

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.

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Chapter 26B, Environmental Cleanup Responsibility Act Rules, was repealed and a new Chapter 26B, Industrial Site Recovery Act Rules, was adopted as R.1997 d.498, effective November 17, 1997.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.

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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SUBCHAPTER 1. GENERAL INFORMATION

Law Review and Journal Commentaries

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

Overturing 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, forsters, 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 person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

5. The sale or transfer of the sole general partner’s entire interest in a limited partnership where the limited partnership is one of the following:

i. The limited partnership is the direct owner or operator of the industrial establishment; or

ii. The limited partnership has 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 person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

6. The reorganization of a general or limited partnership into a corporation, limited liability company, limited liability partnership or other similar business entity;

7. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

8. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment; and

9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an 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), that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment.

"Closing operations" means, unless otherwise provided at N.J.A.C. 7:26B-2.4:

1. The cessation of operations which, as measured on a constant, annual date-specific basis, within any five-year period:

i. Results in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment; or

ii. For industrial establishments which product output is undefined:

(1) Results in at least a 90 percent reduction in the number of employees; or

(2) Results in at least a 90 percent reduction in the area of operations of an industrial establishment;

2. Any temporary cessation of operations of an industrial establishment for a period greater than two years;

3. An industrial establishment becomes nonoperational for health or safety reasons as a result of a judicial proceeding or final agency action;

4. The initiation of bankruptcy proceedings pursuant to Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq.;

5. Any change of operations of an industrial establishment that changes the industrial establishment's North American Industry Classification System number to one that is not subject to ISRA;

6. The termination of a lease or sublease, unless there is no disruption in operations of the industrial establishment; and

7. The assignment of a lease or sublease, unless there is no change in the operator of the industrial establish-

ment and there is no disruption in operations of the industrial establishment.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her authorized representative.

"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity based on the criteria in N.J.A.C. 7:26B-2.2(d). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(d), this definition does not require that a person submit an application for an applicability determination in order for a person or transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(d).

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department's ability to reach those assets, or otherwise hinder the owner's or operator's ability to remediate the industrial establishment based on the criteria in N.J.A.C. 7:26B-2.2(c). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(c), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(c).

"Department" means the New Jersey Department of Environmental Protection.

"Direct owner or operator" means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator 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.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance or hazardous waste into the waters or onto the lands of the State.

"Engineering controls" means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"GIN" means General Information Notice described at N.J.A.C. 7:26B-3.3(a).

"Hazardous substance" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

"Hazardous waste" means any waste defined as such pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., that is further defined as a hazardous waste pursuant to the Solid Waste Regulations, N.J.A.C. 7:26-1.6.

"Indirect owner" means any person who holds a controlling interest in a direct owner or operator, holds a controlling interest in another indirect owner, or holds an interest in a partnership which is the indirect owner or a direct owner or operator, of an industrial establishment.

"Industrial establishment" means any place of business or real property at which such business is conducted, having the North American Industry Classification System (NAICS) codes listed in chapter Appendix C, incorporated herein by reference, dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002-502024, subject to the specified exceptions and limitations and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. Except as provided below for lease properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For lease properties, the industrial establishment includes the leasehold and any external tank, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold.

"Innovative remedial action technology" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Institutional controls" means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Limited 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.

"Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment, or other person assuming responsibility for the remediation under ISRA and this chapter, to the Department certifying that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with N.J.A.C. 7:26E.

"No further action letter" means a written determination by the Department that, based upon an evaluation of the historical use of the industrial establishment, or of an area of concern or areas of concern, as applicable, and any other investigation or action the Department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the industrial establishment or area(s) of concern, or any other property to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, or that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the industrial establishment have been remediated in accordance with applicable remediation regulations. The Department may issue a "no further action letter" if hazardous substances or hazardous wastes remain on the industrial establishment or any other property with appropriate engineering and institutional controls.

"Operator" means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an operator 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.

"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 issues for the transfer of an industrial establishment prior to the completion of the remediation.

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

“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.

7:26B-1.5 Forms and submissions

Any forms or applications required by this chapter may be obtained from and returned to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection
401 East State Street
PO Box 432
Trenton, New Jersey 08625-0432

Amended by R.2003 d.133, effective March 17, 2003.
See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

7:26B-1.6 Certifications and signatories

(a) Any person submitting an application, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include the certification provided at (c) below, as applicable. The person submitting the certification provided at (c) below shall sign the certification in accordance with (e) below.

(b) Any person submitting a remediation agreement application or remediation agreement amendment application to the Department pursuant to ISRA and N.J.A.C. 7:26B-4 shall include the certifications provided at (d)1, 2 and 3 below in addition to the certification required pursuant to (a) above, prior to the Department’s issuance of the remediation agreement or a remediation agreement amendment. The person submitting the certifications provided at (d)1, 2 and 3 below shall sign the certifications in accordance with (e) below.

(c) The following certification is for any application, workplan, report or other request to the Department pursuant to ISRA and this chapter:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, To the best of my knowledge the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13."

(d) The following certifications are for any remediation agreement application or remediation agreement amendment application submitted to the Department pursuant to ISRA and N.J.A.C. 7:26B-4:

1. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I am fully aware of the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 et seq., as it pertains to the remediation of the industrial establishment subject to this remediation agreement. Specifically, I am fully aware of the responsibilities of the owner or operator of the industrial establishment to remediate the site in accordance with ISRA and this chapter. I acknowledge that a remediation agreement has been requested to allow the transaction referenced in the remediation agreement application to proceed prior to completion of all ISRA compliance requirements and that the person entering into the remediation agreement is agreeing to comply with all ISRA requirements. I further acknowledge that the execution of a remediation agreement shall not release [Person] from any responsibilities [Person] have pursuant to ISRA and this chapter."

2. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I acknowledge that the transaction and industrial establishment that are the subject of this remediation agreement is a transfer of ownership or operations of an industrial establishment as defined by ISRA and N.J.A.C. 7:26B. I further acknowledge that [Person] is subject to penalties for violations of ISRA and this N.J.A.C. 7:26B. I am fully aware of [Person's] responsibilities to allow the Department access to the subject industrial establishment and of the requirements to prepare and submit any documents relevant to the remediation of the subject industrial establishment as required by the Department."

3. The purchaser, transferee, or lessee of the industrial establishment shall execute the following certification:

"I hereby certify that [Person] is the transferee and/or new lessee of the industrial establishment subject to this remediation agreement. I have read this application and am aware of the requirements and conditions of ISRA and the remediation agreement. [Person] expressly agrees to allow the Department, seller, previous owner, previous operator, any other person subject to the remediation agreement, and any of their respective agents or assignees the right to enter the industrial establishment after the ISRA-subject transaction has taken place and/or the lease has been executed for completion of the remediation of the industrial establishment. Additionally, I acknowledge and understand that if a restricted use or limited restricted use remedial action is warranted at the subject industrial establishment, institutional controls and engineering controls as defined in N.J.S.A. 13:1K-6 et seq., N.J.S.A. 58:10B-1 et seq., N.J.A.C. 7:26C, N.J.A.C. 7:26E and N.J.A.C. 7:26B may be necessary."

(e) The certifications required by (a) and (b) above shall be executed as follows:

1. For a corporation or limited liability company, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;
3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official; or
4. By a duly authorized representative of the corporation, partnership, sole proprietorship, municipality, state or Federal or other public agency, as applicable. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described in (e)1, 2 or 3 above and the authorization meets the following criteria:
 - i. The authorization specifies either an individual or a position having responsibility for the overall operation of the industrial establishment or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
 - ii. The written authorization is submitted to the Department; and
 - iii. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(f) All signatures required by this section shall be notarized.

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.

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 authorization letter

(a) 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) The Department's issuance of a no further action letter pursuant to ISRA and this chapter may include an authorization for the owner or operator to close operations or transfer ownership or operations of the industrial establishment as designated in the General Information Notice pursuant to N.J.A.C. 7:26B-3.2.

(c) The Department may authorize an owner or operator 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, through the issuance of an authorization letter without, or prior to the issuance of, a no further action letter in the following circumstances:

1. The Department's issuance of a remediation agreement or remediation agreement amendment pursuant to N.J.A.C. 7:26B-4;

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); and

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

(d) 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.

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 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 or transferee 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.

(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.

7:26B-1.10 Liability for ISRA compliance

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

(b) At the Department's discretion, any other person, including, without limitation, a purchaser, transferee, or mortgagee, may sign a remediation agreement; however, such persons shall become responsible for the remediation of the industrial establishment for compliance with ISRA.

(c) 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 for the industrial establishment pursuant to N.J.A.C. 7:26B-1.8(a);
2. The Department has approved 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 a remediation agreement or remediation agreement amendment issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b); 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).

(d) 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 (c)1 or 2 above.

(e) 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.

(f) 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.

(g) Based on the information submitted pursuant to (f)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.

(h) 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.

