

(c) Within 90 days after the date that the Department informs the public, by a notice in the New Jersey Register, that an electronic portal is available, the person responsible for conducting the remediation shall submit to the Department via the electronic application all forms, applications and documents required by this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E electronically.

Administrative correction.

See: 42 N.J.R. 778(a).

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote the address in (a), and rewrote (b) and (c).

Public Notice: Online Portal for the Submission of Annual Remediation Fee Reporting Form and Licensed Site Remediation Professional Notification of Retention or Dismissal Form.

See: 44 N.J.R. 2253(a).

7:26C-1.7 Notification and public outreach

(a) Immediately after a discharge commences, any person or persons responsible for a discharge who knows or should reasonably know of a discharge shall immediately notify the Department by following the requirements of the Discharge of Petroleum and Other Hazardous Substances rules at N.J.A.C. 7:1E-5.

(b) The person responsible for conducting the remediation shall immediately notify the Department hotline at 1-877-WARNDEP or 1-877-927-6337 when either of the following is identified at a site:

1. Contamination that has been caused by a discharge that is not already known to the Department; or
2. An immediate environmental concern.

(c) The person responsible for conducting the remediation shall notify the Department pursuant to this subsection if that person determines that contamination migrated onto the site from another site. The person responsible for conducting the remediation shall notify the Department hotline at 1-877-WARNDEP (1-877-927-6337).

(d) The person responsible for conducting the remediation shall notify the Department in writing, on the Confirmed Discharge Notification form available from the Department at www.nj.gov/dep/srp/srra/forms, within 14 days after the occurrence of any of the following events:

1. A discharge of a hazardous substance, or the discovery of a discharge of a hazardous substance pursuant to N.J.A.C. 7:1E-5.7; or
2. The owner or operator of a regulated underground storage tank:
 - i. Determines that there has been a known or suspected discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-6 or 7;
 - ii. Is required to close a regulated underground storage tank, pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d), 9.2 or 9.3; or

iii. Is otherwise required to conduct a site investigation pursuant to N.J.A.C. 7:14B.

(e) The person responsible for conducting the remediation shall provide the notification and any updates, and the fact sheet and any updates required in (h), (k), (l), (n) and (o) below in English. Additionally, where the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners or tenants in the area within 200 feet of the site boundary, the notification and any updates, and the fact sheet and any updates shall also be provided in that predominant non-English language.

(f) The person responsible for conducting the remediation shall include contact information for the person responsible for conducting the remediation and the name and telephone number for the licensed site remediation professional of record for the site in the notification and any updates, and the fact sheet and any updates required in (h), (k), (l), (n) and (o) below.

(g) To document compliance with this section, the person responsible for conducting the remediation shall submit one copy of each of the following in the subsequent applicable remedial phase report:

1. The notification letter and any updates, and the list of recipients required at (h) and (l) below;
2. The public notification fact sheet and any updates, and the list of recipients required at (h) below and (l) below;
3. The display advertisement required at (l)3 below or a photograph of the notification sign required in (h) below; and
4. The appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms.

(h) The person responsible for conducting the remediation shall:

1. Provide site specific information and documents related to the remediation at a site or area of concern when requested by the Department, including information pertaining to field sampling activities; and
2. Within 14 days prior to commencing field activities associated with the remedial action, provide notification to any local property owners and tenants who reside within 200 feet of the contaminated site, and to the government entities noted in (h)2iii below. The notification shall summarize site conditions and describe the activities that are to take place to remediate the site and shall either be in the form of written correspondence or the posting of a sign visible to the public, which shall be located on the boundaries of the contaminated site. The person responsible for conducting the remediation shall also:

i. Send a notification letter to each local property owner and tenant to whom notification was sent pursuant to (h)2 above that describes the current condition and progress of the remediation every two years until the required remediation is completed and the final remediation document is filed with the Department;

ii. If a sign is utilized, post and maintain the sign until such time as the required remediation is completed and the final remediation document is filed with the Department; and

iii. Submit one copy of the notification letter and list of recipients required in (h)2i above or a photograph of the notification sign required in (h)2ii above, and one copy of the fact sheet required in (l)1 below and the display advertisement required in (l)3 below, to the local government entities as follows:

(1) The municipal clerk of each municipality in which the site is located; and

(2) The county health department and the local health agency.

