

Addressing Contaminants of Emerging Concern (CECs) and Remedial Investigation and Remedial Action Timeframes for Existing Cases (August 5, 2021)

The New Jersey Department of Environmental Protection (Department) is providing this guidance regarding the creation of a new case (LSR Activity¹) and remediation timeframes, when a previously unknown, unidentified, or undetected contaminant(s) of emerging concern (CEC) is identified at a site undergoing remediation with existing timeframes, and where the person responsible for conducting the remediation (PRCR) and the licensed site remediation professional (LSRP) retained pursuant to N.J.A.C. 7:26C-2.3 had no basis to know or reason to believe of the presence, use, or potential discharge of the CEC(s) prior to the discovery of the CEC.

NOTE: This administrative guidance does not apply if the previously issued administrative guidance “Site Remediation & Waste Management Program Implementation of November 25, 2015 Interim Ground Water Quality Standards (ver. March 8, 2016)” is applicable (see https://www.nj.gov/dep/srp/guidance/srra/srwmp_implementing_11-25-15_interim_gwqs.pdf).

NOTE: Guidance regarding remediation timeframes for 1,4-Dioxane is found in “Site Remediation & Waste Management Program Implementation Of November 25, 2015 Interim Ground Water Quality Standards (ver. March 8, 2016)” (<https://www.nj.gov/dep/srp/guidance/srra/>).

As stated on the Department web page (<https://www.nj.gov/dep/srp/emerging-contaminants/>), contaminants of emerging concern are a specified group of chemicals that recently have been shown to occur in the environment and have been identified as a potential environmental or public health risk. New analytical capabilities allow for identification of such chemicals in the environment in extremely low concentrations.

If a CEC is identified as a new discharge at a site undergoing remediation, the DEP Hotline (1-877-Warn-DEP, 1-877-927-6337) or WARN NJDEP App shall be used to report the discharge (N.J.A.C. 7:1E-5.3). This also applies to remediations subject to the Industrial Site Recovery Act (ISRA, N.J.S.A. 13:1K-6 et seq.) and rules (N.J.A.C. 7:26B) and where the PRCR will be creating a new case (LSR Activity) for the CEC discharge (see “Create a new case for the CEC” section below). For additional information regarding ISRA cases, please see the “RAO Issuance” section below.

The PRCR may either merge the CEC incident into the existing case and complete the remediation under the existing timeframes, or create a new case (LSR Activity) with a new set of remediation timeframes for the CEC incident under the applicable Program Interest number. Please note that if the applicable remediation timeframe for the existing case (LSR Activity) has passed or the time to apply for an extension or lengthening has passed (and an extension is not an option), a new case (LSR Activity) with separate remediation timeframes will have to be created for the CEC. This applies to all cases, including ISRA cases. See below regarding issuance of Response Action Outcomes (RAO) for these separate activities.

¹ Note: The Department’s NJEMS database tracks different site locations under “Program Interest Numbers (PI).” Each PI can have multiple entries or “Activities” at which different assignments and schedules are tracked. An “LSR Activity” is used to track different remedial schedules for cases assigned to the Licensed Site Remediation Program.

Merge CEC incident into existing case

To merge the new CEC incident with the existing case, select the existing case (LSR Activity) on the Confirmed Discharge Notification Form, using the online service. This merged case will be subject to the timeframes established under the existing case.

For cases that are merged, an LSRP, using independent professional judgment, should determine if an extension request for the next remedial phase document is justified in order to complete the remediation or whether the remedial phase can be completed within the existing applicable timeframes. If the LSRP has any concern that the remediation of the CEC will delay the completion of the remediation of the other Areas of Concern (AOCs) beyond the applicable timeframe, a separate case for the CEC incident (LSR Activity) should be established. The Department encourages responsible parties to create a new case for the CEC incident rather than request extensions to avoid delays in remediation. The Department likely will not approve extension requests for other AOCs solely because remediation of the CEC will prevent meeting a timeframe.

Create a new case for the CEC

The PRCR may create a new case (LSR Activity) by not selecting the existing case (LSR Activity) on the Confirmed Discharge Notification Form, using the online service. New timeframes will be established for the new case (LSR Activity) based on when the CEC discharge was identified. This will require the retention of an LSRP, submission of an Annual Remediation Fee Form, along with all required remediation documents/forms (please refer to the Data Miner Case Tracking Tool). Only one Ground Water Media Fee will be applicable for the site and the new CEC case (LSR Activity) will be, at a minimum, Category 1 to cover the management of submissions and compliance tracking. The Remedial Investigation (RI) report for the CEC discharge will be due five years from the date when the CEC discharge was first discovered unless the Department establishes an "Expedited Site-Specific Remediation Timeframe" as defined in the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) at N.J.A.C. 7:26C-3. Once the decision is made to establish a separate case (LSR Activity) for the CEC, it cannot be merged into the existing case in the future. All previously identified non-CEC AOCs will remain subject to the original timeframes. This applies to all cases, including ISRA cases. See below regarding issuance of RAOs for these separate activities.

RAO Issuance

If all AOCs are close to completion for an existing case (LSR Activity) where an Entire Site Response Action Outcome (RAO-E) is being pursued (e.g., ISRA Case), the applicable Area of Concern Response Action Outcome(s) (RAO-A) should be issued for all non-CEC AOCs. After the RAO-A(s) are issued for the non-CEC AOC(s) under the exiting case, upon request by the PRCR, the Department will turn off billing for this case (LSR Activity) while the remediation of the CEC case continues. The ground water media fee billing will remain under the CEC Activity. The requirement for the submission of an RAO-E will be deferred to the timeframes established for the CEC case

(LSR Activity). An RAO-E may only be issued after the remediations of both the existing case (LSR Activity) and the CEC case (LSR Activity) are complete.

For example, if a remedial action report (RAR) for the entire site is required to be submitted by 2021 and CECs are found in 2020, then the RAR should be submitted and an RAO-A issued for all non-CEC AOCs by 2021. The remediation of the CEC should be completed and an RAR submitted and RAO-E issued by 2030, excluding any applicable extension or lengthening. The original case will remain open until both activities can be closed and an RAO-E is issued. The requirement to issue an RAO-E for an ISRA case [or any other case required to remediate the entire site (such as under an Administrative Consent Order)] will be held in abeyance until the remediation of the CEC activity is completed.

Notwithstanding the above, the Department reserves the right to establish an expedited timeframe for any case in accordance with N.J.A.C. 7:26C-3. Such situations include, but are not limited to, cases involved in litigation, cases posing imminent risk to public health and safety or the environment, and cases subject to direct Department oversight.