

# **RESPONSE TO COMMENTS**

## **LINEAR CONSTRUCTION TECHNICAL GUIDANCE**

*Comment Period Start: 10/20/11*

*Comment Period End: 12/01/11*

Comment #	Page	Chapter	Section	Subsection	COMMENTS	RESPONSE
1	General Comment				<p>This document does not appear to address many of the concerns raised by NJ Transit and NJDOT at the initial meeting. For example, as a property owner, will NJ Transit and NJDOT be subject to annual remediation permit fees in perpetuity for constructing projects with public benefit? If so, these fees will become financial burdens on the agencies forever, as the land use for major transportation projects rarely changes after they are constructed.</p>	<p>Linear construction entities will not be required to get remedial action permits so will not be required to pay permit fees.</p>
2	3	1	1	1	<p>This technical guidance is designed to help the person conducting a linear construction project to ensure that contamination encountered during the project is managed in a manner that is protective of human health, safety and the</p>	<p>The Departments believes it is important that an LSRP be retained to oversee work at linear construction projects (LCPs). While the work at LCPs is not remediation by definition, these projects will need to be overseen by professionals with knowledge and experience to handle the wide range of environmental conditions that are likely to occur. With some preplanning there should be no need for these projects to be interrupted.</p> <p>The Department did not feel it was warranted to detail the pre-project work in the guidance document. Discussions amongst the members of the guidance committee confirmed that the entities conducting this work are experienced and capable of conducting the pre-project work. Therefore, the pre-project guidance was intentionally general.</p>

environment. However, the management of contaminated media discovered in the course of construction a linear construction project is not and should not become a remediation action and therefore, the constructing party should not be required to retain an LSRP.

PSEG's linear construction activities are necessary to ensure electric and gas system reliability and public safety. It is critical that when this work occurs that it can commence as needed and continue uninterrupted.

The pre-project requirements as stated in the guidance do not adequately contemplate the unique nature of utility work which often must be commenced immediately and without interruption to maintain system reliability and protect the public.

3	3	1	1	<p>The Guidance should not only be intended to foster activity that is protective of health, safety and the environment (as stated in the Guidance), but also to provide a roadmap which, if followed, will ensure that the activity will be acceptable to the Department under the applicable site remediation laws.</p> <p>While the distinction regarding whether or not to follow the guidance vs. the Tech Regs is understandable (i.e., the latter would afford a RAO whereas the former does not), the guidance document should indicate that if it is followed, the activity will be satisfactory to the Department. This is important both to the Person Conducting the Linear Construction Project (PCLCP) and the owner of the property.</p> <p>In those circumstances where an owner is performing a remediation of a</p>	<p>Any remediation, including one conducted as part of a LCP, that is conducted pursuant to the Technical Rules (and any other applicable rules), will be acceptable to the Department.</p> <p>The Department agrees that the person conducting an LCP should provide environmental data to the owner of the property. Before the LCP is completed it is essential that when contamination is encountered that the LCE either conduct the remediation or allow the responsible party access in order for them to conduct the remediation.</p>
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				<p>broader site or area of concern (AOC) within which a LCP is located, and the PCLCP follows the Guidance (but does not obtain a RAO), the owner (or any responsible party performing a remediation) needs to know that the work performed by the PCLCP may be relied upon by the owner (or more likely, the licensed site remediation professional (LSRP) retained by the owner to remediate the site or AOC) and that further investigation or remediation within the boundaries of the LCP will not be necessary. Once a LCP is completed, it will not be possible for an owner to reinvestigate and remediate within the boundaries of the LCP without substantial risk to human health, safety and the environment (e.g., where high voltage utility lines or an oil or natural gas pipeline is present). Consequently, the Guidance should make</p>	
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					clear that this is not necessary where the Guidance is followed.	
4	3	1	1	1	<p>Most overhead power line projects will not meet the definition of LCPs as found in the proposed regulations and Guidance. For those projects that do meet the definition, additional clarification by the Department would be appreciated to confirm that, by following the Guidance, ACE or any other PCLCP will be pursuing a course acceptable to the Department. In particular, where an entity follows the Guidance and ultimately submits a Linear Construction Report (“LCP Report”), that entity should be able to rely on the LCP Report to the same extent that persons responsible for conducting remediations under the</p>	<p>When the Department suggests that a small LCP follow the guidance it means that the best management practices for the handling, reuse and disposal be consistent with the Department rules and guidance. The Department is not recommending that a small LCP submit forms or reports to the Department. It is assumed that LCPs will keep their records and reports on file as a normal course of business.</p>

				<p>State’s Site Remediation Program and the Administrative Requirements For Remediation Of Contaminated Sites (“ARRCS”) can rely on Remedial Action Outcome Reports, especially in light of the involvement of an LSRP in both processes.</p>	
5	3	1	1	<p>With respect to the discussion of documenting deviations in the Guidance, it seems unnecessarily burdensome for the PCLCP to document “any deviation” from the Guidance with supporting data and information. This appears to place too much emphasis on detailing every action taken in connection with a LCP regardless of its degree of significance. Whether an action is a deviation or not may be difficult to identify. Further, some deviations may not have a material effect on the outcome of the LCP or a material effect on human health, safety or the</p>	<p>The Department agrees with the commenter and has modified its policy on applying technical guidance. See <a href="http://www.nj.gov/dep/srp/srra/training/matrix/important_messages/variance_and_bpj.pdf">http://www.nj.gov/dep/srp/srra/training/matrix/important_messages/variance_and_bpj.pdf</a></p>

					environment. Given that an LSRP will be overseeing and documenting the LCP, it should be adequate for the final report to provide a general description of how the LCP was implemented in accordance with the major sections of the Guidance and to describe any material deviations from the practices recommended in the Guidance and why.	
6	3	1	1	3	<p>ACE respectfully requests that overhead power line projects be excluded from the scope of the Guidance. The costs and time delays that would be imposed on these projects through the Guidance is not justified as the projects would involve only limited soil excavation boreholes spread out over many miles of a power line project.</p> <p>Additionally, the Guidance notes that it is intended to apply to linear projects excavating more than</p>	<p>The Department to use 200 cubic yards as a threshold rather than attempt to name types of work or types of projects that would be required to follow the ARRCs rules Sub 16 and the linear construction guidance. Each entity that is doing linear construction work will determine for themselves if any given project will exceed the threshold.</p> <p>When the Department states that projects that are not going to exceed the 200 cubic yard threshold should manage contaminated soil consistent with the Department's Solid Waste rules and guidance, including, but not limited to, SRP's Historic Fill guidance and the Alternative and clean fill guidance.</p>



				<p>200 cubic yards of contaminated soil over the duration of the project, and further notes that the Department recommends that non-responsible parties excavating less than 200 cubic yards of contaminated soil should also follow the practices provided in the Guidance. Because many of ACE's linear projects will excavate less than the threshold amount of contaminated soil, clarification would be appreciated regarding how the Department will treat such projects. In particular, a party which opts to voluntarily follow the best management practices of the Guidance for a linear project entailing less than 200 cubic yards of contaminated soil excavation should be given the opportunity to also submit an LCP Report, and receive the assurance that the project has been conducted in a manner acceptable to the</p>	
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					Department.	
7	3	1	2		<p>Review of the stakeholder list shows that while NJDOT and utilities were represented on the work group, there were no representatives from the land-owner community. As a result, while this is a good quality work product, the recommendations favor the parties undertaking the construction, at the expense of the property owners. Certain changes in process are recommended in the comments below, to correct this shortcoming.</p>	<p>The LCE will need to work property owners to implement needed remediation. The property owners will still dictate remedies.</p>
8	3	1	3	A nd 5.1	<p>It would be helpful to clarify when and why the Spill Act and USHS Act are not applicable to linear construction projects or vice versa.</p>	<p>The Department agrees with the commenter and will and will edit the guidance document accordingly.</p>

9	3	1	3	<p>Second sentence suggests that Linear Construction "entities" (shouldn't they be called "investigators" like other guidance?) MAY comply with this guidance OR the Tech Regs. They MUST comply with TR. Should 'or' be 'must'?</p>	<p>There are no rules for LCEs to comply with yet. The guidance will be amended after the ARRCS rules are adopted.</p>
10	3	1	3	<p>The guidance requires that the site remediation process be followed as a prerequisite for certain construction projects without any triggering event such as an actual discharge of a hazardous substance, the closure of a UST or transfer/closure of an industrial establishment. If NJDEP intends to enforce the provisions of this guidance document as regulation, then it should be promulgated as such.</p>	<p>The only time that a linear construction entity would need to use the linear construction guidance is when contaminated properties are anticipated or found. If no contaminated properties are anticipated then this guidance would not apply. The Department is in the process of adopting basic LCP requirements into subchapter 16 of the ARRCS rules.</p>

