Remediation of Contaminated Soils when reuse of contaminated soil is planned as part of a remedial action	7:26E-6.2(c)	M	60	\$4,000
Failure to propose engineering and institutional controls when historic fill material will not be treated or removed.	7:26E-6.2(d)	M	30	\$4,000
Failure to contain or stabilize contaminants in all media, as a first priority, to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.	7:26E-6.3(a)	NM		\$20,000
Failure to follow requirements related to closure of underground storage tanks.	7:26E-6.3(b)	NM		\$8,000
Failure to properly conduct remediation of a landfill.	7:26E-6.3(c)	M	60	\$4,000

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Failure to conduct the required investigation or take the required actions, and to provide all the information necessary, to support the proposal of a natural ground water remediation.	7:26E-6.3(d)	M	30	\$4,000
Failure to comply with the monitoring and performance requirements for natural remediation.	7:26E-6.3(e)	M	30	\$4,000
Failure to include in a remedial action workplan a proposal to monitor an active ground water remedial system as required.	7:26E-6.3(f)	M	30	\$4,000
Failure to include a groundwater monitoring plan for an active groundwater remedial action	7:26E-6.3(g)	M	30	\$4,000
Failure to include a completed CEA/Well Restriction Area (WRA) Fact Sheet Form as part of an application for a ground water remedial action permit.	7:26E-6.3(h)	M	30	\$4,000
Failure to document the effectiveness of the remedial action.	7:26E-6.4(a)	M	30	\$4,000
Failure to restore all areas subject to remediation to pre-remediation conditions.	7:26E-6.4(b)	M	30	\$4,000

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Failure to decommission all monitoring and extraction wells after completion of remediation.	7:26E-6.4(c)	M	30	\$4,000
Failure to prepare a soil reuse plan pursuant to the Department's Guidance for Remediation of Contaminated Soils that complies with the required sampling requirements.	7:26E-6.4(d)	NM		\$8,000
Failure to remediate property not owned by the person conducting the remediation to the applicable residential use standard if the property owner does not consent in writing to implement the institutional or engineering controls and to record a deed notice.	7:26E-6.4(e)	NM		\$8,000
Failure to implement a post remedial action implementation monitoring plan to determine whether the achieved ground water remediation standards are sustainable and not subject to concentration rebound after remediation standards are met, when contaminant levels in the source monitoring wells are at or below the applicable standards for two consecutive high seasonal water table monitoring events.	7:26E-6.4(f)	M	90	\$8,000
Failure to prepare a schedule of the remedial action that includes the information specified in this section and to revise/resubmit it as required.	7:26E-6.5(a)-(c)	M	30	\$8,000

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Failure to submit a remedial action progress report that includes the required information, when required.	7:26E-6.6	M	30	\$8,000
Failure to submit a Remedial Action Report that complies with the content and format requirements specified by this section.	7:26E-6.7(a)	NM		\$8,000
Failure to include all the required information in the Remedial Action Report.	7:26E-6.7(b)-(f)	M	30	\$4,000
7 Permit identification, permit application schedule and discharge to ground water and surface water permits				
Failure to identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action.	7:26E-7.1(a)	M	30	\$4,000
Failure to apply for and obtain all required permits prior to initiating the remedial action.	7:26E-7.1(b)	M	30	\$4,000
Failure to develop a permit application schedule when required.	7:26E-7.1(c)	M	30	\$4,000

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Failure to comply with this section and the Department’s Guidance NJPDES Discharges To Ground Water Technical Manual For The Site Remediation Program for each discharge to ground water (DGW) that is subject to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-7.5(d).	7:26E-7.2(a)	NM		\$8,000
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Failure to submit a DGW proposal with the required form, including the required detailed description of the DGW proposal.	7:26E-7.2(b)	M	30	\$8,000
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Failure to comply with requirements related to public notice of the DGW proposal.	7:26E-7.2(c)	NM		\$8,000
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Failure to comply with the applicable requirements of N.J.A.C. 7:14A-6, this section, and the Department’s guidance NJPDES Discharges To Ground Water Technical Manual For The Site Remediation Program.	7:26E-7.2(e)	NM		\$8,000
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8 Engineering and Institutional Controls

Failure to prepare a deed notice, pursuant to N.J.A.C. 7:26E-8.2.	7:26E-8.1(b)1	M	30	\$4,000
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Failure to demonstrate in the remedial action workplan that the selected remedial action will remain protective, that contamination exposure can be controlled, and all current and future uses of the site will be consistent with the remedial action.	7:26E-8.1(b)2	M	30	\$4,000
Failure to monitor each engineering and institutional control.	7:26E-8.1(b)3	NM		\$8,000
Failure to document in the remedial action workplan, how each of the specified criteria has been factored in to ensure that the remedial action is protective of the public health and safety and of the environment.	7:26E-8.1(c)	M	30	\$8,000
Failure to record a deed notice for the site pursuant to N.J.A.C. 7:26E-8.2(c) and (d).	7:26E-8.2(a)1	NM		\$8,000
Failure to document the owner's consent to record the necessary deed notice pursuant to N.J.A.C. 7:26E-8.2(b).	7:26E-8.2(a)2	NM		\$8,000
Failure to include a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16.	7:26E-8.2(b)	M	60	\$4,000

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Failure to prepare the required draft notice, draft amendment to the Base Master Plan or Land Use Control Assurance Plan, or draft deed notice, worded pursuant to NJAC 7:26E-8.2(d), as required by this section.	7:26E-8.2(c)	M	30	\$4,000
Failure to prepare a deed notice as part of the remedial action report, that is worded exactly as the model document in N.J.A.C. 7:26E, Appendix E, and includes copies of all required maps.	7:26E-8.2(d)	M	30	\$4,000
Failure to have the owner of the property record the deed notice at the proper county office within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(e)1	NM		\$8,000
Failure to provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the road department of each municipality and county in which the site is located, the NJ Department of Transportation, and utility companies with easements on the roadway.	7:26E-8.2(e)2	NM		\$8,000

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Failure to include a copy of the recorded deed notice, stamped "Filed," or notice, as applicable, with the Remedial Action Outcome and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in (g).	7:26E-8.2(e)3	NM		\$8,000
Failure to provide a copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1 to the specified recipients.	7:26E-8.2(f)	M	30	\$4,000
Failure to comply with N.J.A.C. 7:26C-2.4 when redeveloping or changing the use of a site in a manner inconsistent with a remedial action such that modification of the DER or deed notice is necessary.	7:26E-8.2(g)	NM		\$8,000
Failure to submit a completed CEA/Well Restriction Area (WRA) Fact Sheet Form, and the required information.	7:26E-8.3(b)	M	30	\$4,000
Failure to submit to the Department a monitoring/maintenance certification, for a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded.	7:26E-8.4(c)1	NM		\$8,000

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<p>Failure to submit to the Department a monitoring/maintenance certification, for a ground water classification exception area, every two years on the anniversary of the date that the Department established the ground water classification exception area.</p>	<p>7:26E-8.4(c)2</p>	<p>NM</p>	<p>\$8,000</p>
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<p>Failure to submit to the Department a monitoring/maintenance certification, for all other engineering and institutional controls (besides a deed notice or ground water classification exception area), every two years on the anniversary of when the engineering or institutional control was in place.</p>	<p>7:26E-8.4(c)3</p>	<p>NM</p>	<p>\$8,000</p>
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<p>Failure to submit a biennial certification for all remedial actions and all engineering and institutional controls for the site to the Department in accordance with N.J.A.C. 7:26E-8.4 (c) and biennially thereafter on that same date.</p>	<p>7:26E-8.4(d)</p>	<p>NM</p>	<p>\$8,000</p>
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<p>Failure to monitor the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions as required, including evaluation of land use changes; conducting site inspections; comparing laws and standards; keeping a maintenance log.</p>	<p>7:26E-8.5(a)</p>	<p>NM</p>	<p>\$8,000</p>
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Failure to prepare a biennial certification report and/or a remedial action protectiveness certification form that includes the information listed at N.J.A.C. 7:26E-8.5(b)1-10.	7:26E-8.5(b)	NM	\$8,000
Failure to certify to the Department that the deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained, and the remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of public health and the environment.	7:26E-8.5(c)1	NM	\$8,000
Failure to submit a written and electronic version of the monitoring report along with the certification.	7:26E-8.5(c)2	NM	\$8,000
Failure to submit the monitoring report and the certification in accordance with the schedule in N.J.A.C. 7:26E-8.4(c), to the municipal and county clerks; the local, county and regional health department; each owner of the property; or the Department.	7:26E-8.5(c)3	NM	\$8,000
Failure of the person who is relinquishing the obligation to notify the Department of a change in obligations within 30 days of the effective date of	7:26E-8.5(d)1	NM	\$8,000

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the change.

Failure of the person who is assuming the obligation to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)2	NM	\$8,000
Failure to conduct the monitoring and maintenance of a ground water remedial action, and submit a biennial certification, as required.	8.6(a)	NM	\$8,000
Failure to monitor the protectiveness of a remedial action that includes a ground water classification exception area.	8.6(b)	NM	\$8,000
Failure to prepare a Biennial Certification Report using the required form that includes all of the criteria outlined in N.J.A.C. 7:26E-8.6(b)1-14.	7:26E-8.6(c)	NM	\$8,000
Failure to submit the required certification and form to the listed entities according to the schedule at N.J.A.C. 7:26E-8.4(c), including a statement that the biennial certification report supporting the certification is available upon request and including contact information.	7:26E-8.6(d)	NM	\$8,000

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Failure to monitor the protectiveness of a remedial action that includes any other engineering or institutional control.	7:26E-8.7(a)	NM	\$8,000
Failure to prepare a monitoring report that includes all the information listed at NJAC 7:26E-8.7(b)1-9.	7:26E-8.7(b)	NM	\$8,000
Failure to submit the required certification and monitoring report concerning proper maintenance of each engineering or institutional control.	7:26E-8.7(c)	NM	\$8,000

7:26C-9.6 Penalty Adjustment Factors

(a) For violations that meet the criteria set forth at N.J.A.C. 7:26C-9.5(a)4, the Department may adjust the base penalty listed in the table at N.J.A.C. 7:26C-9.5(c) based on the following factors:

1. The Department may increase the amount of the penalty based on the compliance history of the violator as follows:
 - i. The second time that the same violation occurs, the Department may increase the amount of the penalty by a factor of two; and
 - ii. The third time the violation occurs and for each subsequent occurrence, the Department may increase the penalty by a factor of five.
2. The Department may increase the penalty by up to 100 percent if the violation is the result of any intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

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7:26C-9.7 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to this chapter.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be up to \$20,000 for the first offense, up to \$40,000 for the second offense and up to \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of up to \$1,000 for the first offense, up to \$2,000 for the second offense and up to \$5,000 for the third and each subsequent offense.

(d) A violation under this section is non-minor and therefore is not subject to a grace period.

7:26C-9.8 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with any applicable requirements.

(b) The Department shall include the following dollar amounts in its calculation of economic benefit:

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1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

2. The return earned or that may be earned on the amount of the avoided costs;

3. All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

4. All other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;

2. The amount of one-time nondepreciable expenditures;

3. The amount of annual expenses;

4. The useful life of capital;

5. Applicable tax, inflation and discount rates;

6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

7:26C-9.9 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations listed in N.J.A.C. 7:26C-10.1(a), the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil

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administrative penalty assessment. In each notice of civil administrative penalty assessment the Department shall:

1. Identify the provision violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease; 4. Specify the amount of the civil administrative penalty assessed pursuant to N.J.A.C. 7:26C-9.5; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-9.6.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case or when a notice of civil administrative penalty becomes a final order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:26C-9.10, a notice of civil administrative penalty assessment becomes a final order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52-14B-1 et seq., a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) If the violator does not pay a civil administrative penalty within 30 calendar days after the date of a final order, and the penalty is not contested pursuant to N.J.A. C. 7:26C-9.6, or if the violator does not make a required payment pursuant to a payment schedule entered into with the Department, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing and continue until the violator pays the penalty in full.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-9.10 and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.

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(e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The Department may assess and recover, by civil administrative order, the reasonable cost of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, in addition to the penalty assessment.

7:26C-9.10 Procedures for requesting and conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest a notice of civil administrative penalty assessment or an administrative order assessed or issued pursuant to this chapter, the violator shall submit an original request in writing to the Department at the address in (d), below, within 20 calendar days after the violator's receipt of the notice of civil administrative penalty assessment or an administrative order. The violator shall include the following information in each hearing request:

1. The name, address, and telephone number, and if available, the fax number and email address, of the violator and its authorized representative;

2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;

3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;

4. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order stated in short and plain terms;

5. An admission or denial of each of the Department's findings of fact in the notice of administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding,

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the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours); and

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) The Department shall deny the hearing request if:

1. The violator fails to include all the information required by (a) above; or

2. The Department does not receive the request within 20 calendar days after the violator received the enforcement document being contested.

(c) The Department shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:1413-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C 1.1.

(d) The violator shall send the request for an adjudicatory hearing to:

1. The Office of Legal Affairs

New Jersey Department of Environmental Protection

PO Box 402

Trenton, New Jersey 08625-0402

Attention: Hearing Request; and

2. New Jersey Department of Environmental Protection

Bureau of Enforcement and Investigations

PO Box 028

Trenton, New Jersey 08625-0028

Attention Hearing Request

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7:26C-9.11 Spill Compensation and Control Act directive

(a) A Spill Compensation and Control Act directive is a clear, written notice that the Department has determined that it is necessary to cleanup and remove discharges, and that notifies the Respondents that the Department believes them to be responsible for the hazardous substances that were discharged.

(b) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a hazardous substance at a site to:

1. Clean up and remove the discharge or threatened of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or

2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(c) To the extent possible, the Department will provide in the directive general notice as to:

1. The location of the discharge or threatened discharge;
2. The identity of those responsible parties receiving the directive;
3. The connection of each such responsible party to the hazardous substances at the site;
4. The scope of the necessary remediation or the estimated remediation costs;
5. The actions that the responsible parties are directed to take;
6. The manner and timetable for the undertaking action pursuant to the directive; and
7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

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(f) The responsible party shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party shall make such payment in mitigation of any liability that it may possess and comply with (g) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the responsible party decides not to comply with the directive, the directive recipient shall comply with (g) below, indicating in writing that it chooses not to take any actions to comply with the directive.

(g) If the responsible party chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the responsible party shall submit a written response to the Department according to the requirements in the directive. The responsible party shall include in the response a detailed explanation of the person's reasons for its decision, including all good cause defenses to the directive.

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.1 Scope

(a) This subchapter contains provisions that:

1. Establish the eligibility requirements for technical assistance grants, at N.J.A.C. 7:26C-10.3;

2. Establish the pre-application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.4;

3. Establish the application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.5;

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4. Establish the eligible technical assistance grant activities, at N.J.A.C. 7:26C-10.6; and
5. Establish the reporting requirements for a community group receiving a technical assistance grant, at N.J.A.C. 7:26C-10.7;

7:26C-10.2 General Requirements

(a) The Department shall award a technical assistance grant in an amount not to exceed \$10,000 per remediation phase for each of the following phases of remediation:

1. The remedial investigation phase; and
2. The remedial action phase.

(b) The money awarded in a technical assistance grant shall be used for the limited purposes of hiring a licensed site remediation professional to support and advise a grant recipient concerning the technical assistance grant activities described at N.J.A.C. 7:26C-10.6(b).

(c) The Department shall not award a technical assistance grant to more than one community group at any one time for any contaminated site.

(d) The Department may provide reimbursement to any community group for costs incurred pursuant to 7:26C-10.4(d).

7:26C-10.3 Eligibility

(a) A community group is eligible for a technical assistance grant if it meets the following criteria:

1. One or more members of the community group lives near the site;
2. No member of the community group is associated with any person responsible for conducting the remediation of the site;
3. No person responsible for conducting the remediation of the site established or is currently supporting the community group;
4. The community group must not be affiliated with a national organization;
5. The community group is not an academic institution;

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6. The community group does not consist of a political subdivision (example: township or municipality);
7. The community group is incorporated or in the process of incorporating;
8. The community group must be:
 - i. A non-profit organization pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)3;
 - ii. In the process of obtaining status pursuant to 26 U.S.C. § 501(c)3 status; or
 - iii. Be affiliated with a local organization that has obtained status under 26 U.S.C. § 501(c)3 as a non-profit organization for the specific purpose of representing the community;
9. The community group must have established procedures for record-keeping and financial accounting in managing the technical assistance grant; and
10. The community group must have a commercial bank account in the name of the community group or the name of the 501(c)3 organization with which the community group has affiliated.

7:26C-10.4 Pre-application process

(a) A community group may request that the Department make a finding of substantial public interest in a particular contaminated site, as a condition of seeking a technical assistance grant, by submitting to the Department a petition containing the signatures of 25 or more people who live or work near the site,

(b) The Department will respond to a petition and inform the community group of whether or not it has met the requirements of a substantial public interest.

(c) Within 30 days after receiving the Department's response, the community group shall submit to the Department's Office of Community Relations a Letter of Intent that includes the following information:

1. Name of the community group;
2. Description of the composition of the group;
3. Statement of the group's intent to apply for a technical assistance grant;

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4. Program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking the grant; and

5. Name and address of a contact person for the group and his/her daytime phone number.

(d) Upon receipt of the Letter of Intent, the community group will publish a public notice in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site which includes the following information:

1. Program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking a technical assistance grant;

2. Statement that the community group has submitted a Letter of Intent to the Department as part of the process to acquire a technical assistance grant for the contaminated site;

3. Name of the community group, seeking the technical assistance grant, and its contact; and

4. A statement that any other community groups interested in a technical assistance grant for the same contaminated site has 30 days after the publication of the notice in the newspaper to submit its own Letter of Intent to the Department.

(e) If the Department does not receive an additional Letter of Intent within the prescribed time period, the Department will advise the community group in writing that it has 60 days to file an application for a technical assistance grant pursuant to N.J.A.C. 7:26E-10.5.

(f) If the Department receives additional Letters of Intent, all community groups filing letters will have an additional 30 days from the publication of the public notice to attempt to form a coalition. The Department's website at www.nj.gov/dep/srp/srra/community/ provides guidance about the coalition process.

(g) If multiple community groups apply for a grant for the same site and phase and no coalition is formed, the Department will not award a grant.

7:26C-10.5 Application for technical assistance grant

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(a) An applicant for a technical assistance grant shall submit an application, on a Technical Assistance Grant Form available from the Department at www.nj.gov/dep/srp/srra/community, which includes the following information:

1. Description of the community group, including:
 - i. Bylaws established by the community group; and
 - ii. An explanation of how the community group is organized, including officers and purpose;
 - iii. An explanation of how the community group's board of directors, technical advisors, and project manager will interact with each other; and
 - iv. Name and address of contact person for the community group and his/her daytime phone number;
2. Documentation that the community group meets the eligibility requirements outlined in N.J.A.C. 7:26C-10.3(a) above;
3. A financial plan, including:
 - i. The total amount of money being requested in the technical assistance grant;
 - ii. A budget that describes how the community group will spend the money;
 - iii. A description of the work that will be undertaken with the assistance of a licensed site remediation professional;
 - iv. An outline of how the community group will share information with the community in which the site is located; and
 - v. A list of project milestones and a schedule for meeting those milestones;

(b) After reviewing the application for eligibility, administrative completeness, and technical acceptability, the Department will notify the contact person for the community group in writing as follows:

1. The community group is eligible, the application is administratively complete, technically acceptable and the Department approves the application for all or part of the amount requested, provided there are sufficient funds in the Remediation Guarantee Fund;

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2. The application is administratively incomplete or technically unacceptable and the Department cannot take further action until the deficiencies listed in the Department's notification are corrected; or

3. The community group is not eligible for a technical assistance grant, with a statement of the reason(s) therefore.

(c) The Department reserves the right to deny any and all technical assistance grant applications.

7:26C-10.6 Eligible technical assistance grant activities

(a) The community group shall use the technical assistance grant to hire a licensed site remediation professional that is not associated with any person responsible for conducting the remediation of the contaminated site.

(b) The community group shall use the technical assistance grant to offset the costs of the licensed site remediation professional to:

1. Interpret and comment on remediation documents, including technical reports and analytical data prepared by the person responsible for conducting the remediation;
2. Participate in public meetings concerning the contaminated site;
3. Evaluate the potential impacts of the remediation on the community based upon the information provided by the person responsible for conducting the remediation; and
4. Interpret site information that is ancillary to the remediation, including but not limited to public health and redevelopment information, as these issues may be relevant.

(c) The community group shall not use the technical assistance grant to fund:

1. Lawsuits or other legal actions, including payment of attorney fees for advice related to any kind of legal action or any activities that would result in an attorney/client relationship;
2. Political activity or lobbying;
3. Social, ceremonial or amusement activities and related costs, including meals, lodging, rentals, transportation, and tips;
4. Training or travel for any group member or the licensed site remediation professional;

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5. Generation of new site-specific environmental data, such as soil and water data;
6. Resolving disputes with the Department; or
7. Epidemiological or health studies, such as urine or blood testing.

(d) The Department will issue payments upon the submission of invoices up to the amount of the technical assistance grant to the community group for documented technical assistance costs that are identified in the community group's approved budget and scope of work.

(e) If the community group or its licensed site remediation professional uses technical assistance grant funds for activities not identified in the approved budget and scope of work or for activities listed in N.J.A.C. 7:26C-10.6(c):

1. The Department may revoke the technical assistance grant and require reimbursement; and
2. The community group shall repay all of the grant.

7:26C-10.7 Reporting Requirements

(a) The community group shall submit the following reports to the Department for the duration of the technical assistance grant:

1. Annual progress reports which include the following information:
 - i. Invoices associated with the services provided by the licensed site remediation professional;
 - ii. A project summary sheet prepared in accordance with the Department's Cost Guide at www.nj.gov/dep/srp/srra/community;
 - iii. A list of technical assistance grant project milestones;
 - iv. A description of the community group's progress towards completing its technical assistance grant project;
 - v. A description of any problems the community group encountered that prevented progress toward completing the technical assistance grant project; and
 - vi. Annual financial status reports;

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2. An electronic copy of each final written product the licensed site remediation professional prepares for the group within 30 days after the community group's receipt of the document;

3. A final report, submitted to the Department within 180 days after the date of termination of the technical assistance grant, which shall include:

- i. A description of project goals and objectives;
- ii. Activities undertaken to achieve goals and objectives;
- iii. Difficulties encountered;
- iv. Successes achieved; and
- v. Technical advisor's work products; and

4. A final financial report, submitted to the Department 180 days after the date of the termination of the technical assistance grant, which shall include a detailed description of all funds spent.

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

7:26C-11.1 Scope and requirements

This subchapter provides the requirements for a person to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund.

7:26C-11.2 Application for loans and grants

(a) A person or public entity as defined pursuant to N.J.A.S.A. 58:10B-1 may apply for financial assistance from the Hazardous Discharge Site Remediation Fund by submitting a completed Hazardous Discharge Site Remediation Fund Application Form available from the Department at www.nj.gov/dep/srp/srra/forms and by following the Hazardous Discharge Site Remediation Fund Application Guidance.

7:26C-11.3 Grants for reimbursement of prior remediation costs

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(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs that were incurred prior to an application pursuant to this subchapter provided that:

1. The remediation costs were incurred after June 16, 1993; and
2. The Department has approved the remediation associated with the remediation costs.

7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation using a loan or a grant as part of the remediation funding source requirement shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 12. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

7:26C-12.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, to fund projects eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.

7:26C-12.2 Application for loans and grants

(a) A person may apply for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund by submitting to the Department a completed Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Form available from the Department at www.nj.gov/dep/srp/finance/ustfund and by following the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Instructions and Cost Guide, both of which are a part of the application package.

7:26C-12.3 Grants for reimbursement of prior remediation costs

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(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

1. The remediation costs were incurred after August 30, 1997; and
2. The remediation associated with the remediation costs was conducted with Department oversight.

7:26C-12.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 13. REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-13.1 Scope

(a) This subchapter contains provisions that specify the:

1. General requirements for a person responsible for conducting the remediation of an unregulated heating oil tank system, in N.J.A.C. 7:26C-13.2;
2. Requirements for a person responsible for conducting the remediation using a certified subsurface evaluator to conduct the remediation, in N.J.A.C. 7:26C-13.3; and
3. Requirements for a person responsible for conducting the remediation using a licensed site remediation professional to conduct the remediation, in N.J.A.C. 7:26C-13.4.

7:26C-13.2 General Requirements

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall hire either a subsurface evaluator certified pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16 or a licensed site remediation professional to perform the remediation of the discharge.

(b) If a person responsible for conducting the remediation uses a certified subsurface

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evaluator to perform the remediation, upon completion of the remediation the Department will issue a no further action letter pursuant to N.J.A.C. 7:26C-13.3(b).

(c) If a person responsible for conducting the remediation uses a licensed site remediation professional to perform the remediation, upon the completion of the remediation the licensed site remediation professional will issue a response action outcome pursuant to N.J.A.C. 7:26C-13.3.

7:26C-13.3 Person responsible for conducting the remediation of an unregulated heating oil tank system using a certified subsurface evaluator

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system who uses a certified subsurface evaluator to remediate the discharge shall employ an individual working for a business firm certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank Rules at N.J.A.C. 7:14B-16.

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation in accordance with N.J.A.C. 7:26C-6, upon receipt and review of the following:

1. A certification by the subsurface evaluator certified pursuant to N.J.A.C 7:14B-13 or 16 to perform the remediation, that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated was remediated pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover evidence of a discharge of a hazardous substance, I will

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provide written notice to the owner of the unregulated heating oil tank system as to that discovery and to the Department pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.4. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties”;

2. A completed Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire. The questionnaire may be obtained from the Department’s website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable review fee as set forth at N.J.A.C. 7:26C-4.3; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.7.

(c) All submissions required by this section shall be made to:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
401 E. State St.
P.O. Box 434
Trenton, NJ 08625-0434

7:26C-13.4 Person responsible for conducting the remediation of an unregulated heating oil tank system using a licensed site remediation professional

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil system who uses a licensed site remediation professional to conduct the remediation shall submit the applicable review fee as set forth at N.J.A.C. 7:26C-4.3.

(b) Upon a determination by the licensed site remediation professional that the discharge has been remediated in accordance with all applicable rules, standards and guidance, the licensed site remediation professional shall issue a response action outcome pursuant to N.J.A.C. 7:26C-6 to the person responsible for conducting the remediation.

7:26C-13.5 Special Conditions

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(a) The person responsible for conducting the remediation of the unregulated heating oil system shall comply with N.J.A.C. 7:26E-1.14 when the discharge from the unregulated heating oil tank system results in an immediate environmental concern condition;

(b) The person responsible for conducting the remediation shall obtain the appropriate Departmental approvals when:

1. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit pursuant to N.J.A.C. 7:26E-7.2;

2. The remedy includes a discharge to surface water requiring a New Jersey Pollution Discharge Elimination System General Permit pursuant to N.J.A.C. 7:14A-6.13; or

3. The remedy requires an On-Scene Coordinator Discharge Authorization pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et. seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan (NCP) regulations at 40 CFR Part 30.

