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CHAPTER 26F
HEATING OIL TANK SYSTEM REMEDIATION RULES

Statutory Authority

N.J.S.A. 13:1D-9, 58:10-23.11 et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10A-37.1 et seq.,
58:10B-1 et seq., and 58:10C-1 et seq.

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SUBCHAPTER 1. GENERAL INFORMATION

7:26F-1.1 Scope

(a) This chapter constitutes the minimum administrative and technical requirements for the remediation of a discharge of heating oil from a heating oil tank system. All other discharges shall be remediated pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(b) This chapter contains provisions concerning the remediation of a discharge from a heating oil tank system, including:

1. General remediation requirements, N.J.A.C. 7:26F-2;
2. Soil and free product remediation requirements, N.J.A.C. 7:26F-3;
3. Ground water remediation requirements, N.J.A.C. 7:26F-4;
4. Contamination not related to the heating oil tank system under investigation, N.J.A.C. 7:26F-5;
5. Receptor evaluation, N.J.A.C. 7:26F-6;
6. Remedial action report and heating oil tank system no further action letter request requirements, N.J.A.C. 7:26F-7;
7. Administrative orders and civil administrative penalties, N.J.A.C. 7:26F-8; and
8. Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund, N.J.A.C. 7:26F-9.

(c) This subchapter contains provisions that specify the following:

1. Applicability and exceptions, N.J.A.C. 7:26F-1.2;
2. Liberal construction, N.J.A.C. 7:26F-1.3;
3. Severability, N.J.A.C. 7:26F-1.4;
4. Definitions, N.J.A.C. 7:26F-1.5;
5. Notification requirements, N.J.A.C. 7:26F-1.6;
6. Site access requirements, N.J.A.C. 7:26F-1.7;

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7. Fees, N.J.A.C. 7:26F-1.8;
8. Certification of a submission to the Department, N.J.A.C. 7:26F-1.9;
9. Variance from the requirements of this chapter, N.J.A.C. 7:26F-1.10; and
10. Selection of environmental professionals, N.J.A.C. 7:26F-1.11.

7:26F-1.2 Applicability and exceptions

(a) An owner shall comply with this chapter to remediate a discharge of heating oil from a heating oil tank system. For the purposes of this chapter, when the fill hose is connected to the heating oil tank system, any discharge from the fill hose is considered a discharge from the heating oil tank system.

(b) When there has been a surface discharge of less than 100 gallons of heating oil from a heating oil tank system that does not reach the waters of the State, the owner shall notify the Department in accordance with N.J.A.C. 7:26F-1.6, and shall either:

1. Remediate the discharge under the oversight of local authorities; or
2. Remediate the discharge in accordance with this chapter, if either:
 - i. The local authorities refer the oversight of the remediation to the Department; or
 - ii. The owner wants the Department to issue a heating oil tank system no further action letter for the remediation. In this situation the owner shall either request that the local authority refer oversight of the remediation to the Department, or contact the Department Hotline at 1-877 WARNDEP (1-877-927-6337) and request that the Department oversee the remediation.

(c) The owner shall conduct additional remediation beyond the requirements set forth in this chapter when the Department determines that site-specific conditions warrant such additional remediation in order to protect the public health and safety and the environment.

(d) If heating oil is discharged from a heating oil tank system that is located on a site with other contaminated areas of concern, then the owner may remediate the discharge from the heating oil tank system either:

1. Through compliance with this chapter, independent from the other areas of concern;
2. As a part of the remediation of all areas of concern at the site through compliance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including

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retaining a licensed site remediation professional pursuant to N.J.A.C. 7:26C-2.3 who shall issue a response action outcome pursuant to N.J.A.C. 7:26C-6.2; or

3. Pursuant to (d)2 above when the owner is remediating the site pursuant to the Industrial Site Recovery Act rules, N.J.A.C. 7:26B.

(e) This chapter does not relieve any person from:

1. Complying with more stringent requirements imposed by any other Federal, State, or local statute, rule, or regulation; and

2. Obtaining any and all permits required by Federal, State, or local statute, rule, or regulation.

7:26F-1.3 Liberal construction

The rules in this chapter, being necessary to promote and protect public health and safety and the environment, shall be liberally construed in order to permit the Department to effectuate the purposes of the Department's Enabling Act, N.J.S.A. 13:1D-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 Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Underground Storage Tank Act, N.J.S.A. 58:10A-21 et seq., the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

7:26F-1.4 Severability

If a court of competent jurisdiction finds that any section, subsection, provision, clause, or portion of this chapter is invalid or unconstitutional, the remainder of this chapter shall remain in effect.

7:26F-1.5 Definitions

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

“Applicant” means a person who files an application for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for payment of eligible project costs of a remediation due to a discharge of petroleum from a petroleum underground storage tank, for payment of eligible project costs of a replacement or closure of a petroleum underground storage tank that is not regulated pursuant to N.J.S.A. 58:10A-21 through 35 or 42 U.S.C. §§ 6991 through 6991m, or for payment of eligible project costs of an upgrade or closure of a regulated tank.

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“Area of concern” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Certified closure contractor” means an individual who is certified to perform closure of unregulated heating oil tank systems pursuant to the Underground Storage Tanks rules at N.J.A.C. 7:14B-16.

“Certified subsurface evaluator” means an individual who is certified to perform subsurface evaluation of unregulated heating oil tank systems pursuant to the Underground Storage Tanks rules at N.J.A.C. 7:14B-16.

“Clean fill” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Closure” has the meaning as defined in the Underground Storage Tanks rules at N.J.A.C. 7:14B-1.6.

“Consolidated formation” means a geologic formation where the sands, gravels, clays, or other similar materials have been lithified.

“Contamination” or “contaminant” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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

“Discharge” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Environmentally sensitive natural resource” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Environmental professional” means an individual who is a certified subsurface evaluator or a licensed site remediation professional.

“Extractable petroleum hydrocarbons” or “EPH” means extractable aliphatic and aromatic petroleum hydrocarbons determined using the Department’s “Extractable Petroleum Hydrocarbons Methodology,” as amended or supplemented, currently available at www.nj.gov/dep/srp/guidance/srra/eph_method.pdf. EPH includes, but is not limited to, No. 2 heating oil, diesel fuel, and heavier petroleum products, but excludes the lighter petroleum products, including gasoline and mineral spirits.

“Farm” means land that qualifies for a special tax assessment pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., or any land less than five acres in area that would otherwise qualify for that farmland assessment and that has produced agricultural

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or horticultural products with a wholesale value of \$ 10,000 or more annually for at least the two successive years immediately preceding the year in which the tank removal is performed.

“Free product” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Heating oil” means No. 2 heating oil, No. 4 heating oil, No. 6 heating oil, and kerosene used for heating a building.

“Heating oil tank system” means a residential above ground heating oil tank system, a small, non-residential above ground heating oil tank system, or an unregulated heating oil tank system.

“Heating oil tank system no further action letter” means the Department’s written determination that the heating oil tank system discharge has been remediated pursuant to this chapter.

“Licensed quarry/mine material” means sand, gravel, or rock: (1) excavated from undisturbed geologic formations; (2) obtained from a licensed quarry/mine; (3) not located on or impacted by other contaminant sources; (4) not comingled with any other material; (5) not known or suspected of being contaminated; (6) not adversely impacted by discharges of hazardous materials or chemical application; (7) not affected by conditions or processes that would result in the introduction of contaminants into the licensed quarry/mine material in concentrations above regulatory concern; and (8) not affected by conditions or processes that would increase the concentrations of contaminants already present in the licensed quarry/mine material to concentrations above regulatory concern.

“Licensed site remediation professional” or “LSRP” has the meaning as defined in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Limited restricted use remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Non-residential building” means any building that is not a residential building.

“Owner” means a person who owns a heating oil tank system or, in the absence of any such person, a person who has a legal or equitable title to real property at which a heating oil tank system is located.

“Person” has the meaning as defined in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Receptor” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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“Remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Remediation standard” has the meaning as defined in the Remediation Standards at N.J.A.C. 7:26D-1.5.

“Residential above ground heating oil tank system” means any one or a combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, of any capacity, used to store heating oil for on-site consumption in a residential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures, and other related equipment, is less than 10 percent below the ground.

“Residential building” means a single or multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure used primarily as a dwelling.