11	3	1	3	<p>It is unclear from this subsection what the course of action will be if the Spill Act responsible party either cannot be identified or refuses to take responsibility for cleanup. For linear construction projects to remain on schedule, any required cleanup may have to take place before or during construction. In many cases, remediation under a new highway or rail line will not be practical once the project is completed. This entire document appears to address the concerns of utility companies who do not typically take title to a property, but occupy it through licenses or easements. It does not address the needs of NJ Transit or NJDOT, who typically take title to the property they are building on, placing them in the chain of title for Spill Act liability.</p>	<p>The Department will contact the responsible party. The Department does not anticipate that the linear construction project would need to hold up the project schedule. The linear construction entity should make reasonable allowances to give responsible parties access to contaminated areas for the purposes of remediation.</p> <p>The Department's position is that highway and rail line projects should approach these projects in the same manner as other linear construction entities, and recommends that the commenter discuss their responsibility with their legal representative.</p>
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12	3	1	3	<p>In this section, the Guidance references both “linear construction entities” and a “person conducting a linear construction project.” We suggest that, for consistency, the latter term be used, as that is a defined term in the definition section, whereas the former is not. In the first paragraph, a distinction is drawn between “linear construction entities” who either are or are not “subject to” the Spill Compensation and Control Act or the Underground Storage of Hazardous Substances Act. Presumably what is intended is to distinguish between persons who have or do not have an obligation to remediate contamination under those two statutes (for ease of reference, the former will be referred to in these comments as “responsible parties” or RPs). The Guidance should be revised to clarify that intent</p>	<p>The Department did not intend to differentiate between “linear construction entities” and a “person conducting a linear construction project.” To avoid confusion the Department deleted the one use of the linear construction entity from the document.</p>
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13	3	1	3	<p>The Guidance indicates that, if it is followed, the PCLCP is not required to delineate or remediate contamination “outside the limit of the excavation area within the linear construction corridor.” This wording is one of several instances in the Guidance which points to the need for the Guidance to give further consideration to coordination between the PCLCP and an RP (e.g., a property owner) that is remediating the overall site of which the LCP is a portion, and also to more specifically define the area in which LCP delineation and remediation activities should take place.</p> <p>For example, if the “excavation area” is limited to the precise limits of the excavation, a PCLCP laying an underground pipeline or utility line could be placing that line on top of contaminated soil, waste, or other source material that underlies</p>	<p>The person conducting an LCP must use their judgment during planning, design and implementation to account to the nature and extent of contamination and to what extent that they will allow a responsible party access to remaining contaminated areas after their construction has been completed. The Department agrees that the person conducting the LCP and the responsible party will need to come to agreement regarding coordination of remediation and project construction. However, the Department does not believe that the guidance needs more clarification on this issue and will not be participating in such negotiations.</p>
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				<p>the actual excavation but has not been delineated because it is deemed to be “outside the excavation area,” i.e., the excavation does not go that deep. This could create a significant impediment to further remediation for an owner or RP who will be unable to access the area below the excavation (at least not without significant risk to the health and safety of the owner/RP and the environment) after the LCP is completed because of the presence of the utility or pipeline. Consequently, there is either (1) the need for complete vertical delineation and remediation by the PLCP in the excavation area, (2) delay in the LCP pending completion of the remediation of that area by the RP or (3) an understanding that, because of the presence of the LCP, no further vertical delineation will be required by the RP or owner in order to obtain a RAO for the</p>	
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				<p>applicable site or AOC. Finally, as the above (and other comments below) makes clear, there needs to be substantial coordination between the PCLCP and an RP or any property owner performing a remediation of the overall site or the AOC within which the LCP falls, and this should be spelled out in the Guidance. In the event that an RP (or a property owner) is remediating the property or, upon notice from the PCLCP of a planned LCP, determines that it will remediate the property, the Guidance should indicate that the PCLCP must, at a minimum, afford the RP/owner the opportunity to address contamination within the project area in a manner and time frame consistent with the overall remediation of the site or AOC by the RP/owner. Otherwise, agreement must be reached with the owner whereby the PCLCP performs remediation</p>	
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					activities within the area of the LCP, with the timing, scope and nature of any such remediation and linear project construction activities addressed by agreement of the parties.	
14	3	1	5		<p>As proposed in the draft guidance document "linear construction project" means construction and development to create, maintain, alter a roadway, railroad or utility by a person conducting a linear construction project that: 1. Includes more than one property, that has contamination above a remediation standard; and 2. Will generate more than 200 cubic yards of contaminated soil for fill or disposal during the duration of the linear construction project. The definition should be modified to clarify that it includes maintenance, replacement, and</p>	<p>The definition includes the words "maintain" and "alter" which intentionally would include work such as maintenance and replacement and upgrading of existing infrastructure.</p> <p>The Department disagrees that the 200 cubic yard limit be removed from the definition. The guidance includes the recommendation that "smaller" projects (those generating less than 200 cubic yards of material) not be required to contact and file reports with the Department. It is our understanding that there are hundreds of small repair jobs going on throughout the State at any one time. Because these jobs are small in scale the Department does not think that they should be required to notify and file reports with the Department.</p> <p>As to the volumetric part of the definition of LCP, 200 cubic yards seemed a reasonable cut off between large and small projects. It anticipated that entities will be able to estimate this volume limit by using the waste characterization or other sampling information along with commonly used project management calculations. Notification to the Department would only be required after the entity is fairly sure of the amount of contaminated fill that will be involved in the project.</p>

				<p>upgrading of existing infrastructure. Further the 200 cubic yards of material as a volumetric limit should be removed from the definition. Establishing such a volumetric limitation places the burden of determining the amount of contaminated soil or fill required to be disposed during work and tracking the amount of contaminated soil or fill on the contracting party. While an estimate of the amount of contaminated fill or soil to be disposed during construction may be possible for projects crossing known contaminated properties, determining the amount of contaminated fill or soil that will be generated from properties not known to be contaminated will be difficult. The information on the chemical constituents of soil may not be known until waste characterization analytical data is received.</p>	
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15	4	1	3	<p>In first paragraph, add a statement that if the person conducting a linear construction project is also a person responsible for the remediation as defined in ARRCs, then they must comply with the Tech Rule and delineate and remediate outside the limit of the construction corridor.</p>	<p>The Department agrees with the commenter and will and will edit the guidance document accordingly.</p>
16	4	1	4	<p>‘As noted in the Commenters’ comments filed on the August 15, 2011 rule package, the Commenters requested that the LCP rule should not be adopted until there is a separate opportunity to comment on the rule in light of the Guidance. As noted elsewhere in these comments, a review of the Guidance has identified a number of areas that may benefit from regulatory clarification when dealing with what is a new concept not previously found in the site remediation regulations.</p>	<p>The Department coordinated its responses to comments on the rules and the technical guidance and believes that these responses provide the clarification requested. The Department also plans of conducting training and further outreach on this topic as needed.</p>

17	4	1	5	<p>Def of "person conducting a lc project": shouldn't this be "investigator", again, as in other guidance documents?</p>	<p>This guidance is somewhat different than other technical guidance documents since it is not directed at responsible parties, thus it is not necessary for it to reference the "investigator."</p>
18	4	1	5	<p>In most cases, a utility, as the constructing party, encounters contaminated media within rights-of-way for which it is not the responsible party. Based on the guidance, the constructing party, already burdened with the cost and responsibility of waste management, is then also subject to payment of fees, notification requirements and reporting requirements related to contamination it did not cause. A constructing party, if not the responsible party, should not be required to bear these additional responsibilities the cost of which eventually gets passed on to the ratepayer or taxpayer. If a constructing party discovers a discharge, it is already required to be reported to the NJDEP Spill Hotline providing</p>	<p>The Department would prefer that the person that caused the discharge be the one that remediates the resulting contamination, however sometimes that is not possible. The goal of linear construction guidance is to make sure that contaminated material that is encountered during these projects is dealt with in a way that will be protective of human health and the environment. The Department believes that the use of this guidance will benefit constructing parties by providing a clear and consistent approach to managing contaminated soil and ground water when a responsible party is not willing or able to do the work that is needed within the time frame that the construction is being conducted.</p>

					adequate notice to the agency. The program fees, notification requirements and reporting requirements as proposed in the guidance should be eliminated.	
19	4	1	5		In the event, linear construction definition remains as is, PSEG is requesting clarity on the definition of a "property". Does the right-of-way constitute a property? The definition of a "property" is not defined in the Administrative Requirements for the Remediation of Contaminated Sites (AARCS) NJAC 7:26C.	The document assumes the common English meaning of property (i.e., land). The Department intentionally did not bring in the concept of right-of-way and does not think it is necessary to do so.
20	4	1	5		In the event, linear construction definition remains as is, PSEG is requesting clarity on what is meant by "generate more than 200 cubic yards of contaminated soil for fill or disposal". Does this calculation include the amount of excavated contaminated material that is backfilled into the excavation area as	Yes, further explanation for the volume is provided at 3.3.4.2. This volume refers to the total amount of soil being excavated, whether it will be backfilled, reused or disposed.

					defined in Section 3.3.4.2?	
21	4	1	5		Definitions of “excavation area” and “linear construction corridor” should be added consistent with our comments on section 1.3.	The terms “excavation area” and “linear construction corridor” are defined by their plain English definitions. The Department does not believe the suggested change is needed.
22	4	1	3		The last paragraph should be clarified to, "with an opportunity to access and remediate existing or known contaminated sites or areas of contamination located within the linear construction project area".	The Department agrees with the suggested change. The guidance will be changed accordingly.
23	4	1	3		replace “...chooses to comply with this technical guidance...” with the phrase “...is not the person responsible for conducting the remediation...”	The Department does not believe the suggested change is needed.
24	4	1	3		The person conducting a linear construction project should provide Spill Act responsible parties with the opportunity to access and remediate contamination located within the project area. This requirement could result in long project	The Department agrees that linear construction entities allow responsible parties access to contaminated areas in order to conduct remediation. Responsible parties are required to comply with new regulatory and mandatory time frames that will effectively move these cleanups forward in a timely manner.

					delays and additional costs to the person conducting the LCP due to RPs or suspected RPs reluctance to take ownership/responsibility for impact encountered.	
25	4	1	5		Should "Due Diligence" be included and reference corridor studies in accordance with ASTM/AAI Standards?	The Department intentionally did not dictate how due diligence should be conducted for these projects. Discussions amongst the members of the guidance committee confirmed that the entities conducting this work are experienced and capable of conducting the pre-project work. Therefore, the pre-project guidance was intentionally general.
26	4	1	5		The definition of "Person conducting a linear construction project" must have language added that clearly states that the property or project owner are the "person or entity." The contractor cannot be responsible for preconstruction sampling nor can they get many of the preconstruction permits that are required during the planning sections of this guidance document. These must be done by the "owner" be it a utility laying pipe or a state agency. The definition should read: "Person conducting a	The Department will not edit the definition but will add clarification that this guidance does not apply to a contractor per se. However it should be understood that linear construction entities will often hire contractors to implement these recommendations as part of the LCP.

