

Timing of ISRA Remediation Funding Source

ISSUE: Amendments to the Industrial Site Recovery Act (ISRA) Rules were adopted at N.J.A.C. 7:26B-3.4(a)1 on August 6, 2018. Persons responsible for conducting the remediation of a site subject to the Industrial Site Recovery Act (ISRA) are required to submit documentation to the New Jersey Department of Environmental Protection (Department) indicating that a Remediation Funding Source (RFS) has been established once a remedial action workplan has been either approved by the Department or certified by a licensed site remediation professional. The amendment modified the number of days the person responsible for conducting the remediation has to submit the documentation to the Department from no more than 30 days after approval/certification to no more than 14 days after approval/certification. This amendment was made to comport the ISRA Rules with the requirements of the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-3.b.

The issue raised is when is the RFS notification due for ISRA cases where the remedial action is being conducted in phases.

RESPONSE: From the Department's standpoint, it is expected that the RFS will be established when the remedial action workplan has been submitted for all contaminated areas of concern (CAOCs) associated with the ISRA case. For determination/review purposes, the Department relies on the Case Inventory Document to confirm which CAOCs are included in a given remedial action workplan. **Once all CAOCs are included in a remedial action workplan, the 14-day clock starts.**

It should be noted that for most ISRA cases, the transaction occurs "real time," before the remedial action commences. In these situations, a remediation certification is filed and the RFS is established prior to the transaction closing and prior to the submittal/approval/certification of a remedial action workplan. The occasions in which the establishment of a Remediation Funding Source can wait until the remedial action workplan is submitted/approved/certified are usually either when (a) the only ISRA triggering event is Cessation of Operations, or (b) the proposed transaction is purposefully delayed until the Response Action Outcome (RAO) is issued.

Creation of Delivery Ban Report for Underground Storage Tanks

ISSUE: A request was made that the Department include a DataMiner report that lists tanks that for which there are delivery bans (i.e., not allowed to accept product deliveries). Situations have arisen where the driver of the delivery truck needs to determine, sometimes under adverse conditions, whether there is a delivery ban on a given underground storage tank. The concern is that mistakes will be made, and product delivered, to such a tank. It is believed that having a “delivery ban” report available through DataMiner will prevent these occurrences.

RESPONSE: There are three primary reasons why product should not be delivered to an UST. These include UST(s) that are known or suspected to be leaking, the UST(s) is/are not properly registered, or the UST(s) have a delivery ban imposed (red-tagged) for non-compliance. While the UST owner and operator would always be aware of these circumstances, the Department recognizes this information is not always communicated to the delivery company.

The Site Remediation and Waste Management Program (SRWMP) administers the UST Registration Program and has had a current DataMiner report posted listing properly registered UST locations. To further assist, the SRWMP has posted a new report that lists UST locations where the USTs are not properly registered. This report enables the supply company to search for facilities without a valid registration by county sorted by status date. A facility listed on this report would not be removed until a valid registration is issued.

The responsibility for “red tagging” lies with the Compliance and Enforcement Program (C&E). When an UST is “red-tagged” the C&E inspector will physically attach a heavy duty red plastic zip tie (red tag) to the fill port. The presence of this red tag should be the clear indicator to the delivery person that product should not be dropped. All delivery companies must educate their delivery staff not to deliver to red-tagged USTs or otherwise physically remove the red tag. Questions regarding red-tagging or the availability of a delivery ban report for these tanks should be referred to the C&E.

PUBLIC NOTIFICATION

ISSUE: The public notification amendments at N.J.A.C. 7:26C-1.7, adopted August 6, 2018, require public notification 14 days prior to commencing initial field activities associated with the remedial investigation (previously remedial action). For cases that have not conducted public notification and initiated a remedial investigation prior to August 6, 2018 and have not reached the remedial action phase, when should the PRCR conduct public notification?

RESPONSE: The Department is requiring that the person responsible for conducting the remediation comply with the public notification rule by June 30, 2019. A listserv message was issued describing this. The public notification webpage will be updated shortly to reflect the new requirements. In addition, the Department will add language highlighting the revised public notification requirements to the acknowledgement letter that is issued in response to online submittals of site investigation and remedial investigation reports.