APPENDIX A
DEVELOPER CERTIFICATION

IN THE MATTER OF THE :
[Insert Site Name, : DEVELOPER
Program Interest Number (Preferred ID)] : CERTIFICATION
AND :
[Insert Name of Person] :

Name of Authorized Individual

Authorized Individual's Title

Name of Person

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Address of Person

hereby certifies, on behalf of [*insert name of person*], that he or she is authorized to make this binding Certification for the [*describe here the real property that [insert name of person] is remediating, including any name by which the Site is known, the street address, all blocks and lots, the municipality, county and the DEP program interest name and program interest number(preferred ID)*] [(the Site)], and, with regard to that Site, [*insert name of person*] further certifies as follows:

1. *If person is an owner of the site, or a prospective purchaser of the site: [Insert name of person] insert one of the following:*

purchased the Site on [insert date];

acquired title to the Site by devise or succession on [insert date];

intends to acquire the Site after the date of this Certification.

2. *If person is an owner of the site, insert one of the following unless the person acquired the site on or after January 6, 1998 and entered into an oversight document with the Department prior to acquiring ownership of the Site:*

If person acquired title to the Site on or after September 14, 1993, insert the following:

[Insert name of person] has undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the Site, including the performance of a

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preliminary assessment and a site investigation, if necessary pursuant to N.J.A.C. 7:26E. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(2).

If person acquired title to the Site prior to September 14, 1993, insert the following:

At the time of acquisition, [*Insert name of person*] undertook all appropriate inquiry on the previous ownership and uses of the Site based upon generally accepted good and customary standards, and, as result of that inquiry, did not know and had no reason to know that any hazardous substances had been discharged at the Site. After acquiring title to the Site, [*Insert name of person*] submitted to the Department, on [*insert date*], a preliminary assessment report prepared pursuant to N.J.A.C. 7:26E-3.2, and, if necessary pursuant to N.J.A.C. 7:26E-3, a site investigation report prepared pursuant to N.J.A.C. 7:26E-3.13. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(5).

3. If the person acquired title to the Site on or after January 6, 1998, insert the following:

[*Insert name of person*] has:

a. Within 10 days after acquiring title to the Site, agreed in writing (a copy of which is attached hereto) to give the Department access to the Site to oversee the remediation and to perform any remediation that [*insert name of person*] does not perform; and

b. Within 30 days after acquiring title to the Site, commenced remediation of the Site, including any migration, pursuant to a Department oversight document executed on [*insert date, which must be prior to date of acquisition*] and is presently in compliance with all of the Department's remediation requirements.

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4. *[Insert the following if the person executing this Certification is an owner of the Site and has discovered a discharge a the Site.]* Concerning discharges at the site which occurred prior to *[insert name of person]*'s acquiring title, where applicable, to the Site:

a. *[Insert name of person]* discovered the discharges at the Site on *[insert date]*;
and

b. *[Insert name of person]* reported these discharges to the Department on *[insert date]* via *[insert one of the following:*

telephone call to the DEP Hotline,

written documentation, or

describe other means of providing the Department notice of the discharges].

5. *[Insert name of person]*, at any time up to the date of this Certification:

a. Has not discharged, at the Site, any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Has not been in any way responsible, pursuant to any law, for any contaminant at or emanating from the Site, or contamination that has emanated from the Site, other than by acquiring ownership of the Site, if applicable, after all of the discharges occurred at the Site;

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c. Has not aggravated or contributed to contamination at or emanating from the Site, or contamination that has emanated from the Site;

d. Has not, as a holder of a security interest in a facility or underground storage tank facility, actively participated in the management of a facility or underground storage tank facility at the Site, as those terms are defined in N.J.S.A. 58:10-23.11a et seq.;

e. Has not negligently caused a new discharge at the Site, after the date of [*insert name of person*]'s foreclosure on a security interest in the Site, pursuant to N.J.S.A. 58:10-23.11g.6.e(1); and

f. Is not at the time of this certification, and has never been, an owner or operator of an industrial establishment at the Site pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

6. [*Insert name of person*] is not a corporate successor to, affiliated with, or otherwise related to any person described below such that [*insert name of person*] would be liable for the contamination other than by acquiring title to the site:

a. Any entity that the [*Insert name of person*] has reason to believe has discharged at the Site any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Any entity that [*Insert name of person*] has reason to believe is in any way responsible, pursuant to any law, for contamination at or emanating from the Site, or contamination that has emanated from that Site, other than by acquiring ownership, if applicable, of the Site after all of the discharges occurred at the Site; or

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c. Any person that *[Insert name of person]* has reason to believe is liable, pursuant to N.J.S.A. 58:10-23.11g, for cleanup and removal costs, as that phrase is defined at N.J.S.A. 58:10-23.11b, for the Site.

7. *[Insert name of person]* agrees that until the remediation is complete, *[insert name of person]* is under a continuing obligation to inform in writing the New Jersey Department of Environmental Protection, within 30 calendar days after any of the above facts or circumstances change and the date of such change.

8. *[Insert name of person]* is familiar with the Site and with all matters addressed in this Certification.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment, and that I will also forfeit developer status, for the purposes of the Department's oversight cost formula, in that event.

[Type or Print Full Name of Person]

Dated: _____

By: _____

Signature of Authorized Individual

[Type or Print Name and Title of Authorized Individual]

Dated: _____

Witness: _____

Signature of Witness

[Type or Print Name and Title of Witness]

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APPENDIX B
MODEL TERMINATION OF DEED NOTICE

FILED AT THE OFFICE OF THE REGISTER OF
[county] COUNTY

IN DEED BOOK *[volume]*, Pages *[pages]*

AS TO

BLOCK(S) _____, LOT(S) _____, TAX MAP OF THE [county] County
IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED
IN THE SAME MANNER AS DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by:

Recorded by: _____

[Signature, Officer of County Recording Office]

[Print name below signature]

This Termination of Deed Notice is made as of [month day, year] by [name of property owner].

1. DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [county]
COUNTY, AT BOOK [book number/vol.], PAGES [page numbers]. By way of a Declaration

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of Environmental Restriction (DER) or Deed Notice (hereinafter collectively Deed Notice) dated [month day, year], [name of the original responsible party(s) that filed the DER or Deed Notice] advised of: (a) the existence of soil contamination in concentrations at the real property situated in the [city/town/borough name] and designated as Block(s) [see example above for multiples], Lot(s) [see example above for multiples] (“the Property”) on the Tax Map of [city/town/borough name] that do not allow for the unrestricted use of the Property; (b) the existence of institutional and/or engineering controls selected as part of the remedial action for the Property; and (c) the continuing obligation of [name of original responsible party(s) that filed the DER or Deed Notice], subsequent owners, and others to monitor and maintain those institutional and/or engineering controls. The Deed Notice was part of the remediation of contamination at the Property and was recorded in the Office of the Register of [county] County on [month day, year] in Deed Book [book number/volume], Pages [page numbers] by [name of original responsible party(s) that filed the DER or Deed Notice], the then owner of the Property. Pursuant to Paragraph 10, the Deed Notice was to remain in effect until such time as the Department approved the termination of the Deed Notice by executing a document expressly terminating the Deed Notice.

2. TRANSFER OF THE PROPERTY. By Deed dated [month day, year] and recorded in the Office of the Register of [county] County on [month day, year] in Book [book number/vol], Pages [page numbers], [name of person appearing on deed] transferred ownership of Block(s) _____, Lot(s) _____ subject to the Deed Notice.

3. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [county] COUNTY AT BOOK _____, PAGES _____ AS TO BLOCK(S) _____, LOT(S) _____. By way of letter dated [month day, year], [name of person/corporation etc.] requested approval from the Department to terminate the Deed Notice because conditions that required the execution and recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated [month day, year]. Accordingly, the Department hereby executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed

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Notice recorded in the Office of the Register of [county] County in Deed Book _____, Pages _____ shall be terminated and discharged. A metes and bounds description of Block(s) _____, Lot(s) _____ and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

4. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S)_____.

Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s) _____, the Department also has determined that soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by [name of person or corporation etc. filing new Deed Notice].

5. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice or the date the new Deed Notice for Block(s) _____, Lot(s) _____ is recorded in the Office of the Register of [county], whichever is later, or, if this Termination of Deed Notice and the new Deed Notice are simultaneously recorded in the Office of the Register of [county], on the date of such simultaneous recording.

[Note: The language of the following two (2) consecutive paragraphs shall be substituted for the language of paragraphs 3 and 4 above where the subject property is proposed to be subdivided]

{Appropriate consecutive paragraph number}. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF _____ AT BOOK _____, PAGE _____ AS TO BLOCK(S) _____, LOT(S) _____. By way of letter dated _____, [name of person/corporation etc.] requested approval from the Department to terminate the Deed Notice as to Block(s) _____, Lot(s) _____ because Block(s) _____, Lot(s) _____, has been subdivided from the Property, and the conditions that required the execution and

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recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated _____. Accordingly, the Department hereby executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed Notice recorded in the Office of the Register of _____ in Deed Book _____, Page _____ shall be terminated and discharged as it applies to Block(s) _____ Lot(s) _____. Such termination, however, is limited to Block(s)_____, Lot(s) _____, and the Deed Notice remains in full force and effect as to such other portions of the Property for which the Department has not approved termination of the Deed Notice . A metes and bounds description of Block(s) _____, Lot(s) and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

{ Appropriate consecutive paragraph number}. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s), soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by

[Note: The language of the following paragraph shall be substituted for that of paragraph number 5 above where no new Deed Notice would be filed for the subject property]

{ Appropriate consecutive paragraph number}. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice is recorded in the Office of the Register of [county].

[Note: The following paragraph is required for all versions of this form]

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{Appropriate consecutive paragraph number}. SIGNATURES IN WITNESS WHEREOF, [name of person/corporation etc. executing the Termination of Deed Notice] and the New Jersey Department of Environmental Protection have executed this Termination of Deed Notice, as of the date first written above.

A. *[If Owner is an individual]*

WITNESS:

[Signature]

[Signature]

[Print name]

[Print name]

STATE OF *[State where document is executed]* SS.:

COUNTY OF *[County where document is executed]*

I certify that on *[month day, year]*, *[name of owner]* personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public
[Signature]

[Print name]

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B. *[If owner is a corporation]*

WITNESS:

[Name of corporation]

[Signature]

[Print name and title]

By: _____

[Signature]

[Print name]

[Print title]

STATE OF *[State where document is executed]* SS.:

COUNTY OF *[County where document is executed]*

I certify that on *[month day, year]*, *[name of witness]* personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the *[secretary/assistant secretary]* of *[name of corporate owner]*, the corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the *[president/vice president]* of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

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- (d) this person knows the proper seal of the corporation which was affixed to this document;
- and
- (e) this person signed this proof to attest to the truth of these facts.

[Signature]

[Print Name and Title of Attesting Witness]

_____, Notary Public
[Signature]

[Print Name]

C. *[If owner is a general or limited partnership]*

WITNESS: *[name of partnership]*

[Signature]

[Print name and title]

By: _____, General
Partner
[Signature]

[Print name]

STATE OF *[State where document is executed]* SS.:

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COUNTY OF [*County where document is executed*]

I certify that on [*month day, year*], [*name of person executing document on behalf of owner partnership*] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [*name of partnership owner*], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [*name of partnership owner*]; and

(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public

[Signature]

[Print name]

D. [*If Owner is a Limited Liability Company*]

WITNESS:

[*Name of Limited Liability Company*]

[Signature]

By: _____
[Signature]

[Print name and title of witness]

[Print name and title]

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STATE OF [*State where document is executed*] SS.:
COUNTY OF [*County where document is executed*]

I certify that on [*month day, year*], [*Name of Witness*] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) This person is the [*insert either secretary/assistant secretary of the owner limited liability company*] of [*insert full name of limited liability company*];

(b) This person is the attesting witness to the signing of this document by the proper officer who is the [*insert title of person signing on behalf of limited liability company*] of the [*insert name of owner limited liability company*];

(c) This document was signed and delivered by the limited liability company as its voluntary act and was duly authorized;

(d) This person knows the proper seal of the limited liability company which was affixed to this document; and

(e) This person signed this proof to attest to the truth of these facts.

[*Signature*]

[*Print Name and Title of Attesting Witness*]

_____, Notary Public

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[Signature]

[Print name]

[Note: In situations where the person signing the document on behalf of the owner limited liability company is a member of the limited liability company, the attesting witness shall certify under oath that he/she knows that the document was signed and delivered by the owner limited liability company as its voluntary act, that the member is authorized to execute the document on behalf of the owner limited liability company, and that the person signing the document is authorized to sign the document on behalf of the member. Where the member is a partnership, corporation or other limited liability company, the attesting witness shall also certify that the person signing the document is authorized to sign on behalf of the corporation, partnership or limited liability company, as the case may be. To the extent that such corporation, partnership, or limited liability company, in turn, is directly or indirectly controlled by another corporation, limited liability company, or partnership, and the person signing the document is an officer of that corporation or limited liability company or a partner of that partnership, the attesting witness shall also certify under oath that such person is authorized to sign on behalf of the corporation, limited liability company, or partnership, as the case may be.]

WITNESS:

New Jersey Department of Environmental
Protection

[Signature]

By: _____
[Signature]

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[Print name and title]

[Print name and title]

STATE OF NEW JERSEY SS.:
COUNTY OF MERCER

I certify that on [Month day, year], [Insert name of person executing document on behalf of the New Jersey Department Environmental Protection] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is [insert title] and is authorized to execute this document on behalf of the New Jersey Department of Environmental Protection;

(b) Signed, sealed and delivered this document as his or her act and deed in his capacity as [title] of the New Jersey Department of Environmental Protection; and

(c) This document was signed and delivered by the New Jersey Department of Environmental Protection as its voluntary act, duly authorized.

_____, Notary Public

[Signature]

[Print name]

RECORD AND RETURN TO:

[Name of person who prepared the Termination of Deed Notice]

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[Address]

EXHIBIT A

Metes and Bounds Description

EXHIBIT B

Scaled Tax Map of the Property and Institutional/Engineering Control Boundaries

CHAPTER 26D. REMEDIATION STANDARDS

SUBCHAPTER 1. GENERAL INFORMATION

7:26D-1.1 Purpose

(a) (No change.)

(b) This chapter does not establish the minimum impact to ground water soil remediation standards; these standards shall be developed [by the Department] on a site-by-site basis, pursuant to the Department's authority under N.J.S.A. 58:10B-12a and the Department's Soil Remediation Standards Guidance for Impact to Ground Water available at www.nj.gov/dep/srp/srra/regs/guidance.htm.

(c) (No change.)

7:26D-1.5 Definitions

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

...

“Person responsible for conducting the remediation” means [the person responsible for conducting the remediation as defined pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8] any person defined as such pursuant to the

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Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

...

SUBCHAPTER 7. ALTERNATIVE SOIL REMEDIATION STANDARDS

7:26D-7.1 Purpose

Except as provided at N.J.A.C. 7:26D-1.1(b), this subchapter sets forth the circumstances in which the Department may require the person responsible for conducting the remediation to develop an alternative soil remediation standard, the procedures that the person responsible for conducting the remediation shall use to apply for permission to use an alternative soil remediation standard, the procedures for the person to develop an alternative remediation standard without the Department's prior approval, and the procedures the Department shall use to evaluate an application for the use of an alternative soil remediation standard that is proposed by the person responsible for conducting the remediation.

7:26D-7.3 Basis for an alternative soil remediation standard

(a) [The]Except as provided in N.J.A.C. 7:26D-7.5, the person responsible for conducting the remediation may propose, in accordance with N.J.A.C. 7:26D-7.4, an alternative soil remediation standard based on the following:

1. (No change.)
2. For the inhalation pathway, the procedures set forth in chapter Appendix [6]5, incorporated herein by reference.

(b) The basis for the request for an alternative remediation standard may include, but is not limited to, the following:

1. - 3. (No change.)

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4. Site-specific conditions that support the modification of input parameters for models used to develop alternative soil remediation standards pursuant to Appendices [5 through 7]4 and 5.

(c) (No change.)

7:26D-7.4 Alternative soil remediation standards application and approval process

(a) The person responsible for conducting the remediation may seek Department approval for an alternative soil remediation standard based on the criteria in N.J.A.C. 7:26D-7.3(a) and (b) above by [completing the application in chapter Appendix 6, incorporated herein by reference, and] submitting the completed application on a Alternative Soil Remediation Standard Application form provided by the Department in accordance with [(c)] (b) below.

[(b) The person responsible for conducting the remediation that elects to submit an application for an alternative soil remediation standard agrees to pay the Department's oversight costs pursuant to Industrial Site Recovery Act Rules, N.J.A.C. 7:26B , Underground Storage Tanks rules, N.J.A.C. 7:14B or the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.]

(c) Recodify as (b) (No change in text.)

7:26D-7.5 Procedures for the development of alternative soil remediation standards without prior approval from the Department

(a) The person responsible for conducting the remediation is not required to obtain the Department's prior approval for alternative inhalation soil remediation standards that are developed using N.J.A.C. 7:26D-Appendix 5 and modification of the following site-specific input parameters:

1. Depth range of contamination;
2. Organic carbon concentration;
3. Vegetative cover; and
4. The average number of vehicle trips.

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(b) The person responsible for conducting the remediation that chooses to develop an alternative remediation standard pursuant to (a) above shall provide the following, with the applicable remedial phase report that is submitted to the Department:

1. Documentation that the appropriate methods were used to develop the alternative remediation standard;
2. How the input parameters were selected, including all related laboratory results; and
3. A description how the standards were used in the remediation of the site or area of concern.

APPENDIX 5

Methods for the Development of Alternative Inhalation Soil Remediation Standards

Pursuant to N.J.A.C. 7:26D-7.2, the person responsible for conducting the remediation may propose, for the Department's approval, an alternative soil remediation standard (ARS) for the inhalation exposure pathway for a site or an area of concern based on one of the options provided in this Appendix.

A. (No change.)

B. Alternative Remediation Standard Options

Option I. Volatile Phase Contaminants

1. For volatile phase contaminants, three parameters can be varied to develop an ARS. These parameters are depth range of contamination, organic carbon content of the soil, and site size. These parameters are applicable to residential and non-residential scenarios as well as carcinogenic and noncarcinogenic health endpoints.

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i. Depth Range of Contamination

(1) - (3) (No change.)

(4) The Department will not require the use of an institutional control pursuant to N.J.A.C. 7:26E-8 for an ARS based on depth range of contamination when the depth range of contamination begins at the ground surface. The Department will require the use of an institutional control pursuant to N.J.A.C. 7:26E-8 when an ARS is based on depth range of contamination that begins below the ground surface.

ii. (No change.)

Option II. (No change.)

Option III. (No change.)

[APPENDIX 6

ALTERNATIVE SOIL REMEDIATION STANDARD APPLICATION

A. SITE INFORMATION

1. Program Interest Name: _____
2. Program Interest Number (Preferred ID): _____
3. EPA site ID number, if applicable: _____
4. Street address: _____
5. City: _____
6. County: _____
7. Block and Lots of the site (duplicate if the site is located in more than one municipality):
 - a. Name of the municipality in which the site is located: _____
 - b. Block and Lots: _____
 - c. Year of tax map: _____

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8. The location of the site in a GIS-compatible format (State Plane Coordinates): _____

B. APPLICANT INFORMATION:

- a. Name of applicant: _____
- b. Company name: _____
- c. Mailing address: _____
- d. Phone number: (____ __ __) ____ ____ - ____ ____ ____

C. PROPOSED ALTERNATIVE SOIL REMEDIATION STANDARD INFORMATION

(Add additional pages as necessary)

- 1. Name and chemical abstract number of contaminant for which ARS is being sought:
- 2. A summary of contaminant concentrations at the site for which the ARS is being sought.
- 3. Description of the exposure pathway for which the ARS is being sought:
- 4. Proposed numeric ARS:
- 5. Documentation to support proposed ARS, including but not limited to the following:
 - a. New chemical toxicity.
 - b. New risk assessment methodology or models.
 - c. Alternative land use planned for the site.
 - d. Site specific conditions that support modification of input parameters for models used to develop ARS pursuant to Appendices 4 through 6.

D. Oversight Document Information

- 1. Is the site for which the ARS is being sought being remediated pursuant to Department oversight: Yes _____ No _____
- 2. If yes, the type of Department oversight pursuant to which the Department is reviewing the application:

Memorandum of Agreement

- a. Effective date of Memorandum of Agreement _____
- b. Name of Department contact person _____

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Administrative Consent Order

- a. Effective date of Administrative Consent Order _____
- b. Name of Department contact person _____

Industrial Site Recovery Act Program

- a. Name of Department contact person _____

Underground Storage Tank Program

- a. Name of Department contact person _____

3. If no, the applicant shall enter into a Memorandum of Agreement with the Department pursuant to N.J.A.C. 7:26C-3 prior to the Department reviewing the application. Upon the applicant entering into the Memorandum of Agreement, the applicant shall contact the Department with the following information.

- a. Effective date of Memorandum of Agreement _____
- b. Name of Department contact person _____]

CHAPTER 26E. TECHNICAL REQUIREMENTS FOR SITE REMEDIATION
SUBCHAPTER 1 GENERAL INFORMATION

7:26E-1.2 Liberal construction

These rules, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., [and] 58:10A-21 et seq., 58:10B-1 et seq., and N.J.S.A. 58:10C-1 et seq.

7:26E-1.3 Applicability

(a) [This chapter establishes the minimum technical requirements that form the basis of the Department's review of for the remediation of any contaminated site in New Jersey, including, without limitation, those sites and activities subject to]Any person conducting remediation

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pursuant to any of the following statutes shall comply with this chapter and all guidance found on the Department's website, www.nj.gov/dep/srp/srra/guidance:

1. - 6. (No change.)

7. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.) (CERCLA); [and]

8. The Brownfield and Contaminated Site Remediation Act[.], N.J.S.A. 58:10B-1 et seq.;
and

9. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

[(b) Any person seeking Department review of work undertaken pursuant to this chapter shall:

1. Execute an oversight document with the Department pursuant to N.J.A.C. 7:26C;

2. Comply with the requirements of N.J.A.C. 7:26B; or

3. Comply with the requirements of N.J.A.C. 7:14B.]

(c) through (e) Recodify as (b) through (d) (No change in text.)

7:26E-1.4 Notification and Public Outreach

(a)- (c) (No change.)

(d) The person responsible for conducting the remediation shall notify the Department in writing, on the Confirmed Discharge Notification form available from the Department, within 5 days after the occurrence of any of the following events:

1. A discharge of a hazardous substance, or the discovery of a discharge of a hazardous substance pursuant to N.J.A.C. 7:1E-5.7; and

2. The owner or operator of a regulated tank system:

i. Determines that there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B-6 or 7;

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ii. Is required to close a regulated underground storage tank system, pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d), 9.2 or 9.3; or

iii. Is otherwise required to conduct a site investigation pursuant to N.J.A.C. 7:14B.

(e) The person responsible for conducting the remediation shall notify the Department prior to conducting potable well sampling, and indoor air or sub-slab soil gas sampling pursuant to N.J.A.C. 7:26E-1.17 and 1.18 respectively. The person shall notify the Department, on a Potable Well/Indoor Air Sampling Notification form available from the Department, at the time that that person contacts property owners or tenants for the purpose of gaining access to conduct sampling, but no later than 7 days prior to the scheduled sampling date.

(d) Recodify as (f) (No change in text.)

[(e)](g) The person responsible for conducting the remediation of [an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential dwelling] any unregulated heating oil tank system or the person responsible for conducting an emergency response action shall only comply with the notification requirements of (a) through (c) above[, and (l) below only].

[(f) Except as provided in (e) above, the person responsible for conducting the remediation shall identify sensitive populations and resources located within 200 feet of the site boundary as follows:

1. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multiphase remediation or initiating a single phase remediation, identify all of the following sensitive populations and resources that are located within 200 feet of the site boundary and record this information on the Sensitive Population and Resource Checklist provided by the Department at <http://www.nj.gov/dep/srp/srra/community>:

- i. Residences;
- ii. Potable wells;
- iii. Public and private schools that teach students in any of the grades kindergarten through twelve;
- iv. Child care facilities;

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- v. Public parks and playgrounds;
- vi. Surface water; and
- vii. Tier 1 well-head protection areas. This information is available at www.state.nj.us/dep/njgs/geodata/dgs02-2md.htm;

2. Determine if the site is located in a municipality where an Environmental Justice Petition neighborhood has been designated by either EPA or the New Jersey Environmental Justice Task Force. This information is available at ww.nj.gov/dep/ej;

3. Determine if a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the property boundary and record this information on the Sensitive Population and Resource Checklist pursuant to (f)1 above;

4. Generate a scaled map, in hard copy or electronic form, that shows the location of the site and the location of each sensitive population and resource identified pursuant to (f)1 above. The Department prefers electronic maps [and it prefers that electronic maps be] that are compatible with the New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards" outlined in N.J.A.C. 7:1D, Appendix A. The Department's website at <http://www.state.nj.us/dep/GIS/newmapping.htm> provides user guidance and links to internet mapping applications and data downloads; and

5. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multi-phase remediation or initiating a single phase remediation, submit a paper copy and an electronic copy (disk or CD) of the completed Sensitive Population and Resource Checklist and the map generated pursuant to (f)4, above, to the following:

- i. The Department case manager. If a case manager for the site has not been assigned, a copy of the Sensitive Population and Resource Checklist shall be submitted as part of the remedial investigation report or remedial action report required by this chapter. The submission to the Department shall include documentation that the Checklist and map was sent to the municipal clerk and the designated health official;

- ii. The DEP Office of Community Relations at the following address:

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Division of Remediation Support
New Jersey Department of Environmental Protection
401 East State Street, 6th Floor
P.O. Box 413
Trenton, NJ 08625-0413
Attention: Office of Community Relations

- iii. The clerk of each municipality in which the site is located; and
- iv. The designated local health official.

(g)(h) Except as provided in [(e)](g) above, the person responsible for conducting the remediation shall provide public notice, either by posting a sign pursuant to [(h)](i) below or by sending periodic notification letters pursuant to [(i)](j) below, as follows:

1. All public notices, whether in the form of a sign or a notification letter, shall be in English. Additionally, where[, pursuant to (f) above,] the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, notice shall also be provided in [the] that predominant non-English language; and

2. The person responsible for conducting the remediation may, at any time, change the form of notification pursuant to this subsection from posting a sign pursuant to [(h)](i) below to sending periodic notification letters pursuant to [(i)](j)below, or from sending notification letters pursuant to [(i)](j) below to posting a sign pursuant to [(h)](i), below.

[(h)](i) If the person responsible for conducting the remediation chooses to provide public notice by posting a sign, the following shall apply:

- 1. (No change.)
- 2. The sign shall be posted [as follows:
 - i. No]no later than [two weeks]14 days prior to either initiating field activities associated with a remedial investigation of a multi-phase remediation or initiating a single phase remediation; [or

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ii. For sites where the remedial investigation or single-phase remediation was initiated prior to September 2, 2008, no later than September 2, 2009;]

3. The sign shall remain posted and shall be maintained so that it is legible at all times, until such time as [the Department issues a No Further Action and Covenant Not to Sue letter]the required remediation is completed and the final remediation document is filed or issued [pursuant to N.J.A.C. 7:26C-5];

4. The sign shall be at least two feet by three feet in size and shall include the following wording, printed in font that is of sufficient size to be readable from the street or sidewalk:

i. (No change.)

ii. “For Further Information Contact...,” followed by the name and telephone number for the person responsible for conducting the remediation and the name and telephone number for the licensed site remediation professional. If there is no licensed site remediation professional, include the telephone number for Department’s Office of Community Relations, which is posted on the Department’s website at www.state.nj.us/dep/srp;

iii. The Department's Preferred ID, as provided in the most recent edition of the “Department’s Known Contaminated Sites in New Jersey” report or the valid EPA site identification number. If neither number is available, the incident number provided by the Department's hotline may be substituted [(1-877 WARNDP or 1-877-927-6337)]; and

iv. (No change.)