				linear construction project” is a person or entity, who is the project `owner` or the property `owner,' that conducts a linear construction project and is not subject to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3 the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq	
27	4	1	5	<p>The definition of “linear construction project” requires an LCP to include more than one property that has known contamination above a remediation standard, and to generate more than 200 cubic yards of contaminated soil for fill or disposal during the duration of the project. Because the Guidance does not specify how an entity is expected to estimate the amount of contaminated soil a project will generate, further clarification is needed to confirm that the Department is not imposing a new</p>	<p>The Department believes that during the design and planning of these projects that LCEs can reasonably estimate the amount of contaminated soil that will be generated. If the LCE underestimates the amount of soil, when, during the execution of the project, it is determines that greater than 200 cubic yards of soil is being generated the LCE can submit the notification form to the Department with 45 days after that determination.</p> <p>The Department is not establishing requirements for pre-project planning. Each linear construction entity should conduct the level of due diligence that is warranted to plan for worker safety, soil management and for potential environmental impacts on a project by project basis and apply the LCP guidance as it is applicable.</p>



mandate that entities planning a linear project conduct extensive background research, due diligence and/or site sampling for purposes of determining whether the project in question meets the “linear construction project” definition. Such a mandate would impose significant costs and delays on projects, particularly those planned by ACE in light of the number of properties and individual excavation points involved in constructing either a transmission or distribution line.

For a hypothetical twelve mile overhead distribution line project, hundreds of properties could be involved, and more than 360 individual distribution pole boreholes. In the event that the Department refuses to exempt such a project from the scope of the Guidance, without further clarification an entity constructing the

				<p>project may be forced, as a conservative measure, to conduct research into and possibly sample all of the involved properties and/or boreholes – even where it is unlikely that the project will generate much, if any, contaminated material. As noted below, such research and sampling efforts could cost hundreds of thousands of dollars and impose months of delay to a project. These impacts are not warranted, particularly as simply referencing the State’s list of known contaminated sites against the expected location and number of poles to be installed on transected properties provides a viable threshold estimate of how much contaminated soil may be excavated through the duration of a project – an estimate that is adjusted as the project proceeds to reflect site-specific characteristics and the discovery of unexpected contamination. Use of</p>	
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				<p>the known contaminated site list is an entirely adequate way for an entity to initially determine whether its proposed project will classify as an LCP, with the understanding that later adjustments to the estimate may result in a project becoming an LCP as it is implemented. The Guidance should be clarified in this regard to allow entities to assess whether the Guidance is applicable to their proposed project without first having to spend hundreds of thousands of dollars in research, due diligence and sampling over a number of months.</p>	
28	4	1	5	<p>The definition of “linear construction project” should be referenced to the definition of that term in the ARRCS (the wording is a little different). Also, that definition should be changed consistent with our comments to Section 1.3.</p>	<p>The Department agrees with the suggested change. The guidance will be changed accordingly.</p>

29	4	1	5	Also as noted above, the term “person conducting a linear construction project” should be used in lieu of a “linear construction entity.”	The Department agrees with the suggested change. The guidance will be changed accordingly.
30	4	1	5	The three “tank” definitions should be modified so as to refer to the specific definition of each term pursuant to N.J.A.C. 7:14B rather than each referring to “a tank defined pursuant to N.J.A.C. 7:14B.”	The Department does not agree that the suggested change is necessary. The meaning of the referenced terms are clear in the guidance.
31	5	2	1	PSEG proposes the elimination of the payment of the Site Remediation Program of contaminated media management, & the elimination of reporting to the Site Remediation Program. To the extent that PSEG discovers a discharge for which the company is not responsible, PSEG already reports that discharge to the NJDEP Spill Hotline.	The Department is proposing a minimal fee that will cover its inspection and review costs associated with these projects. Responsible parties will pay fees as established in ARRCS rules.
32	5	2	1	Consider revising 4th bullet item to: Submit a final report to the Department 180 days after the completion of a construction of a linear	The Department would like a final report to be submitted so that the initial “notice” of the project could be closed out of its tracking system.

					construction project only if remediation or similar regulatory action was completed within the limits of construction.	
33	5	2	1		<p>The Guidance indicates that a PCLCP should hire a LSRP to oversee the management of contamination encountered during a LCP. The Guidance should also account for the situation in which an RP or owner of the property is performing a remediation of the property or an area of concern of which the LCP is a part and the RP or owner wants to ensure that the proper measures are being taken by the PCLCP so that the activities of the PCLCP do not hinder, interfere with, or make more dangerous or expensive any remediation by the RP/owner (e.g., by not fully delineating and remediating vertically or in buffer areas as discussed in the comments on section 1.3 above). The</p>	<p>The Department agrees that the owner/RP has the option of retaining an LSRP to oversee the work of the PCLCP. However, the Department considers it to be unnecessary, or even inappropriate, for the guidance to include this suggestion/recommendation.</p>

					Guidance should afford the owner/RP the option of retaining the LSRP to oversee the work of the PCLCP (and avoid the possibility of two separate LSRPs having responsibility for the project or an AOC through which a LCP runs).	
34	5	2	1		This section requires the payment of all fees pursuant to N.J.A.C. 7:26C-4. It was our understanding that only a special LCP fee would be required for LCPs and not the fees required of all remediation projects as set forth in the cited regulation.	The Department included a reference to the general fee section of the ARRCS rules in order to provide a process for a person conducting an LCP between the time that the guidance is posted and when the rules are adopted.
35	5	2	2		If contamination is encountered, the party doing the construction notifies the DEP and then, later, informs the property owner of the notification. Arguably, this procedure is not consistent with the provisions of ARRCS. If contamination is encountered, (unless it is an IEC condition) the property owner must be contacted and the	The Department agrees with the suggested change. The guidance will be changed accordingly.

					notification made jointly by the property owner and the party doing the construction	
36	5	2	2		The guidance requires that during the construction project when contamination above a remediation standard is discovered that is not already known to the Department, the constructing party should immediately notify the Department via the DEP hotline. How often will the Department to update their online databases?	After the Department evaluates each hotline call and determines that a new case should be established, the case data is put into its tracking system. This information is “live” and available to the public via data miner.
37	5	2	2		The sequence of notifications should be reversed. The property owners should first be notified that contamination was encountered, informed that the hotline will be notified and then make the notification. Especially in the case of home-owners this is basic courtesy. Any Case Tracking number that is assigned to a discharge should be associated with the property owner and not	The Department agrees with the commenter.

					the person conducting a linear construction project.	
38	5	2	2		Other than an IEC condition, would it not be the responsibility of the property owner to make the hotline notification if a discharge is identified, since the LSRP for the linear construction project is not the LSRP "of record" for the discharge associated with the property that is intersected by the project?	Any LSRP that becomes aware of an IEC condition is responsible for notifying the Department's hotline.
39	5	2	2		References notifying the Department of name of LSRP. Is this completed via the "Retention and/or Dismissal of an LSRP" form?	No. This information will be part of the LCP notification form.
40	5	2	2		This section requires the PCLCP to immediately notify the Department, and then subsequently the property owner, when contamination above a remediation standard is discovered that is "not already known to the Department." The required notification must include the name of the property owner	<p>The ability for a person conducting an LCP to report the name of the person that is responsible for the contamination that is encountered is limited to the extent that they know this information. In the case were the information is not known, the person conducting an LCP should report the source of the contamination is "unknown".</p> <p>The procedures for due diligence are generally followed including a search of the Department's Data Miner system should indentify sites and USTs of which the Department is aware.</p> <p>The suggested notification procedure would generally be sufficient.</p>



who is responsible for the discharge. As a practical matter, the PCLCP may not know what contamination is already known to the Department without first consulting with the property owner. Similarly, the PCLCP may not know who is actually “responsible for the discharge” and whether that entity is, in fact, the property owner. Finally, while “discovery” of an underground storage tank is a trigger in the Guidance for immediate DEP notification, it may not be clear to the PCLCP whether a given underground tank has, in fact, been discovered or is already known to the property owner or Department.

ACE suggests that, unless an immediate environmental concern condition or environmental emergency is identified, the PCLCP immediately contact the property owner upon discovering any unanticipated

				contamination above a remediation standard or underground storage tank, and subsequently notify the Department within 24-hours depending on the input received from the property owner. This approach may avoid confusion, enhance efficiency, and increase the amount of information that can be provided in the notification provided to the Department.	
41	6	2	2	The person conducting a linear construction project is required to notify the property owner of the discharge, in writing and include a copy of that notification to the Department in the linear construction project final report. Utilities frequently install and maintain facilities within the right of way of local, state, and county roads; therefore, in the event contamination is discovered, it would be required to notify the appropriate local, state, or county authority.	<p>The Department does, as part of its administrative process, notify local governments of discharges in their jurisdiction. The Department does not believe that it needs to modify this long standing process.</p> <p>The Department believes that LCEs and property owners need to have ongoing communication, and the identification of contamination should be part of that.</p>

				<p>PSEG proposes that the Department notify the local, state, or county governmental agencies, not the constructing company. Further, linear construction projects may occur within easements located on private properties, including residential properties. The constructing party should not be required to notice private property owners regarding contamination as it is not the appropriate entity to answer property owner questions or concerns regarding the findings.</p>	
42	5	2	2	<p>Requirements to notify are vague. The words "suspected" and "assumed" are used in the description of knowledge of contamination. These words should be deleted and the requirements to notify should be simplified to 1.) prior to construction if contaminants were identified during due diligence or 2.) encountered during the construction project.</p>	<p>The Department clarified the language in this section.</p>