(i) The person responsible for conducting the remediation shall provide a copy of the remedial action workplan and any updates or status reports, and a copy of the site health and safety plan to the clerk of the municipality, county health department, and local health agency for the municipality and county in which the site is located, when requested.

(j) The person responsible for conducting the remediation of any unregulated heating oil tank system or the person responsible for conducting an emergency response action shall only comply with the notification requirements of (a) through (d) above.

(k) If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements or to raise the topographic level in a floodplain, the person shall:

1. Obtain the Department's prior written approval;

2. Comply with the N.J.A.C. 7:26E-5.2; and

3. Provide notification, which includes the type and concentrations of contaminants in the fill material, the proposed use of the fill and the controls designed to reduce or eliminate exposure, to the following:

i. Each owner of real property and the tenants of those properties, located within 200 feet of the site boundary;

ii. The mayor of each municipality where the site located;

iii. The county designated solid waste coordinator;

iv. The municipal clerk of each municipality in which the site is located; and

v. The county health department and local health agency.

(l) Except as provided in (l)4ii and (m) below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute and publish a fact sheet, which shall include a description of the site's industrial history, source(s) of contamination, description of contamination, current remedial status, proposed remedial actions with a schedule, extent of contamination actions performed to minimize the impact to the public, and a list of online resources for information about the contaminants, as follows:

1. Prepare and distribute the fact sheet within 14 days after the determination that contamination has migrated off site;

2. Distribute the fact sheet to each owner of real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary and to the following government entities:

i. The municipal clerk of each municipality in which the site is located; and

ii. The county health department and local health agency;

3. Publish the fact sheet, or a fact sheet template available at www.nj.gov/dep/srp/srra/guidance that has been updated with site specific information, as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site, within 30 days after the determination that contamination has migrated off site;

4. For soil contamination:

i. The fact sheet shall be updated to include current contaminant extent, redistributed to the parties listed in (l)2 above and republished as described in (l)3i above within 90 days of complete delineation; and

ii. If the contamination has affected only one adjoining property and the affected contaminated medium is limited to the soil, the person responsible for conducting the remediation shall notify only that adjoining property owner and tenant in writing. The notice shall describe the nature and extent of the contamination; and

5. For ground water contamination, conduct the public notification pursuant to the requirements of N.J.A.C. 7:26C-7.3 when the Department establishes a ground water classification exception area.

(m) If only contamination from historic fill migrates off site onto an adjacent property, the person responsible for

conducting the remediation is exempt from the requirements of (l) above.

(n) Unless under direct oversight pursuant to N.J.A.C. 7:26C-14, the person responsible for conducting the remediation may implement a public notification and outreach plan that is different from the requirements set for the in (g), (h) and (l) above if that plan is prepared by a licensed site remediation professional and adequately provides notifications and public outreach substantially equivalent to the public notification otherwise required in (g), (h) and (l) above. The person responsible for conducting the remediation shall include in the applicable remedial phase report that is submitted to the Department the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice.

(o) The person responsible for conducting the remediation shall conduct additional public outreach based on the needs expressed by the community if the Department determines that:

1. Additional outreach is needed due to site-specific circumstances. This shall include responding to public inquiries, including inquiries from the news media, either received by the person responsible for conducting the remediation directly or received by the Department and sent to the person responsible for conducting the remediation; or

2. There is substantial public interest based on a petition containing the signatures of 25 or more people who live or work within 200 feet of the extent of contamination or the property boundary, whichever is greater, and the Department notifies the person responsible for conducting the remediation of its determination and posts a summary of this determination on the Department's web site at www.state.nj.us/dep.

(p) If the person responsible for conducting the remediation is in compliance with the public participation requirements applicable to sites subject to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the National Contingency Plan regulations, 40 CFR Part 300, then that person shall only comply with (a) through (d) above.