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 Oversight rules, at N.J.A.C. 7:26C-10, 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”.

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);

2. A transaction or series of transactions involving the transfer of stock and/or assets among corporations under common ownership if the transaction or transactions will not result in:

i. The diminution of the net worth of the corporation that directly owns or operates the industrial establishment by more than 10 percent; or

ii. A greater or equal amount of assets are available for the remediation of the industrial establishment before and after the transaction or transactions;

3. A transaction or series of transactions involving the transfer of stock and/or assets resulting in the merger or de facto merger or consolidation of the indirect owner with another person, when the indirect owner's assets would have been unavailable for remediation in accordance with N.J.A.C. 7:26B-2.2(b) if the transaction or transactions had not occurred;

4. A transaction or series of transactions involving the transfer of stock and/or assets resulting in a change in the person holding the controlling interest of an indirect owner of an industrial establishment, when the indirect owner's assets would have been unavailable for remediation in accordance with N.J.A.C. 7:26B-2.2(b) if the transaction or transactions had not occurred;

5. A transfer where the transferor is the sibling, spouse, child, parent, grandparent, spouse of child, child of a sibling, or sibling of a parent, of the transferee;

6. A transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;

7. A transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

8. A transfer of an industrial establishment by devise or intestate succession;

9. The granting or termination of an easement or a license to any portion of an industrial establishment;

10. The sale or transfer of real property or closing operations of an industrial establishment pursuant to a condemnation proceeding initiated pursuant to the “Eminent Domain Act of 1971,” N.J.S.A. 20:3-1 et seq.;

11. The execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property or refinancing of any debt not including a sale and lease back, by the owner or operator of an industrial establishment;

12. Any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral;

13. A sale or transfer of assets of an industrial establishment that is in the ordinary course of business;

14. The termination of a lease of an industrial establishment where the lease is renewed by the same tenant without a disruption in operations;

15. The execution of a lease for a period of less than 99 years;

16. The sale of a single or multi-family dwelling used primarily for residential purposes;

17. The transfer to a beneficiary pursuant to the terms of a trust;

18. The change, substitution or replacement of a trustee, administrator, executor, guardian, conservator or fiduciary, where the trust, estate or other similar mechanism is an owner or operator of an industrial establishment;

19. Obtaining construction loans by the owner or operator of an industrial establishment;

20. A change in NAICS number as a result of a change in the NAICS manual without a change in the operations of the industrial establishment;

21. The sale or transfer of stock or assets, or both, in a corporation, if the sale or transfer is part of a reorganization of the corporation into a limited liability company, which shall not result in the diminution of the net worth of the corporation and limited liability company, respectively, that directly owns or operates the industrial establishment, before and after the transaction or transactions and does not result in a change in the person or person holding the controlling interest of the entity; and

22. A transaction or series of transactions involving the transfer of stock or assets of a corporation, or the sale or transfer of interests in a limited liability company, that is a direct owner or operator or indirect owner of an industrial

establishment, resulting in a merger or consolidation, where the direct owner or operator or indirect owner of an industrial establishment is the surviving or resulting person.

(b) The following operations are not industrial establishments:

1. Those portions of a solid waste or hazardous waste facility subject to operational closure or post-closure maintenance requirements pursuant to the following:

- i. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;
- ii. The Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq.; or
- iii. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.;

2. Any office, located on a separate tax lot and block from the industrial establishment it serves, in which personnel are engaged primarily in general administrative, personnel, supervisory, accounting, purchasing, engineering and systems planning, advertising, legal, financial, sales or other related management functions provided however this "office" exemption shall not apply where separate lots and blocks are or have been established after December 31, 1983, at the site of an existing industrial establishment; and

3. Undeveloped or vacant land provided that:

- i. No industrial establishment has operated on such vacant land since December 31, 1983; and
- ii. The contiguous land is not an industrial establishment under the same control or ownership as the vacant land in question.

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

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

Rewrote the section.

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.

7:26B-2.2 Applicability determinations

(a) In order to obtain a determination from the Department concerning the applicability of this chapter to a specific place of business or transaction, a person shall:

1. Submit a completed 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. In summary, the information required in the application includes: the name of the business conducted on site, the NAICS number of the business, the location of the business, or description of the proposed transaction, a description of operations conducted on site, the name of the person owning the real

property, and information regarding the presence of hazardous substances used in the operations on site;

2. Grant written permission for the Department to enter and inspect the site and operations for which the applicability determination is requested;

3. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.1 required for applicability determinations; and

4. Demonstrate to the Department that ISRA or this chapter is not applicable by providing, in writing, the relevant basis for the applicant's position. As part of such demonstration, all applicable requirements of (b), (c) and (d) below shall be satisfied.

(b) For applicability determinations requested for a transfer of ownership or operations involving an evaluation of whether the indirect owner's assets would have been available for remediation, the Department shall evaluate, without limitation, the applicant's responses to (b)1 through 6 below, to determine whether the indirect owner has exercised control over the industrial establishment or the direct owner or operator thereof. An affirmative finding that the indirect owner has exercised control over the industrial establishment or the direct owner or operator thereof, would result in a determination that the indirect owner's assets would have been available for remediation. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify each direct owner and each indirect owner of the industrial establishment;

2. Identify whether the indirect owner has exerted fiscal control over the direct owner or industrial establishment including, but not limited to, imposing any restriction upon the financing, borrowing, budgeting, dividends and cash management of the direct owner or industrial establishment;

3. List all persons that are officers and directors for both the direct owner and the indirect owner of the industrial establishment to establish whether the officers, directors and employees of the indirect owner constitute a majority of the directors of the direct owner or the industrial establishment or such smaller number of directors as is sufficient to effectively direct the management and policies of the direct owner or the industrial establishment;

4. Identify whether the officers, directors and employees of the indirect owner are involved in the day-to-day operations of the direct owner or the industrial establishment and whether the day-to-day operations of the direct owner or the industrial establishment are relevant to the generation, manufacture, handling, storage or disposal of hazardous substances or hazardous wastes;

5. Identify whether the indirect owner has the ability to control the activities, policies or decisions of the direct owner or the industrial establishment and whether these activities, policies or decisions are relevant to the generation, handling, storage or disposal of hazardous substances or hazardous wastes; and

6. The applicant shall provide any additional information which may be relevant to this determination.

(c) For applicability determinations requested for a transfer of ownership or operations involving an evaluation of whether the subject transaction is a corporate reorganization not substantially affecting the ownership of the industrial establishment, the Department shall evaluate, without limitation, the applicant's responses to (c)1 through 6 below, to determine whether the subject transaction does not entail significant changes in the financial ability of a person to comply with this chapter. A finding that the subject transaction does not entail significant changes in the financial ability of a person to comply with this chapter would result in a determination that the subject transaction is a corporate reorganization not substantially affecting the ownership of the industrial establishment. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify each direct owner of the industrial establishment, indirect owner of the industrial establishment and the organizational structure of the person, prior to, and after the proposed transaction;

2. Identify whether the transaction involves the transfer of stock and/or assets, solely among persons under common ownership or control and/or shareholders or owners of such persons. A transaction between related corporations that prepare financial statements or tax returns on a consolidated basis will be presumed to be among corporations under common ownership or control;

3. Identify:

i. Whether the transaction will result in an aggregate diminution of more than 10 percent in the net worth of the industrial establishment or of the person directly owning or operating the industrial establishment. The applicant must include all transactions occurring within the five-year period preceding the date of the proposed transaction in the calculation of "aggregate diminution"; or

ii. Whether there is an equal or greater amount in assets that is available for the remediation of the industrial establishment before and after the transaction(s);

4. Identify whether the transferee has a registered agent in New Jersey who is authorized to accept service on behalf of the transferee. If so, the applicant shall provide the name and address of the registered agent;

5. Identify whether the assets of an indirect owner transferring any direct or indirect interest in the stock or assets of the industrial establishment would have been available for the remediation of the industrial establishment based upon the criteria set forth in (b) above; and

6. Provide any additional information which may be relevant to this determination.

(d) For applicability determinations requested for a transfer of ownership or operations involving an evaluation of whether the subject transaction is a transfer of a controlling interest in the industrial establishment, the Department shall evaluate, without limitation, the applicant's responses to (d)1, 2 and 3 below, to determine whether the subject transaction results in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment. A finding that the subject transaction does result in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment would result in a determination that the transaction is a change in ownership as defined by N.J.A.C. 7:26B-1.4. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify whether the transferor is transferring more than 50 percent of the voting or ownership interest in the direct owner or operator or indirect owner of an industrial establishment. There is a rebuttable presumption that any person who has more than 50 percent of the voting or ownership interest holds a controlling interest in that direct owner or operator or indirect owner; or

2. Identify whether the transferor is transferring 50 percent or less of a voting or ownership interest in the direct owner or operator or indirect owner of an industrial establishment and:

i. Identify whether the transferor possess(es), directly or indirectly, the power to direct or cause the direction of the management and policies of the entity; and

ii. Identify whether a voting trust, shareholder's agreement, proxy or similar agreement exists which would enable the transferor to elect a majority of the board of directors or a smaller number of directors sufficient to effectively direct or cause the direction of the management and policies of the entity; and

3. Provide any additional information which may be relevant to this determination.

(e) The applicant for an applicability determination that is required under this section to provide information concerning the net worth of any person shall include the following information listed in (e)1 and 2 below in its applicability determination application:

1. A statement of income and expenses or similar statement of each direct owner or operator or indirect owner of the industrial establishment, as applicable; and

2. An audited balance sheet or similar statement of assets and liabilities of each direct owner or operator or indirect owner of the industrial establishment, as applicable, as used by that person for the preceding fiscal year that ended closest in time to the date of the applicability determination application.