“Residual contamination” means contamination remaining in soil at a site, after implementation of a remedial action, at a concentration that exceeds the applicable soil remediation standard in this chapter or in the Remediation Standards, N.J.A.C. 7:26D.

“Response action outcome” has the meaning as defined in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Restricted use remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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

“Target compound list plus 30” or “TCL + 30” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Tentatively identified compound” or “TIC” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Unconsolidated formation” means a geologic formation with loosely arranged sands, gravels, clays, or other similar materials.

“Unregulated heating oil tank system” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an

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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 non-residential 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” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

7:26F-1.6 Notification requirements

(a) Upon discovery of a discharge, the owner shall immediately notify the Department by calling the Department Hotline at 1-877-WARNDEP (1-877-927-6337).

(b) When remediating a discharge from a heating oil tank system in accordance with this chapter, the owner shall comply with the notification requirements of the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.7(j).

7:26F-1.7 Site access requirements

(a) The owner shall take all appropriate action, as outlined in (b) below, to obtain access to any property to which the owner does not have legal or equitable title and which is necessary to implement the remediation pursuant to this chapter.

(b) The owner who, in order to implement the remediation pursuant to this chapter, requires access to property to which the owner does not have legal or equitable title shall send, via certified mail, to each person who does have legal or equitable title to that property, a written request for access to that property. The owner shall include the following information in the written request:

1. A description of the obligation that the owner has to remediate the discharge;
2. A site map indicating each area for which the owner needs access;
3. A description of the reason for which the owner needs access and the extent of access needed;
4. A description of the remediation that the owner needs to conduct, indicating the approximate time when the owner will initiate the remediation and the approximate time necessary for the owner to complete that part of the remediation for which the owner needs access; and
5. A request that the person who does have legal or equitable title to that other property respond in writing to the owner within 30 days after receipt of the owner’s written request.

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(c) If the person with legal or equitable title to that other property does not respond, the owner shall send, by certified mail, a second written request to the person with legal or equitable title of that other property. The owner shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the person with legal or equitable title to that other property does not grant access, the owner shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The owner shall submit a copy of the court order if the court order indicates that the court denied access to the property.

(e) The owner shall not construe anything in this section to relieve the owner of the obligation to conduct remediation at any portion of a site or area of concern to which the owner has access.

7:26F-1.8 Fees

(a) The owner shall submit to the Department the following nonrefundable review fee, as applicable, when the owner submits to the Department each document pursuant to this chapter:

1. A heating oil tank remedial action report pursuant to N.J.A.C. 7:26F-7.2, and any subsequent submissions, \$ 400.00 per submission;
2. A request that the Department issue a corrected heating oil tank system no further action letter pursuant to N.J.A.C. 7:26F-7.3(e), \$ 100.00;
3. A discharge to ground water proposal pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.6, \$ 350.00; and
4. A workplan requesting an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26F-4.3(b)2iv, \$ 400.00.

(b) The Department shall not issue a heating oil tank system no further action letter until the owner complies with all of the requirements of this chapter, including, without limitation, the requirement to submit all applicable fees required in (a) above.

(c) The owner shall pay the fees in (a) above by either:

1. Certified check, attorney check, money order, or personal check made payable to "Treasurer, State of New Jersey" and sent to the following address:

New Jersey Department of Environmental Protection
Site Remediation and Waste Management Program
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor

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PO Box 420
Trenton, New Jersey 08625-0420; or

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

7:26F-1.9 Certification of a submission to the Department

(a) An owner conducting the remediation of a discharge from a heating oil tank system pursuant to this chapter shall certify each submission to the Department as follows:

"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."

(b) A certified subsurface evaluator overseeing the remediation of a discharge from a heating oil tank system shall certify each submission to the Department as follows:

"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 consistent with the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F. 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 provide written notice to the owner of the heating oil tank system as to that discovery and to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.7. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties."

(c) A licensed site remediation professional conducting or overseeing the remediation of a discharge from a heating oil tank system pursuant to this chapter shall certify each submission to the Department as follows:

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“I certify that I am a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C-1 et seq. to conduct business in New Jersey. [SELECT ONE OR BOTH OF THE FOLLOWING, AS APPLICABLE: (1) As the Licensed Site Remediation Professional hired for this remediation, I directly oversaw and supervised all of the referenced remediation. (2) As the Licensed Site Remediation Professional hired for this remediation, I personally reviewed and accepted all of the referenced remediation presented herein.] I believe that the information contained herein, including all attached documents, is true, accurate and complete. It is my independent professional judgment and opinion that the remediation conducted at this site, as reflected in this submission to the Department, conforms to, and is consistent with, the remediation requirements in the Site Remediation Reform Act, N.J.S.A. 58:10C-14. My conduct and decisions in this matter were made upon the exercise of reasonable care and diligence, and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals practicing in good standing, in accordance with N.J.S.A. 58:10C-16, in the State of New Jersey at the time I performed these professional services. I am aware pursuant to N.J.S.A. 58:10C-17 that for purposely, knowingly, or recklessly submitting false statement, representation, or certification in any document or information submitted to the Site Remediation Professional Licensing Board or Department, that there are significant civil, administrative, and criminal penalties, including license revocation or suspension, fines, and being punished by imprisonment for conviction of a crime of the third degree.

(d) A property owner who implements a remedial action that allows residual contamination pursuant to N.J.A.C. 7:26F-3.7 shall include the following certification in the remedial action report:

“Prior to or during the implementation of the remedial action, my environmental professional informed me that residual contamination would remain in certain areas of my property. [Property owner shall choose one of the following statements:

I have recorded a deed notice modeled after Appendix B of the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C

OR

Upon Department approval of a draft deed notice modeled after Appendix A of this chapter, I will record that deed notice

OR

I am choosing the small quantity exception for residual contamination pursuant to N.J.A.C. 7:26F-3.7, and I acknowledge that the heating oil tank system no further action letter will reference the small quantity exception for residual contamination with a diagram of the location(s) of that contamination.]”

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7:26F-1.10 Variance from the requirements of this chapter

(a) Except as provided in (b) below, the owner may vary from the requirements in N.J.A.C. 7:26F-2 through 7. For each variance, the owner shall submit the following information to the Department with the remedial action report pursuant to N.J.A.C. 7:26F-7:

1. The specific citation to the rule requirement from which the owner varied;
2. A detailed description of how the work the owner performed varied from the rule requirement; and
3. The owner's rationale for varying from the requirement, including all supporting information necessary to document that the work conducted:
 - i. Provided results that are verifiable and reproducible; and
 - ii. Achieved the objective of the rule requirement from which the owner varied; and
 - iii. Furthered the attainment of the purpose of the specific remedial phase.

(b) The owner shall not vary from any of the following rule requirements:

1. The general remediation requirements at N.J.A.C. 7:26F-2.1;
2. The sample analysis requirements at N.J.A.C. 7:26F-2.2;
3. The requirement to comply with an applicable remediation standard at N.J.A.C. 7:26F-3 and 4;
4. The requirement to remediate free product at N.J.A.C. 7:26F-3.2(a);
5. The requirement to obtain a permit pursuant to N.J.A.C. 7:26F-3.3, 3.7, and 4.3;
6. The requirement to submit reports to the Department; and
7. Fees established pursuant to N.J.A.C. 7:26F-1.8(a) above.

(c) Whether the owner may vary from any requirement not contained in this chapter shall depend on whether the other rule allows such a variance. For example, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, govern when a person may vary from the requirements in that chapter.

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7:26F-1.11 Use of Department technical guidance

An owner conducting remediation pursuant to this chapter shall apply, pursuant to N.J.A.C. 7:26C-1.2(a)3, any available and appropriate technical guidance concerning site remediation as issued by the Department, or shall provide a written rationale and justification for any deviation from guidance. The Department's technical guidance can be found on the Department's website at www.nj.gov/dep/srp/srra/guidance.

7:26F-1.12 Selection of environmental professionals

(a) The owner shall retain one of the following to remediate a discharge from a heating oil tank system:

1. An individual employed by a business firm, both of which are certified for subsurface evaluation pursuant to the Underground Storage Tanks rules at N.J.A.C. 7:14B-16; or
2. A licensed site remediation professional.

SUBCHAPTER 2. GENERAL REMEDIATION REQUIREMENTS

7:26F-2.1 General remediation requirements

(a) When there is a discharge from a heating oil tank system, the owner shall:

1. Upon discovery of a discharge, immediately notify the Department in accordance with N.J.A.C. 7:26F-1.6, and take all actions necessary to stop the ongoing discharge.