5. Within [two weeks]14 days after the sign is posted, the person responsible for conducting the remediation shall submit the site information required at [(i)4](j)4 below, and a photograph of the sign showing its location and content in both electronic/digital format and in hard copy with a Public Notification and Outreach form available from the Department to:

i. (No change.)

ii. The Department’s Office of Community Relations at the address provided [in (f)5ii above]below;

[Division of Remediation Support]

New Jersey Department of Environmental Protection

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Office of Community Relations

401 East State Street, 6th Floor

P.O. Box 413

Trenton, NJ 08625-0413

[Attention: Office of Community Relations]

iii. (No change.)

iv. (No change.)

6. (No change.)

[(i)](j) If the person responsible for conducting the remediation chooses to provide public notice by sending notification letters, the following shall apply:

1. Notification letters shall be sent[:

i. No]no later than [two weeks]14 days prior to either initiating field activities associated with a remedial investigation or remedial action of a multi-phase remediation or initiating a single phase remediation[; or

ii. For sites where the remedial investigation or single-phase remediation was initiated prior to September 2, 2008, no later than September 2, 2009].

2. Additional notification letters that reflect the current condition and progress of the remediation shall be sent every two years [after the initiation of the single phase remediation or the remedial action] until [a No Further Action and Covenant Not to Sue letter is issued by the Department] all the required remediation is completed and the final remediation document is filed or issued.

3. The notices prepared pursuant to [(i)1](j)1 and 2 above shall be sent to the following persons by certified mail or by using the certificate of mailing service:

i. (No change.)

ii. The administrator of each school and child care [facility] center identified in the sensitive population and resource checklist required pursuant to (f) above] located within 200 feet of the site boundary.

4. The notice shall include the following site information:

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i. - ii. (No change.)

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the communication center incident number provided by the Department's hotline may be substituted [(1-877 WARNDEP or 1-877-927-6337)];

iv. (No change.)

v. A brief description of the type of contamination in common language, the affected environmental media, the current remediation phase, [and] action(s) being taken at the site and date field activities are expected to begin;

vi. Contact information for the person responsible for conducting the remediation and the name and telephone number for the licensed site remediation professional. If there is no licensed site remediation professional, include the telephone number for the Department's Office of Community Relations, which is posted on the Department's website at www.nj.gov/dep/srp/; and

vii. (No change.)

5. Each time notification letters are sent, the person responsible for conducting the remediation shall submit an electronic copy and a paper copy of one notification letter and list of recipients to the following:

i. (No change.)

ii. The Department's Office of Community Relations at the address provided in [(f)5ii](i)5ii, above;

iii. – iv. (No change.)

[(j)](k) If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements, to raise the topographic level in the floodplain, or to construct the engineering controls approved by the Department in either a remedial action workplan pursuant to N.J.A.C. 7:26C-8 [or a landfill closure plan pursuant to N.J.A.C. 7:26-

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2A.9], the person shall obtain the Department's prior approval, comply with the Department's Alternative Fill Protocol, and comply with all of the following:

1. Send a notification letter to each of the following persons by certified mail or by using the certificate of mailing service:

i. - iv. (No change.)

v. The assigned case manager. If a case manager for the site has not been assigned, to the Department's Office of Community Relations at the address provided in [(f)5ii](i)5ii, above;

2. (No change.)

[(k)](l) Except as provided in [(e)](g) above and [(l) and (m)](m) and (n) below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute and publish a fact sheet as follows:

1. The fact sheet shall be prepared and distributed [:

i. Within]within [two weeks]14 days after the determination that contamination has migrated off site[; or

ii. For sites where contamination has migrated off site prior to the September 2, 2008, no later than September 2, 2009; and

2. The fact sheet shall be updated and redistributed with the relevant information regarding the extent of the contamination at the completion of the remedial investigation, when the extent of contamination has been determined.

3.]2. The fact sheet [and any updates] shall be distributed by certified mail or by using the certificate of mailing service, to each owner of [all] real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary.

[4.]3. The fact sheet and any updates shall be in English. Additionally, where[, pursuant to (f) above,] the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, notice shall also be provided in [the] that predominant non-English language;

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[5.]4. The fact sheet shall include the following information:

i. - ii. (No change.)

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the communication center incident number provided by the Department's hotline may be substituted [1-877 WARNDP or 1-877-927-6337];

iv. - viii. (No change.)

ix. [Contact information for] The name and telephone number for the licensed site remediation professional. If there is no licensed site remediation professional, include the telephone number for the Department's Office of Community Relations,[at the address provided in [(f)5ii] above] which is posted on the Department's website at [www. nj.gov/dep/srp/](http://www.nj.gov/dep/srp/); and

[6.]5. Within [four weeks]30 days of the discovery of off-site contamination, the person responsible for conducting the remediation shall:

i. Publish the fact sheet prepared pursuant to [(k)](l) above as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site pursuant to this section and the Department's Public Notification Guidance; and

ii. Submit a copy of the fact sheet, a list of persons to whom the fact sheet was mailed pursuant to [(k)3](l)2 above, and a copy of the display advertisement to:

(1) (No change.)

(2) The Department's Office of Community Relations at the address provided in [(f)5ii] (i)5ii above;

(3) – (4) (No change.)

[7.]6. Within [four weeks] 30 days after the horizontal and vertical extent of contamination has been determined pursuant to N.J.A.C. 7:26E-4.1, the person responsible for conducting the remediation shall:

i. [Publish] Except as provided in iii below, publish an updated fact sheet [prepared pursuant to (k)2 above,] as a display advertisement in a daily or weekly newspaper of general

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circulation in the vicinity of the site pursuant to this section and the Department's Public Notification Guidance; and

ii. Submit a copy of the updated fact sheet, a list of persons to whom the updated fact sheet was mailed pursuant to [(k)3](l)2 above, and a copy of the display advertisement to:

(1) (No change.)

(2) The Department's Office of Community Relations at the address provided in [(f)5ii](i)5ii, above;

(3) - (4) (No change.)

iii. For ground water contamination, conduct the public notification pursuant to the requirements of N.J.A.C. 7:26E-8.3 when the Department establishes a CEA.

(l) - (m) Recodify as (m) - (n) (No change in text.)

[(n) The](o) Except as provided in (p) below, the person responsible for conducting the remediation who is performing the remediation with the Department's oversight in accordance with N.J.A.C. 7:26C may propose a plan for public notice and outreach as an alternative to [(h), or (i),] (i) or (j), above. The alternative plan shall be submitted to the assigned case manager and Department's Office of Community Relations at the address in [(f)5ii](i)5ii above for the Department's review.

1. - 2. (No change.)

(p) The person responsible for conducting the remediation may implement an alternative plan if that plan is prepared by a licensed site remediation professional, and that plan meets the intent of this section. The person responsible for conducting the remediation shall include in the applicable remedial phase report that is submitted to the Department the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice.

(o) - (q) Recodify as (q) - (s) (No change in text.)

7:26E-1.5 Certifications, forms and submissions

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(a) [If a document prepared pursuant to this chapter is to be submitted to the Department, it shall be signed and certified pursuant to N.J.A.C. 7:26C; N.J.A.C. 7:26B or N.J.A.C. 7:14B.]

The person responsible for conducting the remediation shall:

1. Certify, and shall have the licensed site remediation professional certify if applicable pursuant to N.J.A.C. 7:26C-1.5, all forms and documents prepared to pursuant to this chapter; and

2. Except as otherwise noted in this chapter, submit all forms and documents to the Department at the address in N.J.A.C. 7:26C-1.6.

(b) All forms are available from the Department at www.nj.gov/dep/srp/srra/forms.

7:26E-1.6 Documenting compliance with the technical requirements

(a) All work being conducted at a site pursuant to this chapter, whether or not being done with Department oversight, shall be documented and included in reports which follow the format and contain the information required pursuant to the reporting sections of N.J.A.C. 7:26E-[2]1 through 8. If a report has already been submitted to the Department pursuant to another Department regulatory program, including but not limited to, N.J.A.C. 7:14B, 7:26B or 7:26C, then a summary of what was included in the previously submitted report may be submitted. The summary shall include a reference to the Department program to which the report was submitted and the date that it was submitted. Any reports prepared pursuant to this chapter may be combined into a single report.

(b) When the remediation is conducted with Department oversight, the person responsible for conducting the remediation shall submit workplans (if applicable) and reports in a timely manner [pursuant to the schedule contained in the oversight document which the person executed with the Department pursuant to N.J.A.C. 7:26C, or as the Department requires pursuant to ISRA or UST]. The workplan and/or report shall comply with the format and contain the information required pursuant to N.J.A.C. 7:26E-[2]1 through 8.

[(c) In order to provide flexibility in the technical requirements for site remediation described in this chapter, the Department has identified certain limited situations, as specified through this

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chapter, when alternate sampling, analytical, or investigatory methods may be used without Department pre-approval.

1. Such alternate methods may be used if the person responsible for conducting the remediation documents in the applicable remedial phase report (that is, preliminary assessment, site investigation, remedial investigation, remedial action) rationale acceptable to the Department for using the alternate method.

2. The Department will review the documentation, either as part of the Department's oversight during the remediation or at a later time when the site becomes a Department priority for site remediation.

3. The Department will evaluate the alternate method in terms of its site-specific application, based upon the documentation provided and other appropriate information available to the Department, in terms of the extent to which the alternate method:

- i. Has previously been either used successfully or approved by the Department in writing in other similar situations; or
- ii. Reflects current technology as documented in peer-reviewed professional journals; and
- iii. Provides results which are verifiable and reproducible;
- iv. Can be expected to achieve the same results or objectives as the method which it proposes to replace;
- v. Furthers the attainment of the goals of the specific remedial phase for which it is used; and
- vi. Is consistent with the overall scheme of this chapter to ensure the remediation of contaminated sites in a manner which is protective of human health and the environment.

(d) Any person responsible for conducting the remediation may petition the Department for a variance from any of the requirements in N.J.A.C. 7:26E-2 through 6 inclusive pursuant to the procedural criteria in (d)1 and the substantive criteria in (d)2, below. The petition shall include a request for use of an alternative approach to be utilized in place of the requirement for which the variance has been requested. The variance is not effective until it has been approved by the

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Department. The decision as to whether or not to grant the variance rests solely with the Department. A variance petition may be submitted within an oversight document executed in accordance with N.J.A.C. 7:26C, or pursuant to the program requirements of N.J.A.C. 7:26B or N.J.A.C. 7:14B. The Department shall make reasonable efforts to provide timely responses to variance petitions.

1. To petition for a variance from a requirement in N.J.A.C. 7:26E-2 through 6, the petitioner shall submit the following information to the Department at the address in the applicable oversight document or in accordance with the program requirements of N.J.A.C. 7:26B or N.J.A.C. 7:14B prior to the utilization of the alternate approach:

- i. The name and address of the person submitting the petition;
- ii. The name and address of the person conducting the remediation;
- iii. The names and addresses of the owner(s) and occupant(s) of the site which is the subject of the variance;
- iv. The street address and all tax block and lot numbers of the site which is the subject of the variance;
- v. A description of the proposed alternate approach and applicable N.J.A.C. 7:26E citation;
- vi. A description of site specific conditions applicable to the variance;
- vii. The technical basis for the variance pursuant to (c) above; and
- viii. Any other information or data the Department requests to thoroughly evaluate the petition.

2. The Department will evaluate the petition for a variance from the requirements of N.J.A.C. 7:26E-2 through 6 according to the same criteria as those listed in (c) above for approval of alternate methods.

3. Verbal variances may be granted pursuant to N.J.A.C. 7:26E-3.4(a)4.]

(e) Recodify as (c) (No change in text.)

[7:26E-1.7 Criteria for going beyond the minimum technical requirements

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(a) The Department may require additional work beyond the minimum technical requirements set forth in this chapter for whenever necessary for the Department to ensure adequate protection of human health and the environment based upon a review of the following areas:

1. The number or magnitude of the discharge(s) being investigated;
2. The nature of the substances discharged;
3. A change in the certification or other authorization of the laboratory performing analyses previously submitted for the site in question or any other site;
4. The identification of additional exposure pathways not otherwise fully investigated pursuant to the minimum requirements;
5. The identification of additional receptors not otherwise fully investigated pursuant to the minimum requirements;
6. Distance to and sensitivity of receptors;
7. When the Department determines that additional data or information is needed to fully evaluate the site; and
8. Any other site-specific conditions the Department identifies which necessitate the need for additional work.]

7:26E-1.7 Variance from the technical requirements and guidance

(a) Except as provided in (b) below, the person responsible for conducting the remediation may only vary from certain technical requirements in N.J.A.C. 7:26E-1 through 8, and site remediation guidance referenced in N.J.A.C. 7:26E-1 through 8 unless expressly exempted by the Department, provided that the person submits the following technical information in the applicable remedial phase report:

1. The regulatory citation for the requirement, or the guidance name and version number for the requirement;
2. A description of how the work performed deviated from the rule requirement or guidance; and

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3. The rationale for varying from the requirement that includes supporting information as necessary to document that the work conducted has:

- i. Provided results that are verifiable and reproducible;
 - ii. Achieved the objectives as the rule requirement or guidance from which it varied;
- and
- iii. Furthered the attainment of the goals of the specific remedial phase.

(b) The person responsible for conducting the remediation shall not vary from any non-technical requirements, including but not limited to, the following:

- 1. Department notification requirements;
- 2. Regulatory timeframes;
- 3. The requirement to obtain permits;
- 4. The requirement to submit reports that are in the format as required in this chapter and address the information required to be provided in this chapter;
- 5. The requirement to comply with applicable remediation standards; and
- 6. The requirement to comply with quality assurance laboratory requirements.

7:26E-1.8 Definitions

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

...

"Area of concern" means any existing or former distinct location where any hazardous [substances] substance, hazardous [wastes]waste, or [pollutants are or were] pollutant is known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where any hazardous [substances]substance, hazardous [wastes]waste, or [pollutants have] pollutant has or may have migrated, including, but not limited to, [all]each current and former:

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1. [Bulk storage tanks]Storage tank and [appurtenances]appurtenance, including, without limitation each:

- i. [Tanks] Above ground or underground storage tank and [silos]silos;
- ii. Rail [cars]car;
- iii. Piping, above and below ground pumping [stations, sumps and pits]station, sump and pit; and
- iv. Loading and unloading [areas]area;

2. Storage and staging [areas]area, including each:

- i. Storage [pads]pad and [areas]area;
- ii. Surface [impoundments and lagoons]impoundment and lagoon;
- iii. [Dumpsters]Dumpster; and
- iv. Chemical storage [cabinets]cabinet or [closets]closet;

3. Drainage [systems]system and [areas]area, including, without limitation each:

- i. Building floor [drains]drain and piping, [sumps and pits] sump and pit, including [trenches] each trench and piping from [sinks] each sink that potentially receives process waste;
- ii. Roof [leaders]leader (when process operations vent to roof);
- iii. Drainage [swales and culverts]swale and culvert;
- iv. Storm sewer collection [systems]system;
- v. Storm water detention [ponds and fire ponds]pond and fire pond;
- vi. Surface water [bodies]body;
- vii. Leach [fields]field; and
- viii. Dry [wells and sumps]well and sump;

4. Discharge and disposal [areas]area, including, without limitation each:

- i. [Areas of discharges]Area of discharge pursuant to N.J.A.C. 7:1E;
- ii. Waste [piles]pile as defined by N.J.A.C. 7:26;
- iii. Waste water treatment, collection and disposal [systems]system, including, without limitation each, septic [systems]system, seepage [pits and dry wells]pit and dry well;
- iv. [Landfills]Landfill;

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- v. [~~Landfarms~~]Landfarm;
 - vi. [~~Sprayfields~~]Sprayfield;
 - vii. [~~Incinerators~~]Incinerator; and
 - viii. Historic fill material [~~areas~~]area or any other fill material [~~areas~~]area;
5. Other areas of concern, including, without limitation each:
- i. Electrical [~~transformers and capacitors~~]transformer and capacitor;
 - ii. Hazardous materials storage or handling [~~areas~~]area;
 - iii. Waste treatment [~~areas~~]area;
 - iv. Discolored [~~areas~~]area or spill [~~areas~~]area;
 - v. Open [~~areas~~]area away from production operations;
 - vi. [~~Areas~~]Area with stressed vegetation;
 - vii. Other discharge [~~areas~~]area;
 - viii. Underground piping including industrial [~~sewers~~]process sewer;
 - ix. Compressor vent [~~discharges~~]discharge;
 - x. Non contact cooling water [~~discharges~~]discharge;
 - xi. [~~Areas~~]Area that may have received floodwater or stormwater runoff from any potentially contaminated [~~areas~~]area; and
 - xii. (No change.)
6. Environmental media at a site, including:
- i. Ground water, including, without limitation, present or past regulated activities under the New Jersey Pollutant Discharge Elimination System (NJPDDES) Discharge to Ground Water regulations, N.J.A.C. 7:14A, including each: [~~seepage pits; dry wells; lagoons; and septic systems which received industrial waste~~] seepage pit; dry well; lagoon; and septic system which received industrial waste;
 - ii. Surface water, including, without limitation, [~~all~~]each surface water [~~areas~~]area and associated sediment which receive or may have received any point or non-point source

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discharge from the site; and

iii. Soil[, pursuant to a Department approved work plan or report].

7. Surface water areas of concern, including, without limitation, [all] each surface water [areas]area and associated sediment which receive or may have received any point or non-point source discharge from the site.

...

“Child care center” means such a facility as defined at N.J.S.A. 30:5B-13 et seq.

...

“Day” means calendar day.

...

“Discharge to ground water proposal” or “DGW proposal” means a proposal for a new discharge to ground water (DGW) designed to occur during or as part of the site remediation process.

...

“Engineered system response” means a system that is designed to mitigate risk or remediate an IEC or free product and as further described in the Department's IEC guidance.

...

“Feasibility study” means a study designed to develop and evaluate options for remedial action using data gathered during the remedial investigation to develop the objectives of the remedial action, and to develop possible remedial action alternatives, to evaluate those alternatives and create a list of feasible alternatives, and to analyze the engineering, scientific, institutional, human health, environmental, and cost of each selected alternative.

...

“Final remediation document” means a document defined as such pursuant to N.J.A.C. 7:26C-1.3.

...

“[Groundwater] Ground water use area” means any area, as determined by a well search conducted pursuant to [N.J.A.C. 7:26E-3.7(e)3]N.J.A.C. 7:26E-1.18 and an evaluation of the

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current and potential groundwater uses of an area using a 25-year planning horizon pursuant to N.J.A.C. 7:26E-8.3(b)4ii, where any domestic, irrigation, industrial, public supply well, or well with a water allocation permit exists, is proposed, or where there is reasonable expectation a well will be installed within the 25-year planning horizon.

...

“Immediate environmental concern” means a condition [which poses an acute threat to human health or a direct to the drinking water of the State including, but not limited to:

1. Dermal contact, inhalation or ingestion of contaminated materials;
2. Potable water supplies contaminated above the applicable drinking water;
3. Contaminants which are confirmed to exist in an occupied or confined space,

producing a toxic or harmful gas resulting in a potential for an acute short-term human health exposure, or producing an oxygen deficient atmosphere, or resulting in demonstrated physical damage to essential underground services;

4. Any other condition that poses an immediate threat to the environment or to the public health and safety.] at a contaminated site where any of the following types of contamination or any of the following conditions related to the discharges at the site are found at the site:

1. Contamination in a well used for potable purposes at concentrations at or above the Class II ground water remediation standards;

2. Contamination in indoor air at a level greater than any vapor intrusion indoor air screening level described in the Department’s Vapor Intrusion Guidance;

3. Contamination in an occupied or confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services;

4. Contamination that exceeds the Department’s acute human health exposure levels in surface soil such that dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure, as further described in the Department’s IEC guidance; or

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5. Any other condition that poses an immediate threat to the environment or to the public health and safety as further described in the Department IEC Guidance.

...

“Indoor air screening level” means a screening level for indoor air defined in the Department’s Vapor Intrusion Guidance.

...

“Licensed site remediation professional” or “LSRP” means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

“Light non-aqueous phase liquid” or “LNAPL” means hydrocarbons that exist as a separate and immiscible phase liquid when in contact with water and/or air, can exist as a continuous phase (mobile) and/or a discontinuous mass (immobile) and is less dense than water at ambient temperature.

...

“No further action letter” means a written determination by the Department [that based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations] defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

["Oversight document" means any document defined as an oversight document pursuant to N.J.A.C. 7:26C.]

...

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“Person responsible for conducting the remediation” [includes any person who executes or is otherwise subject to an oversight document, and any person who is performing the remediation or has control over the person (for example, contractor or consultant) who is performing the remediation, including, without limitation, an owner or operator who is subject to either ISRA or UST] means any person defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

["Remedial action costs" means all costs associated with the development and implementation of a remedial action including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, natural resource damages, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and legal, administrative and capital costs associated with the placement of institutional controls on a property. Remedial action costs shall be expressed as net present worth of all such costs over time by discounting all future costs to the current calendar year. The discount rate to be used for all present worth analyses shall be the current rate as specified by the EPA at the time of remedial action selection and shall be applied before taxes and after inflation. The period of performance for present worth costing analyses shall not exceed 30 years.]

...

“Remediation costs” means costs defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

“Sanitary landfill” or “landfill” means a landfill defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

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“School” means a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1.

...

“Soil gas” means vapors or gases present in unsaturated pore spaces of subsurface material.

“Soil gas screening level” means a screening level for soil gas defined in the Department’s Vapor Intrusion Guidance document.

...

“Timely manner” means [that, except for immediate environmental concern cases, the person responsible for conducting the remediation completes the remedial activities at a contaminated site or area of concern either:

1. Within five years, if soil is the only contaminated media at the site and the remediation will achieve unrestricted or limited restricted use standards; or

2. In compliance with a remedial action schedule approved in writing by the Department.] in compliance with all mandatory time frames, expedited site specific time frames, and regulatory time frames set forth in these rules and in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

7:26E-1.9 General remediation requirements

(a) The person responsible for conducting the remediation shall conduct remediation pursuant to the regulatory timeframes established in this chapter and shall submit all documents, forms, and other submissions as required in this chapter. That person may, based on site specific conditions or circumstances, request an extension of a regulatory timeframe pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3.1.

(b) The person responsible for conducting the remediation shall comply with the Site Remediation Program’s guidance documents in effect at the time that the work is conducted. All guidance documents can be found in the Site Remediation Program’s Guidance Library on the Department’s web site at <http://www.nj.gov/dep/srp/srra/guidance>.

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(c) The person responsible for conducting the remediation shall direct each licensed site remediation professional he or she hires to conduct the remediation pursuant to N.J.A.C. 7:26C-2.4.

(d) The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter as follows:

1. One paper copy and three copies on CD in Adobe portable document format (PDF) of all forms, applications and documents, except as provided in 2 through 4 below;

2. One copy on CD of the site-specific health and safety plan pursuant to N.J.A.C. 7:26E-1.10; quality assurance project plan, pursuant to N.J.A.C. 7:26E-2.2, with the each remedial phase report as applicable;

3. Three electronic copies of all analytical data using the format outlined in the Site Remediation Program's Electronic Data Interchange guidance;

4. One paper copy of all required maps and one electronic copy of all GIS compatible electronic maps prepared using the Department's GIS guidance;

5. Three electronic copies of all full laboratory data deliverables on CD in Adobe portable document format (PDF) or in a format determined by the Department and one paper copy of all full laboratory deliverables for drinking water, indoor air, chromium and dioxin samples; and

6. Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

7:26E-1.9 and -1.10 Recodify as 7:26E-1.10 and -1.11 (No change in text).

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7:26E-[1.11 Bias for Action]1.12 Control of ongoing sources and implementation of interim remedial measures

(a) As a first priority, the person responsible for conducting the remediation shall [implement an interim response action to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors]:

1. Identify the need for any interim remedial measures necessary to remove, contain, or stabilize a source of contamination to prevent contaminant migration and exposure to receptors; and

2. Whenever site-specific data support the need for an interim remedial measure, include in each remedial phase report a description of each interim remedial measure implemented and each interim remedial measure that is planned.

[(b) If an immediate environmental concern (IEC) condition is identified at a site, the person responsible for conducting the remediation shall conduct the following interim response actions:

1. Notify the Department pursuant to N.J.A.C. 7:26E-1.4(a) and (b) as appropriate;
2. Immediately stabilize the IEC condition with Department oversight pursuant to N.J.A.C. 7:26C; and

3. When potable water sources have been impacted by contamination at levels above the ground water remediation standards at N.J.A.C. 7:26D, treat the contaminated drinking water to a point at which the contaminant levels do not exceed the ground water remediation standards, or provide an alternative water supply.

(c) The person responsible for conducting the remediation shall submit written documentation to the Department of all interim response actions conducted in compliance with (a) or (b) above within 14 days of initiating each such action.]

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

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1. Within 60 days after either March 1, 2010 or LNAPL is identified, whichever is later, initiate the recovery of free product and notify the Department on a form available from the Department; and

2. Within 270 days after either March 1, 2010 or LNAPL is identified, whichever is later, complete delineation of the free product; and complete the installation of a LNAPL recovery system, initiate operational monitoring, and submit an Free Product Interim Remedial Measures Report with a form to the Department that documents the actions taken pursuant to this subsection.

7:26E-[1.12] 1.13 Requirement for Department oversight of remediation

(a) The person responsible for conducting the remediation shall investigate and remediate contaminated sites with [Department oversight as specified in N.J.A.C. 7:26C and, in addition,] the Department's prior approval, in the following circumstances:

1. Sites suspected or known to be contaminated with anthropogenic radionuclide contamination of any media; [and]

2. Sites with immediate environmental concern conditions[.]; and

3. Sites with a landfill, if:

i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;

ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, A Brownfield Redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or

iii. The person conducting the remediation wants a final remediation document.

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7:26E-1.14 Immediate environmental concern requirements

(a) The person responsible for conducting the remediation that identifies an immediate environmental concern (IEC) condition shall follow the Department's IEC guidance and address the IEC condition pursuant to this section.