(q) The person responsible for remediating a contaminated site located within the jurisdiction of the Pinelands Commission as defined pursuant to N.J.S.A. 13:18A-1 et seq. shall:

1. Submit copies of all reports or workplans, for preliminary assessments, site investigations, remedial investigations and remedial actions, to the Pinelands Commission concurrently with submission of each such document to the Department;

2. Submit, for approval, a copy of the remedial action workplan or remedial design and construction documents

and a completed Pinelands application to the Pinelands Commission prior to implementing a remedial action;

3. Not commence any construction activity at the site until the Pinelands Commission approves the remediation in writing; and

4. Send the information required pursuant to this subsection to the Pinelands Commission at the following address:

The Pinelands Commission
P.O. Box 359
15 Springfield Road
New Lisbon, NJ 08064

New Rule, R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Former N.J.A.C. 7:26C-1.7, Liberal construction, recodified to N.J.A.C. 7:26C-1.9.

7:26C-1.8 Right of entry and inspection

(a) The owner, operator or tenant of a contaminated site shall allow entry to the site 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, photograph the site and the buildings, and to make copies of the records. If samples are taken, the owner, operator or tenant may request that the Department provide split samples.

(b) The owner, operator or tenant of a contaminated site, a party to a remediation agreement, or a person who has submitted a remediation certification shall, as necessary:

1. Have appropriate technical, scientific, and engineering representatives 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.

New Rule, R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Former N.J.A.C. 7:26C-1.8, Severability, recodified to N.J.A.C. 7:26C-1.10.

7:26C-1.9 Liberal construction

These rules, being necessary to promote the public health and welfare, and protect the environment, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10B-1 et seq. and 58:10C-1 et seq.

Recodified from N.J.A.C. 7:26C-1.7 by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

7:26C-1.10 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from N.J.A.C. 7:26C-1.8 by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

**SUBCHAPTER 2. OBLIGATIONS OF THE PERSON
RESPONSIBLE FOR CONDUCTING THE
REMEDICATION OF A CONTAMINATED SITE**

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

1. Criteria for determining when a person is required to remediate a site, in N.J.A.C. 7:26C-2.2; and
2. Requirements for a person who is responsible for conducting remediation, in N.J.A.C. 7:26C-2.3.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (a)1 and (a)2; and deleted (a)3 and (a)4.

7:26C-2.2 Criteria for determining when a person is required to remediate a site

(a) Unless exempted pursuant to N.J.A.C. 7:26C-1.4(c) or (d), a person shall remediate a site in accordance with this chapter when:

1. The person discharges a hazardous substance or otherwise becomes in any way responsible pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10.23-11g, for a discharge;
2. The owner or operator of a regulated underground storage tank:
 - i. Determines there has been a discharge or suspects there has been a discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-7.2;
 - ii. Undertakes closure of a regulated underground storage tank pursuant to N.J.A.C. 7:14B-8.1(b)6, 9.1(d) and 9.2(a)1; or
 - iii. Is required to conduct an unknown source investigation pursuant to N.J.A.C. 7:14B-7.4;
3. Any of the events described in the Industrial Site Recovery Act Rules at N.J.A.C. 7:26B-3.2(a) occurs;
4. The person discovers a discharge on property that person owns;

5. A no further action letter is rescinded or a response action outcome is invalidated;

6. The Department determines that additional remediation is necessary after the Department has issued a remedial action permit for a remedial action; or

7. The person has executed or is otherwise subject to a judicial or administrative order, a judicial consent judgment, an administrative consent order, a memorandum of understanding, a remediation agreement, or any other oversight document for the remediation of a contaminated site.

Repeal and New Rule, R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Section was "Criteria for determining when a person has initiated remediation".

7:26C-2.3 Requirements for the person responsible for conducting the remediation

(a) Upon the occurrence of any of the events listed in N.J.A.C. 7:26C-2.2(a), the person who is responsible for conducting the remediation at a site pursuant to N.J.A.C. 7:26C-1.4(a) shall:

1. Hire a licensed site remediation professional, unless:

i. The remediation is being conducted partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation;

ii. The remediation is being conducted on a site that is listed on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation; or

iii. The remediation is being conducted at a Federal facility;

2. Notify the Department, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation, including the number of contaminated areas of concern and impacted media known at the time the form is submitted and determined pursuant to N.J.A.C. 7:26C-4.2, within 45 days after:

i. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurred prior to November 4, 2009, May 7, 2012;