2. Within two business days after the discovery of the discharge:

- i. For an unregulated heating oil tank system:
 - (1) Hire a certified closure contractor, unless the unregulated heating oil tank system is located on a farm;
 - (2) Initiate closure of the unregulated heating oil tank system; and
 - (3) Hire an environmental professional to remediate the discharge pursuant to this chapter; and
- ii. For a residential above ground heating oil tank system or a small non-residential above ground heating oil system:
 - (1) Hire an environmental professional to remediate the discharge pursuant to this chapter; and

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- (2) Initiate removal of the residential above ground heating oil tank system or the small non-residential above ground heating oil system;
- 3. Complete closure or removal of the heating oil tank system, as applicable;
- 4. Remediate free product pursuant to N.J.A.C. 7:26F-3.2, as applicable;
- 5. Remediate soil pursuant to N.J.A.C. 7:26F-3.3, 3.4, and 3.5; and
- 6. Remediate the ground water pursuant to N.J.A.C. 7:26F-4.

7:26F-2.2 Sample analysis

(a) The owner shall have all soil and water samples collected in accordance with the requirements for Quality Assurance for Sampling and Laboratory Analysis in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.

(b) The owner shall have all soil and water samples collected and analyzed:

- 1. By a laboratory certified to analyze the contaminants in question pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18;
- 2. In accordance with the requirements for Quality Assurance for Sampling and Laboratory Analysis in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2; and
- 3. For the applicable parameters listed in Table 2-1 below.

Table 2-1 Analytical Requirements for Samples from Heating Oil Tank System Discharges		
<u>Type of Heating Oil</u>	<u>Soil</u>	<u>Water</u>
No. 2 Heating Oil	Extractable petroleum hydrocarbons (EPH) ¹ Analyze 25 percent of samples that contain EPH greater than 1,000 mg/kg for Naphthalene ⁷ and 2-Methyl Naphthalene ^{7,8}	VO+TICs ² , SVO+TICs ⁴
No. 4 and No. 6 Heating Oil	Extractable petroleum hydrocarbons (EPH) ¹ Analyze 25 percent of samples for PAH ⁶ when EPH is detected over 100 mg/kg ⁷	VO+TICs ³ , SVO+TICs ⁵
Kerosene	VO+TICs ³ , Naphthalene, 2-Methyl Naphthalene	VO+TICs ³ , SVO+TICs ⁵

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Footnotes

1. Extractable petroleum hydrocarbons (EPH). Analyze for EPH using the method, “*Analysis of extractable petroleum hydrocarbon (EPH) compounds in non-aqueous and aqueous matrices,*” at www.nj.gov/dep/srp/guidance/srra/eph_protocol.pdf, as supplemented or amended.

2. United States Environmental Protection Agency (EPA) Target Compound List volatile organic compounds including 1,2,4-Trimethylbenzene, but excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane, and 1,4-Dioxane with a library search of the 15 highest Tentatively Identified Compounds (TICs).

TICs for volatiles - Identify up to 15 organic compounds of greatest concentration that are not surrogates, internal standards, or targeted compounds listed under TCL.

3. EPA Target Compound List volatile organic compounds excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane, and 1,4-Dioxane with a library search of the 15 highest TICs.

TICs for volatiles - Identify up to 15 organic compounds of greatest concentration that are not surrogates, internal standards, or targeted compounds listed under TCL.

4. EPA Target Compound List semi-volatile organic compounds including 1-Methyl Naphthalene, but excluding phenol and substituted phenols with a library search of the 15 highest TICs.

TICs for semi-volatiles - Identify up to 15 organic compounds of greatest concentration that are not surrogates, internal standards, or targeted compounds listed under TCL.

5. EPA Target Compound List semi-volatile organic compounds excluding phenol and substituted phenols with a library search of the 15 highest TICs.

TICs for semi-volatiles - Identify up to 15 organic compounds of greatest concentration that are not surrogates, internal standards, or targeted compounds listed under TCL.

6. EPA Target Compound List Polynuclear Aromatic Hydrocarbons (PAH).

7. Conduct the additional analyses on sample(s) with the highest EPH concentration(s), with a minimum of one sample.

8. May perform synthetic precipitation leaching procedure (SPLP) extraction to develop a site specific impact to ground water remediation standard for 2-Methyl Naphthalene (see <http://www.nj.gov/dep/srp/guidance/rs/index.html>, as supplemented or amended).

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SUBCHAPTER 3. SOIL AND FREE PRODUCT REMEDIATION REQUIREMENTS

7:26F-3.1 Scope

(a) This subchapter governs:

1. Free product remediation, N.J.A.C. 7:26F-3.2;
2. Soil remediation, generally, N.J.A.C. 7:26F-3.3;
3. Initiating soil remediation with delineation during excavation, N.J.A.C. 7:26F-3.4;
4. Initiating soil remediation with delineation, N.J.A.C. 7:26F-3.5;
5. Unrestricted use soil remedial action, N.J.A.C. 7:26F-3.6;
6. Soil remedial actions that allow residual contamination, N.J.A.C. 7:26F-3.7; and
7. Site restoration, N.J.A.C. 7:26F-3.8.

7:26F-3.2 Free product remediation

(a) The owner shall, within 60 days after identifying the presence of free product:

1. Initiate the removal of free product; and
2. Treat or remove all free product saturated soil to the extent practicable, or contain free product when treatment or removal is not practicable.

(b) The owner shall:

1. Delineate the horizontal and vertical extent of free product;
2. Determine the thickness of the free product;
3. Remediate free product until either there is no observable sheen, or there is only a discontinuous sheen. A discontinuous sheen is an observable amount of heating oil on the surface of the water in any well or excavation, that is broken or intermittent and does not cover the majority of the water surface;
4. Complete the remediation of free product within one year after its discovery; and
5. After the removal of free product, remediate contaminated ground water pursuant to N.J.A.C. 7:26F-4.

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7:26F-3.3 Soil remediation, generally

(a) The owner shall remediate soil contaminated by a discharge from a heating oil tank system until soil sampling indicates that the property meets the requirements for unrestricted use at N.J.A.C. 7:26F-3.6 or, the residual contamination requirements at N.J.A.C. 7:26F-3.7.

(b) The owner shall initiate remediation of soil contaminated by a discharge from a heating oil tank system by either:

1. Excavating contaminated soil while delineating the extent of contamination, pursuant to N.J.A.C. 7:26F-3.4; or
2. Delineating the horizontal and vertical extent of contaminated soil pursuant to N.J.A.C. 7:26F-3.5 prior to implementing a remedial action.

(c) The owner shall investigate soil contaminated by a discharge from a heating oil tank system as follows:

1. Bias soil sample locations to areas of greatest suspected soil contamination;
2. Analyze the soil samples for the applicable parameters listed in N.J.A.C. 7:26F-2.2, Table 2-1; and
3. Exclude composite sampling, except as necessary for waste classification sampling pursuant to the Hazardous Waste rules, N.J.A.C. 7:26G.

(d) The owner shall properly manage and dispose of all excavated contaminated soil pursuant to the Solid Waste rules, N.J.A.C. 7:26, and the Hazardous Waste rules, N.J.A.C. 7:26G.

(e) The owner shall return excavated soil from drill cuttings or test pit excavations to the original location only if:

1. Drill cuttings are returned in accordance with the Well Construction and Maintenance; Sealing of Abandoned Wells rules, N.J.A.C. 7:9D;
2. Neither free product nor residual contamination is present in the excavated soil;
3. The contamination present in the excavated soil is addressed as part of the remediation of the area of concern in compliance with this chapter; and
4. The replacement of the soil does not pose any threat to public health, safety, or the environment.

