

CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

Authority

N.J.S.A. 13:1D-1 et seq., 13:1K-6 et seq.,
58:10-23.11a et seq. and 58:10B-1 et seq.

Source and Effective Date

R.2009 d.283, effective August 23, 2009.
See: 41 N.J.R. 1348(a), 41 N.J.R. 3414(b).

Chapter Expiration Date

Chapter 26B, Industrial Site Recovery Act Rules, expires on August 23, 2014.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011. See: 43 N.J.R. 1077(a).

Chapter Historical Note

Chapter 26B, Environmental Cleanup Responsibility Act Rules, was adopted as R.1987 d.528, effective December 21, 1987 (operative January 1, 1988). See: 19 N.J.R. 681(a), 19 N.J.R. 2435(a).

Pursuant to Executive Order No. 66(1978) Chapter 26B, Environmental Cleanup Responsibility Act Rules, was readopted as R.1992 d.497, effective November 18, 1992. See: 24 N.J.R. 2773(b), 24 N.J.R. 4524(a).

Chapter 26B, Environmental Cleanup Responsibility Act Rules, was repealed and a new Chapter 26B, Industrial Site Recovery Act Rules, was adopted as R.1997 d.498, effective November 17, 1997. See: 29 N.J.R. 16(a), 29 N.J.R. 4913(a).

Chapter 26B, Industrial Site Recovery Act Rules, was readopted as R.2003 d.133, effective February 24, 2003. See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26B, Industrial Site Recovery Act Rules, was extended by gubernatorial directive from February 24, 2008 to February 24, 2009. See: 40 N.J.R. 1645(b).

Chapter 26B, Industrial Site Recovery Act Rules, was readopted as R.2009 d.283, effective August 23, 2009. See: Source and Effective Date.

Subchapter 4, Remediation Agreement, was renamed Remediation Agreement And Remediation Certification; Subchapter 5, Expedited Compliance Options, was renamed Alternate Compliance Options; Subchapter 8, Fee Schedule And Direct Billing Fees, was renamed Program Fees And Oversight Costs; and Appendix A, Standard ISRA Remediation Agreement, was repealed by special adoption R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011). See: 41 N.J.R. 4467(a).

Law Review and Journal Commentaries

Overturing Environmental Regulations: A Primer on Breaching the Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (Mag.) (April 1994).

New Growth in Old Ground. Bernard A. Weintraub, 147 N.J.L.J. 761 No. 7, S-1 (1997).

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

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APPENDIX A. (RESERVED)

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APPENDIX C. ISRA SUBJECT NAICS CODES

SUBCHAPTER 1. GENERAL INFORMATION

Law Review and Journal Commentaries

Due Diligence - The Crucible. Robert D. Frawley, 218 N.J.L.J. 47 (2002).

Overturning Environmental Regulations: A Primer on Breaching the Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.L.J. 48 (1994).

7:26B-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Industrial Site Recovery Act, P.L. 1993 c.139 (N.J.S.A. 13:1K-6 et seq.).

7:26B-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act.

7:26B-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operations to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

7:26B-1.4 Definitions

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

“Act” or “ISRA” means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

“Agricultural commodity” means any plant or part thereof, or animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, for-

esters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

“Area of concern” means any area defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Authorization letter” means a written statement issued by the Department that authorizes an owner or operator of an industrial establishment to transfer ownership or operations or in the case of a cessation of operations, authorizes the cessation of operations as it relates to the owner and operators obligation to remediate the industrial establishment.

“Authorized agent” means the person authorized to receive correspondence or communications, on behalf of the person responsible for conducting the remediation of the industrial establishment, for matters covered by this chapter.

“Change in ownership” means, unless otherwise provided at N.J.A.C. 7:26B-2.2:

1. The sale or transfer of the business of an industrial establishment;
2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;
3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;
4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:
 - i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;
 - ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or
 - iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner’s assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a