(f) The Department shall, within 45 calendar days after receipt of a complete application for an applicability determination, advise the applicant in writing, of its decision. Any person who requests an applicability determination pursuant to this chapter and does not receive a written response from the Department within the deadlines imposed by this subchapter shall not be entitled to assume that the transaction or operations were found not subject to ISRA.

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

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

In (a)1. substituted "NAICS" for "SIC"

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.

7:26B-2.3 De minimis quantity exemption

(a) An owner or operator who is granted a de minimis quantity exemption from the Department shall be exempt from the provisions of this chapter, except as provided at N.J.A.C. 7:26B-8.1, based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.

(b) The owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons; and

3. The total quantity of hydraulic or lubricating oil, in the aggregate, does not exceed 220 gallons at any one time during the owner's or operator's period of ownership or operation.

(c) The total quantity of hazardous substances or hazardous wastes at an industrial establishment may be a combination of both (b)1 and 2 above; however, in the aggregate, the total quantity shall not exceed 500 pounds or 55 gallons.

(d) The total quantity of hazardous substances at an industrial establishment having the NAICS numbers of 424210, 446110, 446120 or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above shall submit:

1. A completed de minimis quantity exemption application (see N.J.A.C. 7:26B-2.2(a)1 for application contents summary), 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; and

2. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application.

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

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

In (d), substituted "NAICS numbers of 424210, 446110, 446120 or 446191 as qualified by the limitations noted in Appendix C" for "SIC number of 5122".

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.

7:26B-2.4 Revisions to North American Industry Classification System Codes for purposes of definition of "industrial establishment"

In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of "industrial establishment" at N.J.A.C. 7:26B-1.4 is based, the Department shall modify the NAICS codes in Appendix C, as necessary, to ensure that, as required by N.J.S.A. 13:1D-139, the generally equivalent universe of facilities subject to ISRA continues to be regulated under this chapter. Specifically, the Department shall provide limitations and/or exceptions to the NAICS codes set forth in Appendix C as required to maintain the currently regulated universe as of August 15, 2003. The Department shall publish in the New Jersey Register a notice of the new or revised NAICS code(s) and the corresponding administrative change(s) to Appendix C.

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

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

Adopted concurrent new rule, R.2004 d.343, effective August 15, 2004.

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

SUBCHAPTER 3. GENERAL INFORMATION NOTICE

7:26B-3.1 Prenotice filing conference

The Department shall, upon request of any owner or operator of an industrial establishment with an impending closing of operations or transfer of ownership or operations of an industrial establishment, meet with the owner or operator to discuss compliance with the provisions of ISRA and this chapter.

7:26B-3.2 Notification requirements

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice to the Department pursuant to N.J.A.C. 7:26B-3.3, within five calendar days after to the occurrence of any of the transactional events provided below:

1. The close of operations of an industrial establishment or the owner's or operator's public release of its decision to close operations, whichever occurs first;

2. The execution of an agreement by the owner or operator to transfer ownership or operations of the industrial establishment;

3. The signing of an agreement of sale, or the execution of a lease for a period of 99 years or longer, for the industrial establishment or the real property of the industrial establishment;

4. The effective time of corporate dissolution as specified at N.J.S.A. 14A:12-8, or upon the filing of a certificate of dissolution in the office of the Secretary of State, whichever occurs first;

5. The change in operations sufficient to change the primary NAICS number of an industrial establishment from a primary NAICS number that is subject to ISRA or this chapter to one that is not subject to ISRA or this chapter;

6. The exercise of an option to purchase an industrial establishment or the real property of an industrial establishment;

7. The acceptance of payment for the majority of stock in a corporation involving the direct owner or operator or indirect owner of the industrial establishment pursuant to a tender offer;

8. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

9. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, of more than 50 percent of the assets of an industrial establishment within any five-year period as measured on a constant, annual date-specific basis;

10. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, stock in a corporation, of a partnership interest or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment;

11. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, a partnership interest in a partnership that owns or operates an industrial establishment that would reduce, by ten percent or more, the assets available for remediation of the industrial establishment;

12. The transfer or execution of a trust to transfer an industrial establishment to a trust, whichever occurs first, except where grantor and beneficiary are identical or are members of the same family. Family includes the spouse, children, parents, siblings, grandparents, siblings of a parent, children of a sibling, or spouse of child of the grantor;

13. Receipt by the owner or operator of notice that the industrial establishment has become non-operational for health or safety reasons or by judicial proceeding or final agency action;

14. The appointment by a court of a receiver or liquidating trustee or execution of a deed of assignment for the benefit of creditors, in connection with dissolution (unless the event at (a)4 above has already occurred), liquidation or insolvency proceedings under statutory or common law as to the direct owner or operator or indirect owner of an industrial establishment; and

15. The following events in any bankruptcy proceeding:

i. The entry of an Order for Relief in bankruptcy pursuant to Chapter 7 of the United States Bankruptcy Code (11 U.S.C. §§ 701 et seq.);

ii. The filing of a plan of liquidation pursuant to Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 1101 et seq.); or

iii. Events covered by (a)1 through 15 above.

(b) The owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter,

when the written notice in (a) above is required to be submitted.

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

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

In (a)5, substituted "NAICS" for "SIC".

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.

Case Notes

Department of Environmental Protection (DEP) issued negative declaration approvals under Industrial Site Recovery Act (ISRA) in accordance with its then-extant regulations, even though environmental sampling was not conducted. In re Railroad Realty Associates, 313 N.J.Super. 225, 712 A.2d 1165 (N.J.Super.A.D. 1998).

7:26B-3.3 General information notice

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), 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, acreage and geographic boundaries;
2. The tax block and lot numbers of the site;
3. The name, address, and telephone number of the current property owner;
4. The name, address and telephone number of the current business operator and/or business owner of the industrial establishment;
5. Identification and description of the transaction triggering ISRA;
6. Applicable NAICS number(s) for the industrial establishment;
7. The date of public release of the closure decision and a copy of the appropriate public announcement, if any;
8. The date of execution of the agreement of transfer, sale or option to purchase and the name and address of the other parties to the transfer or sale, as applicable;
9. The proposed date for closing or transferring operations;
10. A schedule for submission to the Department of the preliminary assessment report, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, remedial action report, as applicable, and any other information required by this chapter, as follows:

i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3; or

ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department;

11. The name, address and telephone number of the authorized agent and the principal whom the authorized agent represents. The owner or operator shall notify the Department in writing, at the address provided at N.J.A.C. 7:26B-1.5, of any change of identity, address, or telephone number of the authorized agent. Where the Department is required by this chapter to notify or otherwise communicate with the person conducting the remediation of the site, written notice to or communication with the authorized agent by the Department shall be sufficient;

12. The applicable fees required pursuant to N.J.A.C. 7:26B-8.1;

13. Written authorization pursuant to N.J.A.C. 7:26B-1.9(a); and

14. Any additional information required by the Department from a specific owner or operator.

(b) Any person submitting a General Information Notice pursuant to (a) above may submit additional information, including any documentation, workplans and reports required pursuant to this chapter or N.J.A.C. 7:26E, along with the General Information Notice.

(c) The Department shall review the General Information Notice and shall respond in writing to the authorized agent as follows:

1. The Department has determined that the General Information Notice, including any specific applications submitted for the purpose of complying with ISRA, is administratively complete and:

i. The Department shall issue either a no further action letter or authorization letter in accordance with this subchapter; or

ii. The owner or operator of the industrial establishment is required to complete additional remediation, as specified prior to the Department's issuance of a no further action letter or authorization letter; or

2. The Department has determined that the General Information Notice is administratively incomplete and the person is required to correct any deficiencies or complete additional remediation activities, as specified.

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

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

In (a)6, substituted "NAICS" for "SIC".
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.

7:26B-3.4 Revisions to the general information notice or withdrawal of required notice by an owner or operator

(a) An owner or operator may withdraw the notice required pursuant to N.J.A.C. 7:26B-3.2(a) if the owner or operator determines it is no longer necessary to obtain a no further action letter or authorization letter from the Department. Such withdrawal, stating the reason for the withdrawal, shall be made in writing and certified in accordance with N.J.A.C. 7:26B-1.6.