3. Initiate immediate environmental concern contaminant source control and submit an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.11, no later than two years from the later of the following dates:

- i. March 1, 2010; or
- ii. The date the person was required to report the immediate environmental concern to the Department pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.11;

4. Complete a remedial investigation for the delineation of light non-aqueous phase liquid (LNAPL), initiate implementation of an LNAPL interim remedial measure, initiate monitoring, and submit an LNAPL interim remedial measure report with a form available from the Department's website at www.nj.gov/dep/srp/srra/forms, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.10, within two years from the later of the following dates:

- i. March 1, 2010; or
- ii. The date the person identified the presence of LNAPL pursuant to N.J.A.C. 7:26E-1.10;

5. Complete the remedial investigation of the contaminated site and submit the remedial investigation report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.10; and

6. Complete the remedial action of the contaminated site and submit the remedial action report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.8.

(b) The timeframes set forth in (a) above shall not be extended based on the fact that a person other than the person who initiated the remediation assumes responsibility for the remediation pursuant to N.J.A.C. 7:26C-2.2(b)1.

(c) When the Department determines that a person responsible for conducting the remediation has failed to meet a mandatory remediation timeframe, that person shall become subject to direct oversight of the Department pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the mandatory remediation timeframe applies.

(d) A person responsible for conducting the remediation may request an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

Administrative correction.

See: 42 N.J.R. 1862(a).

Amended by R.2011 d.072, effective February 22, 2011.

See: 42 N.J.R. 2297(a), 42 N.J.R. 2360(a), 43 N.J.R. 389(c).

Rewrote the introductory paragraph of (a)1; in (a)1i, deleted "if remediation was initiated prior to November 4, 2009" following "2010"; added new (a)2; recodified former (a)2 and (a)3 as (a)3 and (a)4; rewrote the introductory paragraph of (a)3 and of (a)4; and in (a)3i and (a)4i, deleted "if remediation was initiated prior to November 4, 2009" following "2010".

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In the introductory paragraph of (a), inserted "who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 5"; in the introductory paragraph of (a)1, inserted the second occurrence of "Act"; in (a)1ii and (a)2ii, substituted "(a)1 through 6" for "(b)"; in the introductory paragraph of (a)2 and (a)3, and in (a)3ii, updated the N.J.A.C. references; in (a)3ii, deleted "and" from the end; rewrote the introductory paragraph of (a)4, and (a)4ii; and added (a)5 and (a)6.

7:26C-3.4 Expedited site specific remediation timeframes

(a) The Department may establish an expedited site specific remediation timeframe that shall apply to a particular site, based upon the following criteria:

1. The risk to the public health and safety, or to the environment; and
2. The compliance history of the person responsible for conducting the remediation.

(b) The Department shall notify in writing the person responsible for conducting the remediation when the Department has established an expedited site specific remediation timeframe for a site for which the person is responsible for conducting the remediation.

(c) The person responsible for conducting the remediation shall comply with every expedited site specific remediation timeframe.

(d) When the Department determines that a person responsible for conducting the remediation has failed to meet an expedited site specific remediation timeframe, that person shall be subject to the direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the expedited site specific remediation timeframe applies.

(e) A person responsible for conducting the remediation may request an extension of an expedited site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

(a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:

1. The person shall provide a written rationale for the request in a completed form found on the Department's

website at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:

- i. The end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe;
- ii. The amount of time beyond the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe needed to complete the required work;
- iii. A description of the cause or causes for the extra time needed to complete the work; and
- iv. The steps taken to minimize the extra time needed to complete the work; and

2. The person shall provide any other information the Department requests.

(b) The person responsible for conducting the remediation shall continue any remediation during the time that the Department reviews the extension request submitted pursuant to (b) above, unless the Department directs otherwise.

(c) An extension request submitted pursuant to (a) above shall be deemed to be granted in the following circumstances with limitations as indicated:

1. A delay by the Department in reviewing or granting a permit or required submittal, provided that:
 - i. The person responsible for conducting the remediation timely filed a technically and administratively complete permit application or submittal; and
 - ii. The period of extension shall equal the actual duration of the delay; or
2. A delay in the provision of Federal or state funding for remediation, provided that the person responsible for conducting the remediation timely filed a technically and administratively complete application for funding and that the period of extension shall equal the actual duration of the delay.