43	5	2	2	<p>As a property owner and person conducting LCP, the requirement to immediately notify the Department via the hotline when contamination above a remediation standard is discovered that is not already known to the Department and identify the name of the property owner who is responsible for the discharge is very concerning. Determining the responsible party based on the discovery of impact in a linear trench in many cases in NJ will prove to be a difficult task. It is well understood that utility corridors act as migration pathways, so while the adjacent property owner is the most likely party to be identified, the real RP may be located further upgradient. The notification requirement is also putting a lot of responsibility on field personnel to make a decision with potential legal ramifications (incorrectly identifying</p>	<p>The Department recognizes that it may be difficult to determine likely responsible parties in some cases. The LC entity can only report this information if it is known to them.</p>
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				<p>a RP) based on limited information (elevated PID readings in a utility trench).</p> <p>It should not be the responsibility of the person conducting a linear construction project to identify responsible parties (see comment above) nor notify the property owner of the discharge. This responsibility should remain with the NJDEP, especially in situations where multiple (potential) sources of the impacts exist.</p>	
44	5	2	2	<p>Notification requirements are confusing. There is the 45 day requirement for LCPs known or suspected to have contamination or after contamination is encountered at a LCP assumed not to have contamination, but also an immediate notification via the hotline for contaminants not already known to the Department. Clarification on the notification requirements is</p>	<p>The first notification is based on preliminary work that is conducted before the project is started. If during the project other contamination is discovered (and so would by definition not be already known to the Department) a call to the hotline would be warranted.</p>

					warranted.	
45	5	2	2		A person cannot be conducting a linear construction project and assume a project did not have contamination as is described in the second bullet point because by your definition of a 'Linear Construction Project' is a construction project with contamination present.	The second bullet refers to situations when contamination is not anticipated but is found during the course of the project.
46	5	2	2		May be better to state in the second bullet to identify the name of the property owner on which a discharge has been identified rather than stating the property owner is responsible for the discharge as there may be other RPs that are not the property owner.	The guidance was modified since there will be many instances when the LCE will not be able to determine responsibility for the contamination.
47	5	2	2		Here again, the language appears only to address the needs of utilities constructing on property they do not	The Department will contact the responsible party. The Department does not anticipate that the linear construction project would need to hold up the project schedule. The linear construction entity should make reasonable allowances to give responsible parties access to contaminated areas for the purposes of remediation.

				<p>own, but are occupying through easement or license. NJDOT and NJ Transit typically take title in fee for property they construct on, so they are, in effect, the property owner. If the discharge occurred during prior ownership, or migrated onto State property from a neighboring property, how is NJDOT or NJ Transit supposed to handle their obligations and satisfy NJDEP requirements without delaying or cancelling the construction project until a responsible party can be identified and complete the remediation?</p>	
48	5	2	2	<p>The time for advance notice of the LCP to the Department (at least 45 days) seems unduly long and may unnecessarily delay the start of the LCP. The Commenters propose 30 days.</p>	<p>Generally the planning activities for these projects are long enough to allow for the notice to be submitted 45 days before the start date. If that time frame is not reasonable for a given project, submit the notification some time prior to the start of the project with an explanation of the time constraints.</p>
49	5	2	2	<p>The property owner (where that entity differs from the PCLCP) should also be notified of the LCP and its consent obtained to proceed with a LCP and the requisite remediation activities.</p>	<p>The Department assumes that the person conducting the LCP will need to be in contact with the each affected property owner prior to the start of the project and is free to share any notices, forms and reports with them.</p>

					Any notice, forms or reports submitted to NJDEP by the PCLCP should also be provided to the owner.	
50	5	2	2		The notice given to the Department should indicate the nature of the interest that the PCLCP has in the property (e.g., easement, right of way, etc.) and provide evidence of the property owner's consent to the LCP.	The form provided for this purpose includes questions about the project area. It is not necessary to provide the Department documentation regarding the property owner's consent to conduct the project.
51	5	2	2		The requirement that the PCLCP give the hotline operator "the name of the property owner who is responsible for the discharge" calls for a legal conclusion regarding the liability of the property owner that is inappropriate to impose on the PCLCP. At most they should simply be required to give the name of the property owner.	The person conducting the LCP information that they know to the hotline based on the diligent inquiry that they conducted.
52	5	2	2		The Guidance should address the possibility that the PCLCP may cause a discharge during the performance of the LCP, and should include a requirement that the owner be notified immediately in such an event.	The guidance states " If a person conducting a linear construction project causes a discharge or chooses to take a remediation over for a responsible party the remediation must be conducted in full compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Administrative Requirements for Site Remediation, N.J.A.C. 7:26C." The Department's rules do not establish reporting requirements to third parties that are not governmental entities, so the Department cannot change the guidance as requested.
53	5	2	2		The Guidance should acknowledge that there may be conditions discovered by the PCLCP	The Department is uncertain about the possible conditions referenced by the commenter. It seems that consulting with the property owner on uncertain site conditions would be a reasonable step.



					that may not clearly constitute a discharge. It may also be unclear to the PCLCP whether a potential discharge is one that is not currently known to the Department. In these circumstances, the PCLCP should notify and consult with the owner as to any reporting obligations.	
54	5	2	2		The PCLCP is under no legal obligation to report a discharge. Therefore, the property owner should be afforded that opportunity by the PCLCP where it would not result in a material delay in reporting to the Department. It should be clarified that notice of a discharge should also be given immediately to the property owner.	The guidance contains “should” provisions. The Department stated that the person conducting a LCP should contact the DEP hotline under certain conditions.
55	6	2	2		In second paragraph, 3rd bullet to revise indicate "Discovery of any regulated UST or non regulated UST exhibiting contamination issues." This would exclude residential heating USTs with no concerns and thus reduce unneeded paperwork i.e., hotline notification.	The Department disagrees. The key factor is not whether a tank is “regulated” or not – it is the fact that it is leaking. Any discharge of hazardous material requires a call to the Department’s hotline.

56	6	2	2	Should add a definition of what is "immediately dangerous to life and health" so it is clear what this as.	The Department deleted the phrase from the document. The term environmental emergency is sufficient to describe that the hotline must be called when it is determined that a call to 911 is warranted.
57	6	2	2	Should include bullets for drums and free product as conditions to call the DEP hotline.	The LCE should be allowed to use their discretion when drums or free product is identified. Drums could be empty or contain solid material and the amount of free product might be small not warrant a hotline call.
58	6	2	3	Update term of "Alternate Fill Technical Guidance" to be in line with new guidance procedures	The Department agrees with the commenter and will and will edit the guidance document accordingly.
59	6	2	3	Generic reference to N.J.A.C. 7:26C-7 should be made more specific, i.e., N.J.A.C 7:26C-7.9: Modification of specific requirements in a remedial action permit.	The Department agrees with the suggested change. The guidance will be changed accordingly.
60	6	2	3	The Guidance should allow for greater flexibility with respect to any required planning and due diligence measures by allowing such measures to reflect the nature of a project and to be scaled accordingly. As noted in the Introduction above, ACE submits that the nature of overhead power line projects does not	The guidance allows for a lot of flexibility when it comes to planning and due diligence for these projects and essentially it is left up to the person conducting the LCP to determine what is appropriate for each project type and location.

				<p>warrant their inclusion in the scope of the Guidance. Even if the Department determines to apply the Guidance to overhead power line projects, the costs and time delays that would be imposed on these projects through the Guidance is not justified as the projects would involve only limited soil excavation boreholes spread out over many miles of a power line project. With respect to overhead power line projects, it is unwarranted from an environmental or public health perspective to require characterization of soil and groundwater conditions along the entirety of their proposed routes through detailed background research, due diligence and pre-construction sampling. While such a detailed characterization may be helpful for certain projects entailing significant soil excavation, it is not justified in the context of overhead power line projects, which will</p>	
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				<p>typically excavate limited amounts of soil on any given property. Any of this soil that is contaminated can be - and currently is - removed, handled and disposed of properly without, for instance, detailed operational history on a site or costly soil and groundwater sampling. As noted below, the costs and delays to overhead power line projects anticipated as a result of the planning and due diligence currently described in the guidance are significant, and greater flexibility in those provisions is recommended.</p>	
61	6	3	1	<p>The Guidance should expressly identify the importance of coordinating any data gathering and due diligence with the property owner. Matters such as sampling, materials (soil and water) management, site security and access, removal of free product and buried waste, debris</p>	<p>The Department agrees with this comment.</p>

					<p>or containers, the nature of backfill and other matters addressed by Section 3 of the Guidance must, at a minimum, be coordinated with the property owner (or other RP remediating the overall site or affected AOC). In most instances these matters will be subject to the consent of the owner and approval of the owner's LSRP.</p>	
62	6	3	1		<p>This is important so that the PCLCP's activities do not hinder, interfere with, or make more dangerous or expensive the remediation activities of the owner or other RP at the site or affected AOC. It is also important to recognize that the owner may have property rights superior to the PCLCP that need to be respected in connection with the planning and performance of the LCP.</p>	<p>The Department agrees with this comment.</p>
63	6	3	1	2	<p>Consider revising first sentence to include: There are numerous readily available</p>	<p>The Department agrees with the suggested change. The guidance will be changed accordingly.</p>

					sources of information relative to the operational history and environmental conditions of real property in New Jersey such as regulatory database vendors, historical aerial photographs, historical topographic maps, Sanborn Fire Insurance Maps, City Directories, etc.	
64	6	3	1	2	Should "Due Diligence" be included and reference corridor studies in accordance with ASTM/AAI Standards?	The Department intentionally did not dictate how due diligence should be conducted for these projects. Discussions amongst the members of the guidance committee confirmed that the entities conducting this work are experienced and capable of conducting the pre-project work. Therefore, the pre-project guidance was intentionally general.
65	6	3	1	2	The guidance directs the person conducting the linear construction to report to the NJDEP any contamination that may be encountered and take appropriate measures for the disturbance of any engineering controls that may be in place. Therefore, this section should outline the types of information that may be necessary to obtain, such as investigation reports, deed notices and remediation permits,	The referenced rules sufficiently describe the process and content of such reports, therefore it is not necessary to provide that information in this guidance.