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

1. Immediately notify the case manager if one is assigned. If no case manager is assigned or if the case manager is not available, immediately call the Department's hotline at 1-877 WARNDP or 1-877-927-6337;

2. Within 5 days after identifying the IEC condition, mitigate the IEC impacts as applicable as follows:

i. Provide bottled water to the residents of each property where contaminant concentrations exceed any remediation standard for class II ground water;

ii. Mitigate the infiltration of vapors into structures impacted by vapor intrusion; and

iii. Restrict access to soil contaminated above acute levels; and

3. Within 5 days after identifying the IEC condition submit the following to the Department:

i. A completed IEC [Immediate] Response Action form available from the Department;

ii. A completed IEC Information Spreadsheet available from the Department;

iii. A map indicating the location of the site and the location of the IEC condition;

and

iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)17, with a Full Laboratory Data Deliverables form available from the Department; and

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4. Within 5 days after identifying the IEC condition submit the analytical results from all indoor air sampling to the New Jersey Department of Health and Senior Services at the following address:

NJDHSS

Consumer, Environmental & Occupational Health Service

PO Box 360

Trenton, NJ 08648

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

i. Provide water treatment or an alternative water supply to the residents of each property where contaminant concentrations in their potable well exceed any remediation standard for Class II ground water quality standard;

ii. Install a vapor mitigation system at each property where contaminant concentrations exceed any applicable vapor intrusion indoor air screening level that is available in the Department's Vapor Intrusion Guidance; and

iii. Otherwise reduce exposure to contaminants or hazardous conditions to acceptable levels as applicable.

(c) Within 120 days after identifying the IEC condition, the person responsible for conducting the remediation shall submit an IEC engineered system response action report with an updated IEC Response Action form available from the Department, that includes the following:

1. A description of all immediate response actions and engineered system response actions that have been completed, including the date that each action that was conducted pursuant to (b) above;

2. A summary of all analytical data related to the IEC and the engineered system response action;

3. All maps and figures related to the IEC and the engineered system response action;

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4. A description of the contaminant source control that will be implemented as required pursuant to (d), below; and

5. A GIS compatible map of the estimated area of ground water contamination prepared pursuant to the Department's IEC Guidance.

(d) Within 270 days after identifying the IEC condition, the person responsible for conducting the remediation shall initiate control of the IEC contaminant source using the Department's IEC Guidance, complete the delineation of the IEC contaminant source, and submit an IEC contaminant source control report, with an updated IEC Response Action form available from the Department that includes a descriptions of each of the following:

1. Remedial actions being implemented to remediate the IEC contaminant source;

2. A monitoring plan for the mitigation system; and

3. A monitoring plan for the wells or structures that are located downgradient of the wells or structures that are impacted by the IEC condition.

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

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation pursuant to the requirements of N.J.A.C. 7:26E-1.16 through 1.19.

(b) The person responsible for conducting the remediation who completes an unrestricted remedial action is not required to conduct a receptor evaluation when a final remediation document is issued or is filed with the Department within 270 days after initiating the remediation.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation, on a Receptor Evaluation form available from the Department, by November 26, 2010, or with the submittal of a site investigation report, whichever is later.

(d) The person responsible for conducting the remediation shall submit an updated receptor evaluation report on a Receptor Evaluation form available from the Department with the following documents, as applicable:

1. A remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4.8; and

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2. A remedial action report submitted pursuant to N.J.A.C. 7:26E-6.7.

(e) The person responsible for conducting the remediation shall also send a copy of each receptor evaluation to the following:

1. The clerk of each municipality in which the site is located; and
2. The designated local health official.

7:26E-1.16 Receptor evaluation - land use

(a) The person responsible for conducting the remediation shall identify all current land uses at the site and of each property located within 200 feet of the site boundary.

(b) The person responsible for conducting the remediation shall provide the address of each residence, school or child care center, as well as each park, playground or other recreation area that is identified at the site and within 200 feet of the site boundary.

(c) The person responsible for conducting the remediation shall generate and submit a map that shows the location of the site and the location of each residence, school or child care center, a park, playground or other recreation area land use that is identified pursuant to (b) above.

(d) The person responsible for conducting the remediation shall identify and describe any proposed changes of land use at the site and of each property located within 200 feet of the site boundary that the municipality has approved, with a map depicting the location of the change in relation to the areas being remediated.

7:26E-1.17 Receptor evaluation - ground water

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water remediation standard as follows:

1. Within 90 days after ground water contamination is detected, conduct a well search to identify each well that may be impacted by contamination that has or may have emanated from the site as follows:

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i. Locate all wells by conducting a file search of all available Department, county and local records for all monitoring and potable wells located within one-half mile of each point of ground water contamination, and all irrigation, industrial wells, and wells with water allocation permits located within one mile of each point of ground water contamination;

ii. If the person responsible for conducting the remediation finds any of the wells described in (a)1.i, above, that person shall conduct a door-to-door survey by following the Department's well search guidance;

iii. For each well located, identify the type (potable, irrigation, noncontact cooling water) and the status of the well (active, inactive, properly abandoned pursuant to N.J.A.C. 7:9D), including, as available, total depth, casing length, open bore hole or screened interval, and obtain copies of well records and/or well logs on file with the Department's Bureau of Water Systems and Well Permitting, and any additional records available in county or municipal records;

iv. Document all sources used in conducting the well search, including the names of any agency that was unable to provide the information requested; and

v. For each point of ground water contamination, determine if the ground water contamination is located within a Tier 1 or a Tier 2 well head protection area; and

2. Within 120 days after ground water contamination is detected at the site above a Class II ground water remediation standard, the person responsible for conducting the remediation shall:

i. Notify the Department , pursuant to N.J.A.C. 7:26E-1.4(e), prior to conducting potable well sampling;

ii. Sample each potable well identified by the well search that is located within 1000 feet of any point of ground water contamination, or if ground water flow direction is known, limit sampling to wells 250 feet upgradient, 500 feet sidegradient and 1000 feet downgradient from any point of ground water contamination; and

iii. Sample irrigation wells identified by the well search when there are concerns about exposure or when information about the characteristics of the plume is needed.

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(b) If the person responsible for conducting the remediation determines that a contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard pursuant to N.J.A.C. 7:26D-2.2(a)1, the person shall:

1. Notify the Department of the IEC condition and conduct all actions pursuant to N.J.A.C. 7:26E-1.14; and

2. Within 14 days after completing the first round of potable well sampling, the person responsible for conducting the remediation shall:

i. Continue to delineate ground water contamination, including the extent of free product, pursuant to N.J.A.C. 7:26E-4.4; and

ii. Continue to identify potential wells and conduct additional sampling pursuant to the Department's IEC Guidance.

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

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)17 with the Full Laboratory Data Deliverables form available from the Department;

2. If a licensed site remediation professional is overseeing the remediation, conduct the following:

i. Notify each person whose potable well was sampled of the analytical results; and

ii. Provide the Department with a copy of each notification letter.

(d) The person responsible for conducting the remediation shall provide a detailed report of all potable well sampling activities in the applicable remedial phase report that that person submits to the Department.

7:26E-1.18 Receptor evaluation - vapor intrusion

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(a) The person responsible for conducting the remediation shall conduct a vapor intrusion investigation pursuant to this section and Department's Vapor Intrusion Guidance (VIG) when any of the following conditions exist in shallow ground water:

1. A ground water plume containing petroleum hydrocarbon contamination at a concentration greater than any vapor intrusion ground water screening level, is identified within 30 feet of a building;

2. A ground water plume containing volatile contamination that is not petroleum based at a concentration greater than any vapor intrusion ground water screening level is identified within 100 feet of a building;

3. Free product is identified in ground water within 100 feet of a building; or

4. When any of the following conditions are identified:

i. Soil gas or indoor air contamination is detected at concentrations that exceed the applicable vapor intrusion soil gas or indoor air screening levels;

ii. A landfill is located on or adjacent to the site;

iii. A wet basement or sump in a building contains free product and/or ground water containing any contaminant listed in Table 1 of the VIG;

iv. Methanogenic (methane generating) conditions are present that may cause an explosion; or

v. Any other information that indicates that human health may be impacted via the vapor intrusion pathway.

(b) Within 60 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. Identify all structures and subsurface utilities located within 200 feet of the currently known extent of the shallow ground water that contains contamination at a concentration greater than any vapor intrusion ground water screening level, or within 200 feet of any condition listed in (a)3 or 4 above;

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2. Determine the specific use for each structure identified, including the presence of residences, schools or child care centers, whether each structure has a basement, crawl space, or is constructed on a slab, and the approximate square footage of each building footprint;

3. Determine the specific use, depth of the invert, diameter, and construction specifications of all subsurface utilities identified;

4. Determine the flow direction of the shallow ground water pursuant to N.J.A.C. 7:26E-3.7(e)3; and

5. Determine whether free product pursuant to N.J.A.C. 7:26E-2.1(a)14 is present at each ground water sampling location.

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

1. Notify the Department prior to conducting indoor air or sub-slab sampling pursuant to N.J.A.C. 7:26E-1.4(e); and

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

i. If indoor air samples are to be collected, remove sources of potential background volatile organic chemicals from inside the structure, if possible;

ii. Determine the number and locations of indoor air and/or sub-slab samples;

iii. Collect indoor air and sub-slab samples at structures that may be impacted by vapor intrusion;

iv. Collect other vapor intrusion related samples such as soil gas samples, background samples and ground water samples as necessary to fully evaluate the vapor intrusion pathway;

v. Analyze indoor air samples and sub-slab soil gas samples and any other samples collected using certified analytical methods; and

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

(1) If the results are greater than the Department's vapor intrusion indoor air screening level, the person shall determine whether contaminants are likely to be associated with a discharge at the site or may be attributed to background sources;

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(2) If the results are greater then the vapor intrusion indoor air screening level the person shall immediately notify the Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14;

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

(A) The Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14; and

(B) The New Jersey Department of Health and Senior Services at 609-631-6749;

(4) If the person identifies potentially explosive conditions in a structure or subsurface utility, the person shall immediately notify:

(A) 911 and report explosive conditions to the local emergency response agency;

(B) The Department of the emergency condition at 1-877-WARNDEP or 1-877-972-6337; and

(C) The New Jersey Department of Health and Senior Services at 609-631-6749;

(d) If no contaminant concentration is detected in any indoor air sample in excess of any Department indoor air screening level, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)17 with the Full Laboratory Data Deliverables form available from the Department;

2. Submit all analytical results to the New Jersey Department of Health and Senior Services at the following address:

NJDHSS

Consumer, Environmental & Occupational Health Service

PO Box 360

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3. If a licensed site remediation professional is overseeing the remediation, conduct the following:

i. Notify each person whose indoor air was sampled of the analytical results; and

ii. Provide the Department with a copy of each notification letter.

(e) If the person responsible for conducting the remediation identifies vapor intrusion IEC conditions pursuant to (c) above, within 14 days after completing the first round of sampling, the person shall continue to:

1. Delineate ground water contamination, including the extent of free product, pursuant to N.J.A.C. 7:26E-4.4; and

2. Identify structures and conduct additional indoor air and/or sub-slab sampling pursuant to the Department's IEC Guidance and the VIG.

(f) If the person responsible for conducting the remediation determines that no IEC condition exists, but the vapor intrusion pathway is still of concern, the person shall complete a vapor intrusion investigation as part of the site investigation or remedial investigation, as applicable.

(g) The person responsible for conducting the remediation shall provide a detailed report of all vapor intrusion sampling activities in the applicable remedial phase report that is submitted to the Department.

(h) If the person responsible for conducting the remediation determines that the vapor intrusion pathway is not a concern at or adjacent to the site, the person shall provide a technical rationale supporting that conclusion.

7:26E-1.19 Receptor evaluation - ecological

As part of the receptor evaluation the person responsible for conducting the remediation shall conduct a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11, in order to determine whether a remedial investigation of ecological receptors is required pursuant to N.J.A.C.7:26E-4.7.

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SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that the following quality assurance procedures be followed for all sampling and laboratory analysis activities.

1. Laboratories performing analyses shall conform to the following:

- i. - ii. (No change.)
- iii. For the analysis of samples using USEPA Contract Laboratory Program (CLP) analytical methods for a parameter or category or parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a minimum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c); [or]
- iv. For the analysis of aqueous and non-aqueous samples for parameters or categories of parameters not contained in (a)1i through iii above, the person responsible for conducting the remediation is also responsible for ensuring that the selected laboratory is capable of performing the analysis. At such time as N.J.A.C. 7:18 incorporates procedures for parameters or categories of parameters not contained in (a)1i through iii above, the procedures in N.J.A.C. 7:18 shall be followed[.];
- v. For the analysis of soil gas or indoor air samples collected to investigate the vapor intrusion pathway for a parameter or category of parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a minimum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c);
- vi. For the analysis of samples for petroleum hydrocarbons (PHC) follow the Department's Protocol for Addressing Extractable Petroleum Hydrocarbons; and
- vii. For any field analytical method, the laboratory or individual conducting the analysis shall be certified for the parameter or category of parameters for field analytical methods for which the Department provides certification. If the Department does not provide

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certification for a field analytical method, the laboratory or person shall obtain a site-specific certification for the field analytical method from by the Department's Office of Quality Assurance;

2. The [Department] the person responsible for conducting the remediation shall reject analytical data as follows:

i. - iii. (No change.)

3. - 5. (No change.)

6. The person responsible for conducting the remediation shall ensure that aqueous samples are analyzed to determine potability as follows:

i. For organic contaminant, use the version of USEPA 500 series methods in effect on the date of analysis (USEPA Publication "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III, August 1995" as amended and supplemented); and

ii. For inorganic contaminant, use the version of USEPA 200 series methods in effect on the date of analysis (USEPA Publication "Methods for the Determination of Metals in Environmental Samples, Supplement I, May 1994" as amended and supplemented). As an alternative, lead may be analyzed by the version of ASTM Method D3559-90D in effect on the date of analysis (American Society for Testing Publication "Annual Book of ASTM Standards, 1994") as amended and supplemented, or by the version of Method 3113B in effect on the date of analysis (American Public Health Publication "Standard Methods for the Examination of Water and Wastewater, 18th Edition") as amended and supplemented;

7. The person responsible for conducting the remediation shall ensure that hexavalent chromium analysis of aqueous and nonaqueous samples is conducted as follows:

i. Measure the pH and Eh of each sample, not just the quality control sample, with the pH and Eh data included and plotted in the full data deliverables using the graph in USEPA SW-846 Method 3060A as amended and supplemented; and

ii. Use a site sample for the quality control analyses so the reduction/oxidation effects of the site matrix can be properly evaluated using USEPA SW-846 Method 3060A;

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8. For all samples to be used for determining compliance pursuant to the Department's Compliance Guidance, the analytical method(s) shall have analytical sensitivity sufficient to accurately measure concentrations at or below the applicable remediation standard or criteria;

[6.]9. If analytical methods are not available for a contaminant, analysis of indicator parameters may be acceptable with technical rationale in the applicable remedial phase report that is submitted to the Department (for example, pH may be used as an indicator parameter for acid or base discharges) [may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).];

7. - 13. Recodify as 10. - 16. (No change in text.)

[14. Sampling methods, sample preservation requirements, sample handling times, decontamination procedure for field equipment, and frequency for field blanks, field duplicates and trip blanks shall conform to applicable industry methods such as those specified in the NJDEP "Field Sampling Procedures Manual" in effect as of the date on which sampling is performed. The person responsible for conducting the remediation shall document the rationale for any deviations from the methods in the "Field Sampling Procedures Manual" pursuant to N.J.A.C. 7:26E-1.6(c).]

17. All sample collection, storage, and shipping requirements, such as sampling methods, sample preservation requirements, sample handling times, decontamination procedure for field equipment, and frequency for field blanks, field duplicates and trip blanks shall conform to the requirements specified in the Department's Field Sampling Procedures Manual. The person responsible for conducting the remediation shall document the rationale for any deviations from the methods in the Department's "Field Sampling Procedures Manual" in the applicable remedial phase report submitted to the Department;

[15.] 18. (No change in text.)

(b) Field screening methods are limited as follows:

1. - 3. (No change.)

4. Other field screening methods may be [acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c)]used if use of the selected method

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enables the person to meet the sampling goals set forth in this subchapter, and the person provides the technical rationale for using the selected sampling method in the applicable remedial phase report submitted to the Department.

(c) The following requirements apply for selection of analytical parameters for all environmental media:

1. Samples [from each area of concern] shall be analyzed for:

i. The contaminants [which] that may be present[.] as determined during the preliminary assessment and from any other information obtained during the remediation; or

[2. Analysis of Target Compound List plus 30/Target Analyte List (TCL + 30/TAL) or Priority Pollutant plus 40 (PP + 40) scans, petroleum hydrocarbons, and pH shall be conducted when contaminants in an area are unknown or not well documented, although a limited contaminant list may be used subject to the Department's review of documentation pursuant to N.J.A.C. 7:26EA.C. 7:26E-1.6(c).]

ii. The Target Compound List plus TICs/Target Analyte List (TCL + TICs/TAL), hexavalent chromium, petroleum hydrocarbons (PHC), and pH when contaminants are unknown or not well documented;

2. Based on sampling conducted pursuant to (c)1 above, the person responsible for conducting the remediation may, during future sampling events, sample for fewer contaminants than for which the person initially sampled . The person responsible for conducting the remediation shall provide the technical rationale for the reduced list in the applicable remedial phase report submitted to the Department;

3. In addition to (c)1 and 2 above, analyze samples for parameters as needed to develop:

i. A site-specific standard or criterion for:

(1) The soil impact to ground water pathway;

(2) The vapor intrusion pathway;

(3) The ecological pathway; and

ii. An alternative remediation standard for the soil inhalation pathway; and

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4. For concrete and other building material that will be recycled, conduct sampling pursuant to Department’s Guidance for Characterization of Concrete and Clean Material Certification.

[(d) For all petroleum storage and discharge areas, sample analysis shall be conducted pursuant to the requirements in Table 2-1. Samples taken in non-petroleum storage and discharge areas shall be analyzed for the stored material. Analysis of soil and sediment samples for petroleum hydrocarbons may be in accordance with the revision of NJDEP Method OQA QAM 025 10/91: “Quantitation of Semi-volatile Petroleum Products in Water, Soil, Sediment and Sludge” in effect as of the date on which sampling is performed. Analysis shall be conducted by a laboratory that is certified for any gas chromatography method pursuant to N.J.A.C. 7:18. Laboratory deliverables shall be as specified in the NJDEP method listed above.]

[TABLE 2-1
ANALYTICAL REQUIREMENTS FOR
PETROLEUM STORAGE AND DISCHARGE AREAS¹¹

<u>Sampling Objective</u>	Soil Initial Screening/ <u>Post-Remediation</u> ¹	Water Initial <u>Screening</u>
Gasoline, Mineral Spirits	VO+10 ² , Lead ⁷	VO+10 ² , MTBE ³ TBA ³ , Lead ⁷
Kerosene, Jet Fuel	VO+10 ²	B/N+15 ² , VO+10 ²
	Naphthalenes ⁵	
Fuel Oil No. 2, Diesel Fuel	TPHC ⁹	B/N+15 ¹⁰ , VO+10 ²
Fuel Oil Nos. 4 & 6, Hydraulic Oils, Cutting Oil, Crude Oil,		

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Lubricating Oil	TPHC, PAH ⁸	B/N+15 ¹⁰ , VO+10 ²
Waste Oil	TPHC ⁶ , VO+10 ² , B/N+15 ¹⁰ PCBs,	PP+40 or TCL/TAL ⁴
		Priority Pollutant
	Metals or EPA Target Analyte List	
Waste Vehicular	TPHC ⁶ , VO+10 ²	VO+10 ² , B/N+15 ¹⁰
Crankcase Oil	B/N+15 ¹⁰ , PCBs, lead	
Waste Mineral Oil	TPHC	

Footnotes

1. Analytical parameters may be limited based on previous analytical results.
2. EPA target compound list volatile organic or priority pollutant volatile organic scans including xylene with a library search.
3. Methyl-tertiary-butyl-ether (MTBE), tertiary-butyl alcohol (TBA) analysis required if gasoline tanks were in service after 1979 and 1969 respectively.
4. Priority Pollutant plus forty (PP+40) including xylene, excluding PCB/pesticide analysis, or EPA Target Compound List plus 30 and EPA Target Analyte List, excluding PCB/pesticide analysis.
5. Naphthalene, including Naphthalene, Methyl Naphthalenes, Dimethyl Naphthalenes; may be analyzed in B/N + 15 fraction or in VO fractions; if analyzed in VO fraction, instrument must be calibrated for these analytes. Quantitation of all isomers found shall be performed against at least one Methyl Naphthalene standard and at least one Di-Methyl Naphthalene standard.
6. Total Petroleum Hydrocarbon (TPHC) analysis required on all samples. Other parameters required on 25 percent of samples where TPHC was detected (minimum of one sample); other parameters shall be analyzed for in the sample with the highest TPHC.
7. Lead Analysis required if source was or is leaded gasoline.

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8. TPHC analysis required on all samples. Polynuclear aromatic hydrocarbons (per EPA Priority Pollutant List) analysis required on 25 percent of samples where TPHC exceeds 100 ppm (minimum of one sample); samples for PAH analysis shall be those with the highest TPHC concentration.

9. TPHC analysis required on all samples; VO + 10 analysis required on 25 percent of samples in which TPHC level in soil exceeds 1000 PPM (minimum of one sample); samples for VO analyses shall be those with the highest TPHC concentration.

10. EPA Target Compound List Base Neutral or Priority Pollutant Base Neutral scan with a library search.

11. Analyses are required on all samples unless otherwise noted.]

(d) The person responsible for conducting the remediation shall analyze samples for petroleum hydrocarbons contamination (PHC) pursuant to the Department's Protocol for Addressing EPH Contamination Guidance and as follows:

1. For all petroleum storage and discharge areas, analyze all samples pursuant to the requirements in Table 2-1 and the Department's guidance Replacement of TPH Method 418.1 for the Site Remediation Program;

2. For contaminants, where Table 2-1 indicates that additional analytical parameters are required, conduct the additional analyses on sample(s) with the highest PHC concentration(s), with a minimum of 1 sample; and

3. For all matrices where sheen or odor indicate the potential presence of PHC from an unknown source, analyze all samples as unknown PHC pursuant to the requirements in Table 2-1.

TABLE 2-1
ANALYTICAL REQUIREMENTS FOR
PETROLEUM STORAGE AND DISCHARGE AREAS

Petroleum Product

Soil/Sediment

Water

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<u>Leaded Gasoline,</u> <u>Aviation Gasoline</u>	<u>VO+TICs¹, Lead</u>	<u>VO+TICs¹, Lead</u>
<u>Unleaded Gasoline</u>	<u>VO+TICs¹, Tertiary butyl alcohol</u>	<u>VO+TICs¹, Tertiary butyl alcohol</u>
<u>Light Petroleum Distillates</u> <u>(Naptha, Stoddard Solvent, Paint Thinner, etc.)</u>	<u>VO+TICs¹</u>	<u>VO+TICs¹</u>
<u>Kerosene, Jet Fuel</u>	<u>VO+TICs¹, Naphthalene, 2-Methyl Naphthalene</u>	<u>VO+TICs¹, SVO+TICs²</u>
<u>Fuel Oil No. 2, Diesel Fuel</u>	<u>PHC³. Analyze 25% of samples for 2-Methyl Naphthalene and Naphthalene when PHC are detected over 1,000 mg/kg.⁷</u>	<u>VO+TICs¹, SVO+TICs²</u>
<u>Fuel Oil Nos. 4 & 6, Hydraulic Oils, Cutting Oil, Lubricating Oil</u>	<u>PHC³. Analyze 25 % of samples for PAH⁴ when PHC are detected over 100 mg/kg.⁷</u>	<u>VO+TICs¹, SVO+TICs²</u>

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<u>Crude Oil</u>	<u>PHC³, VO+TICs¹, SVO+TICs², TAL Metals⁵</u>	<u>VO+TICs¹, SVO+TICs², TAL Metals⁵</u>
<u>Waste Oil, Unknown Petroleum Hydrocarbons</u>	<u>PHC³. Analyze 25 % of samples for VO+TICs¹, SVO+TICs², PCBs, EPA TAL Metals⁵ when PHC are detected.⁷</u>	<u>VO+TICs¹, B/N+TICs², TAL Metals⁵</u>
<u>Waste Vehicular Crankcase Oil</u>	<u>PHC³. Analyze 25 % of the samples for VO+TICs, SVO+TICs², PCBs, Lead when PHC are detected.⁷</u>	<u>VO+TICs¹, SVO+TICs², Lead</u>
<u>Mineral Oil, Dielectric Fluid, Transformer Oil</u>	<u>PHC³ and PCBs.</u>	<u>PHC³ and PCBs</u>
<u>Manufactured Gas Plant (MGP) Sites</u>	<u>PHC³, VO+TICs¹, PAH⁴, TAL Metals⁵, Cyanide, Phenolics⁶</u>	<u>PHC³, VO+TICs¹, PAH⁴, TAL Metals⁵, Ammonia (Total), Cyanide, Phenolics⁶</u>

Footnotes

1. EPA Target Compound List volatile organic compounds with a library search of TICs.
2. EPA Target Compound List semivolatile organic compounds with a library search of TICs.
3. Petroleum Hydrocarbons.
4. EPA Target Compound List Polynuclear Aromatic Hydrocarbons with a library search of TICs.
5. EPA Target Analyte List (TAL) Metals.

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6. EPA Target Compound List phenol; 2-methylphenol; 4-methylphenol; and 2,4-dimethylphenol.

7. Conduct the additional analyses on sample(s) with the highest PHC concentration(s), with a minimum of 1 sample.

(e) (No change.)

7:26E-2.2 Quality assurance project plan

(a) [If the Department requires a Quality Assurance Project Plan (QAPP) pursuant to an oversight document or the ISRA, UST, or any other regulatory program, the] The person responsible for conducting the remediation shall [submit the]prepare a Quality Assurance Project Plan [in accordance with the schedule contained in the oversight document or applicable regulation, and] in a format that corresponds directly to the outline of this section.

1. - 2. (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.1 Preliminary assessments

(a) The purpose of a preliminary assessment is to identify the presence of any potentially contaminated areas of concern. [If any potentially contaminated areas of concern are identified, then there is a need for a site investigation pursuant to N.J.A.C. 7:26E-3.3. If no potentially contaminated areas of concern are identified, then no further remediation is required at the site.]

(b) [A preliminary assessment is the first step in the process to determine whether or not a site is contaminated.]

[(c)]A preliminary assessment shall be based on diligent inquiry and include an evaluation of the following:

1. Historical information concerning the site history shall be part of the preliminary assessment unless the remediation is directed at either a specific discharge event (rather than a

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particular area of concern) or any underground tank or underground tank system. The site history shall include an evaluation of the following to the extent available from diligent inquiry:

i. - v. (No change.)

vi. If the site area exceeds two acres, an interpretation of the aerial photographic history of the site, based on available current and historical color, black and white and infrared aerial photographs (scale 1:18,000 or less) of the site and surrounding area at a frequency which provides [the evaluator with] a historical perspective of site activities. [The] Evaluate the photographic history [shall date] back to 1932 or to the earliest photograph available. Aerial photographic coverage is available for review at the New Jersey Department of Environmental Protection [and Energy], Tidelands Management Program, Aerial Photo Library, [9 Ewing Street,] Trenton, New Jersey and from other commercial services;

vii. - xii. (No change.)

xiii. All administrative, civil and criminal enforcement actions for alleged violations of environmental laws concerning the site, including:

(1) - (6) (No change.)

(7) A description of any potential environmental impact which may have resulted from the alleged violation; [and]

xiv. (No change.)

xv. All waste disposal records for any onsite landfill that describes the nature, quantity, location, and date of the placement in the landfill. Include waste disposal records for all wastes, drums, tanks, pressurized gas cylinders and all hazardous wastes; and

xvi. All permit requirements pursuant to a Solid Waste Operating Permit, or Disruption and Closure Permit granted pursuant to N.J.A.C. 7:26, including a description of permit requirements completed to date and a description of permit requirements not yet completed.