(d) The Department may grant an extension of a mandatory remediation timeframe or of an expedited site specific timeframe by granting the approval in writing if appropriate and adequate rationale has been provided pursuant to (a) above and when an extension is needed as a result of the following:

1. A delay in obtaining access to property in accordance with N.J.A.C. 7:26C-8, provided that the person responsible for conducting the remediation demonstrates that good faith efforts have been undertaken to gain access, access has not been granted by the property owner, and,

after good faith efforts have been exhausted, a complaint was filed in the Superior Court to gain access;

2. Other site-specific circumstances that may warrant an extension, as the Department may determine, including but not limited to:

- i. On-going litigation, the outcome of which will have a direct bearing on the person's ability to meet the mandatory remediation or expedited site specific timeframe;
- ii. The fact that the person is an owner of a small business who can demonstrate to the Department's satisfaction that he or she does not have sufficient monetary resources to meet the mandatory remediation or expedited site specific timeframe; or
3. Other circumstances beyond the control of the person responsible for conducting the remediation, such as fire, flood, riot, or strike.

Amended by R.2011 d.072, effective February 22, 2011.

See: 42 N.J.R. 2297(a), 42 N.J.R. 2360(a), 43 N.J.R. 389(c).

In the introductory paragraph of (a)1, substituted "form found on the Department's website" for "Remediation Timeframe Extension Request Form available from the Department".

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. The formula the Department uses to calculate the annual remediation fee for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.2;
2. The payment of an annual remediation fee for the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.3, pursuant to N.J.A.C. 7:26C-4.3;
3. The payment of the applicable individual document review fees for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.4;
4. The formula the Department uses to calculate the remedial action permit fees for the person responsible for permit fees pursuant to N.J.A.C. 7:26C-4.5;
5. The payment of remedial action permit fees, pursuant to N.J.A.C. 7:26C-4.6;
6. The methodology the Department uses to calculate its costs in overseeing remediation and the payment of those costs, pursuant to N.J.A.C. 7:26C-4.7;

Program from Federal Grants or New Jersey State Fee Reimbursements; and

The resulting total unreimbursed Site Remediation indirect expenditures is then divided by the total unreimbursed Site Remediation direct labor expenditures to arrive at the indirect program cost rate.

E = expenses, which includes non-salary direct costs specific to the site such as sampling, analytical, equipment, or supply costs, contractor expenses, and Emergency Response overtime hours. These costs are not subject to additive, fringe, or indirect multipliers.

(f) The person responsible for conducting the remediation:

1. Is exempt from paying the indirect program costs if the person is responsible for conducting the remediation of discharged substances at their primary residence; or

2. May be exempt prospectively from paying the indirect program costs if:

i. The person meets the criteria in the Developer Certification form in Appendix A of this chapter, incorporated herein by reference, and submits the completed form to the Department to the address in N.J.A.C. 7:26C-1.6(a); and

ii. The person requests a statutory exemption pursuant to N.J.S.A. 58:10B-2.1 from the obligation to reimburse the Department for its indirect costs, by following the procedures in (g) below.

(g) To request the prospective application of the statutory exemption for which the person qualifies pursuant to (f)2 above, the person responsible for conducting the remediation shall submit the following to the Department within 60 calendar days after the person initiates remediation at the site or area of concern:

1. An executed Developer Certification, found in Appendix A of this chapter, that establishes that that person is neither:

i. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; nor

ii. A discharger, or a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, and who does not have a defense to liability pursuant to N.J.S.A. 58:10-23.11g.d; and

2. A form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that requires the person(s) completing the form to describe information concerning the acquisition of the site and that person's liability for the discharge at the site, including the name and address of the

site and the person responsible for conducting the remediation, that person's signature, when and how the person either acquired or plans to acquire the site, a statement that the person exercised the appropriate due diligence at the site, the type of due diligence the person conducted, when the discharge occurred, and that the person is not liable for the discharge;

(h) When the Department determines that a person who has complied with (g) above meets the statutory exemption, the Department shall calculate that person's prospective oversight costs, beginning on the date of the requested exemption, using the following alternative oversight cost formula; however, the Department may only offset any future costs by the exempted amount, and shall not offset or pay any rebates of such costs prior to either May 7, 2012 or the date the requested exemption is submitted to the Department.

$$OC (NI) = DPC + E$$

where

OC (NI) = oversight costs without indirect program costs included;

DPC = direct program costs as defined in (e) above; and

E = expenses, as defined in (e) above.