					etc.	
66	6	2	2		Why are UHOT be considered for NJDEP hotline action, since they are unregulated by NJDEP unless a release is present?	LCEs must only call the hotline when a discharge occurred from an unregulated heating oil tank.
67	6	2	2		Consider revising 3rd bullet item to: Discovery of any underground storage tank that has a confirmed release in accordance of NJAC 7:14B-7.1.	The Department intentionally did not reference its UST rules at N.J.A.C. 7:14B because the Department should be called even if an unregulated tank is found.
68	6	3	1	2	The Department needs to clarify what it means by "sufficient" due diligence and properties that will be "transected" by the proposed linear construction project. What activities does the Department consider sufficient for due diligence purposes? What does transected mean? Does it mean adjacent to the property or actually crossing the right of way containing the utility line?	The Department thinks that this section is self explanatory. The stated goal of due diligence is to get information about contamination at properties where the LCP will occur. Pre-project work has been, and will continue to be conducted by entities involved in LCPs. This technical guidance is not meant to replace processes that entities have in place.
69	6	3	1		Clarify in first sentence what conditions should be characterized and state	This section is being left intentionally vague. The purpose of this document is not establish guidance for how LCEs must conduct due diligence. LCEs have existing internal procedures for this purpose. The focus of the guidance is to provide direction regarding what must be done when they identify contamination within the project area.

					these should be done rather than can be helpful. Too vague as written. Similar thought applies to next sentence (is advisable vs should be done).	
70	6	3	1	3	The guidance should mention that the person conducting the linear construction can rely on previous investigation data, if they exist. The discussion on sampling must also address background and DAP.	The Department agrees with the commenter and will edit the guidance document accordingly regarding the use of previous data. However, the Department does not believe it is necessary to include a discussion on background and DAP because there is nothing unique to linear construction projects regarding how to address background or DAP.
71	7	3	1	2	Include Fill Use Plan in list of things to be developed at end of the last sentence	The Department agrees with the commenter and will edit the guidance document accordingly.
72	7	3	1	3	Vertical delineation within construction/project limits is required per Tech Rule and should be added to text as after construction it will be difficult if not impossible to get access to complete vertical delineation after construction is complete.	The LCE would be required to delineate contamination when they do not allow the responsible party access to the site or when they assume responsibility for the remediation from the responsible party.
73	7	3	1	3	The questions that come up most frequently on Linear Construction Projects I have worked on have dealt with	This section refers to the Department's Alternative and Clean Fill Guidance for SRP Sites which is available on the web page as the LCP guidance. Reduced sampling frequencies for large quantities are available and may be used based on the Licensed Site Remediation Professional's judgment.



				<p>handling and disposing of excess soil and surcharge material. Subsequently, the required number of samples to determine clean fill and off-site placement is often debated.</p> <p>Since the Guidance Document indicates that linear construction projects are not site remediation projects, the Guidance Document should provide clear guidance to the number of samples, the type of samples, and types of analysis required to determine if soils are hazardous, non-hazardous (ID-27 waste), clean fill, and/or guidance for Beneficial Use. Reference to regulations or guidance documents, hyperlinks, or new sampling protocol for Linear Construction Projects should be provided detailing the required frequency and types of samples required to determine soils for off-site disposal/placement and/or for clean fill</p>	<p>The Department wants to emphasize the importance of using clean fill to cap contaminated soil in order to prevent exposure. It is not the Department's intention to apply the "requirements" of the Alternative and Clean Fill Guidance to every aspect of construction projects.</p>
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					<p>determination and/or whether hazardous classification sampling analysis is required. If it's intended to be in line with the protocol outlined in Table 1 and Table 2 of the Alternative Fill Protocol, then those guidelines, links, and/or rationale should be highlighted.</p> <p>Linear Construction Projects such as roadways, railroads and other infrastructure projects have the potential to generate large quantities of soil. As such, the sampling protocol to determine the quantities should be reduced to be more practical and economical feasible.</p>	
74	7	3	1	3	<p>Requiring pre-construction sampling is a safety hazard when drilling around utility lines for the sole purpose of defining the level of contamination in the excavation area. There are set back requirements (NJSA Title 48, Public Utilities Chapter 2-82, Board of</p>	<p>The guidance includes recommendations developed by Department staff and stakeholders from a broad range of linear construction entities. The recommended sampling is not a requirement. The Department assumes that each linear construction entity will use its judgment and due caution when conducting pre-construction investigations. Many entities believe such sampling is advisable.</p>

					Public Utilities Commissioners) for drilling around utility lines. Pre-construction sampling (soil and groundwater) is burdensome and not necessary. Therefore the pre-construction sampling requirement should be eliminated.	
75	7	3	1	3	Consider revising first sentence to include: Based on the review of available data (see 3.1.2.), the person conducting a linear construction project should develop a sampling plan for potentially contaminated areas identified within the proposed limits to assess the presence of contamination within the limits of the proposed excavation in order to develop a pre-construction sampling plan.	The Department does not agree with this suggested change. Recommendations about project planning was left intentionally broad so that linear construction entities can apply their existing procedures on a site-specific basis.
76	7	3	1	3	Consider including as 2nd sentence or incorporating into paragraph: Sampling locations should be limited to the limits of construction (i.e., depth	The Department agrees with the suggested change. The guidance will be changed accordingly.

					and width). Additional sampling considerations should be given to deeper-seated excavations associated with trenches, footers, foundations, drilled pile locations, etc., as applicable.	
77	7	3	1	3	The party doing the construction is encouraged to conduct sampling along the alignment. However, there is no mention of reliance on any investigations that the site owner might have conducted. Sampling without the context of any previous investigations at the site will likely result in data that is not representative of site conditions, or results in erroneous interpretations.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
78	7	3	1	3	While the guidance acknowledges historic fill, it does not acknowledge background and Diffuse Anthropogenic Pollution (DAP). The natural occurrence of certain metals (arsenic) is well documented and the site owner cannot be	The LSRP should use their professional judgment when evaluating issues related to background concentration and DAP consistent with existing Department guidance.

					held responsible because an incomplete investigation failed to identify it as background. DAP is also ubiquitous, particularly along existing ROWs and must be properly accounted for in sample collection and data interpretation.	
79	7	3	3		In the first sentence, delete "...in order to develop a pre-construction sampling plan", as this language is redundant to that in the beginning of the sentence. Why would you develop a sampling plan to develop a sampling plan? It is unclear what the intent of the guidance document is with respect to this language.	The Department agrees with the suggested change. The guidance will be changed for clarification.
80	7	3	1	3	First sentence refers to available data "(see 3.1.2)", but 3.1.2 does not reference data. Remove reference to 3.1.2 or correct it.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
81	7	3	1	3	Sampling (including type, location, parameters) should be coordinated with and approved by the	The Department agrees with this comment.

					owner/RP.	
82	7	3	1	3	<p>Additional guidance with respect to ground water sampling would seem to be appropriate. What is the purpose of groundwater sampling in connection with this type of construction? E.g., is it meant to evaluating how to deal with contaminated ground water in connection with dewatering activities? Is the sampling to determine baseline conditions (which could potentially be important to the owner where there is a risk that the PCLCP may cause a discharge or exacerbate contamination that a RP or owner is addressing at the site or affected AOC)? Is there some broader remediation objective that is to be addressed by the PCLCP? The latter would not seem to be the case in most LCP situations.</p>	<p>Only brief recommendations for ground water sampling are included in the guidance, intentionally. Some ground water sampling may be necessary for a given project to determine how dewatering during construction will be handled. Another time the guidance recommends ground water sampling is when a UST is being removed.</p> <p>However, it should kept in mind that whoever is conducting the remediation, whether it is the person conducting the LCP or the responsible party, the Department's Technical Gules and guidance must be followed, including the investigation and remediation of ground water contamination. It was not necessary to repeat those requirements here.</p>
83	7	3	1	3	This section seems to assume that a sampling plan will always be	The guidance clearly leaves the design of the sampling plan to the discretion of the person conducting the LCP.

					needed, but this may not necessarily be the case (or maybe only soil, but not groundwater). This should be clarified.	
84	7	3	2	2	PSEG proposes the elimination of the pre-construction sampling requirement as part of the Materials Management Plan.	This is a very general discussion of the procedures that are widely used in linear construction, so will remain as a recommendation.
85	7	3	2	1	Consider adding 6th bullet item: Or other In-situ remediation (if applicable)	The Department does not believe the suggested change is needed. The use of in situ remediation is rarely used in these projects.
86	7	3	2	1	Only the first paragraph appears to belong in this section. All of the remaining paragraphs in 3.2.1 look like they would be better if placed in Section 3.2 - Materials Management Plan, since they do not directly refer to soil management.	The Department does not believe the suggested change is needed.
87	8	3	2	1	1st bullet: Change "depiction" to "description", unless you want a drawing.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
88	8	3	2	1	Second set of bullets: Consider adding bullet(s) detailing protection of public including dedicated roadway usage and following the local soil	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.

					erosion control plan requirements.	
89	8	3	2	1	Second set of bullets: Consider adding bullet(s) including requirements for spill response and containment plans, and/or communication plans.	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.
90	8	3	2	1	Last Paragraph of section 3.2.1: Consider adding hyperlink for the Department's Clean and Alternative Fill Guidance.	Hyperlinks may be added to the Department's guidance in the future as resources allow.
91	8	3	2	1	Last Paragraph of section 3.2.1: Consider adding contingency requirements to follow local soil erosion and sediment control plan requirements.	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.
92	8	3	2	1	The draft Linear Construction Guidance Document indicates that a Materials Management Plan is needed which is consistent with the Department's Clean and Alternative Fill Guidance document. Utilizing the Clean and Alternative Fill Guidance, it would appear that stripped top soil that is generated	The Department did not mean to imply that the use of stripped topsoil cannot be used as fill – the Alternative Fill Guidance document only applies to SRP sites (i.e., contaminated sites).