2. The person conducting the preliminary assessment shall conduct a site visit to verify the findings in [(c)1] (b)1 above.

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(c) The person responsible for conducting the remediation who is conducting an evaluation of a child care center pursuant to N.J.S.A. 52:27D-130.4 and N.J.A.C. 10:122 shall conduct a preliminary assessment and/or site assessment pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers.

(d) If any potentially contaminated areas of concern are identified during the preliminary assessment, the person responsible for conducting the remediation shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.13.

(e) If no potentially contaminated areas of concern are identified during the preliminary assessment, no further remediation is required at the site except that the person who is required to submit an ISRA general information notice pursuant to N.J.A.C. 7:26B-3 shall submit a preliminary assessment report with a Preliminary Assessment form available from the Department:

1. By June 1, 2010; or
2. Ninety days after the person responsible for conducting the remediation has notified the Department pursuant to the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2, whichever is later.

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation shall prepare a preliminary assessment report which:

1. (No change.)
2. Is presented in a format that corresponds to the outline of N.J.A.C. 7:26E-3.1[(c)](b);
3. Shall also include:
 - i. - iii. (No change.)
 - iv. A summary of the data and information evaluated pursuant to N.J.A.C. 7:26E-3.1[(c)](b)1vii, viii, ix, and x shall be presented by area of concern and all phases of work for a particular area of concern shall be integrated into a single discussion of that area;

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4. For each area of concern identified at the site[, which has not been remediated under Department oversight,] that has not been remediated, the report shall contain a recommendation that either:

i. - ii. (No change.)

5. For each area of concern identified at the site, for which a [No Further Action Letter was] final remediation document was filed or issued, the person responsible for conducting the remediation shall compare the contaminant concentrations remaining in the area of concern [or the site] with the Department's applicable remediation standards at the time of comparison, and the report shall contain a recommendation that either:

i. The area of concern contains contaminants above the numerical remediation standard applicable at the time of comparison; however, no further remediation is required because:

(1) (No change.)

(2) The area of concern [or the site] was remediated using engineering and institutional controls [approved by the Department] and these controls are still protective of public health, safety and the environment; or

(3) The area of concern [or the site were] was remediated to [an approved] a site specific remediation standard and all of the factors and assumptions which are the basis for deriving the site specific remediation standard remain valid for the site;

ii. The area of concern [or site] contains contaminants above the numerical remediation standards applicable at the time of comparison and further remediation is required because:

(1) (No change.)

(2) The area of concern [or site] was remediated using engineering and institutional controls [approved by the Department] and these controls are no longer protective of public health, safety and the environment; or

(3) (No change.)

iii. - iv. (No change.)

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6. Includes a completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Documents. The case inventory document shall be provided at the front of the report.

(b) The documentation required for (a)5 above shall include a table comparing the levels of contaminants remaining in the area of concern, the numerical remediation standards which are contained in the [approved] remedial action workplan that was approved by the Department or was prepared by a licensed site remediation professional and the numerical remediation standards applicable at the time of comparison. The table shall contain all sampling results, including, but not limited to, sample location, sample media, field and laboratory identification numbers, method detection limits as necessary, and analytical results for the area of concern.

[(c) The Department will determine the extent to which prior submissions or completions may satisfy the specific items required for the preliminary assessment. If the Department approves any such prior work in writing, then that work may be included as part of the preliminary assessment.]

7:26E-3.3 Site investigations

(a) The purpose of a site investigation is to determine if any contaminants are present at the site, or as necessary, have emanated or are emanating from the site above any of the applicable [unrestricted use] remediation standards or if no further remediation is required. If such contaminants are present at the site, then additional remediation is necessary.

(b) A site investigation shall be conducted based upon the information collected pursuant to the preliminary assessment requirements in N.J.A.C. 7:26E-3.1 and shall satisfy all of the following requirements:

1. - 8. (No change.)

9. The landfill and historic fill requirements in N.J.A.C. 7:26E-3.12, if applicable.

(c) (No change.)

[(d) It is often appropriate to phase the site investigation so that the areas of concern most likely to be contaminated above the applicable remediation standards are sampled first. If at any

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time during the site investigation, any contamination is found above the applicable remediation standards, then the site investigation may be discontinued and the remediation continued at either the remedial investigation or remedial action phase.]

(d) The person responsible for conducting the remediation shall conduct a comparison of all site data with the Department's applicable remediation standards, pursuant to the Department's Compliance Guidance, to determine if contaminated areas of concern are present.

(e) The person responsible for conducting the remediation shall complete the site investigation and submit a site investigation report with a Preliminary Assessment/Site Investigation form available from the Department by the later of the following:

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

7:26E-3.4 Site investigation - general sampling requirements

(a) Sampling shall be conducted in all potentially contaminated areas of concern[, whether relating to current or former uses of the site] to determine whether or not any contaminants are present above the applicable unrestricted use remediation standard.

1. - 3. (No change.)

4. If access to sampling locations required pursuant to N.J.A.C. 7:26E-3.5 through 3.12 is impractical due to physical obstructions or safety hazards, and no practical sampling alternatives are available[, upon prior verbal or written approval by the Department, sampling may be modified subject to the technical criteria in N.J.A.C. 7:26E-1.6(c)3. Confirmation of any verbal or written approval by the Department shall be provided in the site investigation report. For verbal approvals, the date of the verbal approval and the name of the Department representative who granted the approval shall be provided in written correspondence to the Department within seven days of the verbal approval]the person responsible for conducting the remediation shall provide the rationale for alternative sampling location in the site investigation report.

(b) - (c) (No change.)

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7:26E-3.5 Site investigation - building interiors

The person responsible for conducting the remediation shall conduct a site investigation of building interiors [shall be conducted] when contaminants inside the building have the potential to migrate to the environment outside the building or when contaminants outside the building have the potential to migrate into the building. [Minimum requirements for investigating contaminants inside buildings which have the potential to migrate to the environment outside the building are specified in N.J.A.C. 7:26E-3.9, and requirements for investigating contaminants outside buildings which have the potential to migrate into buildings shall be specified by the Department on a site specific basis]. The person responsible for conducting the remediation shall conduct the site investigation of the vapor intrusion pathway required pursuant to this chapter and the Department's Vapor Intrusion Guidance.

7:26E-3.7 Site investigation - ground water

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

(e) The results of each ground water site investigation analysis shall be evaluated as follows:

1. If the contaminant concentrations found in all ground water samples are below the applicable remediation standards, no further remediation is necessary for ground water;
2. If the contaminant concentrations found in any ground water samples exceed the applicable remediation standards, the ground water may be resampled to confirm the presence of contamination; this confirmation sampling shall include at least two additional samples taken over a 30 day period, the results of which may be averaged with the original result to determine compliance with the applicable remediation standards; and
3. If the contaminant concentrations found in any ground water sample exceeds the applicable ground water remediation standard the person shall determine the direction of ground water flow as follows:

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i. Install a minimum of three ground water monitoring wells or piezometers in each affected aquifer or water bearing zone to determine the ground water flow direction in that zone. Install and survey the monitoring wells or piezometers pursuant to N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:26E-4.4(g) to provide for adequate triangulation;

ii. Collect a minimum of two rounds of synoptic static water levels a minimum of 30 calendar days apart to provide a more accurate indication of the ground water flow direction. The water levels may be taken to evaluate seasonal variations in flow direction;

iii. If the site is located in an area that is tidally influenced, synoptic ground and surface water levels shall be collected during two fair weather sampling events separated by a minimum 30-day period where each event entails collecting hourly water levels from all applicable wells and the surface water for a minimum 71 hour period; and

iv. Collect water level measurements and determine ground water flow direction, taking into account activities in the area which may affect flow direction, such as pumping wells or seasonally used pumping wells and injection wells.

[3. If ground water contamination is confirmed, the person responsible for conducting the remediation shall, except as provided in (f), below:

i. Within six weeks after identifying ground water contamination, conduct a well search including:

(1) Locating wells through a file search using all available Department, county and local records for all monitoring and domestic wells within one-half mile of each point of ground water contamination, and all irrigation, industrial, public supply wells, and wells with water allocation permits within one mile of the area of concern. Available Department records include without limitation, paper, microfiche, electronic and antique well records maintained by the Bureau of Water Allocation. The Department Geographic Information System shall be used as part of the file search. If the site is located in a ground water use area the Department will determine if further action, such as a door-to-door survey, is required;

(2) Identifying the type of well and the status of the well (active, inactive, properly abandoned pursuant to N.J.A.C. 7:9D), including, as available, total depth, casing

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length, open bore hole or screened interval, copies of well records and/or well logs on file with the Department's Bureau of Water Allocation, and any additional records available in county or municipal records; and

(3) Documenting all sources referenced in performing the well search, including agencies that were unable to provide the information requested, including the name of the person within each agency that was contacted and when, and that the request for information was denied or information was unavailable;

ii. Within two weeks after completing the well search, determine if any potable wells exist within 1000 feet of each area of concern with ground water contamination and:

(1) Within 24 hours after determining the existence of a potable well, notify the assigned case manager by telephone. If a case manager is not assigned, notify the Department hotline at 1-877 WARNDEP or (877) 927-6337;

(2) Within eight weeks after identifying the potable wells, sample each existing potable well identified pursuant to the well search suspected to be contaminated by the site in question; and

(3) Within 45 days after completing sampling of the potable wells, submit all analytical results to the Department as full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2(a)13.

iii. Perform the following actions if any of the analytical results for the potable well samples collected pursuant to (e)3ii(2) above indicate that any of the potable wells are contaminated above the drinking water standards for contaminants that are suspected to be from the site:

(1) Within two weeks after submitting the analytical results to the Department, identify each potable well that exists within 1000 feet to one-half mile of each area of concern with ground water contamination and perform all sampling and reporting requirements as set forth at (e)3ii; and

(2) Repeat the process of identifying and sampling potable wells pursuant to (e)3i, ii and iii(1) above, by identifying and sampling potable wells at each successive half-mile

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intervals until either no more potable wells are identified, or no contaminants above the drinking water standard are identified;

iv. Determine the direction of ground water flow for each affected aquifer as follows:

(1) Install a minimum of three ground water monitoring wells or piezometers in each affected aquifer or water bearing zone to determine the ground water flow direction in that zone. Install and survey the monitoring wells or piezometers pursuant to N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:26E-4.4(g) to provide for adequate triangulation;

(2) Collect a minimum of two rounds of synoptic static water levels a minimum of 30 calendar days apart to provide a more accurate indication of the ground water flow direction. The water levels may be taken to evaluate seasonal variations in flow direction;

(3) If the site is located in an area that is tidally influenced, synoptic ground and surface water levels shall be collected during two fair weather sampling events separated by a minimum 30-day period where each event entails collecting hourly water levels from all applicable wells and the surface water for a minimum 71 hour period; and

(4) Collect water level measurements and determine ground water flow direction, taking into account activities in the area which may affect flow direction, such as pumping wells or seasonally used pumping wells and injection wells; and

v. Conduct a ground water remedial investigation pursuant to N.J.A.C. 7:26E-4.4.]

(f) A prospective purchaser shall commence a potable water investigation no later than 30 calendar days after acquiring the property, in accordance with the requirements and schedule [in (e)3, above] at N.J.A.C. 7:26E-1.17.

(g) (No change.)

7:26E-3.9 Site investigation - area specific requirements

(a) The site investigation shall also satisfy the following sampling requirements for bulk storage tanks and appurtenances, including, without limitation, all in-use and out of service

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storage tanks with a storage capacity greater than 55 gallons, and associated piping and fill points.

1. (No change.)

2. For above ground tanks over paved surfaces:

i. - iii. (No change.)

iv. Instead of sampling soil beneath pavement, samples around the pad may be taken pursuant to (b)1 below [subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why boring through pavement was not considered practical (for example, concrete slabs with berms, synthetic liners)] and to N.J.A.C. 7:26E-1.7.

3. - 4. (No change.)

5. For all below grade piping:

i. - iii. (No change.)

iv. For total piping lengths in excess of 50 feet, sampling frequency may be reduced [subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced number was considered adequate] pursuant to N.J.A.C. 7:26E-1.7.

6. (No change.)

(b) The site investigation shall also satisfy the following requirements for all storage and staging areas, dumpsters and transformers, whether temporary or permanent, including exposed soil areas adjacent to above ground vessels on pads; tank loading/unloading areas on pads; dumpster staging areas; electrical transformers, heat exchanger and other outdoor equipment and drum storage pads.

1. (No change.)

2. For all storage and staging areas over permeable cover:

i. (No change.)

ii. Sample frequency shall be one per 900 square feet of surface area to characterize soils below a storage or staging area up to 300 feet in perimeter with a minimum of one sample. [Sample frequency may be reduced for larger areas subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why sample frequency was

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considered adequate.] Sampling locations shall be biased toward the suspected location of greatest contamination based on low points, drainage patterns, discoloration, stressed vegetation, field instrument measurements or other field indicators.

(c) (No change.)

(d) The site investigation shall also satisfy the following requirements for all drainage systems.

1. For all floor drains and collection systems, if there is reason to believe contaminants were discharged into the floor drain or collection system:

i. - ii. (No change.)

iii. Collection system integrity shall be documented by representative soil sampling at potential leak areas, video inspection, hydrostatic test or pressure test[. Other methods may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the methods were considered effective]; and

iv. (No change.)

2. - 5. (No change.)

(e) The site investigation shall also satisfy the following requirements for all discharge and waste disposal systems and areas.

1. For any discharge areas and areas of discolored soil or stressed vegetation where specific requirements are not otherwise provided in this section:

i. (No change.)

ii. Initial characterization samples shall be biased based on field indicators such as soil discoloration, stressed vegetation, or field instrument measurements toward those areas of greatest suspected contamination. Sample frequency shall be at least one sample for every 900 square feet for areas up to 300 feet in perimeter. [Sample frequency may be reduced for larger areas, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced sample frequency was considered adequate.]

2. (No change.)

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3. For below grade wastewater treatment systems:

i. For tanks, septic tanks, separators, and neutralization pits, two samples shall be collected from within the tank, one aqueous and one sludge sample, for analysis [unless documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the site investigation report (N.J.A.C. 7:26E-3.13) specifying why such sampling was not considered necessary to confirm that only sanitary waste was discharged to the system during the entire life of the system. Documentation shall include, without limitation, an affidavit certifying that only sanitary waste was ever discharged to the system and that no present or former floor drains, sinks, or other units in process areas were ever connected to the system].

ii. For septic disposal fields:

(1) Soil borings shall be completed as specified below for onsite disposal fields [unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.13) specifying why soil borings were not considered necessary to confirm that only sanitary waste was discharged to the system pursuant to (e)3i above].

(2) - (6) (No change.)

iii. For cesspools, seepage pits, as defined in N.J.A.C. 7:9A-2.1, and dry wells:

(1) Sampling shall be conducted in accordance with (e)3iii(2) through (5) below, [unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.10) specifying why sampling was not considered necessary, for example, to confirm that only sanitary waste or storm water was discharged to the system pursuant to (e)3i above];

(2) - (5) (No change.)

iv. (No change.)

(f) The site investigation shall also satisfy the following requirements for any other potentially contaminated areas away from process areas not otherwise addressed pursuant to (a) through (e) above:

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1. The sample locations shall be biased toward suspected areas of the greatest contamination. If there is no basis for biasing, then random sampling of these areas is required as follows, except as provided in (f)2 below:

- i.. (No change.)
- ii. The grid nodes chosen for sampling shall be based on the numbers selected from a random number chart; and
- iii. Areas of less than 10 acres shall be sampled at a rate of at least one sample for every two acres[; and
- iv. Areas greater than 10 acres may be sampled at a reduced frequency subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why a reduced frequency was considered appropriate, but a minimum of five locations shall be sampled].

2. If the person responsible for conducting the remediation documents, [pursuant to N.J.A.C. 7:26E-1.6(c),] that the area is not and has not been used for any purpose which may have included hazardous substances, hazardous wastes, or pollutants, including, without limitation, the activities described in (a) through (e) above, then no samples are required. Such documentation shall be based upon the following:

- i. - ii. (No change.)

7:26E-3.12 Site investigation – landfills and historic fill material

[(a) If historic fill material is present at the site, it may be assumed that the fill material is contaminated above an applicable residential soil remediation standard and a remedial investigation of the historic fill material may be conducted pursuant to N.J.A.C. 7:26E-4.6(b).

(b) As an alternative to (a) above, if historic fill material is present at the site, it may be demonstrated that the historic fill is not contaminated above the applicable residential soil remediation standards on a case by case basis.

(c) An appropriate number of ground water samples (minimum of one sample) are required when a high degree of certainty is needed to document that ground water is not contaminated,

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including, without limitation, if the historic fill site is in an area where ground water is used for potable water. All ground water sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.7(c).]

(a) If a landfill may be present at the site, the person responsible for conducting the remediation shall conduct a site investigation as follows:

1. Confirm whether a landfill is present;

2. Determine if buried containers including, but not limited to drums, tanks, pressurized gas cylinders, munitions or explosives of concern, or unexploded ordnance are present by conducting a survey, by a person qualified and experienced in the use of geophysical sensing techniques, using an appropriately calibrated electro magnetometer or other appropriate geophysical sensing technique to detect potential buried containers as follows:

i. Use a 25 foot transect spacing across the landfill and around the perimeter of the landfill a sufficient distance beyond the potential landfill limits to ensure all areas with potential waste are surveyed; and

ii. Take and record readings every five feet along each transect.

3. Evaluate the landfill and determine the presence and effectiveness of existing control systems, as applicable:

i. For each area of soil erosion and sediment deposition around the perimeter of the landfill:

(1) Collect and analyze soil and sediment samples from each area pursuant to N.J.A.C. 7:26E-3.6 and 3.8, respectively; and

(2) Bias samples to areas of likely contamination area pursuant to N.J.A.C. 7:26E-3.4;

ii. Collect a minimum of one leachate and one soil/sediment sample from each seep identified around the perimeter of the landfill. If evidence of seeps are identified, but leachate is not present at the time of sampling, then collect samples when leachate is present;

iii. Collect ground water samples from any existing monitoring wells pursuant to N.J.A.C. 7:26E-3.7;

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iv. Analyze samples collected above for TCL/TAL, pH, ammonia (as N), nitrate (as N), total dissolved solids (TDS), and conductivity;

v. Screen any existing vents for lower explosive level, volatile organic contaminants, methane and hydrogen sulfide using appropriate field analytical techniques such as photoionization detector (PID), flame ionization detector (FID), or other suitable instruments capable of detecting the contaminants pursuant to N.J.A.C. 7:26E-2.1(b); and

vi. Determine the type, extent, and condition of the landfill cap or cover including chemical analysis of soil for TCL/TAL pursuant to N.J.A.C. 7:26E-3.6.

(b) If historic fill material may be present at the site, the person responsible for conducting the remediation shall conduct a site investigation as follows:

1. Confirm whether historic fill material is present; and

2. If historic fill material is confirmed, either:

i. Assume that the fill material is contaminated above the residential soil remediation standards and conduct a remedial investigation of historic fill material pursuant to N.J.A.C. 7:26E-4.6(b); or

ii. Demonstrate that the historic fill material is not contaminated above the residential soil remediation standards by sampling pursuant to N.J.A.C. 7:26E-3.4, 3.6 and 3.9, as applicable;

3. Investigate areas of concern located in historic fill material independently of the historic fill material. To differentiate between contaminants in fill and those from site discharges, conduct an evaluation of the contaminant type and concentration gradient in each area of concern and the contaminant distribution in the fill;

4. If historic fill material is assumed to be, or is determined to be contaminated, and the fill material is located within two feet of the seasonally high water table, collect a minimum of one ground water sample pursuant to N.J.A.C. 7:26E-3.7;

5. If the results of ground water sampling conducted pursuant to (b4) above indicate contaminant concentrations are below the applicable ground water remediation standards, no further investigation of ground water as relates to impacts from historic fill is required; and

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6. If the results of ground water sampling conducted pursuant to (b)4 above indicate contaminant concentrations are above an applicable ground water remediation standard:

i. For sites where the historic fill material extends beyond the property boundaries, the Department will establish a ground water classification exception area pursuant to N.J.A.C. 7:26E-6.3, using the footprint of the property as the boundaries of the classification exception area; or

ii. For sites where the historic fill material is contained within the property boundaries, conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26E-4.4.

7:26E-3.13 Site investigation report

(a) (No change.)

(b) The site investigation report shall include the following:

1. (No change.)

2. A physical setting section which shall include descriptions of the following unless the remediation is directed at either a specific discharge event, rather than a particular area of concern, or any underground tank or underground tank system:

i. - ii. (No change.)

iii. The results of the well search conducted pursuant to N.J.A.C. 7:26E-1.17 [N.J.A.C. 7:26E-3.7(e)3 using the well search format at Appendix B] and the Department's Well Search Guidance; and

iv. The direction of ground water flow, as determined pursuant to [N.J.A.C. 7:26E-3.7(e)3iv]N.J.A.C. 7:26E-3.7(e)3.

3. - 4. (No change.)

5. A completed a case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report.

(c) The site investigation report shall also include the following data and information:

1. - 2. (No change.)

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3. A table summarizing all sampling results, including sample location, media, sample depth, field and laboratory identification numbers, analytical results, and comparison to applicable remediation standards organized by area of concern:

i. - iv. (No change.)

v. The data in the summary table shall be presented both as a hard copy and an electronic deliverable using the format outlined in detail in the Site Remediation Program's Electronic Data Interchange Manual in effect as of the date the report is submitted. The Electronic Data Interchange Manual may be obtained at [<http://www.state.nj.us/dep/srp/hazsite/index.html> or by calling (609) 292-9418] <http://www.nj.gov/dep/srp/hazsite/docs/>. Electronic deliverables are not required if the summary table is prepared as part of the remediation of a specific discharge event or for an area of concern that consists of a storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no groundwater impact.

(1) The following locational information shall be submitted:

(A) (No change.);

(B) Locational information collected in latitude and longitude shall be converted to New Jersey state plane coordinates. Conversion programs can be obtained at [<http://www.state.nj.us/dep/srp/hazsite/index.html>.] <http://www.nj.gov/dep/srp/hazsite/help/software/>.

(2) - (3) (No change.)

4. - 6. (No change.)

7. The following information shall be reported for each monitoring well sampled for each ground water sampling event. All measurements shall be to the nearest 0.01 feet:

i. Before purging:

(1) - (3) (No change.)

(4) The thickness of free product, if present, as determined pursuant to [N.J.A.C. 7:26E-2.1(a)11]N.J.A.C. 7:26E-2.1(a)14;

(5) - (9) (No change.)

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- ii. - v. (No change.)
- 8. (No change.)

(d) The site investigation report shall also include the following legible maps and diagrams:

- 1. - 2. (No change.)

3. If applicable, a map of the distribution of free product, and surface water, structure and airborne contaminants, including sample location numbers and contaminant concentrations;

- 4. - 5. (No change.)

(e) If a vapor intrusion evaluation was conducted pursuant to N.J.A.C. 7:26E-1.18, the site investigation report shall also include the following:

1. A summary of the vapor intrusion evaluation including, a description of all structures that were sampled and those that where sampling was determined not to be necessary; and

2. A scaled map of the site and surrounding area that:

i. Includes the locations of each structure and subsurface utility identified in relation to the areas of known ground water contamination;

ii. Includes the use of all structures and whether they are occupied; and

iii. Highlights each structure that is used as a residence, school, or child care center.

(f) The site investigation report shall also include the results of the baseline ecological evaluation;

(g) The site investigation report shall also include the results of all landfill and historic fill material investigations conducted pursuant to N.J.A.C. 7:26E-3.12, including:

1. A summary of all records pertaining to the nature of waste disposal at the landfill, and permit information; and

2. A copy of the records summarized in accordance with (g)1 above, as a separate attachment to the report.

(h) The site investigation report shall also include a summary and rationale for each variance from the requirements of this subchapter or guidance.

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SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) A remedial investigation is necessary at each area of concern with contaminants which exceed [the] any applicable unrestricted use soil remediation standards or the applicable [groundwater or surface water] remediation standard [pursuant to N.J.A.C. 7:26E-1.13]. The purposes of a remedial investigation are to:

1. - 7. (No change.)

(b) [The delineation of the horizontal and vertical limits of contamination to the applicable unrestricted use remediation standard for all media shall be conducted as part of the remedial investigation.] The person responsible for conducting the remediation shall delineate contamination in all media pursuant to the Department's Compliance Guidance. When the future use of an area under investigation is known to be restricted and the property owner has agreed to place a deed notice on the property appropriately restricting its use, the person responsible for conducting the remediation may delineate the horizontal and vertical limit of the soil contamination to the applicable restricted use standard or the applicable ground water impact soil cleanup criteria, whichever is lower. The person responsible for conducting the remediation at the site shall determine if soil contamination has migrated off the property, at any depth, above the applicable unrestricted use standard. Delineation samples shall be biased to identify any migration paths of the contaminant. Samples shall be biased based on professional judgment, area history, discolored soil, stressed vegetation, drainage patterns, field instrument measurements, odor and other field indicators. Delineation shall be accomplished by either:

1. - 3. (No change.)

(c) (No change.)

7:26E-4.2 Remedial investigation workplan

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(a) [If a remedial investigation workplan is required by the Department in an oversight document or by the ISRA or UST programs, the workplan shall include proposals to complete all applicable requirements pursuant to N.J.A.C. 7:26E-4.1 and 4.3 through 4.7.] The person responsible for conducting the remediation shall prepare a remedial investigation workplan prior to conducting the remedial investigation. The remedial investigation workplan shall be [presented] in a format that corresponds to the outline of this section.

(b) The remedial investigation workplan shall include:

1. - 8. (No change.)
9. Quality assurance project plan including proposed sampling/ analytical methods pursuant to N.J.A.C. 7:26E-2.2;[and]
10. Health and safety plan pursuant to N.J.A.C. 7:26E-1.9[.]; and
11. A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the workplan.

TABLE 4-1 (No change.)

7:26E-4.4 Remedial investigation of ground water

(a) - (f) (No change.)

(g) All ground water monitoring wells and piezometers shall:

1. Be constructed pursuant to N.J.A.C. 7:9D. [Variations from the well construction procedures in N.J.A.C. 7:9D shall be proposed to the assigned case manager prior to requesting a variance under N.J.A.C. 7:9D.] Failure to install a well or piezometer in accordance with current well construction specifications in N.J.A.C. 7:9D can result in rejection of results, and requirements to decommission the well or piezometer;

2.- 10. (No change.)

11. Be constructed with a locking cap and generally protected from damage and vandalism. [Any damage or vandalism to a monitoring well or piezometer shall be reported to

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the Department, and] The person responsible for conducting the remediation shall, within 14 days after discovering the damage, properly repair or decommission the damaged monitoring well or piezometer [shall be properly repaired or decommissioned] in accordance with N.J.A.C. 7:9D.

(h) - (i) (No change.)

7:26E-4.5 Remedial investigation of surface water, wetlands and sediment

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

(c) The surface water investigation shall be conducted pursuant to (d) below to evaluate the relationship between contaminated ground water, sediments and surface waters, unless:

1. [Documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided with the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why] If the person responsible for conducting the remediation determines that this migration pathway [was]is not considered significant[;], that person shall provide a technical rationale supporting that conclusion in the remedial investigation report; or

2. (No change.)