(f) When backfilling an excavation, the owner shall:

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1. Use fill material that is:

i. Not contaminated above any remediation standard, pursuant to N.J.A.C. 7:26D, as determined based on appropriate sampling of the fill material as referenced in the Fill Material Guidance for SRP Sites, available at www.nj.gov/dep/srp/guidance/;

ii. Free of extraneous debris and solid waste; and

iii. Of equal or lesser permeability than the soil removed; and

2. If an excavation extends into the saturated zone, compact the backfilled soil in one-foot intervals.

(g) The owner shall obtain a permit from the Department prior to initiating any discharge to surface water, discharge into the ground, injection of fluids into injection wells, or any other activity that currently requires a permit from the Department, as follows:

1. An on-scene coordinator discharge authority permit where water generated from dewatering is treated and then discharged to surface water;

2. A discharge to ground water permit-by-rule where in situ treatment includes the injection or placement of compounds into soil or ground water;

3. A discharge to ground water permit-by-rule where treated water will be reinjected to ground water; or

4. Any other permit required to complete the remedial action.

7:26F-3.4 Initiating soil remediation with delineation during excavation

(a) An owner electing to initiate soil remediation by excavating contaminated soil while delineating the extent of soil contamination shall:

1. Unless the owner leaves residual contamination pursuant to N.J.A.C. 7:26F-3.7, excavate contaminated soil until contamination is no longer detectable by methods including, but not limited to, field instrumentation, sight, or smell;

2. For a discharge from an unregulated heating oil tank system, collect post-excavation soil samples on the same day as the excavation of the contaminated soil, as follows:

i. If the discharge is from the tank, the owner shall:

(1) Collect one sample from the tank centerline for every six feet of tank length or fraction thereof;

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(2) Distribute sample locations equally along the center line of the tank and collect samples from zero to six inches below the base of the final excavation, whether or not ground water is present;

(3) Collect one sample for every 30 linear feet of each sidewall of the excavation or fraction thereof, with a minimum of one sample from each sidewall of the excavation; and

(4) If the excavation extends to within two feet of either bedrock or ground water, then collect a ground water sample pursuant to N.J.A.C. 7:26F-4.2; and

ii. If the discharge is from the piping associated with an unregulated heating oil tank system, the owner shall collect a minimum of one soil sample for every 15 linear feet of piping or fraction thereof, from zero to six inches below the base of the final excavation; and

3. For a discharge from a residential above ground heating oil tank system or a small, non-residential above ground heating oil tank system, collect post-excavation soil samples on the same day as the excavation of the contaminated soil, as follows:

i. If the perimeter of the excavation is 30 feet or less, then collect at least one sample from the bottom of the excavation and one surface sidewall sample (zero to six inches below the ground surface) from the sidewall of the excavation, each of which shall be biased in the direction of water runoff over the ground surface;

ii. If the perimeter of the excavation is greater than 30 feet, then collect at least one additional surface sidewall sample for every 30 linear feet of perimeter, or fraction thereof, and one additional sample from the bottom of the excavation for every 100 square feet of bottom area, or fraction thereof;

iii. For an excavation that is three feet in depth or greater, collect at least one additional sample from the bottom of each sidewall for every 30 linear feet of perimeter, or fraction thereof; and

iv. If the excavation extends to within two feet of either bedrock or ground water, then collect a ground water sample pursuant to N.J.A.C. 7:26F-4.2.

4. Evaluate the soil sample data to determine whether the sample meets the requirements for unrestricted use in accordance with N.J.A.C. 7:26F-3.6;

5. If the sample data indicate that the sample meets the requirements of N.J.A.C. 7:26F-3.6, then complete the remediation pursuant to this chapter;

6. If the sample data indicate that the sample does not meet the requirements of N.J.A.C. 7:26F-3.6, then:

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i. Implement a soil remedial action that leaves contaminated soil in place, in accordance with N.J.A.C. 7:26F-3.7; or

ii. Proceed with additional remediation as follows:

(1) Excavate additional contaminated soil beyond the original extent;

(2) Collect the following post-excavation samples:

(A) One additional soil sample from the bottom of the excavation for each additional 100 square feet of newly excavated area; and

(B) One additional sidewall sample for each additional 30 linear feet of sidewall, or fraction thereof;

(3) Analyze the soil samples collected pursuant to (a)6ii(2) above to determine whether the samples meet the requirements for unrestricted use in accordance with N.J.A.C. 7:26F-3.6; and

(4) Repeat the activities set forth in this paragraph until sample data indicate that the sample meets the requirements for unrestricted use in accordance with N.J.A.C. 7:26F-3.6.

7:26F-3.5 Initiating soil remediation with delineation

(a) An owner electing to initiate soil remediation by first delineating contaminated soil shall:

1. Install a minimum of four soil borings, no more than 10 feet from where the discharge was discovered, in four equal directions (for example, north, south, east, and west);

2. Field screen each boring;

3. Continue to install additional soil borings horizontally and vertically and conduct field screening until field screening indicates no further contamination or until bedrock is encountered;

4. Collect a sufficient number of soil samples from the soil borings to confirm delineation horizontally (all directions) and vertically when field screening indicates no further contamination; and

5. Collect a ground water sample pursuant to N.J.A.C. 7:26F-4.2 when contamination extends to within two feet of either bedrock or ground water.

(b) When the delineation of the horizontal and vertical extent of the soil contamination is complete, the owner shall implement an in situ remedial action, excavate the contaminated soil to

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the extent of the delineated samples, or implement a soil remedial action that allows residual contamination in accordance with N.J.A.C. 7:26F-3.7.

(c) After the owner has implemented an in situ remedial action in an area previously delineated in accordance with (a) above, the owner shall drill soil borings within and at the boundaries of the horizontal and vertical extent of the delineated contaminated area to confirm that the soil results comply with N.J.A.C. 7:26F-3.6 by:

1. Collecting a minimum of two soil samples per 300 square feet, or fraction thereof, of the originally delineated area;
2. Where the originally contaminated area exceeds two feet in depth, collecting two additional soil samples per 300 square feet, or fraction thereof, of the originally delineated area for each additional two feet of depth; and
3. Biasing sampling to the originally delineated area and depths of greatest contamination identified during previous field screening or sampling events pursuant to (a) above.

(d) Except as set forth at N.J.A.C. 7:26F-3.7, an owner implementing a remedial action pursuant to this section shall analyze the soil samples to determine whether the remediation meets the requirements for an unrestricted use soil remediation in accordance with N.J.A.C. 7:26F-3.6:

1. If the analysis indicates that the soil remediation meets the requirements of N.J.A.C. 7:26F-3.6, then the owner shall complete the remediation pursuant to this chapter; or
2. If the analysis indicates that the soil remediation does not meet the requirements of N.J.A.C. 7:26F-3.6, then the owner shall continue to remediate the soil until analysis indicates that the remediation meets the requirements of N.J.A.C. 7:26F-3.6.

7:26F-3.6 Unrestricted use soil remedial action

(a) For a discharge of No. 2 heating oil, the owner may implement an unrestricted use soil remedial action when, for each soil sample:

1. The extractable petroleum hydrocarbons concentration is less than or equal to 1,000 mg/kg; or
2. The following conditions are met:
 - i. The extractable petroleum hydrocarbons concentration is greater than 1,000 mg/kg, but less than or equal to 5,100 mg/kg;
 - ii. No impacts to ecological receptors, as determined by N.J.A.C. 7:26F-6.4;

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iii. The Naphthalene concentration is less than or equal to six mg/kg; and

iv. The 2-Methyl Naphthalene concentration:

(1) Is less than or equal eight mg/kg; or

(2) If a Synthetic Precipitation Leachate Procedure analysis is performed:

(A) The 2-Methyl Naphthalene concentration in soil is less than or equal to 230 mg/kg; and

(B) The 2-Methyl Naphthalene concentration in leachate from the Synthetic Precipitation Leachate Procedure analysis is less than or equal to 600 ug/l.

(b) For a discharge of No. 4 heating oil or No. 6 heating oil, or a combination thereof, the owner may implement an unrestricted use soil remedial action when, for each soil sample:

1. The extractable petroleum hydrocarbons concentration is less than or equal to 100 mg/kg; or

2. The following conditions are met:

i. The extractable petroleum hydrocarbons concentration is greater than 100 mg/kg but less than or equal to the Department calculator-generated extractable petroleum hydrocarbons residential soil remediation criterion, which is found on the Department's website at www.nj.gov/dep/srp/guidance/srra/eph_calculator.xls;

ii. There is no impact to any ecological receptor, as determined by N.J.A.C. 7:26F-6.4; and

iii. Each polyaromatic hydrocarbon compound is less than or equal to the most stringent of either:

(1) The applicable residential soil remediation standard pursuant to N.J.A.C. 7:26D; or

(2) The applicable site-specific impact to ground water remediation standard pursuant to N.J.A.C. 7:26D.