				<p>during the construction of a linear project could not be reused as clean fill for "capping material" (as part of an engineered control), unless rigorous analytical testing is conducted and the testing results are all below the most stringent Soil Remediation Standards including the Impact to Groundwater Screening Levels. The increased cost to linear projects that are associated with the management of top soil could be cost prohibitive. Not only would there be the added costs for sampling the top soil, but there would also be the added off-site disposal costs for top soil which does not achieve the rigorous Impact to Groundwater Screening Levels and the increased importation of "clean fill" that would be needed to offset the stripped soil which may not be reused within the project. For linear projects which can be</p>	
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					<p>aerially extensive, e.g., roadway projects, the overall cost increase could easily range on the order of \$100,000s to \$1,000,000s. This guidance policy also seems to be counterproductive to the Department's goal of reducing the amount of materials entering landfills, since there may be limited off-site disposal/recycling options for the top soil.</p>	
93	8	3	2	1	<p>Applying the Alternative Fill guidance (like-on-like requirement and 75% percentile requirement) are above and beyond the management of re-use of soil in a linear construction project. It is critical that when this work occurs that it be uninterrupted to ensure the reliability of the electric and gas systems, since PSEG's activities necessary to protect the public health, safety, and welfare.</p>	<p>The Department feels that it is important to ensure that contaminated soil is not moved to formerly clean areas thereby creating now contaminated sites. The movement of contaminated soil must be conducted in a thoughtful and responsible way. The need to follow the Department's Alternative Fill guidance when managing contaminated soil will not be removed from the guidance.</p>

94	8	3	2	1	The Material management Plan should include the content of, or include a separate Fill Use Plan, not "and be consistent with" it.	The Department does not believe the suggested change is needed.
95	8	3	2	2	In the first sentence after the bullets state that free product must also be disposed properly, not just removed so this is clear to all guidance users.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
96	8	3	2	2	Again, this section appears to be directed only to utilities that construct within easements that they do not own. Is it the Department's intent to allow NJDOT or NJ Transit to only address free product in the construction area on properties they do own, if the free product is from an off-site source?	The guidance recommends that the linear construction entity remove free product when it is encountered or let the responsible party access to do so regardless of the source of the free product.
97	8	3	2	2	Add bullet item: Groundwater re-injection;	The Department does not believe the suggested change is needed because ground water re-injection would be covered under dewatering management procedures.

98	8	3	2	2	<p>The Guidance limits the PCLCP's responsibility for delineating or remediating free product or other groundwater contamination beyond the excavation corridor. While in most instances this should be the case, in some instances, the presence of a buffer area beyond the limits of the excavation that cannot (or should not) be disturbed by the owner/RP, may preclude the owner/RP from effectively addressing such contamination. In those circumstances, the responsibility of the PCLCP for addressing free product or other groundwater contamination should be extended to the buffer area or, at the owner/RPs election, the LCP should not proceed until the owner/RP either addresses the conditions or is satisfied with the PCLCP's plan to address it. An existing LCP that is being maintained or altered may also be the source of the contamination. Although delineation does not reveal groundwater contamination within the area of the excavation,</p>	<p>The extent of delineation outside the excavation area is left to the person conducting the linear construction project's discretion. The Department assumes that these issues will be worked out with the affected property owners and/or responsible parties.</p>
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					there may be contaminated groundwater either on- or off-site sufficiently close to the planned excavation that it may be drawn to the excavation or make further remediation more difficult. This possibility should be evaluated and, as appropriate, additional delineation and remediation activities required, or limitations imposed on the construction/dewatering activity by the PCLCP.	
99	9	3	2	3	What is meaning of "and other" within the 2nd paragraph, last sentence?	This phrase refers to any other site-specific factor that would be considered when selecting a method of fluid disposal such as cost and local ordinances.
100	9	3	2	3	Consider revising 3rd paragraph: New Jersey Pollution Discharge Elimination System (NJPDES) Discharge to Surface Water (DSW) Permits are issued by the NJDEP-Division of Water Quality. A separate permit may be required for each discharge occurrence (i.e., each discharge with a discrete	The Department does not believe the suggested change is needed. The inclusion of more details regarding the options and procedures established in the NJPDES program is not appropriate in the LCP guidance.

discharge location) within the linear construction project; alternatively, several discharge locations within one drainage basin may be combined in one permit. It also should be noted that many linear construction projects may have existing NJPDES permits in place. The person conducting the linear construction project should follow the applicable discharge requirements which may be included as part of permit stipulations.

When applying for a Discharge to Surface Water Permit, the person conducting a linear construction project must document that the municipality or utility responsible for the maintenance of the storm sewers has been notified of the requested permit. The permit checklists and forms can be accessed at the following NJDEP links:

101	9	3	2	3	Any water discharges should be coordinated with the owner (and subject to its approval) to avoid adverse impacts on the property and any remediation responsibility of the owner.	The Department agrees with the comment.
102	10	3	3		Project construction activities affecting the property should be subject to the owner's consent. This comment applies to each subsection of Section 3.3.	The Department agrees with the comment.
103	10	3	3	1	Consider adding to first paragraph: ...which may include the posting of signs and the placement of barriers, using dedicated roadways, closure of roads to restrict access to portions of the project area so that construction may occur without endangering the public, and complying with all soil erosion and sediment control plan stipulations.	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.
104	10	3	3	1	...and placement barriers, "as well as" closure... ADD "AS	The Department agrees with the commenter and will and will edit the guidance document accordingly.

					WELL AS" to sentence.	
105	10	3	3	2	3rd paragraph, consider referencing the Department's 1998 Revised Guidance Document for the Remediation of Contaminated Soils and add hyperlink.	The Department does not believe the suggested change is needed because document referenced is dated and is being replaced with other technical guidance.
106	10	3	3	2	The Guidance should reflect that the property owner and/or party responsible for a discharge retain responsibility for any contaminated materials at a property regardless of the construction of an LCP. For instance, the Guidance should not imply that the PCLCP is required to remove and dispose of contaminated soil (Section 3.2.1), water, or free product (Section 3.2.2) that is properly the responsibility of another entity. It is appropriate for LCP soil and dewatering management plans to address the removal and disposal of contaminated materials, but the Guidance should continue to allow for the	The Department did not think that the guidance for LCPs needs to reiterate the requirements and responsibilities of responsibilities. The guidance focused on how a non-responsible party involved in an linear construction project can address contamination when it is encountered.



					possibility that such removal and disposal may be conducted by the property owner and/or responsible party depending on the terms of the particular easement for the property in question negotiated between the parties.	
107	10	3	3	3	Consider revising last paragraph to: Stockpiled contaminated material intended for offsite disposal should be removed from the site as soon as possible, .....	The Department agrees with the suggested change. The guidance will be changed accordingly.
108	10	3	3	3	Occasionally, excavated soils must be stockpiled in an area designated as flood zone, especially when space constrains limit the options for locating a staging pad. Typically, the excavated soils are stockpiled for a very short duration (a few days) before they are loaded out for disposal. Relief from land use permits should be provided for these limited and specific circumstances.	It is important that linear construction projects follow the Department's requirements for land use permits.

109	11	3	4	1	<p>Last sentence states:          “In accordance with regulatory requirements, the person conducting a linear construction project must keep a copy of the original manifest for the files and sign the bills of lading and the hazardous waste manifests as the generator.” It should be noted that the person conducting the linear construction project may or may not be the generator or acting on behalf of the generator. For example, waste associated with a linear construction project that crosses a known contaminated site may be generated by the owner of the site rather than the person conducting the linear construction project. In that case, bills of lading and hazardous waste manifests should not be signed by the person conducting the linear construction project. All waste and associated documentation should be managed in accordance with</p> <p>The generator of waste in this context is the person or entity that digs up contaminated soil. The Department agrees that all waste and associated documentation should be managed in accordance with applicable rules and regulations.</p>
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					applicable rules and regulations.	
110	11	3	3	4	While this section indicates that the PCLCP should ensure proper characterization, transportation and disposal of regulated materials, there may be situations where such actions will be conducted by the property owner or the responsible party. The Guidance should allow for this possibility.	The guidance reiterates several times that either the person conducting the linear construction project or the responsible party must conduct required remediation in compliance with its rules and guidance.
111	11	3	3	4.2 and.6	Six inches of clean fill is unlikely to be protective as it is easily disturbed. Should state that an appropriate thickness of clean fill is needed to be protective of future disturbance and as needed for landscaping purposes so future disturbance of clean fill will not disturb underlying contaminated material with 1-foot of clean fill recommended for this purpose.	Six inches of clean fill will be appropriate in the majority of cases because linear construction projects usually include cement or asphalt cover and controlled access as a matter of course.
112	11	3	3	4.2	Is the 200 cubic yards of contaminated soil for fill included in the amount of excavated	Yes.

					contaminated material that can be backfilled into the excavation area as defined in Section 3.3.4.2?	
113	11	3	3	4.2	<p>This section indicates that, with the exception of free or residual product, contaminated backfill can be placed directly back into the excavation. This section should be modified to provide that waste/debris/containers and similar material should not be placed directly back into the excavation (much in the same way that Section 3.3.4.3 indicates that soil that contains free product or buried containers should not be reused in "other areas" of the LCP). To do otherwise would greatly complicate the future remediation of the property by any RP or the owner who would be unable to re-excavate such materials without disturbing the utility/pipeline or the buffer zone at substantial risk to human health, safety and the environment. In</p>	<p>The Department assumes that professional judgment will be used when returning contamination/waste back into the excavation. The Department agrees that waste/debris/containers and similar material should not be placed directly back into the excavation or any material that would make ultimate remediation more complicated.</p>