(d) (No change.)

7:26E-4.6 Remedial investigation of landfills and historic fill material

[(a) The remedial investigation shall include, unless the remedial investigation is being conducted pursuant to ISRA, an investigation of all landfills as follows:

1. The remedial investigation of landfills shall be conducted pursuant to N.J.A.C. 7:26E-4.1 according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Landfill investigations shall characterize the contents of the landfill through a complete file review, which shall include a review of the Department's Geographic Information System. In addition, the horizontal and vertical extent of fill material and impact on the soil, ground water, air and surface waters shall be evaluated;

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3. The boundaries of the landfill shall be identified through geophysical sensing techniques, or subsurface exploration techniques including test pits or borings, or an aerial photographic history, or local government records, or use of the Department's Geographic Information System. Other methods may be used if documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why the methods were considered appropriate; and

4. The person responsible for conducting the remediation shall review all records pertaining to the landfill to determine if any hazardous waste pursuant to N.J.A.C. 7:26 may have been disposed in the landfill.]

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of a landfill as follows:

1. Determine the horizontal extent of the landfill without regard to the location of property boundaries, as follows:

i. Use aerial photography, local government records, and the Department's Geographical Information System;

ii. Install test pits at a minimum of one every 100 linear feet around the perimeter of the landfill;

iii. Install test pits and/or borings perpendicular to the landfill until no waste is found;
and

iv. Use borings to determine the horizontal extent of the landfill if the landfill material is buried too deep for the use of test pits. Borings shall be of a sufficiently large diameter so that samples from the boring will clearly identify the recovered material;

2. Determine the vertical extent of the landfill as follows:

i. Install test pits or borings through the landfill material to native soil, meadow mat or bedrock without regard to the depth of the water table;

ii. Install test pits equally distributed across the landfill unless locations can be biased based on landfill records or geophysical sensing results or site observations;

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iii. Use borings to determine the vertical extent of the landfill if the landfill material is buried too deep for the use of test pits. Borings shall be of a sufficiently large diameter so that samples from the boring will clearly identify the recovered material; and

iv. Install test pits or borings at the following minimum frequency:

<u>Acreege of Land Fill</u>	<u>Number of Test Pits or Borings</u>
<u>1-10</u>	<u>1 per acre (minimum of 3)</u>
<u>11-50</u>	<u>1 per two acres (minimum of 6)</u>
<u>51-100</u>	<u>1 per three acres (minimum of 17)</u>
<u>101-200</u>	<u>1 per four acres (minimum of 25)</u>
<u>Over 201</u>	<u>1 per five acres (minimum of 40)</u>

3. Delineate the location, condition, and contents of buried containers identified in the landfill pursuant to N.J.A.C 7:26E-3.12(a)2 using test pits as follows:

i. Determine the general physical characteristics of the waste material including the presence of free product pursuant to N.J.A.C. 7:26E-2.1(a)14;

ii. Log the waste material, soils, and all buried containers encountered in the test pits or borings; and

iii. Record the location of each test pit or borings using a format compatible with the Department's Geographic Information System (see N.J.A.C. 7:1D Appendix A) and the Department's GIS Guidance;

4. Evaluate each test pit or boring required pursuant to 1 through 3 above as follows:

i. Determine the general physical characteristics of the waste material including the presence of free product pursuant to N.J.A.C. 7:26E-2.1(a)14;

ii. Log the waste material, soils, and all buried containers encountered in the test pits or borings; and

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iii. Record the location of each test pit or borings using a format compatible with the Department's Geographic Information System (see N.J.A.C. 7:1D Appendix A) and the Department's GIS Guidance;

iv. Collect leachate or ground water samples, when present;

v. Collect soil samples from below any waste material;

vi. Screen for lower explosive level (LEL), volatile organic contaminants, methane and hydrogen sulfide using appropriate field analytical techniques such as photoionization detector (PID), flame ionization detector (FID), or other suitable instruments capable of detecting the contaminants pursuant to N.J.A.C. 7:26E-2.1(b);

vii. Conduct a radiation survey of the test pits/borings using a hand-held gamma meter. The survey shall be conducted by a person qualified and experienced in the use of radiation survey techniques; and,

viii. Analyze samples collected above for TCL/TAL, pH, ammonia (as N), nitrate (as N), total dissolved solids (TDS), and conductivity;

5. Conduct ground water and leachate sampling pursuant to N.J.A.C. 7:26E-3.7 and as follows:

i. Determine ground water flow direction and submit a Ground Water Contour Map Reporting form;

ii. Determine if ground water mounding is occurring by installing a minimum of one shallow monitoring well within the landfill. The well(s) shall be biased toward topographically high points in the central portion of the landfill;

iii. Install monitoring wells based on the contour map at a minimum of one for every 150 linear feet along the sides of the landfill where ground water flows from the landfill;

iv. Install monitoring wells just beyond the perimeter of the landfill with a minimum of one well in the upgradient direction of ground water flow and three wells in the downgradient direction with additional wells installed if flow extends radially from the landfill;

v. Analyze ground water samples collected from test pits installed pursuant to 1 through 3 above, if potential in lieu of shallow ground water monitoring wells required in (i)2

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and (i)3 above. Bias sampling towards test pits where contamination is indicated by visual observations, odors, free product, and field instrument readings;

vi. Collect ground water or leachate samples at the water table from monitoring wells installed pursuant to ii through iv above; and

vii. Analyze ground water and leachate samples for TCL/TAL, pH, ammonia (as N), nitrate (as N), total dissolved solids (TDS), and conductivity; and

6. Delineate sources of contaminants within and beyond the limits of the landfill based on the results of the screening of vents, test pits, or borings for lower explosive limit, volatile organic contaminants, methane, and hydrogen sulfide.

(b) The person responsible for conducting the remediation [remedial investigation of historic fill material] shall [identify] determine the extent of the on-site location of the historic fill material and characterize the fill material, including a determination of the presence of any contaminated non-historic fill material and any free and/or residual product pursuant to [N.J.A.C. 7:26E-2.1(a)11] N.J.A.C. 7:26E-2.1(a)14, as follows:

1. - 3. (No change.)

4. Areas of concern located in historic fill material shall be investigated independently of the historic fill material. To differentiate between contaminants in fill and those from site discharges, an evaluation of the contaminant type and concentration gradient in each area of concern and the contaminant distribution in the fill shall be conducted. If this evaluation is not conclusive the Department may require additional data or information; and

5. If at any time during the remedial investigation of fill material the person responsible for conducting the remediation encounters materials that do not meet the definition of historic fill material because it includes material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag or tailings, free and/or residual product, as determined pursuant to [N.J.A.C. 7:26E-2.1(a)11] N.J.A.C. 7:26E-2.1(a)14, or containerized waste, the remediation of each such area shall be conducted as a separate area(s) of concern pursuant to N.J.A.C. 7:26E-4.1; and

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6. An appropriate number of ground water samples (minimum of one sample) are required when a high degree of certainty is needed to document that ground water is not contaminated, including, without limitation, if the historic fill site is in an area where ground water is used for potable water. Any ground water sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.7(c).]

TABLE 4-2 (No change.)

7:26E-4.8 Remedial investigation report

(a) The remedial investigation report shall comply with all requirements in N.J.A.C. 7:26E-3.13 (site investigation report) and in addition shall present and discuss any additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the [approved] remedial investigation workplan as outlined in N.J.A.C. 7:26E-4.2 [if applicable]. The remedial investigation report shall be accompanied by a Remedial Investigation Report form and be presented in a format that corresponds to the outline of this section.

(b) The remedial investigation report shall include the following:

1. A copy of the remedial investigation workplan required pursuant N.J.A.C. 7:26E-4.2;

1. Recodify as 2. (No change in text.)

[2.]3. Physical setting pursuant to N.J.A.C. 7:26E-4.2(b)4, including but not limited to[:

i. The] the results of the groundwater flow direction confirmation conducted pursuant to N.J.A.C. 7:26E-4.4(h)3ii; [and]

[ii. The results of the updated well search conducted pursuant to N.J.A.C. 7:26E-4.4(h)3v, including a conclusion as to whether any wells may be impacted by the contaminant plume. The results of the well search shall be presented on the well search form at Appendix B.]

3. Recodify as 4. (No change in text.)

[4.]5. Findings/recommendations pursuant to N.J.A.C. 7:26E-3.13(b)4 and shall include a determination whether remedial action is required for soil pursuant to the Department's Compliance Guidance; and

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6. A completed a case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report.

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

(e) If the person responsible for conducting the remediation conducted a vapor intrusion evaluation during the remedial investigation, the person shall include the results of that evaluation as a part of the remedial investigation report the information required pursuant to N.J.A.C. 7:26E 7:26E-3.13(e).

(f) The person responsible for conducting the remediation shall submit an updated receptor evaluation pursuant to N.J.A.C. 7:26E-1.15 on a Receptor Evaluation form provided by the Department.

(g) The remedial investigation report shall also contain the results of all other remedial investigations conducted pursuant to this subchapter.

SUBCHAPTER 5. REMEDIAL ACTION SELECTION

7:26E-5.1 Remedial action selection

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

(c) [A]The person responsible for conducting [a] the remediation [for a site] shall select a remedial action that reduces contamination to below all applicable remediation standards or eliminates exposure to [contaminants] contamination above the applicable remediation [standard.] standards based on the current and future land use for the site and all of the following:

1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12;

i. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4; and

ii. Any other applicable standards adopted pursuant to law;

2. All applicable New Jersey regulations, including, without limitation:

i. The Technical Requirements for Site Remediation at N.J.A.C. 7:26E; and

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ii. The remediation standards promulgated by the Department at N.J.A.C. 7:26D;
3. The Department's technical guidelines concerning site remediation at
www.nj.gov/dep/srp/srra/guidance; and

4. If there is no specific requirement provided by any technical standard the Department has adopted, or the Department's guidance is not appropriate or necessary, the person responsible for conducting the remediation may use the following additional technical guidance to make decisions regarding remediation, shall specifically identify all such guidance used, and set forth the rationale for such use:

i. Relevant guidance from the United States Environmental Protection Agency or other states; and

ii. Other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and the environment.

(d) In determining the appropriate remedial action that will reduce or eliminate exposure to contaminants above the applicable remediation standard, the person responsible for conducting the remediation shall also select, develop and implement a remedial action that is based on the following factors:

1. The ability of the remedial action to protect the public health and safety and the environment, including:

i. - ii. (No change.)

iii. The degree to which the [proposed] remedial action reduces toxicity, mobility, or volume of contaminants through treatment, reuse or recycling;

iv. - v. (No change.)

2. The implementability of the [proposed] remedial action, including:

i. The engineering and scientific feasibility and availability of the technologies that the [proposed] remedial action would employ. If treatability, bench scale, or pilot studies have been conducted pursuant to N.J.A.C. 7:26E-4.1(a)4, these results shall be utilized to determine whether or not the [proposed] remedial action is technically feasible; or

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[ii. The ability of the person responsible for conducting the remediation to implement the proposed remedial action within a reasonable time frame. A proposed remedial action will be considered timely if it will achieve the applicable remediation standard within five years from the time the remedy is implemented, or in the case where Department approval of a remedial action workplan is required or sought, five years from remedial action workplan approval. Remedial actions to address immediate environmental concerns shall be considered timely as specified by the Department in an oversight document pursuant to N.J.A.C. 7:26C.]

iii. Recodify as ii. (No change in text.)

3. The consistency of the [proposed] remedial action with other applicable Federal, State, and local laws and regulations, including, without limitation, the provisions of the Pinelands Protection Act, P.L. 1979, c.111 (N.J.A.C. 13:18A-1 et seq.), any rules promulgated pursuant thereto, and the provisions of section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711;

4. The potential impacts of the [proposed] remedial action on the local community, including, without limitation:

i. The potential impacts to the community identified by the responses that the person responsible for conducting the remediation receives from the notices provided in accordance with N.J.A.C. 7:26E-1.4[(a)]; and

ii. The degree to which the [proposed] remedial action is consistent with the local land use Master Plan; and

5. (No change.)

[(d)](e) [A] The person responsible for conducting the remediation may select an innovative remedial action technology for any site, area of concern, or contaminated media[, upon review and approval of an application submitted to the Department]. The [application for use] selection of an innovative remedial action technology shall include:

1. (No change.)

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2. A report that includes a detailed description of the following shall be submitted with the remedial action selection report, the remedial action workplan or the feasibility study, as applicable:

i. - iv. (No change.)

(f) The person responsible for conducting the remediation that is remediating a site that is subject to direct Department oversight pursuant to N.J.S.A. 58:10C-27 shall submit a feasibility study, consistent with the USEPA guidance, with a remedial investigation report instead of submitting a remedial action selection report, or as the Department otherwise directs.

(e) - (f) Recodify as (g) - (h) (No change in text.)

(i) If new construction of, or a change in use to, a residence, a school, or child care center will occurs at a site that is undergoing remediation, under the circumstances listed in 1 below, the person responsible for conducting the remediation shall select a remedial action from the list of remedial actions in 2 below.

1. For any remediation initiated:

i. Before May 7, 2010, and the Department directs the person to do so; or

ii. On or after May 7, 2010.

2. List of remedial actions:

i. An unrestricted use remedial action;

ii. A presumptive remedial action consistent with the Department's Presumptive Remedy Guidance on presumptive remedial actions; or

iii. A alternative remedy pursuant to (j) below.

(j) The person responsible for conducting the remediation shall not implement an alternative remedy for a site that will be used as a residence, a school, or a child care center without the Department's prior written approval.

(k) The person responsible for conducting the remediation shall request the Department's approval of an alternative remedy, pursuant to (j) above, by submitting all of the following to the Department:

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1. A written analysis explaining why the presumptive remedial action is impractical due to site conditions if the basis for proposing an alternative remedy is that the presumptive remedies published by the Department are impractical; and

2. (No change.)

7:26E-5.2 Remedial action selection report

(a) The person responsible for conducting the remediation shall demonstrate to the Department that the proposed remedial action is appropriate by submitting a remedial action selection report to the Department for approval, prior to implementation of the remedial action, when:

1. The selected remedial action is a restricted use remedial action, except for interim response actions immediately necessary to contain or stabilize a discharge in order to prevent damage to public health, safety or the environment.

2. The selected remedial action utilizes an innovative remedial action technology;

3. The selected remedial action will take longer than five years to complete from the time the remedial action is implemented, or the remedial action workplan is approved by the Department; or

4. The selected remedial action is being implemented to address ground water, surface water or sediment contamination or ecological impact.

(b) A remedial action selection report is not required if the site being remediated is subject to the requirements for preparing a feasibility study pursuant to CERCLA or a corrective measures study pursuant to RCRA.

(c) A remedial action selection report is not required if the site or area of concern being remediated is an unregulated heating oil tank system, unless the person responsible for conducting the remediation is required to enter into a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order in order to obtain a No Further Action Letter pursuant to the Department Oversight of the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.5(d).

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(d) The remedial action selection report shall be presented in a format that corresponds to the outline of this section, except that for innovative remedial action technologies the format shall include the information required at N.J.A.C. 7:26E-5.1(d), and shall include:

1. A detailed description of the selected remedial action including, without limitation, specifications for engineering and institutional controls and a plan for monitoring of such controls pursuant to N.J.A.C. 7:26E-8;

2. A list of the remediation standards that the proposed remedial action will comply with for each media of concern at each area(s) of concern;

3. A discussion of how the proposed remedial action satisfies all of the criteria pursuant to N.J.A.C. 7:26E-5.1(c), (d), if applicable, and (e); and

4. The Department may require the submittal of any additional information regarding remedial action selection which is necessary for the Department to determine if the remedy is appropriate.

(e) Where Department pre-approval of a remedial action workplan is required pursuant to N.J.A.C. 7:26E-6.1(b), or sought, the remedial action selection report should be submitted in conjunction with the final remedial investigation report, N.J.A.C. 7:26E-4.8. If the remedial action selection report is not submitted with the final remedial investigation report, the remedial action selection report shall be submitted with the remedial action workplan, N.J.A.C. 7:26E-6.2.

(f) Where Department pre-approval of a remedial action workplan is not required or sought, the remedial action selection report shall be submitted with the remedial action report, N.J.A.C. 7:26E-6.7.]

(a) The person responsible for conducting the remediation shall prepare and submit a remedial action selection report with the remedial action workplan and the Remedial Action Workplan form, except as provided in (c) below.

(b) The remedial action selection report shall be presented in a format that corresponds to the outline of this section and shall include:

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1. A detailed description of the selected remedial action including, without limitation, specifications for engineering and institutional controls, and a plan for monitoring of such controls pursuant to N.J.A.C. 7:26E-8;

2. A list of the remediation standards that the remedial action will comply with for each media of concern at each area of concern;

3. A discussion of how the remedial action satisfies all of the criteria pursuant to N.J.A.C. 7:26E-5.1(c) through (e) as applicable;

4. A discussion of why the alternative remedy is equally protective as the applicable presumptive remedy pursuant to N.J.A.C. 7:26E-5.1(j). An alternative remedy shall be approved by the Department prior to its implementation at a site;

5. A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report; and

6. Any additional information regarding remedial action selection that is necessary for the Department to determine if the remedy is appropriate.

(c) The person responsible for conducting the remediation is not required to submit a remedial action selection report when:

1. The remediation is limited to an unregulated heating oil tank system;

2. The person is required to submit a feasibility study pursuant to CERCLA, or is required to submit a corrective measures study pursuant to RCRA; or

3. The person is subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27; or

4. That person is using a licensed site remediation professional to oversee the remediation unless a remedy that is an alternative to the presumptive remedy is proposed.

SUBCHAPTER 6. REMEDIAL ACTION

7:26E-6.1 Remedial action requirements

(a) (No change.)

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[(b) Each remedial action implemented at a contaminated site shall:

1. Be approved by the Department prior to implementation, if a remedial action selection report is also required pursuant to N.J.A.C. 7:26E-5.2(a);

2. Comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department, provided, however, that if the applicable numeric remediation standards decrease by an order of magnitude or more prior to the issuance of a No Further Action Letter for the area of concern or the site, the person responsible for conducting the remediation shall be responsible for any additional necessary remediation to achieve the new remediation standards;

3. Comply with all applicable Federal, State, and local laws, regulations, and requirements; and

4. Not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another.]

(b) Except as provided in N.J.A.C. 7:26E-6.2(b), the person responsible for conducting the remediation shall ensure that each remedial action implemented at a contaminated site shall:

1. Be approved by the Department or a licensed site remediation professional prior to implementation;

2. Comply with the requirements of this subchapter;

3. Not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another;

4. Comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department or was prepared by a licensed site remediation professional, provided, however, that if an applicable numeric remediation standard decreases by an order of magnitude or more prior to the issuance of a final remediation document for the site being remediated, the person shall be responsible for additional necessary remediation to achieve the new remediation standard; and

5. Use institutional controls whenever a restricted use remedy or a limited restricted use remedy is used to remediate a site.

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(c) - (f) (No change.)

7:26E-6.2 Remedial action workplan

(a) [If a remedial action workplan is required by the Department in an oversight document or pursuant to the ISRA or UST programs, or if the person responsible for conducting the remediation elects to obtain Department pre-approval for the workplan, the workplan shall be submitted in accordance with the schedule contained in that document, if applicable, and shall be presented in a format that corresponds directly to the outline of this section in a format that corresponds directly to the outline of this section. The workplan shall include:] The person responsible for conducting the remediation shall prepare and submit a remedial action workplan in a format that corresponds directly to the outline of this section with a Remedial Action Workplan form. The workplan shall include:

1. through 15. (No change.)

16. The following documentation whenever a deed notice is required as a component of the remedial action:

i. (No change.)

ii. A draft deed notice, including all of the exhibits, pursuant to N.J.A.C. 7:26E-8.2(c) unless a licensed site remediation professional has been hired;

17. All documentation required pursuant to N.J.A.C. 7:26E-8.3 whenever a classification exception area is to be established; [and]

18. A plan for the monitoring, maintenance and evaluation of all engineering and institutional controls pursuant to N.J.A.C. 7:26E-6.3, 8.5, 8.6, and 8.7, as applicable[.]; and

19. A completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the workplan.

(b) The person responsible for conducting the remediation subject to N.J.A.C. 7:26C-2.3 may implement a soil remedial action without the prior Department approval of a remedial action workplan if that person:

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1. Can complete the soil remedial action within 5 years from the commencement of the implementation of the remedial action; or

2. Is implementing a soil remediation which meets the established residential or nonresidential use soil remediation standards.

(c) The person responsible for conducting the remediation who proposes to reuse contaminated soil as part of a remedial action shall include in the remedial action workplan a reuse soil plan pursuant to the Department's Guidance Document for the Remediation of Contaminated Soils and that includes all of the following:

1. - 3. (No change.)

[(c)](d) (No change.)

7:26E-6.3 Specific remedial action requirements

(a) (No change.)

(b) The following requirements shall be followed for the closure of an underground storage tank:

1. - 5. (No change.)

6. The tank shall be removed from the site according to all applicable laws and regulations.

i. - ii. (No change.)

iii. If the underground storage tank is located under a permanent structure or is physically inaccessible or a certification is submitted, signed and sealed by a licensed New Jersey professional engineer, stating that the sampling requirements at (b)6ii(3), (4), and (5) above for closure of the underground storage tank will cause damage to an adjacent structure, an alternate method for documenting the integrity of the tank may be submitted pursuant to [N.J.A.C. 7:26E-1.6(d)] N.J.A.C. 7:26E-1.7;

iv. - v. (No change.)

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[(c) For a proposed remediation that includes a discharge to ground water described by the New Jersey Pollutant Discharge Elimination System (NJPDES) permit-by-rule at N.J.A.C. 7:14A-7.5 (b)3vii, the following requirements apply:

1. The person seeking authorization under this permit-by-rule shall submit a remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 that includes the following:

i. A detailed description of how the discharge would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Surface Water Quality Standards, N.J.A.C. 7:9B;

ii. A detailed explanation of why the proposed ground water treatment system would be appropriate for the discharge. The explanation shall include, but not be limited to, plans for operating the proposed treatment system by a person licensed pursuant to the Licensing of Water Supply and Wastewater Treatment System Operators rules, N.J.A.C. 7:10A, where a licensed operator would be required to run the system;

iii. A detailed description of the type, location, volume and duration of the discharge that would be required for the remediation of ground water or soil, and a detailed description of the effect that the proposed discharge would have on ground water or any other receptor;

iv. A detailed description of the concentrations of all contaminants expected to be present in the discharge;

v. A detailed a description of the chemical content of all fluids and substances to be discharged and/or placed into, or onto the ground to implement remediation;

vi. A detailed monitoring plan, including but not limited to, the monitoring wells to be sampled, the frequency of sampling for wells, and if applicable, the fluid to be discharged, and a list of all the analytes to be monitored;

vii. A detailed proposal to modify, as applicable, any existing Classification Exception Area or establish a new Classification Exception Area, as defined in the Ground Water Quality Standards, N.J.A.C. 7:9C;

viii. A detailed schedule for the submission of reports of all discharge-related activities;

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ix. If applicable, specifications for the design of an underground injection system. Such specifications shall be in accordance with New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C 7:14A-8; and

x. A draft public notice, worded exactly as the model in Appendix H, for approval prior to publication in accordance with (c)2 below.

2. The person seeking authorization under this permit-by-rule shall publish the public notice of the request for permit-by-rule authorization required by (c)1x above in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least 45 days prior to the proposed startup date of the ground water discharge, that includes the following:

- i. The name and location of the site;
- ii. A brief description of the proposed discharge; and
- iii. A public comment period of at least 30 days;

3. The person seeking authorization under this permit-by-rule shall provide a copy of the remedial action workplan, which includes the request for permit-by-rule authorization, to the mayor, clerk, and planning board for each municipality where the contaminated site is located, and any sewerage authority, health officer and environmental commission with jurisdiction for each area in which the contaminated site is located;

4. The person seeking authorization under this permit-by-rule shall submit to the Department proof of publication of the public notice required by (c)2 above within 15 calendar days after the notice is published;

5. The Department shall hold a public hearing if there is or may be a significant degree of public interest in favor of holding a public hearing. The Department may hold a public hearing if it determines that a hearing is likely to clarify one or more legal or factual issues regarding a request for permit-by-rule authorization and that oral testimony is essential to adequately express all issues and concerns;

i. The Department shall publish a notice of a public hearing at least 30 days prior to the hearing; and

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ii. The Department shall extend the public comment period to the close of the public hearing;

6. Written comments and requests for a public hearing on the request for permit-by-rule authorization shall be submitted to the Department to the address provided in the public notice in accordance with (c)2 above

7. The Department shall consider comments received during the public comment period and respond to the comments when it issues the written decision to approve or deny the permit-by-rule authorization. The Department shall provide a copy of the decision to each commenter and to each person or entity to whom the notice was sent pursuant to (c)3 above.

8. The person that is granted authorization under this permit-by-rule shall comply with the record-keeping requirements of the New Jersey Pollutant Discharge Elimination System (NJPDES) rules set forth at N.J.A.C. 7:14A-6.6.]

(c) The person responsible for conducting the remediation of a landfill shall:

1. Obtain and comply with all permits required by N.J.A.C. 7:26-2A; and

2. If any drums, tanks or other waste containers are identified in the landfill, evaluate whether:

i. The integrity of the landfill containment system would be threatened if the drum, tanks or other waste containers are left in place; and

ii. Excavation and treatment of these materials would be practicable and result in a reduction in risk at the site.

(d) When submitting a remedial action workplan for natural ground water remediation, the person responsible for conducting the remediation shall demonstrate to the Department that:

1. Groundwater contaminant concentrations will decrease to applicable remediation standards pursuant to [N.J.A.C. 7:26E-1.13] N.J.A.C. 7:26D through degradation, retardation, or dispersion under present site conditions.

i. - ii. (No change.)

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2. Free and/or residual product in the unsaturated and saturated zones, as determined pursuant to [N.J.A.C. 7:26E-2.1(a)11] N.J.A.C. 7:26E-2.1(a)14, is treated or removed, if practicable, or contained if treatment or removal are not practicable;

3. - 6. (No change.)

7. Contaminant levels in ground water do not present a vapor risk to any receptors[. This determination shall be made on a case-by-case basis];

8. - 10. (No change.)

(e) (No change.)

(f) The person responsible for conducting the remediation that is implementing an active ground water remediation shall include a monitoring plan in the remedial action workplan with a schedule designed to demonstrate:

1. There is a decreasing trend of contaminant concentrations in the ground water and that the ground water remediation standards will be attained in the treatment zone using the Mann-Whitney U test or the Department's Remedial Action Outcome guidance shall be used make this determination.