Recodified from N.J.A.C. 7:26C-4.5 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (a) and (e); and added (f) through (h). Former N.J.A.C. 7:26C-4.7, Payment of fees and oversight costs, recodified to N.J.A.C. 7:26C-4.9.

7:26C-4.8 Oversight cost review

(a) The person responsible for conducting the remediation may contest an oversight cost the Department has assessed, pursuant to N.J.A.C. 7:26C-4.7, by submitting a written request to the Department, pursuant to (c) and (d) below, within 45 days after the billing date indicated on the oversight cost invoice that person received from the Department.

(b) The Department shall deny an oversight cost review request if the request is based on the following:

1. An employee's hourly salary rate;

2. The Department's salary additive rate, fringe benefit or indirect rate;

3. Management decisions of the Department, including decisions regarding who to assign to the case, how to oversee the case or how to allocate resources for case review; or

4. Receipt of the request after the 45-day period established in (a) above.

(c) The person responsible for conducting the remediation shall submit an oversight cost review request to the Department at the following address:

New Jersey Department of Environmental
Protection
Site Remediation
Office of Direct Billing and Cost Recovery
401 East State Street
PO Box 413
Trenton, NJ 08625-0413

(d) The person responsible for conducting the remediation shall include the following information in a request for an oversight cost review:

1. A copy of the invoice;
2. Payment of all uncontested charges, including salary, additives, and fringe and indirect rate calculations, as applicable, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address, email address, and telephone number of the person making the request; and
6. Information supporting the request or other written documents relied upon to support the request.

(e) If any information or the payment required by (d) above is not included, the Department shall deny a request for an oversight cost review.

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a corrected invoice or have the revision in the next invoice, which shall be due and payable according to the corrected or next invoice.

(g) The Department may, if it determines that the factual issues involving an oversight cost dispute cannot be resolved informally, determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(h) If the Department does not determine the matter to be a contested case and, therefore, not subject to an adjudicatory hearing, the Department shall issue written notification for this determination. This determination shall be considered a final agency action.

(i) If the objector does not file a request for an oversight cost review within 45 days after the billing date shown on the invoice for the Department's oversight costs, the full amount of the oversight costs shall be due and owing. If the invoice is

not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-4.9.

Recodified from N.J.A.C. 7:26C-4.6 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a) and (i), updated the N.J.A.C. reference, and substituted "45" for "30"; in (b)2, deleted "or" from the end; in (b)3, inserted the second occurrence of "the", and substituted "; or" for a period at the end; and added (b)4.

7:26C-4.9 Payment of fees and oversight costs

(a) The person responsible for conducting the remediation shall pay all fees and costs pursuant to an invoice the Department issues or as otherwise required pursuant to this chapter.

(b) The person responsible for conducting the remediation shall make all payments of fees and oversight costs required by this chapter:

1. By either:
 - i. Certified check, attorney check, money order, or personal check made payable to "Treasurer, State of New Jersey"; or
 - ii. E-check or credit card after the Department posts a notice for either on its website at www.nj.gov/dep/srp/srra or in the New Jersey Register that the Department's portal for making payments by E-check or credit card is available; and

2. By mailing payments to the following address unless otherwise indicated on the first page of a billing invoice:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment & Initial Notice
401 East State Street
PO Box 434
Trenton, NJ 08625-0434

(c) If the person responsible for conducting the remediation fails to pay any fee or cost pursuant to this chapter, the person responsible for conducting the remediation:

1. Shall pay interest on the unpaid fees beginning at the end of the period when payment is due as stated in an invoice issued by the Department, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey;
2. May be subject to enforcement pursuant to N.J.A.C. 7:26C-9, including penalties for each day the fee is not paid;
3. May have its property subject to a lien on all real and personal property of the person responsible for conducting the remediation, including a first priority lien on the property subject of the remediation; and

4. Shall not receive a final remediation document until all the costs and fees are paid in full.

Recodified from N.J.A.C. 7:26C-4.7 by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

7:26C-4.10 Seven and one-half percent of the cost of the remediation

(a) The person responsible for conducting the remediation may request that the Department determine whether the applicable costs in this subchapter have exceeded 7.5 percent of the total remediation costs for a site as provided pursuant to the Brownfield Act at N.J.S.A. 58:10B-2.1d, by following the procedures set forth in this section.