(c) For a discharge of kerosene, the owner may implement an unrestricted use soil remedial action when, for each soil sample, the following conditions are met:

1. There are no impacts to ecological receptors, as determined by N.J.A.C. 7:26F-6.4; and

2. Each volatile organic compound is less than or equal to the most stringent of either:

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- i. The applicable residential soil remediation standard pursuant to N.J.A.C. 7:26D; or
- ii. The applicable site-specific impact to ground water remediation standard pursuant to N.J.A.C. 7:26D.

7:26F-3.7 Residual contamination

(a) If an owner does not implement an unrestricted use soil remedial action pursuant to N.J.A.C. 7:26F-3.6, an owner may implement a soil remedial action pursuant to one of the alternatives at (b) below, which allow residual contamination to remain, if:

1. As to ecological receptors, there is no impact to any ecological receptor, as determined by N.J.A.C. 7:26F-6.4, or the impact to any ecological receptor is mitigated; and

2. As to ground water:

- i. Property conditions did not require a ground water investigation pursuant to N.J.A.C. 7:26F-4;

- ii. The owner conducted a ground water investigation that did not identify any ground water contamination above the applicable ground water remediation standards, N.J.A.C. 7:26D-2; or

- iii. The owner implemented a ground water remedial action that remediated the concentration of all contaminants in ground water to or below the applicable ground water remediation standards, N.J.A.C. 7:26D-2.

(b) An owner shall implement one of the following:

1. A limited restricted or restricted use soil remedial action, as applicable, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, which shall include, without limitation:

- i. If the property is owned by another person, obtaining the property owner's written agreement for the owner to implement a soil remedial action where residual contamination remains on the property or containment is the remedy for free product;

- ii. Recording, or having the person who owns the property record, a deed notice, pursuant to N.J.A.C. 7:26C-7.2, for the area where residual contamination remains on the property or containment is the remedy for free product;

- iii. Obtaining a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and

- iv. Paying all applicable fees.

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2. A soil remedial action for a residential property at which remediation of an on-site discharge is impeded because the soil contamination is located under a residential building, a paved area, or a capped easement (for example, a sidewalk containing utilities), provided:

i. If the property upon which the on-site residual contamination remains is owned by another person, obtaining the property owner's written agreement for the owner to implement a soil remedial action by which residual contamination remains on the property;

ii. All soil contamination not located under a residential building, a paved area, or a capped easement is remediated pursuant to N.J.A.C. 7:26F-3.6;

iii. There is no free product remaining;

iv. A Deed Notice prepared pursuant to N.J.A.C. 7:26F Appendix A is placed on the property; and

v. As part of the application for a heating oil tank system no further action letter in accordance with N.J.A.C. 7:26F-7, the owner submits to the Department:

(1) A remedial action report that includes the information at (c) below; and

(2) A draft deed notice prepared pursuant to N.J.A.C. 7:26F Appendix A.

3. A soil remedial action for a residential property at which remediation of an on-site discharge results in less than 15 cubic yards of residual contamination under a residential building, provided that:

i. If the property upon which the on-site residual contamination remains is owned by another person, obtaining the property owner's written agreement for the owner to implement a soil remedial action by which residual contamination remains on the property;

ii. All soil contamination not located under a residential building is remediated pursuant to N.J.A.C. 7:26F-3.6; and

iii. As part of the application for a heating oil tank system no further action letter in accordance with N.J.A.C. 7:26F-7, the owner submits to the Department, a remedial action report that includes the information at (c) below.

(c) For a remediation in accordance with (b)2 and 3 above, as part of the remedial action report that the owner submits to the Department with an application for a heating oil tank system no further action letter in accordance with N.J.A.C. 7:26F-7, the owner shall provide:

1. Written documentation that:

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- i. The owner has met the requirements of (b)2 or 3 above, as applicable;
 - ii. The remediation of the residual contamination on the residential property where the discharge occurred is impeded because it is located under a building, a paved area, or a capped easement (for example, a sidewalk containing utilities), including:
 - (1) Data that establish the horizontal and vertical extent of the residual contamination; and
 - (2) A narrative description and a map of the location of the residual contamination under the building, paved area, or capped easement;
2. A description of all steps that the owner has taken to remediate soil contamination prior to determining not to remediate the contaminated soil; and
 3. A description of why further remediation is impeded or is otherwise impracticable.
- (d) If the Department approves the application for a heating oil tank system no further action letter for the remediation of a site on which residual contamination remains, then the Department shall issue a heating oil tank system no further action letter that notes the presence of the residual contamination.

7:26F-3.8 Site restoration

- (a) The owner shall restore the topography of each area of remediation to its pre-remediation condition.
- (b) When a site is located adjacent to or in a wetland, or adjacent to or in any other environmentally sensitive natural resource, the owner shall also comply with all applicable restoration and soil management requirements, including, but not limited to, the Coastal Zone Management Rules, N.J.A.C. 7:7E, and the Fresh Water Wetlands Protection Act Rules, N.J.A.C. 7:7A.

SUBCHAPTER 4. GROUND WATER REMEDIATION REQUIREMENTS

7:26F-4.1 Scope

- (a) This subchapter governs:
 1. Ground water investigation requirements, N.J.A.C. 7:26F-4.2; and
 2. Ground water remedial action requirements, N.J.A.C. 7:26F-4.3.

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7:26F-4.2 Ground water investigation requirements

(a) The owner shall investigate ground water pursuant to (b) below to determine whether the discharge from a heating oil tank system contaminated the ground water when:

1. Any portion of the heating oil tank system is located within the seasonal high ground water table or within two feet of either ground water or bedrock; or
2. As required pursuant to N.J.A.C. 7:26F-3.4(a)2i(4) and (a)3iv and 3.5(a)5.

(b) To investigate ground water contamination, the owner shall:

1. Locate ground water sampling points as follows:

i. When the ground water is sampled prior to soil remediation, bias the ground water sampling point location to within 10 feet of the point of discharge in the expected downgradient ground water flow direction;

ii. When the ground water is sampled after soil remediation and the excavation extends less than 20 feet in any direction from the center line of the tank:

(1) Bias the ground water sampling point location to within 10 feet outside of the excavation in the expected downgradient ground water flow direction; or

(2) Where site conditions prohibit sampling of the ground water within 10 feet outside of the excavation in the expected downgradient ground water flow direction, locate the ground water sampling point within the excavation, after backfilling the excavation pursuant to N.J.A.C. 7:26F-3.3(f); or

iii. When the ground water is sampled after soil remediation and the excavation extends 20 feet or more in any direction from the center line of the tank:

(1) Locate a ground water sampling point within the excavation, biased in the expected downgradient ground water flow direction, after backfilling the excavation pursuant to N.J.A.C. 7:26F-3.3(f); and

(2) Locate a ground water sampling point in a location outside the backfilled excavation from which the heating oil tank was removed, but within 10 feet of the backfilled excavation, biased in the expected downgradient ground water flow direction;

2. Install each ground water sampling point as follows:

i. For an unconsolidated formation:

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(1) For monitoring wells, extend the well screen to five feet above the ground water table and 10 feet below the ground water table, and otherwise install the well pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules at N.J.A.C. 7:9D;

(2) For all other sampling technologies, the sampling interval shall extend across the ground water table; or

ii. For a consolidated formation:

(1) If ground water is encountered, extend the borehole to 10 feet below the first ground water encountered and complete construction of the well as a permanent well pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules at N.J.A.C. 7:9D-2.4(b);

(2) If ground water is not encountered by a depth of 35 feet into bedrock, then secure the borehole and inspect the location after a 24-hour equilibration period:

(A) If no measurable ground water or free product is detected after 24 hours, then no further ground water remediation is required; or

(B) If ground water or free product is detected in the borehole, then complete construction of the well as a permanent well pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules at N.J.A.C. 7:9D-2.4(b);

3. Sample ground water in accordance with the most recent version of the Department's Field Sampling Procedures Manual available at www.nj.gov/dep/srp/srra/guidance and, if, the excavation was not backfilled pursuant to N.J.A.C. 7:26F-3.3(f) prior to August 6, 2018, then include the volume of water that fills the excavation when determining the volume of water to be purged prior to sampling, in accordance with the Department's Field Sampling Procedures Manual in effect on the date that the ground water sampling is performed;