2. The plume is not migrating horizontally or vertically into an uncontaminated aquifer zone below and adjacent to the contaminant plume;

3. The plume is contained and not reaching the sentinel wells. Contaminant levels in sentinel wells shall remain below the applicable standard. The sentinel wells shall be located no closer than three years contaminant travel time to the nearest potential downgradient receptor and no further than five years contaminant travel time from the delineated downgradient extent of the contaminant plume; and

4. The ground water remedial action is performing as designed.

(g) The person responsible for conducting the remediation that is implementing an active ground water remediation shall include a ground water monitoring plan, with a schedule, designed to evaluate the ground water remedial action in order to:

1. Optimize the system's performance as the remediation progresses; and

2. Optimize the ground water quality monitoring program as remediation progresses.

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(h) The person responsible for conducting the remediation subject to (e) and (g) above shall apply for a ground water remedial action permit by submitting the following to the Department with the monitoring plan pursuant to (e) and (g) above:

1. A completed Ground Water Remedial Action Permit form;
2. A completed CEA/Well Restriction Area (WRA) Permit Fact Sheet form; and
3. A ground water remedial action permit application fee pursuant to N.J.A.C. 7:26C-4.4.

7:26E-6.4 [Post-] Additional remedial action requirements

(a) The [following sampling] person responsible for conducting the remediation shall document the effectiveness of the remedial action as follows:

1. - 6. (No change.)

(b) The person responsible for conducting the remediation shall restore all areas of concern [All areas subject to remediation shall be restored,] to the extent practicable, to pre-remediation conditions with respect to topography, hydrology and vegetation[, unless alternate restoration is approved by the Department pursuant to N.J.A.C. 7:26E-1.6(d).]as follows:

1. - 3. (No change.)

(c) (No change.)

(d) If contaminated soils will be reused at a site, [a soil reuse evaluation proposal shall be conducted and submitted to the Department prior to the reuse of contaminated soils and shall satisfy] the person responsible for conducting the remediation shall prepare a soil reuse plan pursuant to the Department's Guidance Document for the Remediation of Contaminated Soils that complies with the following sampling requirements:

1. The contaminated soil intended for reuse shall be fully characterized and delineated pursuant to the site investigation, N.J.A.C. 7:26E-3, and remedial investigation, N.J.A.C. 7:26E-4, or, if the soil has not been fully characterized and delineated, the soil shall be sampled in accordance with all applicable requirements at N.J.A.C. 7:26E-1, 2, 3.4, and 3.6, at the following frequencies:

- i. - ii. (No change.)

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iii. For quantities of soil greater than 1,000 cubic yards, a lower sampling frequency may be acceptable[, subject to prior Departmental approval pursuant to N.J.A.C. 7:26E-1.6(d)];.

2. (No change.)

3. Excavated soil from drill cuttings or test pit excavations, may be returned to the original location provided that:

i. (No change.)

ii. Neither free nor residual product is present, as determined pursuant to [N.J.A.C. 7:26E-2.1(a)11] N.J.A.C. 7:26E-2.1(b)14;

iii. - iv. (No change.)

(e) If the person responsible for conducting the remediation required for real property not owned by that person does not obtain the property owner's written consent to implement the institutional and/or engineering control at the property and to record a deed notice, the person shall remediate the property to an applicable [unrestricted] residential soil remediation standard.

(f) The person responsible for conducting the remediation shall implement, when contaminant levels in the source monitoring wells are at or below the applicable standards for two consecutive high seasonal water table monitoring events, a post remedial action implementation monitoring plan to determine whether the achieved ground water remediation standards are sustainable and not subject to concentration rebound after remediation standards are met.

7:26E-6.5 Remedial action schedule

(a) (No change.)

(b) The person responsible for conducting the remediation shall include the following in the remedial action schedule:

1. Monthly time frames, for the initiation and completion of each remedial action task[, including a consideration of Department review time for submitted reports. Specific dates shall not be listed, as these will be contingent upon Department approval of the remedial action workplan];

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2. - 3. (No change.)

4. A listing of all anticipated report submittals to the Department [including, without limitation, progress reports, ground water monitoring reports, post-remedial action data reports for individual areas of concern, construction design reports and final remedial action reports];

5. [Time frames for submission of remedial action progress reports pursuant to N.J.A.C. 7:26E-6.6 and the remedial action report pursuant to N.J.A.C. 7:26E-6.7, including consideration of:

i. Review times of not only the person preparing each report, but all other persons who will be reviewing the report prior to submission to the Department, including, but not limited to, owners, operators, subcontractors, and legal advisors; and

ii. Laboratory analysis and data reduction time;

6.] A timeframe for submitting a request for a waste classification to the Department for disposal or treatment of waste generated during implementation of the remedial action; [and]

[7.]6. A timeframe for site restoration pursuant to N.J.A.C. 7:26E-6.4(b)[, and the Department's final inspection.]; and

7. A schedule for the submission of a ground water remedial action permit application, pursuant to N.J.A.C. 7:26E-6.3(h).

(c) (No change.)

7:26E-6.6 Remedial action progress reports

(a) The person responsible for conducting the remediation who does not have a remedial action permit, shall submit remedial action progress reports to the Department pursuant to this section and according to the remedial action schedule pursuant to N.J.A.C. 7:26E-6.5.

(b) The person responsible for conducting the remediation shall include the following in each remedial action progress report, as appropriate:

1. - 6. (No change.)

7. The cost of each remedial action, including:

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i. An annual summary of all [remedial action] remediation costs incurred to date;
and

ii. (No change.)

8. (No change.)

9. For [active] ground water remedial actions:

i. - iv. (No change.)

10. - 12. (No change.)

7:26E-6.7 Remedial action report

(a) The person responsible for conducting the remediation shall prepare a remedial action report and submit with a Remedial Action Report form, in a format that corresponds directly to the outline of this section, when the remedial action is completed, except as noted in (e), below.

(b) The person responsible for conducting the remediation shall include the following in the remedial action report:

1. - 5. (No change.)

6. A report of the [remedial action] remediation costs, including a cost estimate to monitor, maintain, and certify the protectiveness of each engineering and/or institutional control pursuant to N.J.A.C. 7:26E-8; [and]

7. A copy of a deed notice, stamped "Filed" if applicable pursuant to N.J.A.C. 7:26E-8.2(d), along with a Remedial Action Permit form on a remedial action permit application fee pursuant to N.J.A.C. 7:26C-4.4; and

[7.]8. Information pursuant to (c) through [(e)] (g), below, as applicable.

(c) - (e) (No change.)

(f) The person responsible for conducting the remediation shall submit an updated receptor evaluation pursuant to N.J.A.C. 7:26E-1.15(d) on a Receptor Evaluation form provided by the Department.

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(g) A completed a case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Document. The case inventory document shall be provided at the front of the report.

SUBCHAPTER 7 PERMIT IDENTIFICATION, [AND] PERMIT APPLICATION SCHEDULE AND DISCHARGE TO GROUND WATER PROPOSALS

7:26E-7.1 Permit identification

(a) Any person conducting a remedial action shall identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action including but not limited to:

1. - 17. (No change.)

18. New Jersey Pollutant Discharge Elimination System (NJPDES) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);

i. - ii. (No change.)

iii. NJPDES—Discharge to Ground Water (DGW) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A) and (N.J.A.C. 7:26E-7.2);

19. -29. (No change.)

30. Hazardous Waste TSD Facility Permit, except that hazardous waste treatment, storage, or disposal facility permits pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Hazardous Waste rules at N.J.A.C. 7:26G, shall not be required for any remediation conducted on site pursuant to [any of the following:

i. An administrative consent order pursuant to N.J.A.C. 7:26C; or

ii. A memorandum of agreement expressly executed for the implementation of a Department approved remedial action pursuant to a Department approved schedule; provided, however, that if the remedial action is not implemented pursuant to the approved schedule, then this provision does not apply and the otherwise applicable hazardous waste permits shall be required

iii. Approvals under authority of ISRA and UST; or

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iv. Approvals under any State publicly funded projects] the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C; and

(b) (No change.)

(c) [Any person conducting a remedial action pursuant to an oversight document or the ISRA or UST programs,] The person responsible for conducting the remediation shall develop a permit application schedule to identify the timeframes for application and issuance/approval pursuant to N.J.A.C. 7:26E-6.5(b)3.

7:26E-7.2 Requirements for discharge to ground water proposals

(a) For each discharge to ground water (DGW) that is subject to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-7.5(d), the person responsible for conducting the remediation shall comply with this section and the Department's Guidance NJPDES Discharges to Ground Water Technical Manual for the Site Remediation Program.

(b) The person responsible for conducting the remediation shall submit a DGW proposal with a form available from the Department to the address provided on the form. The person shall include a detailed description of the following with the DGW proposal:

1. How the DGW would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Surface Water Quality Standards, N.J.A.C. 7:9B, as applicable;

2. Why the proposed ground water treatment system would be appropriate for the DGW;

3. The type, location, volume and duration of the discharge proposed for the remediation of ground water or soil, and the effect that the proposed discharge would have on ground water or any other receptor;

4. The concentrations of all contaminants expected to be present, prior to any treatment, in the fluid to be discharged;

5. The chemical content of all fluids and substances to be discharged and/or placed into, or onto the ground to implement remedial action;

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6. A monitoring plan, including but not limited to, the monitoring wells to be sampled, the frequency of sampling for wells, and if applicable, monitoring of the fluid to be discharged, and a list of all the analytes to be monitored;

7. A proposal to establish a Classification Exception Area for the area impacted by the DGW pursuant to the Department's Discharge to Ground Water Technical Manual, if applicable;

8. A schedule for the submission of reports of all discharge-related activities; and

9. Specifications for the design of an underground injection system pursuant to N.J.A.C. 7:14A-8, as applicable.

(c) Except as provided in (f) below, the person responsible for conducting the remediation shall:

1. Prior to publication of the public notice, submit a draft public notice, using the model in Appendix H, to the address provided on the form, for the Department's approval;

2. After obtaining the Department's approval of the draft public notice and prior to publishing the public notice, the person responsible for conducting the remediation shall provide a copy of:

i. The approved public notice to the clerk for each municipality in which the contaminated site is located, and to the designated local health official;

ii. The DGW proposal to the clerk for each municipality in which the contaminated site is located and to the designated local health official, if requested; and

iii. The approved public notice and DGW proposal to the Pinelands Commission, if the contaminated site is located within its jurisdiction as defined pursuant to N.J.S.A. 13:18A, at the address specified at N.J.A.C. 7:26E-1.4(r);

3. Publish the approved public notice of the DGW in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least 35 days prior to the proposed startup date of the ground water discharge;

4. Submit to the Department the proof of publication for the public notice within 15 days after the notice is published, and provide the names and addresses of everyone that was sent a copy of the public notice and DGW proposal.

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(d) The Department shall hold a public hearing on the DGW proposal if there is, or may be, a significant degree of public interest in favor of holding a public hearing. The Department may hold a public hearing if it determines that a hearing is likely to clarify legal or factual issues regarding the DGW proposal and that oral testimony is essential to adequately express all issues and concerns. If the Department decides to hold a public hearing on the proposed DGW, the Department shall:

1. Publish a notice of a public hearing at least 30 days prior to the hearing;
2. Extend the public comment period to the close of the public hearing;
3. Consider comments received during the public comment period and respond to the comments when it issues the written decision to approve or reject the DGW proposal; and
4. Provide a copy of the decision to each commenter and to each person or entity to whom the notice was sent pursuant to (c)2 above.

(e) After the Department approves the DGW, the person responsible for conducting the remediation shall comply with the applicable requirements of N.J.A.C. 7:14A-6, this section and the Department's guidance NJPDES Discharges to Ground Water Technical Manual for the Site Remediation Program.

(f) The person responsible for conducting the remediation is exempt from the notification provisions of this section:

1. When the proposed discharge is for the remediation of an unregulated heating oil storage tank; or
2. When the discharge will not exceed 180 days,

SUBCHAPTER 8 ENGINEERING AND INSTITUTIONAL CONTROLS

7:26E-8.1 General requirements

(a) (No change.)

(b) [Any person proposing] The person responsible for conducting the remediation that will [to] use an engineering and/or institutional control[s] as part of a remedial action shall:

1. [Propose] Prepare a deed notice, pursuant to N.J.A.C. 7:26E-8.2, whenever:

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i. Soil contamination will remain above a concentration that would allow for the unrestricted use of the property, and may include engineering controls such as a cap or fencing;
[or]

ii. A ground water remedial action includes containment[.],such as a ground water pump and treat system or a slurry wall; or

iii. A landfill is being remediated .

2. (No change.)

3. Monitor each engineering and institutional control [until such time that the Department approves in writing the removal of the control].

(c) In evaluating the protectiveness of a remedial action that includes an engineering and/or institutional control, the [Department will consider site-specific conditions, including, but not limited to] person responsible for conducting the remediation shall document in the remedial action workplan, how each of the following criteria has been evaluated to ensure that the remedial action is protective of the public health and safety and of the environment:

1. - 6. (No change.)

7:26E-8.2 Deed notice requirements

(a) The person responsible for conducting the remediation of a site that [includes a soil remedial action that includes a proposed] will use a deed notice pursuant to N.J.A.C. 7:26E-8.1(b) shall:

1. (No change.)

2. If that person is not the owner of the site, [provide the Department documentation of] document the owner's consent to record the necessary deed notice pursuant to (b) below.

(b) The person responsible for conducting the remediation that [proposes] will implement a remedial action that includes a deed notice shall [provide the Department with] include a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16, as follows:

1. - 2. (No change.)

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(c) The person responsible for conducting the remediation [proposing] that will implement a remedial action that requires the owner of [the site] any real property to record a deed notice shall comply with the following procedures [for drafting a deed notice for the Department's approval as follows]:

1. For a property that is owned by a local, county, State or Federal government agency (except as provided in (c)2 below), and no deed is associated with the [site] property, the person responsible for conducting the remediation shall [submit a draft] prepare a notice worded pursuant to (d) below, to serve as the notice in lieu of a deed notice;

2. For a property that is owned by the U.S. Department of Defense, and no deed is associated with the [site] property, the person responsible for conducting the remediation shall [submit draft] prepare an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to (d) below, to serve as the notice in lieu of a deed notice; or

3. For a property that is owned by any person not described in (c)1 or 2 above, the person responsible for conducting the remediation shall [provide the Department with a draft] prepare a deed notice pursuant to (d) below.

(d) The person responsible for conducting the remediation [who elects to]that will use a deed notice as part of a remedial action for a contaminated site shall [submit a draft]prepare a deed notice [to the Department, as part of the remedial action work plan pursuant to N.J.A.C. 7:26E-6.2(a)16,] that:

1. Is worded exactly as the model document in N.J.A.C. 7:26E Appendix E and the Department's Deed Notice Guidance;

2. Includes copies of all required maps that:

i. Are GIS compatible [with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's " Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>] and are prepared using the

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Department's GIS guidance at <http://www.state.nj.us/dep/srp/srra/regs/techgis>;

ii. - v. (No change.)

(e) [The person responsible for conducting the remediation who proposes to use a deed notice as part of a remedial action for a contaminated site shall submit a final draft of the deed notice to the Department as part of the remedial action report pursuant to N.J.A.C. 7:26E-6.6, unless the Department directs its submission at an earlier time.

(f) Within 45 calendar days after the receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the] The person responsible for conducting the remediation that will use a deed notice as part of a remedial action for a contaminated site shall comply with the following, as applicable:

1. If there is a deed for the property, the person shall have the owner of the property record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the [site] property is located;

2. If the property to which the notice applies is a local, county or State roadway, the person shall provide a paper copy of the document referenced in (c)1 above, and an electronic copy in a read only format, including all of the exhibits, to the following, as applicable:

- i. Each road department of each municipality in which the [site] property is located;
- ii. Each road department of each county in which the [site] property is located;
- iii. - iv. (No change.)

3. In all other circumstances, the person shall provide a paper copy of the recorded deed notice, stamped "Filed," or notice, as applicable, and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in [(g)](f) below.

[(g) Within 45 calendar days after receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the] (f) The person responsible for conducting the remediation that will use a deed notice prepared pursuant to (d) above, as part of a remedial action for a contaminated site shall provide, as applicable, a paper copy of the recorded deed notice or document referenced in (c)1 above, and an electronic copy in read only format, including all exhibits, to the following:

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1. The [Department's assigned case manager] Department;
2. The municipal clerk, mayor and town council of each municipality in which the [site] property is located;
3. The local, county, and regional health department in each municipality and county in which the [site] property is located;
4. Each gas, electric, water, sewer, cable company and all other utilities that service the [site] property or have a license or easement to cross the [site] property;
5. The Pinelands Commission if the [site] property is located within an area subject to the jurisdiction of the Pinelands Commission; and
6. (No change.)

[(h)](g) Any person who chooses to redevelop or change the use of [a site] real property in a manner inconsistent with a remedial action that includes an engineering and/or institutional control, or conduct additional remediation or other activities that [may compromise the integrity of an engineering control, such that the remedy no longer meets the applicable health risk standard, or is no longer protective of public health, safety and of the environment, shall obtain the Department's prior written approval of such activities by submitting:] would result in the need to file a new deed notice or replace a declaration of environmental restrictions associated with the real property, shall comply with N.J.A.C. 7:26C-2.4.

- [1. A memorandum of agreement application, pursuant to N.J.A.C. 7:26C-3, for the Department's oversight of activity, if the person is not already subject to the Department's oversight for the site;
2. A remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 prior to implementation of such activities; and
3. A request to the Department, pursuant to (i) below, to remove or modify, as appropriate, the declaration of environmental restrictions or deed notice.]

[(i) Any person may submit a written request along with the memorandum of agreement application, to the assigned case manager at Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434,

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Attention: Case Assignment Section, to remove or modify a remedial action that includes an engineering and/or institutional control. The person shall submit a copy of the existing deed notice or declaration of environmental restrictions stamped "filed" and the reason for the removal or modification based on the following:

1. The performance of subsequent remediation;
2. A change in conditions at the site;
3. The Department's revision of soil remediation standards; or
4. A change in the maintenance or monitoring requirements in this chapter.
5. Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434, Attention: Case Assignment Section.]

(j) The Department will evaluate the request submitted pursuant to (h) above and within 90 calendar days after the Department's receipt of the written request will either:

1. Approve the request with the condition that:

- i. The property owner records with the office of each county recording officer, pursuant to (f) above, a notice executed by the Department, that the use of the site is no longer restricted or that the restriction has been changed and that the declaration of environmental restrictions or deed notice is therefore either terminated or modified. Any Department approved modified declaration of environmental restrictions or deed notice delineating the new restrictions shall be recorded pursuant to this section;

- ii. The applicant provides written notice to each municipality in which the site is located, with a copy to the Department sent to the address provided at N.J.A.C. 7:26C-1.4, of the removal or change of the restrictive use conditions; and

- iii. The applicant provides an electronic copy in a read only format, of all information required in (c) above, for the approved modified declaration of environmental restrictions or deed notice as required pursuant to (f) and (g) above; or

2. Issue a written denial of the request.]

7:26E-8.3 Ground water classification exception areas

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(a) (No change.)

[(b) The person responsible for conducting the remediation shall submit the following information to the Department as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2:

1. For each ground water sampling point, a list of all contaminants and their concentrations, that do not meet the groundwater quality standards, from the most recent 24 months of ground water sampling;

2. A description of the fate and transport of the contaminant plume, using the most mobile and persistent contaminants present that exceed the ground water quality standards, including:

i. The horizontal and vertical distances that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to or below the applicable ground water quality standards;

ii. A proposed expiration date for the classification exception area; and

iii. All other information required by Appendix F;

3. The following maps consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2;

i. A USGS Quadrangle map (paper copy only), indicating the location of the site;

ii. A map, in paper and electronic formats, indicating the predicted extent of the ground water contaminant plume; and

iii. A map (paper copy only) showing all properties, according to tax block and lot with a reference to the year of the referenced tax map, under which the contaminant plume is located and is expected to migrate;

4. Information regarding current and projected use of the ground water in the aquifer(s) in which the ground water classification exception area is located, as follows:

i. The current ground water use based on the most recent well search conducted pursuant to this chapter; and

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ii. The future ground water use for a 25-year planning horizon based on the following, without limitation:

- (1) The New Jersey Water Supply Master Plan;
- (2) Department of Environmental Protection, Bureau of Water Allocation;
- (3) Municipal master plans;
- (4) Zoning plans;
- (5) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;
- (6) Local planning officials;
- (7) County and local boards of health; and
- (8) Local and/or county ordinances restricting installation of potable wells; and

5. Copies of the certified letters, return receipt requested, notifying the following persons of the need to establish the ground water classification exception area:

- i. The municipal and county clerks for each municipality and county in which the ground water classification exception area will be located;
- ii. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;
- iii. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;
- iv. The county planning board for each county in which the ground water classification exception area will be located;
- v. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;
- vi. New Jersey Department of Environmental Protection, Water Supply Administration:
 - (1) Bureau of Safe Drinking Water; and
 - (2) Bureau of Water Allocation; and

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vii. If the ground water classification exception area is located in a ground water use area, each owner of any real property within the ground water classification exception area.

(c) The Department will establish a ground water classification exception area based upon the projected area of the contaminant plume in the ground water, pursuant to (b), above.

(d) The Department may revise or reestablish a ground water classification exception area at any time to more accurately reflect ground water conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6.

(e) The Department will remove a ground water classification exception area based upon ground water data, collected pursuant to N.J.A.C. 7:26E-8.6(a)7, that indicate that the contaminant concentrations in the ground water meet all of the applicable ground water quality standards.]

(b) The person responsible for conducting the remediation shall submit to the Department a completed CEA/Well Restriction Area (WRA) Permit Fact Sheet form, and the following information:

1. For each ground water sampling point used to define the CEA, or the subset of those points on the maps required by item 3 below, provide data tables that include the following data and information as applicable:

i. All contaminants and their concentrations, that exceed the ground water quality standards, from the most recent 24 months of ground water sampling;

ii. If ground water contaminants in the CEA may discharge to a surface water body, include the surface water quality standards applicable to that surface water body pursuant to the Surface Water Quality Standards, N.J.A.C. 7:9B;

iii. The applicable vapor intrusion ground water screening levels pursuant to the Vapor Intrusion Guidance, or site-specific vapor intrusion screening levels for ground water; and

iv. The depth below ground surface to the water table, the approximate depth of the ground water contamination and, where it is known that the top of ground water contamination is below the water table, the thickness of the clean water lens above the contamination.

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2. A description of the fate and transport of the contaminant plume, using all available data for the most mobile and persistent contaminants present that exceed the ground water quality standards, including the fate and transport of contaminants in the plume that may volatilize and migrate in the vapor phase. For a CEA involving chlorinated volatile organic compounds, the description shall address sequential reductive dechlorination of the contaminants. The production of degradation products must be considered when calculating duration and extent of the CEA. The CEA shall be the sum of each individual contaminant duration and extent in ground water. The fate and transport description shall also include:

i. The horizontal and vertical distances that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to or below the applicable ground water quality standards, including, but not limited to:

(1) A brief conceptual site model description; and

(2) A summary and description of all data, information, interpretations, and software used to describe the plume fate and transport and to produce the map required pursuant to (c)3iii below;

ii. The expected duration of the CEA; and

iii. For volatile contaminants in ground water, include a discussion of how changes in property use or conditions could effect the fate and transport of the ground water contamination or vapors emanating from the ground water contamination pursuant to the Department's Vapor Intrusion Guidance.

3. The following maps and a cross section, as paper copies and in the electronic formats indicated below, consistent with Department GIS guidance found on the Department's web site, using data for the most mobile and persistent contaminants from the most recent 24 months, and:

i. A United States Geological Survey (USGS) Quadrangle map in electronic pdf format indicating the location of the site;

ii. A map in electronic pdf format showing all properties, according to tax block and lot with a reference to the year of the tax map used, under which the contaminant plume is located and is expected to migrate;

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iii. A map in both electronic pdf format and GIS compatible format indicating the known and predicted extent of the most mobile and persistent ground water contaminants, the prevailing ground water flow direction, the proposed CEA boundary, and the locations and identifying name/number of each monitoring well or ground water sampling points and any sentinel wells required by N.J.A.C 7:26E-6.3. Identify the subset of wells that define the furthest downgradient extent of the contamination, the greatest width of the contamination, and at least one well representative of the highest levels of ground water contamination;

iv. A cross section map in both electronic pdf format and GIS compatible format drawn along the prevailing ground water flow direction and the approximate ground water contaminant plume centerline indicating the location of wells and borings used to draw the cross section, the generalized location of the water table, generalized hydrostratigraphy and the known and predicted extent of the contaminant plume, and the proposed CEA boundaries; and

v. A map in both electronic pdf format and GIS compatible format, separate or combined with a map required pursuant to 3iii above, showing the location of any area(s) of concern that caused the ground water contamination and the location and name/number of each downgradient monitoring well(s) closest to the area(s) of concern. The North American Industry Classification System (NAICS) code for the operations that caused the contamination, if known, shall be indicated on the CEA/WRA Fact Sheet Form and the attribute table for the GIS map.

4. Documentation of current and projected use of the ground water in the aquifer(s) in which the ground water CEA is located, as follows:

i. The current ground water use based on the most recent well search conducted pursuant to this chapter; and

ii. The future ground water use for a 25-year planning horizon based on the following, without limitation:

(1) Municipal master plans;

(2) Zoning plans;

(3) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

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(4) Local planning officials;

(5) County and local boards of health; and

(6) Local and/or county ordinances restricting installation of potable wells.

5. Notification, using the CEA/WRA Fact Sheet Form, that certified letters, return receipt requested, have been sent informing the following persons of the need to establish the ground water CEA and a list of the names and addresses of those persons, based on the proposed boundaries of the CEA:

i. The municipal and county clerks for each municipality and county in which the ground water classification exception area will be located;

ii. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;

iii. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;

iv. The county planning board for each county in which the ground water classification exception area will be located;

v. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;

vi. New Jersey Department of Environmental Protection, Water Supply

Administration:

(1) Bureau of Safe Drinking Water; and

(2) Bureau of Water Systems and Well Permitting of Water Allocation; and

vii. Each owner of any real property that will be within the foot print of the ground water CEA.

(c) The Department will establish a ground water CEA based upon the actual and projected area and depth of the contaminant plume in the ground water, pursuant to (b) above. A final CEA/WRA Permit Fact Sheet issued by the Department will contain the effective date establishing the CEA and its expiration date.

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(d) The Department may revise or reestablish a ground water CEA at any time to more accurately reflect ground water conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6. The Department will issue an updated CEA/WRA Permit Fact Sheet if the CEA is revised or reestablished.

(e) The Department will remove a ground water CEA based upon ground water data, collected pursuant to N.J.A.C. 7:26E-8.6 that indicate that the contaminant concentrations in the ground water meet all of the applicable ground water quality standards.

7:26E-8.4 Monitoring, maintenance, and biennial certification – who has obligation and when

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

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control as part of a remediation shall submit to the Department a certification, pursuant to this section and consistent with [N.J.A.C. 7:26C-1.2(a)1] N.J.A.C. 7:26E-1.5 on a Remedial Action Protectiveness Certification form provided by the Department according to the following schedule:

1. - 3. (No change.)

(d) (No change.)

7:26E-8.5 Monitoring, maintenance, and biennial certification – requirements for deed notices and declarations of environmental restrictions

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions shall:

1. - 3. (No change.)

4. Develop a detailed log of how the persons responsible for monitoring the protectiveness of the remedial action have maintained and evaluated the engineering control in compliance with this section. The log shall be completed for the time since the first certification due date pursuant to N.J.A.C. 7:26E-8.4[(e)], or the last certification and monitoring report was submitted to the Department, whichever is more recent.