(b) An owner or operator submitting a general information notice shall notify the Department, in writing, of any changes, amendments or other necessary modifications to the information contained in the general information notice, within 30 calendar days of the person's discovery that the information provided to the Department in the person's original General Information Notice is incorrect, inaccurate or incomplete.

SUBCHAPTER 4. REMEDIATION AGREEMENT

7:26B-4.1 Remediation agreement

(a) An owner or operator requesting that the Department enter into a remediation agreement to allow the transfer of ownership or operations of the industrial establishment to occur prior to the Department's approval of a negative declaration or remedial action workplan for the industrial establishment shall submit a remediation agreement application to the Department at the address provided at N.J.A.C. 7:26B-1.5 which includes the following:

1. A completed general information notice pursuant to N.J.A.C. 7:26B-3.3, if not previously submitted;
2. A detailed description of the transaction;
3. Identification of the person(s) responsible for compliance with the remediation agreement, ISRA and this chapter;
4. A detailed cost estimate for remediation of the industrial establishment in accordance with N.J.A.C. 7:26C-7;
5. Identification of the type of remediation funding source(s) to be submitted in an amount equal to the cost estimate in (a)4 above, pursuant to the remediation funding source requirements of N.J.A.C. 7:26C-7;
6. The certifications by the owner, operator, transferee and/or lessee, as applicable, in accordance with N.J.A.C. 7:26B-1.6;

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

8. Any additional information requested by the Department from a specific owner or operator.

(b) The Department shall send two original remediation agreements to the authorized agent within 14 calendar days after the Department's receipt of the information required pursuant to (a) above. The owner or operator of the industrial establishment or other authorized signatory shall sign both originals and return one executed original remediation agreement to the Department in accordance with the time schedule provided in the remediation agreement.

(c) The language for the remediation agreement shall conform to the language in the standard remediation agreement pursuant to Appendix A, incorporated herein by reference, to the greatest extent practicable, as determined by the Department.

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.

7:26B-4.2 Remediation agreement amendment

(a) An owner or operator of an industrial establishment may request an amendment to the remediation agreement to allow a transfer of ownership or operations, subsequent to the transaction described in the remediation agreement, to occur prior to the Department's approval of a negative declaration or remedial action workplan for the industrial establishment.

(b) An owner or operator requesting an amendment to the remediation agreement pursuant to (a) above shall submit a remediation agreement application in accordance with N.J.A.C. 7:26B-4.1, to the Department at the address provided at N.J.A.C. 7:26B-1.5.

(c) The Department shall send two original remediation agreement amendments to the authorized agent within 14 calendar days after the Department's receipt of the information required pursuant to (b) above. The owner or operator of the industrial establishment or other authorized signatory shall sign both originals and return one executed original remediation agreement amendment to the Department in accordance with the time schedule provided in the remediation agreement amendment.

SUBCHAPTER 5. EXPEDITED COMPLIANCE OPTIONS

7:26B-5.1 Expedited review

(a) An 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.

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 Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or any other applicable State or Federal law;

4. A copy of the no further action letter or equivalent approval for that area of concern;

5. A certification by the owner or operator that:

i. The owner or operator has completed a preliminary assessment report and site investigation report in accordance with N.J.A.C. 7:26E, as applicable, at each area of concern identified at (c)1 above; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, there has been no discharge of a hazardous substance or hazardous waste at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, a discharge of a hazardous substance or hazardous waste occurred at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; and

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

(d) The Department shall review the area of concern 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 Department shall either approve the application by the issuance of a no further action letter for each area of concern identified at (c)1 above pursuant to N.J.A.C. 7:26B-1.8, or disapprove the application and require the owner or operator to remediate all areas of concern identified in (c)1 above, in accordance with ISRA and this chapter and N.J.A.C. 7:26E.

7:26B-5.3 Regulated underground storage tank waiver

(a) The owner or operator may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a regulated underground storage tank waiver in accordance with (c) below.

(b) The Department's approval of a regulated underground storage tank waiver application authorizes the owner or operator to close operations or transfer ownership or operations of an industrial establishment prior to obtaining approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B.

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed regulated underground storage tank waiver 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 preliminary assessment report that demonstrates that the only area of concern at the industrial establishment is an underground storage tank or tanks as defined pursuant to N.J.S.A. 58:10A-22 and N.J.A.C. 7:14B or a preliminary assessment and site investigation report which demonstrates that the only discharged hazardous substances or hazardous wastes at the industrial establishment or that has migrated offsite, above the applicable remediation standards, are from a discharge from that underground storage tank or tanks;

3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance, pursuant to N.J.A.C. 7:26B-5.3(d), with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B for all underground storage tanks at the industrial establishment that are covered by that act; and

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

(d) The owner or operator shall be deemed in compliance with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B as it relates to the subject discharge of a hazardous substance or hazardous waste from an underground storage tank, if the owner or operator has been issued an order by, or has entered into an agreement with the Department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

(e) The Department shall review the regulated underground storage tank waiver application in accordance with N.J.A.C. 7:26B-1.7, and shall either approve the application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.4 Remediation in progress waiver

(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 a remediation in progress waiver in accordance with (c) below.

(b) The Department's approval of a remediation in progress waiver application authorizes the owner or operator to close operations or transfer ownership or operations of the industrial establishment prior to obtaining approval from the Department of a remedial action workplan, a negative declaration and without the approval of a remediation agreement.

(c) To apply for a remediation in progress waiver, the owner or operator shall submit a completed remediation in progress waiver 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. Evidence that establishes that the industrial establishment is already in the process of a remediation pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or other applicable state laws and regulations, or the industrial establishment is currently in the process of an equivalent remediation pursuant to the 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 Federal law;

3. A certification by the owner or operator which includes the following:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, to identify areas of concern in accordance with N.J.A.C. 7:26E and based on the preliminary assessment report and site investigation report:

(1) There has been no discharge of any hazardous substance or hazardous waste during the owner's or operator's period of ownership or operation;

(2) A discharge of a hazardous substance or hazardous waste occurred during the owner's or operator's period of ownership or operation and the Department approved the remediation;

4. A certification by the owner or operator that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation;

5. A certification by the owner or operator that:

i. A remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-7; or

ii. A financial assurance was established prior to June 16, 1993 and the amount of the financial assurance is consistent with the current cost estimate developed in accordance with N.J.A.C. 7:26E, for the remediation or the implementation of the remedial action workplan at the industrial establishment; and

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

(d) The Department shall review the 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 either approve the remediation in progress waiver application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the 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.

7:26B-5.5 Limited site 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 a limited site review in accordance with (c) below.

(b) The Department's approval of a limited site review application authorizes the owner or operator to remediate only those area(s) of concern at an industrial establishment where a discharge, subsequent to a prior remediation, has occurred.

(c) To apply for a limited site review, the owner or operator shall submit a completed limited site 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 has been previously implemented and the Department has issued a no further action letter;

ii. The Department has approved a negative declaration; or

iii. The Department or the United States Environmental Protection Agency has previously approved an equivalent remediation of the industrial establishment pursuant to the 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 law;

3. A certification by the owner or operator of the industrial establishment that 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, and that no other discharge of a hazardous substance or hazardous waste, that was not identified in (c)3i or ii below, has occurred at the industrial establishment; and

i. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval, and was not remediated in accordance with the procedures established by the Department; or

ii. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval and that any remediation performed by the owner or operator has not been approved by the Department; and

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank 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 negative declaration, no further action letter, or other approval, as applicable, issued by the Department or federal agency for the industrial establishment;

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

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

(d) The Department shall review the limited site 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.

(e) The Department shall either approve or disapprove a limited site review application by the following actions:

1. Approve the limit site review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a);

2. Approve the limited site review application and require the owner or operator of the industrial establishment to remediate each area of concern identified in (c)3 above, in accordance with ISRA and this chapter; or

3. Disapprove the limited site review application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.6 Minimal environmental 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 a determination that a discharge at an industrial establishment is a minimal environmental concern in accordance with (c) below.

(b) The Department's approval of a minimal environmental concern application authorizes the owner or operator to close operations or transfer ownership or operations at an industrial establishment prior to obtaining approval of a remedial action workplan or without the approval of a remediation agreement by the Department. This section shall not be construed to allow an owner or operator to implement a remedial action involving the remediation of groundwater or surface water prior to the Department's approval of a remedial action workplan for the site.

(c) To apply for a minimal environmental concern determination, the owner or operator shall submit a completed minimal environmental concern 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 preliminary assessment report, site investigation report and remedial investigation report for the industrial establishment;

3. A certification by the owner or operator that based on the remediation completed, there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards and the remedial action at those areas of concern can be completed pursuant to N.J.A.C. 7:26E and the applicable remediation standards within six months after the owner's or operator's receipt of the approval of the application by the Department;

4. Documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose an immediate threat to human

health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge;

5. A certification by the owner or operator that a remedial action workplan shall be prepared pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E and the remediation shall meet either the restricted use or unrestricted use soil remediation standards and the applicable surface water and groundwater remediation standards;

6. A certification, by the owner or operator that the remedial action workplan will be prepared, implemented and completed pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E within six months after the owner's or operator's receipt of the approval of the application by the Department;

7. Evidence that a remediation funding source has been established in accordance with N.J.A.C. 7:26C-7; and

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

(d) The Department shall review the minimal environmental concern application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment, if necessary.

(e) Within 30 calendar days after the receipt of a complete application the Department shall either approve the minimal environmental concern application by the issuance of an authorization letter or disapprove the application and require the owner or operator to remediate the industrial establishment pursuant to ISRA and this chapter.

(f) Within six months after receipt of the Department's approval of the minimal environmental concern application, the owner or operator shall implement the remedial action at the industrial establishment and submit the remedial action report to the Department.

(g) The owner or operator shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5 prior to the expiration of the schedule established in (f) above, that the owner or operator can not implement the remedial action at the industrial establishment and submit the remedial action report to the Department. The owner or operator shall have no more than 120 calendar days in addition to the schedule established in (f) above, to implement the requirements of the remedial action and submit the remedial action report required by (f) above.

(h) The Department shall review the remedial action report above in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment or at any area offsite.

(i) The Department shall either approve or disapprove the remediation of the industrial establishment and notify the owner or operator of its determination within 45 calendar days after receipt of the remedial action report. The Department shall approve the remediation by the issuance of a no further action letter in accordance with N.J.A.C. 7:26B-1.8(a), or may disapprove the remediation and require the owner or operator remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

(j) The Department may rescind its determination that the industrial establishment is a minimal environmental concern and rescind any letters issued pursuant to (e) above upon the failure of an owner or operator of the industrial establishment to implement the requirements of a remedial action workplan within the additional time provided (g) above, and require that a new remedial action workplan be submitted and implemented by the owner or operator in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.7 Limited conveyance

(a) The owner of an industrial establishment may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a certificate of limited conveyance in accordance with (c) below.

(b) The Department's approval of a certificate of limited conveyance authorizes the owner of an industrial establishment to transfer a portion of an industrial establishment upon the Department's issuance of a no further action letter or approval of a remedial action workplan or remediation agreement for the subject portion of the industrial establishment without the owner or operator conducting a remediation of the entire industrial establishment. The certificate of limited conveyance shall be valid for three years from the date of issuance.

(c) To apply for a certificate of limited conveyance, the owner or operator shall submit a completed limited conveyance 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 of the industrial establishment that identifies the real property on which the industrial establishment is situated, and the portion of the real property subject to the proposed transfer and any areas conveyed pursuant to a prior certificate of limited conveyance;
3. A description of the real property to be transferred;

4. An appraisal of the entire industrial establishment, an appraisal of the real property to be transferred and an appraisal of the remaining real property if the certificate of limited conveyance were issued. The appraisals required by this section shall not be made more than one year prior to the submission of the application for a certificate of limited conveyance and shall be conducted by a designated Member, Appraisal Institute (American Institute of Real Estate Appraisers), Senior Real Estate Analyst (Society of Real Estate Appraisers), or Senior Member (American Society of Appraisers);

5. The sale price or fair market value of the real property to be transferred;

6. Any additional information the Department requests from a specific owner or operator;

7. Copies of all prior certificate(s) of limited conveyance if any, issued for the subject industrial establishment;

8. A copy of the sales agreement specifying the agreed upon price for the real property presently proposed for conveyance or, in the case of an acquisition by a condemning authority where no agreement has been reached, an affidavit from the owner specifying the compensation, including any damages, sought by the owner and the current appraised value; and

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

(d) The Department shall review the information submitted pursuant to (c) above in accordance with N.J.A.C. 7:26B-1.7 and shall issue a certificate of limited conveyance for the real property on which an industrial establishment is situated after the Department deems the following criteria to be satisfied:

1. The sale price or fair market value of the real property to be conveyed, together with any additional diminution in value of the remaining property as a result of this transfer, is not more than one-third of the total appraised value of the real property of the industrial establishment prior to the transfer;

2. The remaining real property is an industrial establishment subject to the provisions of this chapter; and

3. Transfers or conveyances made pursuant to this section shall not exceed one-third of the value of the industrial establishment during the period of ownership of the applicant.

(e) Upon the Department's issuance of the certificate of limited conveyance, the owner or operator shall remediate the portion of the real property certified for transfer or conveyance prior to the transfer or conveyance. The remediation of the real property subject to the certificate of limited conveyance shall include any discharges from the remaining portion of the industrial establishment that have migrated or are migrating to the real property certified for conveyance.

(f) Upon the Department's disapproval of the limited conveyance application, the owner or operator shall remedi-

ate the industrial establishment in accordance with ISRA and this chapter.

(g) The owner or operator shall remediate the remaining portion of the industrial establishment, or otherwise comply with this chapter, upon the subsequent closing of operations or transferring of ownership or operations of the industrial establishment.

(h) An owner may, concurrent with or subsequent to a transfer or conveyance executed pursuant to this section, transfer additional portions of the industrial establishment in excess of the permissible conveyance limitation provided at (d)3 above, if the proposed transfer does not constitute a closing of operations or transfer of ownership or operations of an industrial establishment as defined at N.J.A.C. 7:26B-1.4.

(i) An owner who transfers additional portions pursuant to (h) above shall use the funds paid for those additional portions exclusively for remediating the additional portion(s) transferred pursuant to (h) above. The owner shall deposit any portion of the amount paid that remains unexpended in a remediation trust fund that shall be established pursuant to N.J.A.C. 7:26C-7 and N.J.S.A. 13:1K-11.8(g).

(j) Nothing in this section shall be construed to allow an owner to transfer any of the real property of an industrial establishment without complying with ISRA and this chapter for those portions subject to the transfer.

7:26B-5.8 Remedial action workplan deferral

(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 a remedial action workplan deferral in accordance with (c) below.

(b) The Department's approval of a remedial action workplan deferral application authorizes the owner or operator to transfer ownership or operations of the industrial establishment without the preparation, approval and implementation of a remedial action workplan for the industrial establishment.

(c) To apply for a remedial action workplan deferral, the owner or operator shall submit a completed remedial action workplan deferral 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 information:

1. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer as established by the following criteria:

i. Substantially the same use means that the industrial establishment shall retain the same four digit industry group number, as designated in the NAICS Manual; or

ii. An owner or operator may submit a written request to the Department at the address provided at N.J.A.C. 7:26B-1.5, for a determination that the industrial establishment be deemed subject to substantially the same use based upon its retention of the same three digit subsector number, as designated in the NAICS Manual. The owner or operator shall include the following information: the industrial establishment's current six digit NAICS number, a description of the current operations of the industrial establishment, the proposed six digit NAICS number for the industrial establishment after the proposed transfer and a description of the proposed operations at the industrial establishment after the proposed transfer;

2. The completed preliminary assessment report, site investigation report, and remedial investigation report for the industrial establishment;

3. A cost estimate for the remedial action necessary at the industrial establishment based upon the information collected in the preliminary assessment report, site investigation report, and remedial investigation report and developed in accordance with N.J.A.C. 7:26E;

4. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the purchaser, transferee, mortgagee or other party to the transfer has reviewed preliminary assessment report, site investigation report, and remedial investigation report and the cost estimate for the remedial action necessary at the industrial establishment and that the purchaser, transferee, mortgagee or other party to the transfer has the financial ability to pay for the implementation of the necessary remedial action; and

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

(d) The Department shall review the remedial action workplan deferral application in accordance with N.J.A.C. 7:26B-1.7. The Department shall either approve the remedial action workplan deferral by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to submit a remedial action workplan for the industrial establishment.

(e) Upon approval of the deferral application by the Department, the preparation, approval, and implementation of a remedial action workplan for the industrial establishment may be deferred for that transfer provided in the notice required by (a) above, until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes operations.

(f) The Department's approval of the remedial action workplan deferral application shall not be construed as an approval by the Department of any workplans and or reports submitted in accordance with (c)3 above.

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

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

In (c)1. amended i and ii and substituted "NAICS" for "SIC".

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.

SUBCHAPTER 6. REMEDIATION PROCEDURES

7:26B-6.1 Preliminary assessment, site investigation and remedial investigation

(a) Unless otherwise established pursuant to N.J.A.C. 7:26B-6.5, the owner or operator shall complete the remediation required by ISRA and this chapter and submit the reports 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, within the time schedules listed in (b) through (e) below, N.J.A.C. 7:26B-6.2 and 6.3.

(b) The owner or operator shall complete the preliminary assessment report in accordance with N.J.A.C. 7:26E-3.2 and submit a negative declaration, if applicable, within 35 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(c) The owner or operator shall complete a site investigation report, if applicable, in accordance with N.J.A.C. 7:26E-3.13 and submit a negative declaration, if applicable, within 120 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(d) The owner or operator shall complete a remedial investigation workplan, if applicable, in accordance with N.J.A.C. 7:26E-4.2 within 180 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(e) The owner or operator shall complete the remedial investigation report in accordance with N.J.A.C. 7:26E-4.8 and submit a negative declaration, if applicable, within 300 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan, whichever occurs last.

7:26B-6.2 Soil remedial action and remedial action workplan

(a) The owner or operator required to conduct a soil remedial action at the industrial establishment or at any area of concern shall not implement a remedial action prior to the Department's approval of a remedial action workplan for the site unless the soil remedial action satisfies the criteria established in (b) below.

(b) The owner or operator may implement a soil remedial action at an industrial establishment without prior Department approval of a remedial action workplan if the following criteria are satisfied:

1. The soil remedial action is reasonably expected to be completed, in compliance with N.J.A.C. 7:26E, within the time schedules established by the Department. Such remedial action shall not exceed the five years from the commencement of the implementation of the remedial action; and

2. The owner or operator is implementing a soil remedial action which achieves the established minimum unrestricted or restricted use soil remediation standards without the use of engineering controls, as applicable.

(c) The owner or operator planning to implement a soil remedial action in accordance with (b) above shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) that includes the following information:

1. A certification that based on the remediation completed, there are no areas of concern at the industrial establishment or at any location where hazardous substances or hazardous wastes have migrated or are migrating from the industrial establishment involving the remediation of groundwater or surface water; and

2. A detailed schedule of implementation for the remedial action which includes a summary of the remediation performed to date, the status of the remediation of each area of concern, the proposed remedial actions to be conducted at each area of concern and the time schedules for the completion of proposed activities. This information may include both narrative and/or graphic descriptions and shall only be used for the purposes of establishing a time schedule pursuant to this subsection.

(d) The notification required by (c) above shall be certified in accordance with N.J.A.C. 7:26B-1.6.

(e) The notification required by (c) above shall satisfy the requirement of N.J.A.C. 7:26E-1.4 to notify the Department. The owner or operator shall notify any other person as required pursuant to N.J.A.C. 7:26E-1.4.

(f) The Department may require an owner or operator planning to implement a soil remedial action in accordance with (b) above to submit progress reports on a quarterly, semi-annual or annual basis. The owner or operator is not required to submit the progress reports unless the Department requests the submission of the reports in writing.

(g) The owner or operator required to conduct a soil remedial action that does not satisfy the criteria established in (b) above shall submit a remedial action workplan to the Department for review and approval within 420 calendar

days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

7:26B-6.3 Groundwater or surface water remedial action workplan

The owner or operator shall submit the remedial action workplan for any remedial action involving the remediation of groundwater or surface water for review and approval by the Department within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

7:26B-6.4 Remediation funding source requirement

The owner or operator shall submit a remediation funding source in accordance with N.J.A.C. 7:26C-7 upon the Department's approval of a remedial action workplan for the industrial establishment.

7:26B-6.5 Compliance with remediation schedules

(a) The owner or operator required to remediate an industrial establishment or any area of concern shall comply with:

1. The schedules established at N.J.A.C. 7:26B-6.1, 6.2 and 6.3;

2. The alternative schedule of implementation submitted with the General Information Notice as provided at N.J.A.C. 7:26B-3.3(a)10; or

3. The schedule established in a remediation agreement in accordance with N.J.A.C. 7:26B-4.

(b) The owner or operator required to remediate an industrial establishment or any area of concern shall provide written notice to the Department at the address provided at N.J.A.C. 7:26B-1.5, at least 15 calendar days prior to the date of expected noncompliance upon the owner's or operator's finding that the remediation of the industrial establishment will not conform to the schedules established at (a) above. The notification shall include the following information:

1. A summary of remediation completed to date and the status of each area of concern;

2. The proposed remediation pursuant to N.J.A.C. 7:26E, to be conducted at each area of concern and the revised schedule of for the completion of proposed remediation; and

3. Any additional information which is relevant to the Department's evaluation of the proposed remediation schedule.

7:26B-6.6 Completion of remediation

Upon completion of the remediation, the owner or operator shall submit to the Department the workplans for and reports of the preliminary assessment, site investigation, remedial investigation and remedial action, as applicable, and any additional information required by the Department that has not been previously submitted to the Department for review and approval.

7:26B-6.7 Submission and review of a negative declaration

(a) Unless otherwise provided by this chapter, the owner or operator, subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment, shall submit a negative declaration, executed and 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. The Department shall approve a negative declaration by the issuing a no further action letter.

(b) The owner or operator shall submit a negative declaration pursuant to (c) below upon the occurrence of any of the following events:

1. The submission of a preliminary assessment report, site investigation report, remedial investigation report or remedial action report, as applicable, which demonstrates the following:

i. There are no discharged hazardous substances or hazardous wastes at the industrial establishment; or

ii. Any discharged hazardous substances or hazardous wastes at the industrial establishment above the applicable remediation standards have been remediated in accordance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department; and any discharged hazardous substances or hazardous wastes that have migrated or are migrating from the industrial establishment above the applicable remediation standards have been remediated in compliance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department;

2. The receipt by the owner or operator of notification from the Department that based on the Department's review of the information submitted, the owner or operator shall submit a negative declaration; or

3. The owner or operator is required pursuant to N.J.A.C. 7:26B-5 to submit a negative declaration.

(c) The owner or operator required to submit a negative declaration pursuant to this chapter shall submit the negative declaration on forms available from the Department at the address provided at N.J.A.C. 7:26B-1.5. The owner or operator shall include the following information in the negative declaration:

1. Identification of the subject industrial establishment including:

i. The name and location of the industrial establishment, including street address, city or town, municipality, county, zip code and telephone number;

ii. The tax block and lot numbers of the industrial establishment;

iii. The applicable NAICS number of the subject industrial establishment;

iv. The current real property owner, including name, address, and telephone number; and

v. The current business operator and/or business owner, if different from (c)li above, of the industrial establishment including name, address and telephone number;

2. The preliminary assessment report, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, as applicable, and any other information required by the Department if not previously submitted, to review the proposed negative declaration; and

3. A certification by the owner or operator that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated or is migrating from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with any applicable remediation standards.

(d) The owner or operator shall certify the negative declaration in accordance with the provisions at N.J.A.C. 7:26B-1.6.

(e) The owner or operator shall pay all applicable fees required pursuant to N.J.A.C. 7:26B-8.

(f) The Department shall review a negative declaration within 45 calendar days after the completion of the Department's review of all the information submitted pursuant to this chapter and shall:

1. Approve the remediation for that industrial establishment by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a); or

2. Inform the owner or operator that additional remediation at the industrial establishment or at an offsite location is required.

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

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

In (c)liii, substituted "NAICS" for "SIC".

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.

**SUBCHAPTER 7. PROTECTION OF
CONFIDENTIAL INFORMATION**

7:26B-7.1 Confidentiality claims

(a) Any person required to submit any information pursuant to this chapter which in the person's opinion consti-

tutes trade secrets, proprietary information, specific information regarding an ISRA-subject transaction other than the fact that the ISRA-subject transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the appropriate fee pursuant to N.J.A.C. 7:26B-8.1.

(b) Any person asserting a confidentiality claim pursuant to (a) above shall submit two documents to the Department. One document shall be intact including any information which the person alleges to be entitled to confidential treatment. The second document shall be identical to the first and may be a copy of the first except that the alleged confidential material shall be redacted.

(c) The top of each page of the first submission containing the information which the person alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the person alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the person alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, redacted submission (which may or may not be enclosed in a separate envelope, at the option of the person), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, a person shall send the complete package by certified mail, return receipt requested and if necessary hand delivery, at the address specified at N.J.A.C. 7:26B-1.5. The Department will assume no responsibility for packages until they are received.

7:26B-7.2 Access to information; nondisclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made shall be limited to Department employees, representatives, and contractors, whose activities necessitate such access and as provided by N.J.A.C. 7:26B-7.5 and 7.6.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other person except as provided in this subchapter or as otherwise required by law.

7:26B-7.3 Confidentiality determinations

(a) The Department shall determine that documents, in whole or in part, are subject to confidential treatment based on the following criteria:

1. Whether a person has asserted a confidentiality claim pursuant to this subchapter which has not expired by its terms, been waived or withdrawn;

2. Whether a person has shown that reasonable measures were taken to protect the confidentiality of the information and that the person intends to continue to take such measures;

3. Whether the information is not, and has not been, available or otherwise disclosed to any other person without the consent of the person asserting a confidentiality claim (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute or regulation specifically requires disclosure of the information; and

5. Except for information related to national security, whether the person has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

(b) The Department shall treat documents for which a confidentiality claim has been asserted as entitled to confidential treatment until the Department acts upon a confidentiality claim and determines otherwise. The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq., to inspect or copy such information;

2. Deems it necessary to determine whether information in its possession is entitled to confidential treatment; or

3. Determines for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the determination whether information is or is not entitled to confidential treatment. Within 30 calendar days after its determination that the information is not entitled to confidential treatment, the 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. FEE SCHEDULE AND DIRECT BILLING FEES

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. Applicability determination application	\$300.00
2. Area of concern waiver application	\$150.00
3. Confidentiality claim	\$375.00
4. De minimis quantity exemption application	\$300.00
5. Expedited review application	\$225.00
6. General Information Notice	\$150.00
7. Limited site review application	\$525.00
8. Limited conveyance application	\$600.00
9. Negative declaration review	\$150.00
10. Preliminary assessment report	\$375.00
11. Regulated underground storage tank waiver application	\$600.00
12. Remedial action workplan deferral application	\$975.00
13. Remediation agreement application	\$1,500
14. Remediation agreement amendment application	\$750.00
15. Remediation in progress waiver application	\$225.00
16. 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-9.

(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).

7:26B-8.2 Oversight costs

The owner or operator conducting the remediation of an industrial establishment pursuant to ISRA and this chapter shall submit payment to the Department pursuant to the provisions found in the rules for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.3 and submit payment pursuant to N.J.A.C. 7:26C-9.5.

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

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

Rewrote the section.

7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the rules for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.3, the contestor shall follow the procedures found in N.J.A.C. 7:26C-9.4.

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

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

Rewrote the section.

7:26B-8.4 Payment of fees

All fees required by this subchapter shall be made by certified check, attorney check, money order, or by personal check shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all fees shall be mailed to New Jersey Department of Environmental Protection, Division of Responsible Party Site Remediation, 401 E. State Street, PO Box 432, Trenton, New Jersey 08625-0432. Courier and hand deliveries may be made to 401 East State Street, 5th Floor, Trenton, New Jersey.

Amended by R.2003 d.133, effective March 17, 2003.
See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

APPENDIX A**STANDARD ISRA REMEDIATION AGREEMENT**

The standard ISRA remediation agreement contains references to [Person], [amount], and other blank brackets []. Upon the Department's issuance or entry of a remediation agreement, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document. The matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF :
THE [Name of the site] : REMEDIATION
SITE AND [Name of : AGREEMENT
operator]
AND [Name of owner] :
ISRA Case #[] :

This Remediation Agreement is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "Department" or "DEP") by N.J.S.A. 13:1D-1 et seq., the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director for the Industrial Site Evaluation Element within the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [], Lot [] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter "Property"), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").

2. On [date], [Corporation/entity/individual] submitted to the Department an application for a Remediation Agreement pursuant to N.J.A.C. 7:26B-4.1. This Remediation Agreement

application is incorporated herein by reference and includes the following information:

A. Transaction

Seller: []

Buyer: []

Description: []

B. Person(s) executing this Remediation Agreement and responsible for conducting the remediation of the [] industrial establishment (hereinafter referred to as Person(s)).

Lead Person:

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

Person: [Any other Person(s)]

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

3. The Department and the [Person(s)] expressly agree that the terms and conditions of this Remediation Agreement shall apply separately to each of the industrial establishments listed in paragraph 1 above. Furthermore, the Department and the [Person(s)] agree to administer and complete all applicable ISRA program requirements, including the remediation funding source requirements and any other remedial measures undertaken pursuant to this Remediation Agreement and ISRA, for the industrial establishment.

4. The transaction described in paragraph 2.A above is the transfer of ownership or operations of an industrial establishment as defined by ISRA. The Department and [Person(s)] expressly agree that the transaction described in paragraph 2.A above is subject to ISRA. [Person(s)] has requested that the Department prepare a Remediation Agreement which, when effective, will allow the transaction described in paragraph 2.A above to be consummated prior to the completion of all administrative and remediation requirements pursuant to ISRA.

5. By entering into this Remediation Agreement, [Person(s)] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable] nor waives any rights or defenses with regard to the site except as specifically provided in this Remediation Agreement.

6. The scope of the remediation required by this Remediation Agreement includes all contaminants within the meaning of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et

seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (hereinafter "contaminants") at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

7. [Additional provisions may be added at the Department's discretion].

AGREEMENT

I. Remedial Investigation Requirements

1. Within [] calendar days after the effective date of this Remediation Agreement, as set forth in paragraph 67 below (hereinafter "the effective date of this Remediation Agreement"), or as otherwise approved in writing by the Department, [Person] agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E, including a schedule pursuant to N.J.A.C. 7:26E-4.2(b). [Person] agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

2. Within [] calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the RI Work Plan to conform to the Department's comments and agrees to submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Work Plan.

3. Upon receipt of the Department's written final approval of the RI Work Plan, [Person] agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

4. [Person] agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

5. If upon review of the RI Report the Department determines that additional remedial investigation is required, the Department shall notify [Person] of the additional work that is required. [Person] agrees to submit to the Department another RI Workplan and schedule for the additional work. Upon approval of the RI Workplan for the additional required work, [Person] agrees to conduct additional remedial investigation and submit another RI Report pursuant to the approved schedule.

6. Within [] calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, [Person] agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Report.

II. Remedial Action Requirements

7. Within [] calendar days after receipt of the Department's written approval of the RI Report, [Person] agrees to submit to the Department a Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

8. Within [] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the Department's comments and agrees to submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Work Plan.

9. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, [Person] agrees to implement the approved Remedial Action Work Plan in accordance with the schedule therein.

10. [Person] agrees to submit to the Department a Remedial Action Report (hereinafter "RA Report") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the RA Work Plan and the schedule therein.

11. If upon review of the RA Report the Department determines that additional remediation is required, [Person] agrees to conduct additional remediation as required by the Department including submission of additional workplans and reports, as applicable.

12. Within [] calendar days after receipt of the Department's written comments on the RA Report, or longer as authorized by the Department, [Person] agrees to modify the RA Report to conform the Department's comments, and agrees to submit the modified RA Report to the Department. The determination as to whether or not the modified RA

Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments, and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Report.

III. Additional Remedial Investigation and Remedial Action

13. If at any time that this Remediation Agreement is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, [Person(s)] agrees to conduct such additional remediation as the Department directs.

14. If the Department determines that no further action is required at the [] industrial establishment, [Person(s)] shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6.7, within thirty (30) calendar days or longer as authorized by the Department from receipt of the Department's request for the submission of the negative declaration.

IV. Progress Reports

15. [Person] agrees to submit quarterly progress reports which detail the status of [Person's] compliance with this Remediation Agreement to the Department in accordance with N.J.A.C. 7:26E-6.6. [Person] agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Remediation Agreement. [Person] agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. [Person] may request that the Department allow progress reports to be submitted semi-annually or annually.

V. Project Coordination

16. [Person] agrees to submit to the Department all documents required by this Remediation Agreement, including correspondence relating to force majeure issues pursuant to Section X. of this Agreement by delivery with an acknowledgment of receipt from the Department. The date that the Department executes the acknowledgment will be the date the Department uses to determine [Person's] compliance with the requirements of this Remediation Agreement for purposes of assessing penalties and availing itself of any other applicable remedies.

17. Within seven (7) calendar days after the effective date of this Remediation Agreement, [Person(s)] agrees to submit to the Department the name, title, address and telephone number of the individual who shall be [Person]'s technical contact for the Department for all matters concerning this Remediation Agreement. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to [Person's] agent, identified in paragraph 46. below of the

date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

18. Within seven (7) days after the effective date of this Remediation Agreement the Department will identify the individual who will be the Department's contact for all matters concerning this Remediation Agreement. Unless the Department otherwise directs in writing, [Person] agrees to submit all payments and [number of copies] copies of all documents required by this Remediation Agreement to the Department's contact.

19. [Person] agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to paragraph 18, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

20. The Department will consider a written request for an extension of time to perform any requirement under this Remediation Agreement, provided that [Person] submits any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

VI. Remediation Funding Source and Remediation Funding Source Surcharge

21. [Person] agrees to establish and maintain during the life of this Remediation Agreement a remediation funding source in an amount equal to the Department approved estimate of the remediation costs related to compliance with this Remediation Agreement, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the site, pursuant to N.J.A.C. 7:26C-7. [Person] agrees that the initial amount is \$[].

22. [Person] agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

VII. Project Cost Review

23. Beginning three hundred sixty-five (365) calendar days after the effective date of this Remediation Agreement, and annually thereafter on the same calendar day, [Person] agrees to submit to the Department a detailed review of all remediation costs expended by [Person] to comply with this Remediation Agreement, including:

- (a) A detailed summary of all monies spent to date pursuant to this Remediation Agreement;
- (b) The detailed estimated remediation costs required to comply with this Remediation Agreement, including all operation, maintenance and monitoring costs; and
- (c) The reason for any changes from the previously submitted cost review.