4. Analyze all ground water samples for the applicable parameters listed in N.J.A.C. 7:26F-2.2, Table 2-1; and

5. Evaluate the data to determine compliance with the applicable ground water remediation standards, N.J.A.C. 7:26D-2.1(a):

i. If all of the analytical results are at or below the applicable ground water remediation standards, then no further remediation of ground water is necessary other than to complete the heating oil tank system remediation pursuant to N.J.A.C. 7:26F-6 and 7; and

ii. If any analytical result is above an applicable ground water remediation standard, then either:

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(1) Collect two confirmation samples, evenly spaced and using similar purging and sampling techniques, within 60 days after the initial sample and average the results of the two confirmation samples and the original sample to determine compliance with the applicable standard:

(A) If the average does not exceed the applicable ground water remediation standard, then no further remediation of ground water is necessary other than to complete the heating oil tank system remediation pursuant to N.J.A.C. 7:26F-6 and 7; or

(B) If the average exceeds the applicable ground water remediation standard, then delineate the ground water contamination pursuant to (c) below; or

(2) Delineate the ground water contamination pursuant to (c) below;

(c) When the owner has confirmed the presence of ground water contamination, the owner shall:

1. Conduct a receptor evaluation pursuant to N.J.A.C. 7:26F-6;

2. Delineate the horizontal and vertical extent of ground water contamination by locating ground water sampling points in a downgradient direction based on topographic relief, the location of surface water bodies, structural controls in the bedrock or soils, location of pumping wells and subsurface conduits at or below the water table or based on data from adjacent sites; and

3. Implement a ground water remedial action pursuant to N.J.A.C. 7:26F-4.3.

7:26F-4.3 Ground water remedial action requirements

(a) The owner shall perform a remedial action for ground water contaminated by a discharge from a heating oil tank system by:

1. Remediating free product in accordance with N.J.A.C. 7:26F-3.2; and

2. Remediating all ground water contamination in excess of the applicable ground water remediation standard, N.J.A.C. 7:26D, to a concentration at or below that applicable ground water remediation standard, as demonstrated by two confirmation samples collected 90 days apart.

(b) If the ground water remedial action includes a discharge to surface water, then the owner shall request an on-scene coordinator discharge authorization by submitting to the Department at the address in (c) below:

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1. An Unregulated Heating Oil Tank System Remediation Form found at www.nj.gov/dep/srp/unregulatedtanks;
2. A workplan including the following information:
 - i. A description of the contaminant source, remedial activities conducted to date and the site conditions that necessitate on-scene coordinator authorization in lieu of other treatment and/or disposal options;
 - ii. A list of contaminants of concern and concentrations, including all existing soil and ground water sample results;
 - iii. Proposed sampling parameters and analytical methodology;
 - iv. A site plan with all relevant features identified;
 - v. A topographic map of the site;
 - vi. Name of the stream receiving the discharge and its classification, which can be found in the Surface Water Quality Standards, N.J.A.C. 7:9B;
 - vii. Location of treatment system;
 - viii. Location of discharge point;
 - ix. Duration of the discharge;
 - x. Rate of discharge flow in gallons per minute; and
 - xi. Location and description of any sensitive receptors including private wells and potable water intakes; and
3. The permit fee in accordance with N.J.A.C. 7:26F-1.8.

(c) The information required in (b) above shall be submitted to:

Bureau of Case Assignment & Initial Notice
Site Remediation and Waste Management Program
NJ Department of Environmental Protection
401-05H PO Box 420
Trenton, NJ 08625-0420

(d) If the ground water remedial action includes a discharge to ground water, the owner shall obtain a New Jersey Pollutant Discharge Elimination System permit pursuant to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C 7:14A-7.5(b) and submit a discharge to

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ground water proposal pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.6(b) and (c);

(e) Except as provided in (f) below, the owner shall complete the ground water remedial action prior to submitting the remedial action report to the Department.

(f) If the owner implements a ground water remedial action that will not be completed prior to submitting the remedial action report to the Department, then the owner shall:

1. Implement a ground water remedial action and demonstrate its effectiveness pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5;

2. Propose a ground water classification exception area pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-7.3, as part of the ground water remedial action permit application required in (f)3 below;

3. Obtain a ground water remedial action permit pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-7; and

4. Submit a copy of the ground water remedial action permit, including all attachments, as part of the remedial action report pursuant to N.J.A.C. 7:26F-7.2.

(g) When the concentrations of contaminants in ground water are at or below the applicable ground water quality standards, the owner may request that the classification exception area be removed and the ground water remedial action permit be terminated in accordance with the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-7.3 and 7.13, respectively.

SUBCHAPTER 5. CONTAMINATION NOT RELATED TO THE HEATING OIL TANK SYSTEM UNDER INVESTIGATION

7:26F-5.1 Contamination not related to the heating oil tank system under investigation

(a) An owner who is remediating a discharge from a heating oil tank system, who identifies a contaminant in excess of any remediation standard not related to the discharge that the owner is remediating, shall call the Department Hotline at 1-877-WARNDEP (1-877-927-6337) and report the observation of the contaminant.

(b) Notwithstanding (a) above, the owner shall continue to remediate, pursuant to this chapter, all discharges from a heating oil tank system.

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SUBCHAPTER 6. RECEPTOR EVALUATION

7:26F-6.1 Scope

(a) This subchapter governs:

1. Receptor evaluation--ground water, N.J.A.C. 7:26F-6.2;
2. Receptor evaluation--vapor intrusion, N.J.A.C. 7:26F-6.3; and
3. Receptor evaluation--ecological, N.J.A.C. 7:26F-6.4.

7:26F-6.2 Receptor evaluation--ground water

(a) If the owner detects ground water contamination exceeding any applicable ground water remediation standard at N.J.A.C. 7:26D-2.2(a), then the owner shall:

1. Within 14 days after identifying ground water contamination exceeding the applicable standard, determine if any potable wells or irrigation wells used for potable purposes exist within 100 feet of the known extent of the ground water contamination by:

- i. Contacting the local health department; and
- ii. Conducting a door-to-door survey; and

2. If there are any potable wells or irrigation wells used for potable purposes within 100 feet of the known extent of the ground water contamination, then the owner shall:

i. Sample each potable well or irrigation well used for potable purposes within 90 days after identification of the well within 100 feet of the known extent of ground water contamination;

ii. Analyze each well sample for the appropriate analytes listed in N.J.A.C. 7:26F-2 Table 2.1 pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)9;

iii. Prepare laboratory data deliverables pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15i; and

iv. Evaluate the data to determine if the concentration of any contaminant in any potable well or irrigation well used for potable purposes exceeds any Class II-A Ground Water Quality Standard, N.J.A.C. 7:9C:

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(1) If any contaminant is identified in excess of any Class II-A Ground Water Quality Standard, N.J.A.C. 7:9C, then conduct all actions required by the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.11; or

(2) If no contaminant is identified in excess of any Class II-A Ground Water Quality Standard, N.J.A.C. 7:9C, then:

(A) Provide each property owner, occupant (if applicable), and applicable county/municipal health department with a copy and explanation of all ground water analytical results; and

(B) Provide the Department, as part of the remedial action report submitted pursuant to N.J.A.C. 7:26F-7.2, with a copy of the well data and the explanation submitted to each property owner, occupant (if applicable), and applicable county/municipal health department.

7:26F-6.3 Receptor evaluation--vapor intrusion

(a) If, within 180 days after the discovery of the discharge, the owner does not remediate the free product and ground water contaminant concentrations to below the vapor intrusion ground water screening levels, which are available on the Department's website at www.nj.gov/dep/srp/guidance/vaporintrusion/index.html, then the owner shall, within 240 days after the discovery of the discharge, conduct a vapor intrusion investigation by:

1. Identifying all buildings located within 30 feet of free product or ground water contamination that is in excess of the vapor intrusion ground water screening levels;

2. Determining the specific use and construction of each building identified in (a)1 above, including whether each building has a basement, a crawl space, or is constructed on a slab, and the approximate square footage of each building footprint;

3. Collecting an appropriate number of samples in appropriate locations, as referenced in the Vapor Intrusion Technical Guidance available at www.nj.gov/dep/srp/guidance/vaporintrusion/vig_main.pdf;

4. Analyzing those samples for the analytes listed in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(c)3 pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)7; and

5. Preparing laboratory data deliverables pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15i.

(b) After conducting the vapor intrusion investigation in (a) above, the owner shall:

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1. Evaluate the results of the vapor intrusion investigation, including a comparison of the analytical results to the Department's vapor intrusion screening levels, which are available on the Department's website at www.nj.gov/dep/srp/guidance/vaporintrusion/index.html; and

2. Determine if there is a complete vapor intrusion pathway for each building that the owner is investigating.

(c) For each building with an incomplete vapor intrusion pathway, which occurs when all indoor air results are equal to or less than all of the Department's vapor intrusion indoor air screening levels, which are found in tables available at www.nj.gov/dep/srp/guidance/vaporintrusion/index.html, the owner shall comply with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.15(d).