(b) A person may make a request pursuant to this section by submitting the information required in (c) below, to the Department within 90 calendar days after the later of:

1. May 7, 2012;
2. The issuance of the final remediation document for all of the discharges at the site, for which that person is responsible, issued after May 7, 2012; or
3. The resolution of all oversight cost reviews pursuant to N.J.A.C. 7:26C-4.6.

(c) A person may make a request pursuant to this section by submitting the following to the Department:

1. The appropriate form, which contains information as described in (c)2 through 6 below, found on the Department's website at www.nj.gov/dep/srp/srra/forms;
2. A narrative summary of the remediation of the site;
3. A narrative statement that all reviews of any oversight cost invoice pursuant to N.J.A.C. 7:26C-4.6 have been either settled or resolved;
4. A narrative statement that includes the date of each oversight cost invoice received, and indicates the date that the full payment was made for each such invoice the Department has issued pursuant to:
 - i. This subchapter; and
 - ii. The applicable rules at N.J.A.C. 7:14B, 7:26B and 7:26C in effect prior to May 7, 2012;
5. A detailed description of all of the remediation costs as defined in N.J.A.C. 7:26C-1.3, prepared by a certified public accountant or an independent auditor, including, as applicable:
 - i. The costs of all correspondence and other communication with the Department concerning the remediation, including, without limitation, the costs of preparing all letters, email and other correspondence, whether by the person, or any other person acting on

behalf of that person, such as a consultant, licensed site remediation professional, or attorney;

ii. All remediation costs incurred by any other person, including any other person responsible for conducting the remediation and the Department; and

iii. The future costs of compliance with a remedial action permit, if applicable, prepared by a licensed site remediation professional; and

6. The date and scope of each final remediation document issued for the site.

(d) The Department shall only approve a request pursuant to this section:

1. After a final remediation document has been issued for all areas of concern at the site;

2. If the person responsible for conducting the remediation has paid each cost invoice within 60 calendar days after the later of:

- i. May 7, 2012;
- ii. The receipt by the person responsible for conducting the remediation of each oversight cost invoice; or
- iii. The resolution of all oversight cost reviews pursuant to N.J.A.C. 7:26C-4.6;

3. If the Department has not addressed an earlier such request for a particular site; and

4. For a rebate of costs paid, if the Legislature has specifically provided the funds to the Department to make such payments.

(e) Upon receipt of a request pursuant to this section, the Department shall:

1. Review the request to determine compliance with (b) through (d) above;

2. Inform the requester in writing of any noncompliance with (b) through (d) above. The requester shall have 30 days to respond to the Department and resubmit missing information;

3. Deny the request if the requester does not resubmit information within 30 days, or the request is again found to be incomplete; and

4. If full compliance with (b) through (d) above is determined, recalculate fees and any costs related to remediation permits, and, if applicable, one or a combination of the following:

- i. The amount of credit that could be applied to future costs to offset any prior payment above the statutory maximum; or

ii. Rebate any prior payment above the statutory maximum, subject to the legislative authorization specified in (d)4 above.

New Rule, R.2012 d.095, effective May 7, 2012.
See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

7:26C-5.1 Scope

(a) This subchapter establishes the requirements for:

1. Who has the obligation to establish and maintain a remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.2;

2. The dollar amount that the person responsible for conducting the remediation has to establish and maintain in a remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.3;

3. The requirements related to each of the financial mechanisms available as remediation funding sources or financial assurance, in N.J.A.C. 7:26C-5.4 through 5.9;

4. The annual cost reviews, in N.J.A.C. 7:26C-5.10;

5. The procedures for adjusting the amount of the remediation funding source or financial assurance and for returning the remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.11;

6. The disbursement of funds from a remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.12; and

7. The procedures the Department will use to draw on the funding in the remediation funding source or financial assurance when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.13.