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(b) The persons responsible for monitoring the protectiveness of a remedial action shall prepare a [monitoring report] biennial certification report along with a Remedial Action Protectiveness Certification form, available from the Department, which includes the following information:

1. (No change.)
2. Site identifiers (as applicable):
 - i. - viii. (No change.)
 - ix. The tax block and lot number; [and]
 - x. The name of each municipality and county in which the site is located; and
 - xi. The name and license number of the licensed site remediation professional, if applicable.
3. - 4. (No change.)
5. The results of the comparison of applicable laws and regulations pursuant to (a)[5]3 above;
6. - 10. (No change.)

(c) The persons responsible for monitoring the protectiveness of a remedial action shall:

1. (No change.)
2. Include with the certification a written monitoring report pursuant to (b) above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department with a Remedial Action Protectiveness Certification form available from the Department; and

3. (No change.)

(d) (No change.)

7:26E-8.6 Monitoring, maintenance, and biennial certification – specific requirements for ground water classification exception areas

(a) The person responsible for conducting the remediation shall conduct the monitoring and maintenance of a ground water remedial action, and submit a biennial certification, as required

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by this section, unless the Department has established a ground water classification exception area for a site pursuant to N.J.A.C. 7:26E-3.12(b)6i.

(b) The persons responsible for monitoring the protectiveness of a remedial action that includes a ground water classification exception area shall:

1. (No change.)

2. Determine whether there are any planned changes within [the] a 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent, based upon a review of the following [This determination shall be made by reviewing all plans, records and other relevant information from the following sources, without limitation]:

- i. [The New Jersey Water Supply Master Plan;
- ii. Department of Environmental Protection, Bureau of Water Allocation
- iii.] Municipal master plans;
- [iv] ii. [Zoning] Local zoning plans;
- [v] iii. Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines, wells or well fields;
- vi. - viii. Recodified as iv. – vi.

3. Identify whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent. Changes shall be identified by:

- i. Completing a [Department computer generated] well search [(contact the Bureau of Water Allocation)] using the Department’s CEA Biennial Certification Compliance: Tools for Performing Well Searches for CEA Biennial Certifications for all wells within one mile up-gradient, side-gradient and down-gradient of the groundwater classification exception area; and
- ii. Identifying all wells, other than groundwater monitoring wells, installed within one mile up-gradient, side-gradient and down-gradient of the groundwater classification

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exception area since the Department established the groundwater classification exception area or the last completed biennial review, whichever is more recent, using the well search [format at Appendix B] information available on the Department's web site;

4. Inspect all ground water monitoring wells associated with the ground water classification exception area and maintain a log for each monitoring well as follows:
 - i. (No change.)
 - ii. [Report to the Department, pursuant to N.J.A.C. 7:26E-4.4(g)11] Identify any damaged or vandalized monitoring wells and either repair or decommission damaged monitoring wells pursuant to N.J.A.C. 7:9D or replace the monitoring wells, as necessary; and
 - iii. (No change.)
5. (No change.)
6. Determine whether:
 - i. Any of the actual or proposed changes in the groundwater use identified pursuant to [(a)2] (b)2 and 3 above have influenced or may influence the protectiveness of the remedial action that includes the groundwater classification exception area and, if necessary, conduct additional remediation, modify the remedial action, or propose a revision to the groundwater classification exception area, and apply for a modification of the ground water remedial action permit to ensure that the remedial action remains protective of the public health and safety and the environment; [and]
 - ii. There is a need to reevaluate the fate and transport of the groundwater [contamination] contaminant plume or the contaminants in the plume with regard to the risk of vapor intrusion, and, if necessary [to revise] conduct additional remediation, modify the remedial action, or propose a revision to the groundwater classification exception area, and apply for a modification of the ground water remedial action permit to ensure that the remedial action remains protective of the public health and safety and the environment; and
 - iii. There are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety. If such changes are identified, perform additional public outreach, consistent

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with the notification requirements at N.J.A.C. 7:26E-8.3(b)5, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk using the NJDEP Vapor Intrusion Guidance on the Department's web site; and

7. Assess ground water quality as follows:

i. Within [120] 180 calendar days after the projected expiration of the ground water classification exception area, collect at least two rounds of ground water samples such that the time between sampling events shall account for seasonal fluctuations in the ground water table and the number of ground water samples collected are representative of the entire horizontal and vertical extent of the ground water classification exception area;

ii. (No change.)

iii. At any other time prior to the projected expiration of the ground water classification exception area, ground water sampling [is optional] may be performed to determine whether the ground water meets the applicable ground water quality standards. The number of samples collected and the time between sampling events shall be consistent with [(a)7i] (b)7i above. If ground water samples indicate that contaminant concentrations have decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then any person may request that the Department remove the ground water classification exception area.

[(b)](c) The persons responsible for evaluating the protectiveness of a remedial action that includes a ground water classification exception area shall prepare a [monitoring report] Biennial Certification Report using the form, available from the Department, that includes the following:

1. (No change.)

2. Site identifiers, as applicable:

i. - vii. (No change.)

viii. The name of each municipality and county in which the site is located; and

ix. The name and the license number of the licensed site remediation professional if

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applicable;

3. -4. (No change.)

5. The results of the evaluation of the changes in groundwater use conducted pursuant to [(a)2] (b)2 and 3 above, including locating and identifying on a scaled map all wells and/or waterlines found within one mile from any part of the boundaries of the groundwater classification exception area;

6. The maintenance and evaluation log for each monitoring well pursuant to [(a)4] (b)4 above, including:

i. A [copy of any report submitted to the Department,] description of any well damage or vandalism identified or repairs completed pursuant to N.J.A.C. 7:26E-4.4(g)11[, concerning damaged monitoring wells]; and

ii. A copy of the [well] Well [closure] Abandonment [report] Report for each monitoring well used to establish the ground water classification exception area that has been decommissioned pursuant to N.J.S.A. 58:4A-1 et seq., and N.J.A.C. 7:9D since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent;

7. (No change.)

8. A discussion of [whether]:

i. [Any of the actual] Actual or proposed changes in the ground water use [have influenced or may influence the protectiveness of the remedial action that includes the ground water classification exception area] pursuant to (b)6i above, including any additional remediation conducted, modification of the remedial action, or proposed revision to the groundwater classification exception area, and apply for a modification of the ground water remedial action permit to ensure that the remedial action remains protective of the public health and safety and the environment; [and]

ii. [There is a need to reevaluate] The reevaluation of the fate and transport of the ground water contamination plume [and to revise] pursuant to (b)6ii above, including any

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additional remediation conducted, modification of the remedial action, or proposed revision of the ground water classification exception area, and apply for a modification of the ground water remedial action permit to ensure that the remedial action remains protective of the public health and safety and the environment; and

iii. The evaluation of any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants pursuant to (b)6iii above, including any additional remediation conducted to address the vapor intrusion risk using the NJDEP Vapor Intrusion Guidance, and apply for a modification of the ground water remedial action permit.

9. (No change.)

10. A [description and map of a proposed] revised ground water classification exception area [, in both paper and electronic format] application consistent with the requirements of [N.J.A.C. 7:26E-8.2(d)2] N.J.A.C. 7:26E-8.3, if ground water monitoring pursuant to this subchapter indicates that a revision to the ground water classification exception area is necessary;

11. The dates and results of inspections and maintenance, including all [test and] ground water sampling results[, of] for each [groundwater] ground water classification exception area;

12. A description of any additional remediation or action taken to ensure the protectiveness of the remedial action that includes the ground water classification exception area; [and]

13. For the first biennial certification required after the projected expiration of the ground water classification exception area, if the contaminant concentrations in the ground water have not decreased to or below the applicable ground water quality standards throughout the classification exception area, the person responsible for evaluating the protectiveness shall submit:

- i. A narrative, detailing why ground water contamination is still present; [and]
- ii. [A re-evaluation of the ground water quality standards pursuant to N.J.A.C. 7:26E-8.3(b), based on the current configuration of the ground water contaminant plume.] A description of any additional remediation conducted; and

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iii. A revised ground water classification exception area application pursuant to (c)10 above; and

14. A certification, in a format as specified in Department's CEA guidance and based on the evaluation required by this section, that the remedial action continues to be protective of the public health and safety and the environment.

[(c) The persons responsible for monitoring the protectiveness of a remedial action that includes a ground water classification exception area shall:

1. Certify in a format acceptable to the Department that, based upon the monitoring report required pursuant to (b) above, the groundwater classification exception area continues to provide notice of the groundwater contamination and the remedial action continues to be protective of the public health and safety and the environment;

2. Submit a report pursuant to (b) above, in both paper copy and in electronic format acceptable to the Department; and

3. Submit the certification and the report required by (c)1 and 2 above, according to the schedule in N.J.A.C. 7:26E-8.4, to:

i. Each external agency that the Department copied when it established the ground water classification exception area;

ii. Each property owner that the Department copied when it established the ground water classification exception area; and

iii. The Department, at the address in N.J.A.C. 7:26E-8.4, along with the name and address of each person that was sent a copy of the certification pursuant to (c)3i and ii above.]

(d) The persons responsible for monitoring the protectiveness of a remedial action that includes a groundwater classification exception area shall submit the certification required by (c)14 above, with a form available from the Department, to the entities listed below, and according to the schedule at N.J.A.C. 7:26E-8.4(c). The persons shall include in the notification a statement that the biennial certification report supporting the certification is available upon request from the persons responsible for monitoring the protectiveness of a remedial action and include appropriate contact information. The entities to notify are:

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1. Each external agency that was notified about the groundwater classification exception area pursuant to N.J.A.C. 7:26E-8.3(b)5; and

2. Each property owner notified about the groundwater classification exception area pursuant to N.J.A.C. 7:26E-8.3(b)5vii.

7:26E-8.7 Monitoring, maintenance, and biennial certification – engineering and institutional controls

(a) (No change.)

(b) For each engineering and institutional control, the persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall prepare a monitoring report that includes the following information:

1. (No change.)

2. Site identifiers (as applicable):

i. - v. (No change.)

vi. The date of each [no further action letter] final remediation document for the site that included an engineering and/or institutional control;

vii. The name of the Department's case manager, if applicable for the site at the time of each [no further action letter] final remediation document;

viii. (No change.)

ix. The tax block and lot number; [and]

x. The name of each municipality and county in which the site is located; and

xi. The name and the license number of the licensed site remediation professional, if applicable;

3. - 9. (No change.)

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall:

1. - 2. (No change.)

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3. Submit the certification to the Department pursuant [to the schedule and address in] N.J.A.C. 7:26E-[8.4(e)1]1.5(a)2.

APPENDIX B RESERVED

[Well Search Format

Preparer

Name of Site

Program Interest Number (Preferred ID)

Street Address

Township

County

USGS Quadrangle

Latitude

Longitude

Instructions:

1. All sources of well records/information shall be clearly documented.
2. List all wells and State well permit numbers, including active, inactive and decommissioned, within ½ mile of the site boundary. Include all wells, active, inactive and decommissioned at the site.
3. Locate all listed wells on a site locus map.
4. Sources that shall be used:
 - a. Well records search of the Bureau of Water Allocation. There is no cost if this search is performed by the individual. Appointments shall be made to examine well records by contacting the Bureau of Water Allocation at (609) 292-2957. Upon written request, the Bureau will provide the well search for a fee.

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b. Contact local or county Health Department or equivalent.

5. Complete chart on back.

WELL OWNER	ADDRESS	LENGTH TOTAL DEPTH	OF CASING	STATIC WATER ELEV.	USE CODE	SOURCE OF INFORMATION
1.						
2.						
3.						
4.						
5.						
6.						

USE CODES

A =

B = Boring

C =

D = Domestic

E = Recovery/Decontamination Pollution Control/Leachate with Pump Capacity

F = Fire

G = Irrigation

H = Heat Pump/Geothermal

I = Industrial

J = Injection/Waste Discharge

K =

L = Livestock

M = Monitoring

N = Public Non-community

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- O = Oil/Gas Exploration
- P = Public Supply
- Q = Recharge
- S = Sealed
- T = Test
- U = Non-public
- V = Gas Vent
- W = Dewatering
- X = Cancelled
- Y = Cathodic Protection
- Z = Piezometer

NEW REPLACEMENT WELL CODES

- 1 = Domestic
- 2 = Public Community
- 3 = Public Non-Community
- 4 = Industrial
- 5 = Irrigation
- 6 = Monitoring
- 7 = piezometer
- 8 = Heat Pump/Geothermal
- 9 = Recovery
- 0 = Gas Vent]

APPENDIX F RESERVED

[GROUND WATER CLASSIFICATION EXCEPTION AREA FACT SHEET

A. SITE INFORMATION

1. Program's Site Identification Number: _____

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2. Program Interest Number (Preferred ID): _____
3. Program Interest Name: _____
4. Street address: _____
5. City: _____
6. County: _____
7. Block and Lots of the site (duplicate if the site is located in more than one municipality):
 - a. Name of the municipality in which the site is located: _____
 - b. Block and Lots: _____
 - c. Year of tax map: _____
8. United States Geological Survey Quadrangle map, indicating the location of the site, resented as Exhibit A.
9. Site Contact:
 - a. Name of contact person: _____
 - b. Company name: _____
 - c. Mailing address: _____
 - d. Phone number: (____) _____ - _____

B. PROPOSED CLASSIFICATION EXCEPTION AREA INFORMATION

1. Narrative description of proposed classification exception area:
2. Location of proposed classification exception area (duplicate if the site is located in more than one municipality):
 - a. Name of the municipality in which the site is located: _____
 - b. Block and Lots: _____
 - c. Year of tax map: _____

3. Affected aquifer(s):

Aquifer Name	Vertical Depth	Ground Water Classification

4. Contaminant concentrations:

Contaminant	Concentration ¹	GWQS ²	SWQS ³

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5. Proposed classification exception area boundaries:

Horizontal: Scaled map indicating projected areal extent of proposed classification exception area, as well as location of site, presented as Exhibit B.

Vertical: As stated in B.3., above.

Locational coordinates of boundary of proposed classification exception area as New Jersey State Plane Coordinates. A minimum of four coordinates shall be submitted, in a format compatible with Department's geographic information system:

 Northing Easting (New Jersey State Plane Coordinates)
 Latitude Longitude

6. Estimated size of the proposed ground water classification exception area:

7. Projected duration and expiration date of the proposed classification exception area:

- a. Duration (in years and or days): _____
- b. Expiration date (as calendar date): _____

Footnotes

- 1 Maximum concentration detected at the time Classification Exception Area information Submitted to the Department.
- 2 New Jersey Ground Water Quality Standards, N.J.A.C. 7:9C.
- 3 New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B.]

APPENDIX H

MODEL PUBLIC NOTICE FOR A DGW PROPOSAL

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The model public notice in this appendix contains blanks and matter in brackets { }. These blanks shall be replaced with the appropriate information prior to publication in appropriate local newspapers. As provided at N.J.A.C. 7:26E-[6.3] 7.2(c), the wording of this model public notice shall not be otherwise changed or modified.

Public Notice

This notice is being given to inform the public that as part of the remediation of {Site Name} at {street address}, Block: ____ Lots: ____, in {Municipality}, {____} County, a proposal has been submitted to the New Jersey Department of Environmental Protection (Department) [requesting a permit-by-rule authorization] to discharge to ground water in accordance with a permit issued pursuant to the provisions of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., its implementing regulations the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A; the Ground Water Quality Standards, N.J.A.C. 7:9C[-6]; and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The [NJDEP] Department's Site Remediation [and Waste Management] Program is [overseeing the remediation under case] reviewing the proposal to discharge to ground water for the purpose of remediating a contaminated site with the program interest # {_____}.

Brief description of the proposed discharge: {Include a description of the site including the [approved] remedial action, type of discharge (e.g., treated ground water or in situ bioremediation), discharge unit (e.g., injection well, overland flow, lagoon, etc.) and treatment proposed and the name and description of the [aquifer] formation receiving the discharge. [Copies of the plans, which include the proposed discharge to ground water,] A copy of this public notice have been sent to the [Mayor,] Municipal Clerk[, Planning Board, Sewerage Authority,] and designated local health official [Health Officer, and Environmental Commission of] for {Municipality, County or region}.

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[The proposed plan to discharge to ground water] A copy of the DGW proposal is [also] available from the person responsible for conducting the remediation {include the name and address of the person conducting the remediation, or as part of the administrative record which is on file at the offices of the Department, Site Remediation [and Waste Management] Program, located at 401 East State Street, Trenton, Mercer County, New Jersey [or add alternate location]. The file may be reviewed under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A 47:1A-1 et seq. Information regarding the OPRA procedures is available at <http://www.state.nj.us/dep/opra/oprainfo.html>.

Interested persons may submit written comments regarding the [discharge to ground water portion of remediation] DGW proposal to the Department [addressed to {Case Manager, NJDEP, Address}] at the address listed below and to the owner or operator of the facility at {name and address of person/contact submitting [Plan] DGW proposal}. All comments shall be submitted within 30 calendar days of the date of this public notice. All persons who believe that [any condition specific to the proposed discharge to ground water within the remedial action workplan] the DGW proposal is inappropriate, must raise all reasonably ascertainable issues and submit in writing to the Department all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons that relate to the {requirements to be applied to the proposed discharge} DGW proposal will be considered by the Department, provided that the Department receives the comments by the close of the public comment period. After the close of the public comment period, the Department will [approve or modify] render a decision regarding the proposed discharge. The Department will respond to all significant and timely comments with its [final] decision regarding the DGW proposal. Each person who has submitted written comments will receive notice of the Department's [final] decision.

Any interested person may request in writing that the Department hold a non-adversarial public hearing on the [plan to discharge to ground water] DGW proposal. This request shall state the nature of the issues to be raised in the proposed [meeting] hearing and shall be

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submitted within 30 calendar days of the date of this public notice to the [Case Manager, at the] address cited [above] below. A public hearing will be conducted whenever the Department determines that there is a significant degree of public interest in the discharge to ground water decision. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public [meeting] hearing.

Comments and written requests for a non-adversarial public hearing shall be sent to:

ATTN: DGW proposal

Site Remediation [and Waste Management] Program

NJ Department of Environmental Protection

Name of [Case Manager] Department contact

Address of [Case manager] Department contact

[ATTN: Non-adversarial public hearing request]

[Additional information concerning the proposal may be obtained from {Name of person/contact submitting the proposal, phone #} or the {NJDEP Case Manager, Name of Bureau phone #}.]

CHAPTER 38. HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:38-1.4 Definitions

The following words and terms, when used I this chpater, shall have the followingmenaings unless the context clearly indicates otherwise:

["Administrative consent order" means, in accordance with the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, an administrative order which is signed by one or more persons and the Department; and may be in the form of a memorandum of understanding for public entities at the Department's discretion.]

...

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“Final remediation document” means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

...

“Licensed site remediation professional” means an individual who has been issued a license pursuant to N.J.S.A. 58:10C.

...

[“Memorandum of agreement” means, in accordance with the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, a written agreement between the Department and one or more persons to conduct remediation of a site or an area of concern.]

...

[“No further action letter” means, in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, a written determination by the Department that, based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area(s) of concern, or any other site to which a discharge originating at the has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations. The Department may issue a “no further action letter” if contaminants remain on the site with appropriate engineering and institutional controls.]

...

SUBCHAPTER 2. JURISDICTION, APPLICABILITY AND EXEMPTIONS

7:38-2.4 Highlands applicability determination

(a) (No change.)

(b) Any person proposing to undertake any activity in the preservation area that requires any environmental land use or water permit from the Department other than, as provided at (c) below, a NJPDES permit or TWA, shall either clearly stipulate that the proposed activity is

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subject to the Highlands Act in an application to the Department for an HPAA, or obtain a Highlands Applicability Determination, before submitting an application for the environmental land use or water permit unless the activity is one of the following:

1. - 7. (No change.)

8. The remediation of any contaminated site pursuant to N.J.S.A. [58:10B-1 et seq. conducted in accordance with a memorandum of agreement or remedial action workplan] 58:10C, provided no residential, commercial, or industrial development is undertaken concurrently with, or subsequent to, the remediation. Any concurrent or subsequent development at the site is subject to the requirements of this chapter for a Highlands applicability determination and HPAA as applicable;

9. - 10. (No change.)

(c) - (g) (No change.)

SUBCHAPTER 6. HIGHLANDS PRESERVATION AREA APPROVAL

7:38-6.6 Waiver for redevelopment in certain previously developed areas in the Highlands preservation area: Department-designated Highlands Brownfields

(a) (No change.)

(b) For the purposes of this section, a site that meets the criteria in one of the following three Tracks is eligible for designation by the Department as a Highlands brownfield, provided that the contamination onsite is not the result of a current or previous agricultural use:

1. (No change.)

2. Track Two: A former or current commercial or industrial site for which:

i. Prior to the issuance of a [No Further Action (NFA) letter] final remediation document, a remedial action report was completed confirming the presence of contamination onsite, and documenting the current or previous use as a commercial or industrial site;

ii. The Department or a licensed site remediation professional has issued [an NFA letter] a final remediation document for the entire site for which the brownfield designation is sought as of July 1, 1993, or later, pursuant to N.J.A.C. 7:26C-[2.6]6; and

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iii. No discharge of a contaminant has occurred on the site since the date of the [NFA letter] final remediation document. Sites where a discharge of a contaminant has occurred on the site since the Department or a licensed site remediation professional has issued [an NFA letter] a final remediation document must apply for designation through Track Three; or

3. Track Three: A former or current commercial or industrial site with suspected or confirmed contamination onsite for which neither the Department nor a licensed site remediation profession has [not] issued a [NFA letter] final remediation document.

(c) (No change.)

(d) For a Track Two site, the Department may designate as a Highlands brownfield only that portion of a site that meets one or both of the following:

1. Areas on which remediation has been approved by either the Department or a licensed site remediation professional and for which the Department or a licensed site remediation professional has issued a [NFA letter] final remediation document; or

2. (No change.)

(e) (No change.)

(f) For a Track Three site for which remedial activity, in addition to a Preliminary Assessment and Site Investigation confirming the existence of contamination onsite has occurred, the Department may designate as a Highlands brownfield only that portion of a site that meets one or more of the following:

1. Areas for which a Department-approved or licensed site remediation professional-approved delineation of soil contamination has been completed, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

2. (No change.)

3. Areas disturbed for remediation activities, (but not new residential, commercial or industrial development), in accordance with a Department or licensed site remediation professional approved Remedial Action Workplan, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

(g) - (j) (No change.)

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(k) Once the Department designates a site as a Highlands brownfield, and the Council has identified all or part of the brownfield as appropriate for redevelopment in accordance with N.J.S.A. 13:20-9b and 13:20-11a(6)(h), an applicant shall be eligible for a HPAA with a waiver for redevelopment under this section if the applicant demonstrates that:

1. - 2. (No change.)

3. For a Track One Highlands brownfield:

i. As of May 9, 2005, the applicant is or was remediating or closing, or has completed remediation or closure of a landfill that ceased operation before January 1, 1982 in accordance with:

(1) (No change.)

(2) A Remedial Action Workplan approved by the Department or by a licensed site remediation professional, and [issued] pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6; or

ii. (No change.)

4. For a Track Two Highlands brownfield, the applicant demonstrates that no discharge of a contaminant has occurred on the site since the [NFA letter] final remediation document was issued [by the Department];

5. For a Track Three Highlands brownfield, the applicant is remediating the site pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules [has obtained an Oversight Document pursuant to the Department Oversight of the Remediation of Contaminated Sites rules], N.J.A.C. 7:26C, or the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, as applicable;

6. - 8. (No change.)

(l) Any waiver approved in accordance with this section shall be conditioned upon the receipt of [an NFA letter] a final remediation document, or equivalent approval for sanitary landfills issued by the Department with respect to the area of the site designated as a Highlands brownfield and identified by the Council as appropriate for redevelopment.

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SUBCHAPTER 9. APPLICATION CONTENTS

7:38-9.2 Application requirements for a Highlands Applicability Determination

(a) - (c) (No change.)

(d) In addition to providing all the information required at (b) and (c) above, the following information shall be provided if an applicant is seeking a letter of exemption from the requirements of the Highlands Act:

1. - 14. (No change.)

15. For the remediation of any contaminated site pursuant to N.J.S.A. 58:10[B]C-1 et seq. pursuant to N.J.A.C. 7:38-2.3(a)15:

i. - iii. (No change.)

iv. The name of the DEP case manager [handling or supervising remediation at DEP] or licensed site remediation professional assigned to the case, if any;

16. - 17. (No change.)

(e) (No change.)

7:38-9.6 Additional application requirements for a Highlands Preservation Area Approval with waiver

(a) - (e) (No change.)

(f) In order to obtain Department-designation of a brownfield in accordance with N.J.A.C. 7:38-6.6, all applicants shall provide an HRAD obtained in accordance with the requirements at N.J.A.C. 7:38-9.4. In addition, the following information is required:

1. (No change.)

2. For a designation in accordance with N.J.A.C. 7:38-6.6(b)2:

i. A copy of [a No Further Action (NFA) letter] the final remediation document for the entire site [issued by the Department];

ii. A summary of the remedial action report completed prior to the issuance of the [NFA letter] final remediation document that confirms the presence of contamination onsite and documents the current or previous use as a commercial or industrial site;

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iii. Certification that no discharge of a hazardous substance has occurred onsite since the date of the [NFA letter] final remediation document issued pursuant to the [Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites [rule] rules, N.J.A.C. 7:26C-[1.2]1.6;

iv. (No change.)

3. - 5. (No change.)

(g) (No change.)

(h) In addition to the requirements at (g) above, the following information is required to obtain a waiver for redevelopment based upon a Department-designated brownfield:

1. For a waiver based upon a designation in accordance with N.J.A.C. 7:38-6.6(b)1 for a landfill that ceased operation prior to January 1, 1982:

i. (No change.)

ii. A Remedial Action Workplan approved by the Department or a licensed site remediation professional, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6;

2. (No change.)

3. For a waiver based upon designation in accordance with N.J.A.C. 7:38-6.6(b)2, certification that no discharge of a hazardous substance has occurred on the site since the date of the [NFA letter] final remediation document, pursuant to the [Department Oversight of] Administrative Requirements for the Remediation of Contaminated Sites [rule] rules, N.J.A.C. 7:26C-[1.2]1.6;

4. For a waiver based upon a designation in accordance with N.J.A.C. 7:38-6.6(b)3, [a valid Oversight Document pursuant to the Department Oversight of the Remediation of Contaminated Sites rules] evidence documenting that remediation is being conducted pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or the Industrial Sites Recovery Act rules, N.J.A.C. 7:26B, as applicable, [agreeing to conduct all remediation] necessary to obtain a [NFA letter] final remediation document pursuant to N.J.A.C. 7:26C-[2.]6.

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(i) - (k) (No change.)

CHAPTER 45. RULES FOR THE REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK

SUBCHAPTER 8. STORMWATER RUNOFF AND WATER QUALITY IMPACT REVIEW

7:45-8.5 Specific recharge standards

(a) The minimum design and performance standards for groundwater recharge are as follows:

1. (No change.)

2. The groundwater recharge requirement does not apply to redevelopment projects that are subject to the following types of existing stormwater:

i. Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department or licensed site remediation professional approved remedial action work plans or landfill closure plans and areas with high risks for spills of toxic materials, such as gas stations and vehicle maintenance facilities; and

ii. (No change.)

3. (No change.)

(b) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of this special adoption. I hereby authorize this special adoption.

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Date: _____

Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection