

“Owner” means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an owner of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

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

“Preliminary assessment” means the first phase of remediation defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

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

“Remedial investigation” means those actions to investigate a discharge defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

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

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

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

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

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

“Restricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E-1.8.

“SIC” means Standard Industrial Classification.

“Site investigation” means the collection and evaluation of data defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Transferring ownership or operations” means:

1. Any transaction or proceeding through which an industrial establishment undergoes a change in ownership;
2. The sale or transfer of more than 50 percent of the assets of an industrial establishment, excluding real property within any five-year period as measured on a constant, annual date-specific basis. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery;
3. The execution of a lease for a period of 99 years or longer for an industrial establishment;
4. The dissolution of an entity that is an owner or operator or indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred; or
5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, “family” means any of the relations included at N.J.A.C. 7:26B-2.1(a)4.

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

“Unrestricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Rewrote “Applicable remediation standard”, “Remedial action” and “Remediation” or “remediate”; inserted “Area of concern”, “Engineering controls”, “Innovative remedial action technology”, “Institutional controls”, “Limited restricted use remedial action”, “Restricted use remedial action”, and “Unrestricted use remedial action”; and deleted “Declaration of environmental restriction”.

Amended by R.2003 d.133, effective March 17, 2003.

See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

Deleted “Applicable remediation standard”; added “Remediation standard”.

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).

See: 36 N.J.R. 2931(a).

In "Closing operations", in subparagraph 5, substituted "North American Industry Classification System" for "Standard Industrial Classification"; amended "Industrial establishment; deleted "SIC manual".

Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.

See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).

Provisions of R.2004 d.206 adopted without change.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Added definitions "Final remediation document", "Licensed site remediation professional", "Remediation certification", and "Response action outcome"; and in definition "Remediation agreement", substituted "issued before November 4, 2009" for "issues".

7:26B-1.5 Forms and submissions

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

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

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

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

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

Amended by R.2003 d.133, effective March 17, 2003.

See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

Special repeal and new rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Section was "Forms and submissions".

7:26B-1.6 Certifications and signatories

Any person submitting an application, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include a certification that is executed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.5.

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (d)3, rewrote the last sentence of the certification.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Rewrote the section.

7:26B-1.7 Department review

(a) The Department shall review and approve or disapprove all submissions by an owner or operator based on the following criteria:

1. Whether the remediation workplan and report was prepared, implemented or completed in compliance with N.J.A.C. 7:26C, 7:26E and this chapter;
2. Whether all the information and documents required to be submitted to the Department have been submitted; and
3. Whether the information submitted is sufficient, complete or accurate.

(b) The Department shall inform the owner or operator, in writing, of the results of the Department's review of the submission, including any deficiencies in the submittal or required additional remediation. The owner or operator shall then complete all required additional remediation and address any deficiencies prior to the Department's issuance of a no further action letter or authorization letter.

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

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

(b) An owner or operator is authorized to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, without, or prior to the issuance of, a final remediation document in the following circumstances:

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

2. The Department's approval of a regulated underground storage tank waiver application pursuant to N.J.A.C. 7:26B-5.3(e);

3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d);

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

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

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

(c) The issuance of an authorization letter pursuant to (c) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial establishment pursuant to ISRA, this chapter and any other applicable law.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Section was "No further action letter and authorization letter". In (a), substituted "In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the" for "The"; deleted former (b); recodified former (c) and (d) as (b) and (c); in the introductory paragraph of (b), substituted "An" for "The Department may authorize a" and "final remediation document" for "no further action letter"; inserted "is authorized" and deleted "through the issuance of an authorization letter" preceding "without"; rewrote (b)1; in (b)4, deleted "and" from the end; in (b)5, substituted "; and" for a period at the end; and added (b)6.

7:26B-1.9 Right of entry and inspection

(a) The owner or operator shall expressly consent in writing pursuant to ISRA and this chapter to entry of the industrial establishment by the Department and its authorized representatives, upon the presentation of credentials, to inspect the site, buildings and records related to environmental issues and to take samples from the site, in which case the owner or operator shall be provided with split samples upon his or her request, photograph the site and the buildings, and to make copies of the records.

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

1. Allow the Department and/or its authorized representatives, upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records related to environmental issues, and to take

samples from the site, photograph the site and the buildings and to make copies of the records; where the Department takes samples from the site, the buyer, transferee or owner or operator shall be provided with split samples upon his or her request; and

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

(c) The owner or operator or other person subject to ISRA or who is a party to a remediation agreement shall as necessary:

1. Have appropriate technical, scientific, and engineering representatives, as necessary, accompany the Department and its authorized representative during the inspection; and

2. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In the introductory paragraph of (b), inserted "; or the owner or operator of the industrial establishment that has submitted a remediation certification"; in (b)1, substituted a comma for "or" preceding "transferee" and inserted "or owner or operator"; and in (b)2, inserted a comma following "workplan" and inserted "or remediation certification".

7:26B-1.10 Liability for ISRA compliance

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

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

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

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

3. The owner or operator has executed prior to November 4, 2009 a remediation agreement or remediation agreement amendment, or, on or after November 4, 2009, has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3; or

4. The Department has issued an authorization letter to the owner or operator pursuant to N.J.A.C. 7:26B-1.8(c).

(c) An owner or operator that is closing operations shall be required to amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(a) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to (b)1 or 2 above.

(d) Any person, other than the owner or operator of the industrial establishment, that has obtained title to the industrial establishment by deed of foreclosure, by other deed or transfer, or by court order or other process, shall not be deemed an owner or operator of that industrial establishment where the operator had closed operations prior to the transfer of title and where no new industrial establishment has operated under the person's ownership. Nothing contained herein shall be construed as a waiver or release of liability by the Department of an owner or operator subject to the requirements of this chapter for the industrial establishment.

(e) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of this chapter, the landlord or the tenant may petition the Department to seek ISRA compliance from that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of this chapter. The petitioning party shall submit the following to the Department at the address provided at N.J.A.C. 7:26C-1.5:

1. A written request to the Department to seek ISRA compliance first from that party that has agreed to be responsible pursuant to the provisions of a lease. The written request shall be in the form of a Landlord/Tenant Petition as specified in chapter Appendix B, incorporated herein by reference. The petitioning party shall send a copy of the petition to the other party(s) to the lease, by certified mail, return receipt requested, at the time of the mailing of the petition to the Department; and

2. A copy of the signed lease between the landlord and tenant.

(f) Based on the information submitted pursuant to (e)1 and 2 above, the Department may determine that the lease clearly defines the responsibilities of either person to comply with the provisions of this chapter. The Department shall seek ISRA compliance from the person deemed responsible pursuant to the lease. The Department's determination shall not be construed as a waiver or release of liability by the Department of any other person who may be subject to the requirements of this chapter for the industrial establishment.

(g) The Department may compel compliance by both parties if the Department determines that the lease does not clearly define the responsibilities of the owner or operator of the industrial establishment, or upon the failure by the person responsible pursuant to the lease to comply with the provisions of this chapter.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).
Rewrote (f)1.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).

In (a), substituted "(d)" for "(e)" and "(e), (f) and (g)" for "(f), (g) and (h)"; deleted former (b); recodified former (c) through (h) as (b) through (g); in (b)1, inserted "; or a licensed site remediation professional has issued a remedial action outcome" and substituted "7:26C-6" for "7:26B-1.8(a)"; in (b)2, inserted "or a licensed site remediation professional has certified"; in (b)3, inserted "prior to November 4, 2009" and substituted "; or on or after November 4, 2009 has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3;" for "issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b);"; in (c), substituted "(b)1" for "(c)1"; and in (f), substituted "(e)1" for "(f)1".

7:26B-1.11 Civil penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of not more than \$25,000 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

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

(c) Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provision of ISRA or this chapter shall be personally liable for any penalties provided by ISRA or this chapter.

(d) In its discretion, the Department may compromise and settle any claim for a penalty pursuant to ISRA or this chapter.

Amended by R.2f003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote (b).
Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

In (b), deleted ".4 and 10.5" following "N.J.A.C. 7:26C-10".
Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).

In (b), substituted "Administrative Requirements for the Remediation of Contaminated Sites" for "Oversight" and updated the N.J.A.C. reference.

SUBCHAPTER 2. APPLICABILITY

7:26B-2.1 Operations and transactions not subject to ISRA

(a) The following transactions shall not be considered closing operations or transferring of operations or ownership:

1. Corporate reorganization not substantially affecting the ownership or control of the industrial establishment in accordance with N.J.A.C. 7:26B-2.2(c);

SUBCHAPTER 4. REMEDIATION AGREEMENT AND
REMEDICATION CERTIFICATION**7:26B-4.1 Remediation agreement**

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

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (a)5, added "pursuant to the remediation funding source requirements of N.J.A.C. 7:26C-7" at the end.

Special repeal and new rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Section was "Remediation agreement".

7:26B-4.2 Remediation agreement amendment

An owner or operator of an industrial establishment who, prior to November 4, 2009, entered into an amendment to the remediation agreement shall proceed to remediate the industrial establishment pursuant to the terms of the remediation agreement and the remediation agreement amendment, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Rewrote the section.

7:26B-4.3 Remediation certification

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

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;
2. A certification by the owner or operator of the industrial establishment describing:
 - i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;
 - ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;
 - iii. The requirement of the owner or operator to perform the remediation the Department requires;

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

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

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

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

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

Special new rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

SUBCHAPTER 5. ALTERNATE COMPLIANCE
OPTIONS**7:26B-5.1 Expedited review**

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

(b) The Department's approval of an expedited review application authorizes the owner or operator of an industrial establishment that was previously remediated to close operations or transfer ownership or operations of the industrial establishment without further remediation when there has been no discharge subsequent to the last remediation or a subsequent discharge occurred and the subsequent discharge has been remediated and approved by the Department.

(c) To apply for an expedited review, the owner or operator shall submit a completed expedited review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A certification by the owner or operator that:

i. A remedial action workplan or equivalent plan, has previously been implemented and the Department has issued a no further action letter or equivalent approval for the industrial establishment;

ii. The Department has approved a negative declaration for the industrial establishment; or

iii. The Department or the United States Environmental Protection Agency has approved an equivalent remediation of the industrial establishment pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable State or Federal law;

3. A certification by the owner or operator that:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or equivalent remediation approval; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment, subsequent to the issuance of the no further action letter or the equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, a discharge of a hazardous substance or hazardous waste at the industrial establishment has occurred subsequent to the issuance of the no further action letter, or the equivalent approval. The owner or operator shall identify the discharge(s), describe the action taken to remediate the discharge(s) and demonstrate that the remediation was approved by the Department;

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank system which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent no further action letter, or other equivalent approval, as applicable, for the entire industrial establishment and/or a copy of the document evidencing the Department's approval as referenced in (a)3i(2) above;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6;

7. Any additional information required by the Department from a specific owner or operator; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the expedited review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall approve the expedited review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a) or disapprove the expedited review application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In (a), substituted "In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the" for "An".

7:26B-5.2 Area of concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an area of concern review in accordance with (c) below, for any area(s) of concern at the industrial establishment for which a remediation has previously been conducted and approved by the Department.

(b) The Department's approval of an area of concern review application relieves the owner or operator from remediating each area of concern at the industrial establishment that was previously remediated and where there has not been any subsequent discharges at that area of concern.

(c) To apply for an area of concern review, the owner or operator shall submit a completed area of concern review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A site map which identifies the area(s) of concern which is/are the subject of this area of concern review;

3. A certification by the owner or operator that the Department or the United States Environmental Protection Agency has approved an equivalent remediation at an area of concern pursuant to ISRA, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive En-

Department shall send written notification outlining the reasons for its determination, by certified mail, return receipt requested, to the person who submitted the information and the information shall become part of the Department's public files unless contested pursuant to (d) below.

(d) A person who wishes to contest a determination by the Department that the information submitted is not entitled to confidential treatment shall, within 30 calendar days after receipt of the Department's written notification, submit evidence to support the person's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

1. The period of time for which confidential treatment is desired by the person (for example, until a certain date, until the occurrence of a specified event, or permanently);
2. The measures taken by the person to guard against undesired disclosure of the information to others;
3. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and
4. The extent to which disclosure of the information would result in substantial damage to the person, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the nexus between disclosure and the damage;

(e) Failure of the person to furnish timely comments or exceptions pursuant to (d) above waives the person's confidentiality claim.

(f) A person may submit a written request for an extension to contest the Department's determination pursuant to (d) above. The Department may extend the time limit for submitting comments pursuant to (d) above for good cause.

(g) The Department shall review the evidence and:

1. To the extent that the Department determines that the information submitted is not entitled to confidential treatment, the Department shall send written notification of this determination to the person by certified mail, return receipt requested. The notice shall state the basis for the determination and that the Department shall make the information available to the public on the 14 calendar days after receipt by the person of the written notice; or
2. To the extent that the Department determines that the information submitted is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The Department shall send written notification of this determination to the person by certified mail, return receipt requested.

7:26B-7.4 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in (b) below or N.J.A.C. 7:26B-7.6.

(b) The Department may disclose confidential information to another state agency or to a Federal agency if:

1. The Department is required by law to disclose the information;
2. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;
3. The request sets forth the official purpose for which the information is needed;
4. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
5. The other state or Federal agency has first furnished to the Department a written legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;
6. The other agency has obtained the written consent of the affected person to the proposed disclosure; and
7. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

7:26B-7.5 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department if the contract in question provides that the contractor and the contractor's employees, agents and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to anyone the Department has not authorized in writing, shall store the information in locked cabinets in secure rooms, and shall return to the Department all copies of the information, and any abstracts or extracts therefrom, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(b) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure to its contractors;
2. The date on which disclosure was made;
3. The name of the contractor to which disclosure was made; and
4. A description of the information disclosed.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1D-2, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

Administrative change.
See: 32 N.J.R. 1796(a).

7:26B-7.6 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure;
2. The date on which disclosure was made;
3. The name of the person to which disclosure was made; and
4. A description of the information disclosed.

7:26B-7.7 Security procedures

(a) Submissions to the Department pursuant to this chapter will be opened only by persons authorized by the Department engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:26B-1.5.

(c) The Department shall store all submissions entitled to confidential treatment as determined at N.J.A.C. 7:26B-7.3 in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

SUBCHAPTER 8. PROGRAM FEES AND OVERSIGHT COSTS

7:26B-8.1 Fee schedule

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

1. Area of concern waiver application	\$150.00
2. Confidentiality claim	\$375.00
3. De minimis quantity exemption application	\$300.00
4. Expedited review application	\$225.00
5. General Information Notice	\$150.00
6. Limited site review application	\$525.00
7. Limited conveyance application	\$600.00
8. Negative declaration review	\$150.00
9. Preliminary assessment report	\$375.00
10. Regulated underground storage tank waiver application	\$600.00
11. Remedial action workplan deferral application	\$975.00
12. Remediation in progress waiver application	\$225.00
13. Site investigation report	\$750.00

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

(c) The applicable fees required by (a) above are non-refundable.

(d) The fees required by (a) above are not one time fees but rather the fees required to perform the review of each specific submittal to the Department.

(e) Any fees required pursuant to (a) above that are subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

Amended by R.2007 d.274, effective August 20, 2007.
See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).

In (a)2, (a)5, (a)7, (a)8, (a)11, (a)12 and (a)15, deleted the dagger following "application"; in (a)1 through (a)16, updated the fee amounts; deleted the footnote following (a)16; added new (b); and recodified former (b) through (d) as (c) through (e).

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Deleted former (a)1, (a)13, and (a)14; recodified former (a)2 through (a)12 as (a)1 through (a)11 and former (a)15 and (a)16 as (a)12 and (a)13; and in (b), substituted "7:26C-4 and 5" for "7:26C-9".