24. At any time after [Person] submits the first cost review pursuant to the preceding paragraph [Person] may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Remediation Agreement. If the Department grants written approval to such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

25. If the estimated costs of meeting [Person's] obligations in this Remediation Agreement at any time increase to an amount greater than the remediation funding source, [Person] agrees to, within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

26. If [Person] remediates the Site to a restricted use remediation standard and [Person] implements institutional and engineering controls, [Person] shall maintain the remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount necessary to pay for the maintenance of the engineering and institutional controls.

VIII. Oversight Cost Reimbursement

27. All submissions required pursuant to this Remediation Agreement shall be accompanied by all appropriate fees pursuant to N.J.A.C. 7:26B-8.

28. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to the paragraph 30 below, determined pursuant to N.J.A.C. 7:26B-8, [Person(s)] agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period invoiced in the Department's summary.

29. [Person] agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Remediation Agreement as provided herein for those oversight costs that have accrued prior to that termination.

30. [Person] also agrees to pay interest on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in paragraph 28, above, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

IX. Reservation of Rights

31. The Department reserves the right to unilaterally terminate this Remediation Agreement in the event that the Department determines that [Person] has violated the terms of

this Remediation Agreement. Before the Department unilaterally terminates this Remediation Agreement, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and [Person] shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

32. Nothing in this Remediation Agreement precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person(s)] for violations of this Remediation Agreement. In any such action brought by the Department under this Remediation Agreement for injunctive relief, civil, or civil administrative penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this Remediation Agreement, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the Remediation Agreement. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Remediation Agreement, except as provide in paragraph 45. of this Agreement. Under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Remediation Agreement.

33. This Remediation Agreement shall not be construed to affect or waive the claims of Federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

34. Except as otherwise stated in this Remediation Agreement, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Remediation Agreement, [Person] reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

35. Except as otherwise set forth herein, by the execution of this Remediation Agreement the does not release [Person], from any liabilities or obligations [Person] may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

36. Nothing in this Remediation Agreement shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the [] industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.

X. Force Majeure

37. If any event specified in the following paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Remediation Agreement, [Person] shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] shall take all necessary action to prevent or minimize any such delay.

38. The Department will extend in writing the time for compliance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

- (a) [Person] has complied with the notice requirements of the preceding paragraph;
- (b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Person]; and
- (c) [Person] has taken all necessary action to prevent or minimize any such delay.

39. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

40. "Force Majeure" shall not include the following:

- (a) Delay in an interim requirement with respect to the attainment of subsequent requirements;
- (b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this Remediation Agreement;
- (c) Contractor's breach, unless [Person] demonstrates that such breach falls within paragraph 38. below; and
- (d) Failure to obtain access required to implement this Remediation Agreement, unless denied by a court of competent jurisdiction.

XI. Penalties

41. [OPTIONAL-- [Person(s)] agrees to pay a penalty in the amount of \$_____ for its violation of _____, and shall submit to the Department a certified check made payable to the "Treasurer, State of New Jersey" for \$[]00, no later than [Person(s)] execution and submittal to the Department of the Remediation Agreement. The Department's acceptance of the penalty shall not be construed as a waiver of the Department's right to compel [Person(s)] to specifically perform their obligations under this Remediation Agreement.]

42. [Person] agrees to pay penalties for its violations of this Remediation Agreement, or for its failure to implement and maintain institutional controls including, by way of example, a deed notice or declaration of environmental restriction that are part of a remedial action implemented pursuant to this Remediation Agreement order, according to the amounts and conditions in N.J.A.C. 7:26C-10.

43. [Person] agrees that its payment of a penalty pursuant to this Remediation Agreement does not alter [Person's] responsibility to complete any requirement of this Remediation Agreement.

44. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement.] [List each non-DEP party to this Remediation Agreement] are jointly and severally liable for penalties for violations of this Remediation Agreement.

XII. Dispute Resolution

45. In the event a conflict arises between [Person] and the Department, [Person] may initiate the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

XIII. General Provisions

46. [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Remediation Agreement unless and until [Person] provides the Department with the name, title address and telephone number of [Person's] new agent.

[Name, title, address and telephone number of [Person's] agent]

47. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site to which [Person] has access, at all times, for the purpose of monitoring [Person's] compliance with this Remediation Agreement and/or to perform any remedial activities [Person] fails to perform as required by this Remediation Agreement. [Person] agrees that the Department's right of access pursuant to this paragraph shall continue after the Department's termination of this Remediation Agreement pursuant to paragraph 64., below.

48. [Person] agrees to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

49. [Person] agrees to provide a copy of this Remediation Agreement to each contractor and subcontractor retained to perform the work required by this Remediation Agreement and agrees to condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this Remediation Agreement. [Person] agrees to be responsible to the Department for ensuring

that its contractors and subcontractors perform the work herein in accordance with this Remediation Agreement.

50. Nothing in this Remediation Agreement relieves [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this Remediation Agreement shall not excuse [Person(s)] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this Remediation Agreement. This Remediation Agreement shall not preclude the Department from requiring that [Person(s)] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Remediation Agreement if the terms and conditions of any such permit are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by [Person(s)] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations, N.J.A.C. 7:14A-1 et seq., then [Person(s)] agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

51. All work plans, schedules, and other documents required by this Remediation Agreement and approved in writing by the Department are incorporated herein and made a part hereof.

52. Upon the receipt of a written request from the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, were developed pursuant to this Remediation Agreement. [Person] reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

53. [Person] agrees to comply with this Remediation Agreement, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

54. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by [Person(s)] and the Department. Any amendment to this Remediation Agreement shall be executed by the Department and [Person(s)]. The Department reserves the right to require the resolution of any outstanding violations of the applicable regulations or this

Remediation Agreement prior to executing any such amendment.

55. [Person] waives its rights to an administrative hearing concerning the entry of this Remediation Agreement.

56. This Remediation Agreement shall be governed and interpreted under the laws of the State of New Jersey.

57. If any provision of this Remediation Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Remediation Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Remediation Agreement shall be valid and enforced to the fullest extent permitted by law.

58. This Remediation Agreement represents the entire integrated agreement between the Department and [Person] concerning the site subject to this Remediation Agreement and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

59. Within thirty (30) calendar days after the effective date of this Remediation Agreement, [Person] agrees to record a copy of this Remediation Agreement with the County Clerk, [] County, State of New Jersey and agrees to provide the Department with written verification of compliance with this paragraph which shall include a copy of this Remediation Agreement stamped "Filed" by the County Clerk.

60. This Remediation Agreement shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the industrial establishment or site shall alter party's responsibilities under this Remediation Agreement.

61. [Person's] document retention policy notwithstanding, [Person] agrees to preserve, during the pendency of this Remediation Agreement and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of [Person's] divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] re-

serves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to data related to site conditions, sampling, or monitoring.

62. [Person(s)] agrees to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] agrees to submit a cost review pursuant to this Remediation Agreement to the Department. [Person(s)] agrees to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] agrees to obtain and submit to the Department additional financial assurance pursuant to this Remediation Agreement.

63. If [Person] remediates the site to a restricted use standard as defined in N.J.A.C. 7:26E-1.8 and [Person] implements institutional and engineering controls, this Remediation Agreement shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source until the Department determines that the site is remediated to the applicable unrestricted use standard.

64. If [Person] remediates contaminated soil at the site to the Department's unrestricted use soil standard as defined at N.J.A.C. 7:26E-1.8, and any other contaminated media to the applicable remediation standard, the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by [Person] of written notice from the Department stating that [Person] has completed the remediation required by this Remediation Agreement in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Remediation Agreement and therefore [Person] does not need to continue to maintain a remediation funding source or pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Remediation Agreement is thereby terminated. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Remediation Agreement.

65. Except as provided in paragraph 52. above, [Person] may assert a claim of confidentiality for any information sub-

mitted by [Person] pursuant to this Remediation Agreement, by following the Department's procedures in N.J.A.C. 7:26B-7.

66. [Person(s)] agrees to submit to the Department, two copies of the executed original Remediation Agreement, each with the original signature of [Person] or its authorized representative, and documentary evidence such as a corporate resolution, or a certification by a corporate officer, that the signatory has the authority to bind [Person(s)] to the terms of this Remediation Agreement, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

67. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the Department and [Person(s)].

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: _____ By: _____
Assistant Director
Site Remediation Program
[NAME OF PERSON EXECUTING
AGREEMENT]

Date: _____ By: _____
[of]

Print Full Name Signed Above

Title

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

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

In AGREEMENT, added a second sentence in 7, added a reference to days in 9, deleted a reference to Industrial Site Evaluation Element in 14, and changed N.J.A.C. reference in 16; and in NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, substituted a reference to Site Remediation Program for a reference to Responsible Party Cleanup Element.

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

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

In AGREEMENT, added the last sentence in 7.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

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

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

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.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote the appendix.

APPENDIX B

STANDARD LANDLORD/TENANT PETITION

Landlord/Tenant Petition, Pursuant to N.J.S.A. 13:1K-11.9,
Requesting the Department of Environmental Protection to