					<p>addition, there may be other circumstances in which it is preferable, from an overall site remediation standpoint not to return certain impacted soils to the excavation in view of overall site remediation plans. This is another reason why these types of actions should be subject to the consent of the owner or, at a minimum, the Guidance should leave these matters to be addressed as between the PCLCP and the owner.</p>	
114	11	3	3	4.3	<p>As noted, soil reuse within the LCP (other than directly redepositing it from where it was excavated) should be subject to the same conditions proposed in the above comments on Section 3.3.4.2, including the consent of the owner.</p>	<p>The Department agrees with the commenter.</p>
115	12	3	4		<p>As with other contamination, where free product or residuals extend beyond the boundaries of the excavation into a buffer area maintained by the PCLCP on either side of</p>	<p>The Department assumes that professional judgment will be used when determining the extent of delineation/backfilling within buffer areas on a site-by-site basis.</p>

					a utility/pipeline, the PCLCP's responsibility under the Guidance to delineate and remediate contaminated soils, free or residual product should extend to the limits of the buffer area for the reasons previously discussed.	
116	12	3	3	4	If a previously unknown UST is found and removed, are the typical NJDEP "back" registration fees applicable?	The "back" registration fees are applicable to the owner or operator of the regulated UST.
117	12	3	3		Should recommend that all abandoned tanks be removed unless they will not affect the structural or other engineering requirements of the construction project.	This section of the guidance is in line with existing rule requirements, so will not be changes as recommended.
118	12	3	3	5	Isn't the statement "Any material excavated from other portions of the project exhibiting potential contamination (staining, odors, etc.) may not be used as clean backfill..." inconsistent with Section 3.3.4.2, which states that "Excavated contaminated material can be replaced directly back into the excavation	The basic tenant of the guidance is that highly contaminated soil be removed from excavations, and that remaining contamination be capped with clean fill.

					as backfill except when it contains free or residual product.”? Please clarify.	
118	13	3	3	6	Site Restoration/Capping - It should be noted that many linear construction projects are conducted on roadways where state and federal highway construction standards will dictate the requirements for backfill and surface materials.	The Department understands that different backfill materials will be used depending on the ultimate use of the site. The Department is primarily concerned with people being exposed to soil contamination. The LSRP for the project will be authorized to use other types and quantity of backfill based on site-specific need.
120	13	3	5		Some concerns were noted with how this applies to historic fill areas on the Turnpike. We know a large part of the Turnpike was constructed on either historic fill or fill brought in specifically for construction of the Turnpike (throughout Essex and Hudson Counties and other places). It appears you can reuse the historic fill, which is good, but it does not address whether a deed notice needs to be put in place if you are the owner of the linear property. Also, if you own the	The Department will not require LCEs to place deed notices within the project area. The Department believes that access to these areas will be adequately controlled by the linear construction entity and that these sites rarely, if ever, will convert to another site use.

					linear property, does the presence of historic fill trigger a comparison of soil sample results to IGW SSLs and potential evaluation of groundwater quality?	
121	13	3	5		PSEG agrees that the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or ground water classification exception area) for contamination that is left within the construction corridor.	That is correct.
122	13	3	5		'This section, which specifies that remedial action permits (and associated deed notice and Classification Exception Area (CEA) requirements) are not required, appears to be inconsistent with the newly proposed N.J.A.C. 7:26C-16(a)6, which would seem to require that the PCLCP obtain Site Remediation Program remedial action permits (and therefore have to record a deed notice or obtain approval of a CEA). It would seem that it	The person that assumes responsibility for the remediation that includes a remedial action permit, whether it is the person conducting the LCP or the responsible party, is required to obtain and maintain the proper permits pursuant to the ARRCS rules and the Technical Requirements.



					would be preferable that the remedial action permit requirements not be separately applied to a LCP (as per the Guidance, but not per the proposed regulation). This underscores the importance of ensuring that the remediation steps taken by the PCLCP are consistent with the overall remediation of the site and properly documented so that any deed notice, CEA and associated remedial action permit, as ultimately obtained by an RP or owner for the entire site or area of concern, is consistent for the entire site or affected AOC.	
123	13	3	5	1	PSEG agrees that the person conducting a linear construction project is not required to conduct public notification or outreach pursuant to NJAC 7:26E-1.4 because linear construction projects are remediation projects conducted pursuant to the Technical Rules, NJAC	That is correct.

					7:26E.	
124	13	3	5	2	Historical fill - PSEG agrees that the person conducting a linear construction project may assume that historic fill material contains the contaminants at concentrations listed in NJAC 7:26E-4.6 without sampling. PSEG understands that historic fill can be re-used in the project.	That is correct.
125	13	3	5	2	PSEG agrees a person conducting a linear construction project is not required to call the Department's hotline to report the presence of historical fill and ground water investigation is not required to be assessed.	The first part of the comment is correct. Ground water needs to be addressed as described in the Department's Historic Fill Guidance. It is not necessary to evaluate historic fill with the impact to ground water screening levels since there is an assumption that the ground water is contaminated with common historic fill contaminants.
126	13	3	5	2	This section allows the PCLCP to assume, without sampling, that historic fill contains the contaminants at concentrations listed in N.J.A.C. 7:26E-4.6. This sampling exemption, and any consequences flowing from it, must similarly	N.J.A.C. 7:26E-4.6 allows any person conducting remediation to assume that historic fill on their site is contamination and thus no analytical confirmation is needed. This section of the guidance is consistent with SRP's rules on this subject.

					<p>be applied to any RP or owner performing a remediation of the property because, as noted above, once a LCP is complete and the utility or pipeline is in place, the RP or owner will be unable to sample the area of the LCP, including any buffer area, given the health, safety and environmental issues associated with sampling within that corridor. If such an exemption cannot be permitted under existing regulation, either the regulations must be revised to permit it or the PCLCP must perform sampling of historic fill in the same manner as a party performing a remediation under the Technical Requirements for Site Remediation.</p>	
127	13	3	3	3	<p>The GD makes reference to " the person conducting a linear construction project" were "the project" will be appropriate various locations since this GD is directed to the person conducting a linear</p>	<p>Thank you for editorial comments. The Department will be making editorial changes to the guidance.</p>

					construction project.	
128	13	3	5	3	Removal of free and residual product by the PCLCP should apply not only in the trench excavation but also extend into any buffer area for the reasons explained above.	The extent of delineation outside the excavation is a site-by-site determination to be made by the person conducting the linear construction project and the responsible party.
129	13	3	5		Should this paragraph be title 3.5.1 Institutional Controls? Also, the following may be considered " Generally, six inches of clean fill, or other suitable capping material (asphalt or concrete material), should be placed at the surface to prevent direct contact exposure." If so, the other subsection numbering will change.	Thank you for editorial comments. The Department will be making editorial changes to the guidance.
130	11	3	3	4.1	Last Sentence: clarify regulatory requirements (e.g., Federal Resource Conservation and Recovery Act (40 CFR Subpart B Parts 262.20 to 262.23) and N.J.A.C 7:26G).	The Department does not believe the suggested change is needed.
131	11	3	3	4.2	Is the 200 cubic yards of contaminated soil for fill included in the amount of excavated contaminated material that can be backfilled	Yes.

					into the excavation area as defined in Section 3.3.4.2?	
132	11	3	3	4.2	Allowing only six inches of clean fill, will set a new policy standard for SRP.	The Department has the authority to establish different remediation requirements based on site conditions.
133	11	3	3	.4.3	2nd paragraph: First sentence: Change "soil reuse plan" to "Fill Use Plan" as per Alt and Clean Fill Guidance doc. Second sentence is awkward. Suggest using the following language: The Fill Use plan should be based on sufficient characterization of soils in the donor and receiving areas, and comply with the DEP's technical guidance entitled Alternative and Clean Fill at SRP Sites. This guidance describes the like-on-like and 75th percentile requirements, which state that the use of fill can not make a receiving site worse by either introducing new contaminants, or increasing the contaminant concentrations.	The Department agrees with the commenter and will and will edit the guidance document accordingly.

134	12	3	4		typo Last line of first paragraph. ("...unless it can be documented that the tank...	The Department agrees with the suggested change and will edit the document accordingly.
135	12	3	3	5	Clarify that contaminated material must be capped with clean fill or other suitable capping material. Use of may in the first sentence implies that contaminated material left behind does have to be capped.	The Department disagrees. This section only applies to the use of clean fill and does not make any implication regarding the need to cap contamination.
136	13	3	4		I would not recite or excerpt regulations due to potential misinterpretation or transcription errors. Consider revising last paragraph of the section to include: The person conducting a linear construction project must remove soil containing free or residual product that is present within the construction corridor during the removal of the tank to the extent practical. As required, a groundwater investigation should be completed in accordance with N.J.A.C. 7:26E-4.4.	The Department does not believe the suggested change is needed. This paragraph reflect the actions that are recommended and are not intended to reflect any Technical Rule requirements.