(d) For each building with a complete vapor intrusion pathway:

1. If an indoor air result is greater than any of the Department's vapor intrusion indoor air screening levels, but less than or equal to any of the Department's vapor intrusion rapid action levels, which are found in tables available at www.nj.gov/dep/srp/guidance/vaporintrusion/index.html, the owner shall comply with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.15(e); and

2. If an indoor air result is greater than any of the Department's vapor intrusion rapid action levels, the owner shall comply with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.15(f).

7:26F-6.4 Receptor evaluation--ecological

(a) An ecological receptor evaluation is required, except as provided in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16(d), when:

1. For a discharge from a heating oil tank system containing No. 2, No. 4, or No. 6 heating oil, any extractable petroleum hydrocarbons concentration in soil exceeds 1,700 mg/kg; or

2. For a discharge from a heating oil tank system containing kerosene, the concentration of any volatile contaminant in soil is above the residential soil remediation standard pursuant to N.J.A.C. 7:26D.

(b) The owner shall conduct an ecological receptor evaluation as follows:

1. Determine if any environmentally sensitive natural resource, other than ground water:

i. Is present on the site;

ii. Is adjacent to the site; or

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- iii. May be, has been, or is impacted by contamination from the site; and
2. Determine if any contaminant concentration is present at the site that exceeds any ecological screening criterion or any aquatic surface water quality standard.
3. If an environmentally sensitive natural resource is present and any contaminant concentration is present at the site that exceeds any ecological screening criterion or any aquatic surface water quality standard, then a licensed site remediation professional is required to prepare an ecological risk assessment pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8(c)2, for the environmental professional to submit to the Department with the remedial action report.

SUBCHAPTER 7. REMEDIAL ACTION REPORT AND HEATING OIL TANK SYSTEM NO FURTHER ACTION LETTER REQUEST REQUIREMENTS

7:26F-7.1 Scope

- (a) This subchapter governs:
 1. Remedial action reports, N.J.A.C. 7:26F-7.2; and
 2. Heating oil tank system no further action letters, N.J.A.C. 7:26F-7.3.

7:26F-7.2 Remedial action reports

- (a) The owner shall prepare a remedial action report that includes the following:
 1. A description of all remedial actions taken at the site;
 2. A list of all variances from the requirements of this chapter submitted pursuant to N.J.A.C. 7:26F-1.10;
 3. A description of the physical conditions of the site, including, but not limited to, the topography, geology, hydrogeology, and proximity to surface water and wetlands;
 4. The total amount of contaminated soil and ground water disposed of or treated;
 5. The total cost of the remediation;
 6. A scaled site map(s) that contains the following:
 - i. A north arrow and a bar scale;

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ii. The location of: each former heating oil tank system; all structures, including, but not limited to, buildings, potable wells, storm drains, and septic systems; and the property boundaries;

iii. The boundaries of the soil excavation and each area remediated;

iv. The location of each post-excavation soil sample, with the corresponding sample depth, analytical results, and date that each sample was collected;

v. If ground water was investigated or remediated, then the location of all ground water monitoring points, the horizontal and vertical extent of the contaminant plume, and the expected or determined downgradient ground water flow direction;

vi. If vapor intrusion was investigated or remediated, then the location of all vapor intrusion sampling points; and

vii. If potable wells or irrigation well used for potable purposes were investigated, then the location of all sampling points;

7. A copy of all monitoring well and available potable well records and well construction details, including the depth to ground water, a description of each soil boring, well purging methods, and ground water sampling methods, if applicable;

8. Photographs documenting the condition of each tank and the sides and bottom of each excavation, if available;

9. The following documentation, if clean fill material is used in the excavation, including:

i. Copies of sample results;

ii. A description of the source of the clean fill material;

iii. A copy of the bill of lading documenting the source(s) of clean fill, including the street, town, lot and block, county, and state from which the clean fill originated;

iv. A brief history of the source of the clean fill;

v. A copy of the certificate of destruction for contaminated soil that has undergone treatment; and

vi. A statement from the environmental professional that the clean fill is of equal or lesser permeability than the soil removed from the heating oil tank system excavation;

10. The following information, if licensed quarry/mine material is used in the excavation:

i. Identification of the source of the delivered licensed quarry/mine material;

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ii. A statement from the quarry operator that the licensed quarry/mine material has not been subject to a discharged hazardous substance at any time;

iii. A description of any steps taken to document or confirm the statement in (a)10ii above; and

iv. A statement from the environmental professional that the licensed quarry/mine material is of equal or lesser permeability than the soil removed from the heating oil tank system excavation;

11. A copy of the disposal receipts for all contaminated soil, tank contents, and contaminated ground water, if applicable;

12. All analytical data, including:

i. Soil sample results in tabular form including sample depth, the applicable soil remediation standard(s), the date on which each sample was collected, and the sample name, data qualifier(s), and reporting limit(s);

ii. Ground water sample results in tabular form including sample depth, the applicable ground water remediation standard(s), the date on which each sample was collected, and the sample name, data qualifier(s), and reporting limit(s);

iii. Potable well or irrigation well used for potable purposes sample results in tabular form for each well that had no exceedance of any ground water remediation standard, including the applicable ground water remediation standard, the date on which each sample was collected, the sample name, data qualifier(s), and reporting limit(s), and a copy of the explanation given to each property owner and occupant (if applicable) of the potable well sample results, if applicable;

iv. Vapor intrusion analytical results in tabular form for each building with an incomplete vapor intrusion pathway, including the type of sample (sub-slab, indoor air, or ambient), the applicable screening level(s), and the date on which each sample was collected, if applicable;

v. One copy of all sample chain of custody forms, analytical summary tables, and nonconformance summaries from a laboratory certified pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18;

vi. A statement of data usability based on any problems or issues associated with sample collection or transportation, chain of custody, or laboratory analysis;

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vii. The disk(s) containing reduced data deliverables for each soil and non-potable ground water sample pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15ii; and

viii. One copy of the full data deliverables for all potable water and vapor intrusion sampling (including sub-slab, indoor air, and ambient) pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15i, if applicable;

13. Electronic data deliverables as follows:

i. For unregulated heating oil tank systems at residential buildings and residential above ground heating oil tank systems, electronic deliverables are not required; and

ii. For unregulated heating oil tank systems at non-residential buildings and small, non-residential above ground heating oil tank systems, electronic data deliverables pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.6(a)5;

14. Documentation of all actions taken under N.J.A.C. 7:26F-1.7 to obtain access to property that the owner does not have legal or equitable title, if applicable;

15. Either a copy of the draft deed notice prepared pursuant to N.J.A.C. 7:26F-3.7(b)2 prior to filing, or a statement that the owner is applying the small quantity exception pursuant to N.J.A.C. 7:26F-3.7(b)3, if residual contamination remains on the property, if applicable;

16. A copy of the ground water remedial action permit, including all attachments, if applicable;

17. A copy of the ecological receptor evaluation prepared pursuant to N.J.A.C. 7:26F-6.4, if applicable; and

18. A copy of the ecological risk assessment prepared pursuant to N.J.A.C. 7:26F-6.4(b)3, if applicable.

7:26F-7.3 Heating oil tank system no further action letter

(a) To obtain a heating oil tank system no further action letter from the Department, the owner shall submit the following to the Department:

1. A remedial action report prepared pursuant to N.J.A.C. 7:26F-7.2, and a completed and certified Unregulated Heating Oil Tank (UHOT) System Remediation Form available at www.nj.gov/dep/srp/srra/forms/;

2. For each environmental professional that conducts a portion or a phase of the remediation, a separate Unregulated Heating Oil Tank (UHOT) System Form that describes the work that the environmental professional performed; and

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3. The applicable fee pursuant to N.J.A.C. 7:26F-1.8.

(b) Except as set forth in (c) below, the owner shall submit the items in (a) above to the following address:

New Jersey Department of Environmental Protection
Bureau of Case Assignment & Initial Notice
Mail Code 401-05H
PO Box 420
Trenton, New Jersey 08625-0420

(c) Within 90 days after the date that the Department informs the public, by a notice in the New Jersey Register, that an electronic portal is available, the owner shall submit to the Department electronically via the electronic portal all forms, applications, and documents required by this chapter.

(d) If an owner determines that incorrect administrative site information was submitted to the Department, the owner shall request that the Department issue a corrected heating oil tank system no further action letter by:

1. Submitting an unregulated heating oil tank questionnaire, found at www.nj.gov/dep/srp/unregulatedtanks/uhot_app.pdf, and any supporting documentation; and
2. Paying the fee as required by N.J.A.C. 7:26F-1.8.

(e) The scope of the remediation limits the scope of the covenant not to sue that accompanies the heating oil tank system no further action letter, as addressed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6.5.

SUBCHAPTER 8. ADMINISTRATIVE ORDERS AND CIVIL ADMINISTRATIVE PENALTIES

7:26F-8.1 Administrative order and civil administrative penalty

Whenever the Department determines that an owner has violated any of the provisions of this chapter, the Department shall apply the Administrative Requirements of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.

7:26F-8.2 Denial, suspension, revocation, and refusal to renew a certification

The Department may deny, suspend, revoke, or refuse to renew a certification issued pursuant to N.J.A.C. 7:14B-16.11.

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SUBCHAPTER 9. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND

7:26F-9.1 Scope

This subchapter sets forth the requirements for an applicant to apply for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, to fund a project eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23.

7:26F-9.2 Application for financial assistance

(a) An applicant may apply for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund by:

1. Submitting to the Department a completed Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund Application Form available at www.nj.gov/dep/srp/srra/forms/; and

2. 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.

(b) An applicant who applies for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund shall submit to the Department analytical data sufficient to support the proposed remediation.

7:26F-9.3 Financial assistance for reimbursement of prior remediation costs

(a) An applicant may remediate a discharge from an unregulated heating oil tank system and then apply for financial assistance for reimbursement of remediation costs provided that:

1. The applicant must incur all of the remediation costs after August 30, 1997;

2. The applicant did not, prior to submitting the application for financial assistance, pay for any of the remediation performed, unless the applicant:

i. Performed and paid for remediation of a discharge related to an unregulated heating oil tank at an applicant's primary residence; or

ii. Is a nonprofit organization, corporation, or association with not more than 100 paid individuals that is qualified for exemption from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. N.J.A.C. 501(c)(3), or a duly

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incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad;

3. For remediation conducted prior to August 6, 2018, the remediation associated with the remediation costs was conducted in compliance with the rules in effect at the time the remediation was conducted and with the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23; and

4. For remediation conducted on or after August 6, 2018, the remediation associated with the remediation costs was conducted in compliance with this chapter and with the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23.

APPENDIX A - MODEL DEED NOTICE

Instrument Number

DEED NOTICE

This shell document contains blanks and matter in brackets []. These blanks shall be replaced with the required site information prior to recording.

Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN ACCORDANCE WITH THE BROWNFIELD AND CONTAMINATED SITE REMEDIATION ACT, N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____
[Signature]

[Print name below signature]

Recorded by: _____
[Signature, Officer of County Recording Office]

[Print name below signature]

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DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by *[Insert the full legal name and address of each current property owner]* (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. *[Insert the full legal name and address of each current property owner]* *[Insert as appropriate: "is" or "are"]* the owner in fee simple of certain real property designated as Block(s) ____ Lot(s) ____, on the tax map of the *[Insert, as appropriate: City/Borough/Township/Town]* of *[Insert the name of municipality]*, *[Insert the name of county]* County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site which includes this property is *[Insert the Program Interest Number (Preferred ID)]*; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. SOIL CONTAMINATION. *[Insert the full legal name of the owner of the heating oil tank system]* has remediated contaminated soil at the Property. However, residual contamination that contains contaminants in concentrations that do not allow for the unrestricted use of the Property remains at certain areas of the Property that is not accessible because it is currently located under the following existing engineering control(s): *[Pick as applicable: a building, a paved area, or a capped easement (for example, a sidewalk containing utilities)]*. Such soil contamination, including the type, concentration and specific location, and the existing engineering control(s) on the site are described in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice and engineering controls in accordance with the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-13.

3. CONSIDERATION. In order to obtain approval of the remedial action for the remediation of a discharge from the heating oil tank system, and in consideration of the terms and conditions of that approval, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessors, lessees, and operators of the Property of the restrictions outlined in this Deed Notice and required by law, as set forth herein.

4A. RESTRICTED AREAS. Due to the presence of residual contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property that contain the residual contamination (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit B, which is attached hereto and made a part hereof.

4B. RESTRICTED LAND USES. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.3.

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4C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to maintain engineering controls on the Property as described in Exhibit B.

5A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners, lessors, and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any, of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner or the subsequent owner shall provide written notice to the Department of Environmental Protection within 30 calendar days after the Owner's or subsequent owner's petition for or filing of any document initiating a rezoning of the Property to be used as a child care facility, or public, private, or charter school.

5B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessors, lessees, and operators while each is an owner, lessor, lessee, or operator of the Property.

6A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners, lessors, and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. The Owner and all subsequent owners, lessors, and lessees shall restore any disturbance of an engineering control to pre-disturbance conditions within 60 calendar days after the initiation of the alteration, improvement, or disturbance, unless the Department approves, in writing, a period of time exceeding 60 calendar days.

iii. Except as provided in Paragraph 6B below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property that disturbs any engineering control at the Property without first obtaining the Department's written permission for the alteration, improvement, or disturbance, unless the person restores the engineering control to pre-disturbance conditions within 60 calendar days.

6B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or an immediate environmental concern, see the Site Remediation Reform Act at N.J.S.A. 58:10C-2, any person

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may temporarily breach an engineering control provided that that person complies with each of the following:

- i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the Department Hotline at 1-877-WARNDEP (1-877-927-6337);
- ii. Hires an environmental professional, as defined in the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F-1.5, to respond to the emergency;
- iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;
- iv. Implements all measures necessary to limit actual or potential, present, or future risk of exposure to humans or the environment to the contamination;
- v. Notifies the Department of Environmental Protection when the emergency or immediate environmental concern has ended by calling the Department Hotline at 1-877-WARNDEP (1-877-927-6337);
- vi. Restores the engineering control(s) to the pre-emergency conditions as soon as possible; and
- vii. Submits to the Department of Environmental Protection, within 60 calendar days after completion of the restoration of the engineering control(s), a report including: (a) the nature and likely cause of the emergency; (b) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (c) the measures completed or implemented to restore the engineering control(s); and (d) any changes to the engineering control(s) or site operation and maintenance plan to prevent recurrence of such conditions in the future.

7. TERMINATION OF DEED NOTICE. This Deed Notice may be terminated only upon recording a Department-approved Termination of Deed Notice, available in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C Appendix C, with the office of the [*Insert as appropriate the County Clerk/Register of Deeds and Mortgages*] of [*Insert the name of the County*] County, New Jersey, expressly terminating this Deed Notice.

8. ACCESS. The Owner, and the subsequent owners, lessors, lessees, and operators agree to allow the Department, its agents, and its representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice, and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessors, lessees, and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners, lessors, and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

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9. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, and the Site Remediation Reform Act, N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11 and N.J.S.A. 58:10C.

10. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

11A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map -- A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description -- A tax map of lots and blocks as wells as a metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

iii. Exhibit A-3: Property Map -- A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

11B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map -- A separate map for each restricted area that includes:

(A) As-built diagrams of any buildings, paved areas, or capped easements (for example, a sidewalk containing utilities) that function as engineering controls; and

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_____, Notary Public
[Print Name and Title]

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is a corporation]

ATTEST: _____ [Name of corporation]

_____ By _____

[Print name and title] [Signature]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20___, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the [Pick as applicable: secretary/assistant secretary] of [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 [Pick as applicable: president/vice president] of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;
- (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]

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Signed and sworn before me on _____, 20__

_____, Notary Public

[Print name and title]