137	13	3	4		<p>How does a linear construction project respond to a previously unidentified UST? The time frames detailed in this section are not conducive to the construction schedule and would result in delay claims by the contractor and result in potential work stoppages on the project. Emergency notification or post-notification processes should be included.</p>	<p>The Department is aware that UST removal may need to be conducted quickly. The Department will be glad to work with people that are removing tanks that are unable to implement the procedures outlined in this section.</p>
138	13	3	4		<p>Last paragraph of section. In a situation with groundwater that intersects the UST excavation, would it be permissible to collect a grab sample for analytical purposes?</p>	<p>Samples should be conducted following the Field Sampling Procedures Manual</p>
139	13	3	4	3	<p>last paragraph states: “The person conducting a linear construction project... should collect a ground water sample from a temporary well point when an underground storage tank has discharged...” The ground water sample procedure should not be restricted to a temporary well</p>	<p>The Department agrees with the commenter and will and will edit the guidance document accordingly.</p>

					point. The guidance should reference any appropriate groundwater sampling method pursuant to the FSPM.	
140	13	3	3	5	Here again, the guidance document appears to be oriented towards entities that construct within an easement on property they do not own. If NJ Transit or NJDOT condemned property to construct a roadway or rail line, would the condemned be considered the "responsible party", freeing NJDOT or NJ Transit from having to perform the remedial action for the property?	This guidance is directed at the linear construction entity, they are by definition not responsible parties. The Department does not intend to draw any conclusions about who the responsible party is in any given situation. Each party should obtain legal counsel regarding their responsibility under the Spill Act or other remediation statutes.
141	13	3	3	6	Site Restoration/Capping - It should be noted that many linear construction projects are frequently conducted on roadways where state and federal highway construction standards will dictate the requirements for backfill and surface materials.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
142	13	3	4		In last paragraph,	The Department agrees with the commenter and will and will edit the guidance



					"free or residual" should be "free and/or residual".	document accordingly.
143	13	3	4	and 5.3	In last paragraph, removal of free and/or residual product should extend beyond the project limits where necessary to prevent recontamination of the soil under the project or require appropriate engineering controls to prevent recontamination or allow for future remedial actions by the responsible party.	As stated previously, LCEs are not required to conduct remediation pursuant to the Technical Rules. The guidance states that...The person conducting a linear construction project should provide Spill Act responsible parties with an opportunity to access and remediate contamination existing or known contaminated sites or areas of contamination located within the linear construction project area.
144	13	3	5		Considering replacing paragraph to read: Should the linear construction project encounter a pre-existing and permitted contaminated site, the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or ground water classification exception area) for contamination from that site that is left within the construction corridor.	The Department believes that the suggested change is not the intended point of this section.
145	13	3	5		Consider reiterating reporting process detailed in Section 2.2	The Department does not believe the suggested change is needed.

					<p>detailing previously unidentified/unknown releases. "The person conducting a linear construction project should notify the DEP hotline and indicate that a discharge has been identified at a linear construction project and name of the property owner who is responsible for the discharge. The person conducting a linear construction project should then notify the property owner of the discharge, in writing and include a copy of that notification to the Department in the linear construction project final report.</p>	
146	13	3	5		<p>Shouldn't they record the contamination within their easement paperwork? It may not be a formal deed notice, but it would still be recorded with the easement in the deed file.</p>	<p>The property owner, not the LCE, would be responsible for establishing a deed notice if one is warranted.</p>
147	13	3	5		<p>We agree that the person conducting a linear construction project is not required to obtain remedial action</p>	<p>This statement is correct.</p>

					permits (deed notice or ground water classification exception area) for contamination that is left within the construction corridor.	
148	13	3	5	1	We agree that the person conducting a linear construction project is not required to conduct public notification or outreach pursuant to NJAC 7:26E-1.4 because linear construction projects are remediation projects conducted pursuant to the Technical Rules, NJAC 7:26E.	This statement is correct.
149	13	3	5	2	Historical fill - We agree that the person conducting a linear construction project may assume that historic fill material contains the contaminants at concentrations listed in NJAC 7:26E-4.6 without sampling. We understand that historic fill can be re-used in the project.	This statement is correct.
150	13	3	5	2	We agree a person conducting a linear construction project is not required to call the	This statement is correct.

					Department's hotline to report the presence of historical fill and ground water investigation is not required to be assessed.	
151	13	3	5		<p>The guidance states that the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or ground water classification exception area) for contamination that is left within the construction corridor. These permits and controls are the responsibility of the person responsible for conducting the remediation. This provision completely ignores the property owner. This section must be revised to recommend that any remedial actions and subsequent institutional controls must be developed with the consent of the property owner. Such provision is in accordance with the requirements of the TRSR.</p>	This statement is correct.

152	13	3	5	2	Consider revising the 2nd sentence of the last paragraph to: Historic fill may be reused in other areas where historic fill occurs within the linear construction project area...	The Department does not believe the suggested change is needed.
153	13	3	5	2	This section needs to reference the Historic Fill Technical Guidance.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
154	13	3	5	2	The list of historic fill contaminants in current rule are proposed to be removed in the new Tech Rule	The guidance will be amended when the Technical Rules are adopted.
155	14	4	2		This section specifies that the PCLCP should prepare and submit, with the requisite form, a Final LCP Report. It does not specify that the report should be prepared by a LSRP for the PCLCP, nor does proposed N.J.A.C. 7:26C-16(a)7. Consequently, it is unclear whether a LSRP must prepare the report.	The forms should be prepared by the LSRP, there is a certification section provided for this purpose.
156	14	4	2		Did not see copy of the LCP Notification Form on the website. Would like to review before finalized.	A copy of this draft form is available at <a href="#">www ...draft forms</a>

157	14	4	2	<p>The final report should also be submitted for review and comment to any RP that is remediating the site and/or the site owner to ensure consistency with the overall remediation of the property or any affected AOC. If the RP or owner has comments, the report should either be revised to incorporate those comments or the comments should be included with the submission of the report.</p>	<p>The Department encourages linear construction entities to work closely with responsible parties, but has chosen not to go into detail in the guidance document.</p>
158	14	4	3	<p>This section specifies that if the PCLCP wants a RAO for its work, “the [LSRP] is required to conduct remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.” The implication of this section is that the PCLCP will have to fully delineate and remediate any contamination discovered within the confines of the LCP pursuant to the</p>	<p>The Department did not think it was necessary to provide descriptions of the many possibilities of shared responsibility between the person conducting the linear construction project and the responsible party. The Department does not intent to get involved with the negotiation between these parties.</p>

Technical Regulations and applicable guidance (which should probably also be referenced in addition to the ARRCs rules) and, as a result, in order to obtain a RAO, the PCLCP would likely have to address contamination that is being or will be addressed by the RP/owner.

As noted above, where the PCLCP differs from the RP or owner who is remediating the overall site or any affected AOC, it is very possible that the RP/owner will have a LSRP for the broader remediation. This, combined with the overlapping remediation obligations that arise where the PCLCP wants a RAO, presents the serious potential for conflicts with respect to addressing contamination outside of the boundaries of the LCP. Moreover, without the full cooperation of the owner, a PCLCP cannot record a deed notice that may be required for a

					<p>soil remediation or impose a CEA. Consequently, unless the LCP itself can be defined as a separate area of concern and any cleanup within the LCP meets unrestricted use standards (so that a deed notice is not required), it appears that a PCLCP that wants a RAO will have to enter into an agreement concerning the remediation of the LCP with any RP/owner that is remediating a site or relevant area of concern within which a LCP is located.</p> <p>As noted elsewhere in these comments, this may be necessary regardless of whether the PCLCP wants a RAO. The Guidance should expressly recognize these circumstances.</p>	
159	14	4	4	2	<p>This section requires the person conducting an LCP to prepare a Final Linear Construction Report upon completion of the project. The Guidance should specify whether entities that conduct</p>	<p>The definition of a linear construction project, and the need to follow the guidance, is premised on the threshold of generating more than 200 cubic yards of contaminated material. It is not necessary to repeat that premise in different sections of the guidance.</p> <p>The Department does not want to encourage submissions from projects that generate less than 200 cubic yards of contaminated material.</p> <p>Linear construction entities are free to hire LSRPs and remediate encountered contamination in conformance with ARRCs and the Technical Requirements in order to</p>



					linear projects that do not generate 200 cubic yards of contaminated material -- and thereby do not qualify as an LCP -- may nonetheless voluntarily submit a Final Linear Construction Report and enjoy the same degree of closure as PCLCPs. The Guidance should further specify whether and how the Department will review submitted reports, and what reliance individuals may place on the submission of reports in future activities involving the property in question (e.g. property transactions or future NJDEP enforcement activities involving the identified contamination).	pursue an RAO.
160	14	4	3		If a RAO is wanted should also state that N.J.A.C 7:26 E must also be followed in addition to ARRCS	The Department agrees with the commenter and will edit the guidance document accordingly.
161	14	5			Consider revising first sentence/paragraph to be: The person conducting a linear	The Department does not believe the suggested change is needed.

					<p>construction project should pay a one-time fee of \$450 pursuant to N.J.A.C. 7:26C-4.2(a)2ii when the initial notification of the linear construction project is submitted to the Department.</p>	
162	14	5			<p>The referenced section in the fee provisions of the ARRCS applies to remediation projects with one area of concern and does expressly apply to the facts and circumstances of a LCP (particularly one that may encompass more than one area of concern or multiple sites). Until the August 15, 2011 regulatory package goes into effect, there is no fee in the ARRCS that expressly applies to a LCP.</p>	<p>The fee suggested by the guidance was included to give parties a “process” to follow until the Department completes its rule adoption in May, 2012.</p>
163	16	Appendix 2			<p>Appendix 2, Final Linear Construction Report - Example Table of Contents: Section III requires extensive documentation “for each contaminated property” that is encountered during the</p>	<p>The Department agrees.</p>

				<p>linear construction project. The person conducting the linear construction project may or may not have access to all of the information specified for each site.</p> <p>Furthermore, assuming that the contaminated sites are being addressed, such information would be reported to NJDEP. The information required in the final construction report should be limited to the area of the linear construction project and sampling, if any, specifically associated with the project. The primary goals of the report should be 1) to document environmental conditions, if any, identified within the linear construction project and 2) to document proper management of any waste material encountered. Additional reporting on the contaminated properties crossed by the linear construction project is</p>	
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					not reasonable.	
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