Administrative correction.

See: 42 N.J.R. 1862(a).

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a)1, (a)2, (a)3, (a)5, (a)6 and (a)7, inserted "or financial assurance" throughout; and in (a)3, inserted "requirements related to each of the".

7:26C-5.2 Establishing a remediation funding source and financial assurance

(a) Except provided in (b), below, the following persons responsible for conducting the remediation shall establish and maintain a remediation funding source pursuant to this subchapter:

1. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq.;

2. A person liable for cleanup and removal costs pursuant to the Spill Act, N.J.S.A. 58:10-23.11 et seq., if:

i. The Department has issued a Spill Act directive to that person;

ii. A State agency has issued an order to that person; or

iii. That person has entered into an administrative consent order with a State Agency; and

3. A person who has been ordered by a court to clean up and remove a discharge pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

(b) The following persons are not required to establish a remediation funding source pursuant to this subchapter:

1. A person who performs a remediation in an environmental opportunity zone;

2. A person who uses an innovative remedial action technology, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the innovative technology;

3. A person who implements an unrestricted use remedial action or a limited restricted use remedial action in a timely manner for all or part of a remedial action, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the unrestricted use remedial action or the limited restricted use remedial action;

4. A government entity;

5. A person who undertakes a remediation at their primary or secondary residence;

6. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs a remediation at the licensed child care center; or

7. The person responsible for conducting a remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.

(c) Except as provided in (d) below, the person responsible for conducting the remediation who is implementing an engineering control as part of a remedial action shall establish and maintain financial assurance pursuant to this subchapter.

(d) The owner or operator of a small business and the persons listed at (b)4 through 7 above is not required to establish financial assurance pursuant to this subchapter.

(e) Any person who is required to establish a remediation funding source or financial assurance shall establish and maintain a remediation funding source or financial assurance in an amount specified in N.J.A.C. 7:26C-5.3, until:

(b) A parent company may provide a self guarantee for a wholly owned subsidiary that is the person responsible for conducting the remediation when the wholly owned subsidiary does not have its own audited financial statements and its financial statements are reported through that parent company. The parent company must comply with all the requirements of this section.

(c) In the case of a special purpose entity created specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant that the statement is prepared in accordance with the Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board's Accounting Standards Codification or the International Accounting Standards Board's International Financial Reporting Standards.

(d) The self-guarantee shall be valid for one year from the date of the submittal required in (a) above. Thereafter, the person shall:

1. Comply with the requirements of (a) above, and if applicable (b) and (c) above, annually, to provide a self-guarantee for each successive year that that person is required to maintain a remediation funding source and wishes to continue to provide a self-guarantee; and

2. Submit the information required by (a) above, and if applicable (b) and (c) above, to the Department 30 days prior to the date of expiration of the existing statement.

Amended by R.2011 d.251, effective October 3, 2011.
See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In the introductory paragraph of (a), substituted "form, found" for "Self-guarantee Remediation Funding Source Form available", and inserted a comma preceding "that".

Amended by R.2012 d.095, effective May 7, 2012.
See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In the introductory paragraph of (a), substituted "form" for "Self-guarantee Remediation Funding Source Form"; in the introductory paragraph of (a)3, deleted ", as defined by the American Institute for Certified Public Accountants," following "activities"; and rewrote (a)4 and (c).

7:26C-5.9 Remediation funding source surcharge

(a) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter that elects to establish the remediation funding source by one or any combination of the following shall submit to the Department a remediation funding source surcharge pursuant to (b) below:

1. A remediation trust fund pursuant to N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy pursuant to N.J.A.C. 7:26C-5.5;
3. A line of credit pursuant to N.J.A.C. 7:26C-5.6; or

4. A letter of credit pursuant to N.J.A.C. 7:26C-5.7.

(b) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter and who is required to pay a surcharge pursuant to (a) above, shall submit the remediation funding source surcharge to the Department, and shall:

1. Pay, by cashier's or certified check payable to the Treasurer, State of New Jersey, a remediation funding source surcharge in an amount equal to one percent of the amount of the remediation funding source; and

2. Submit the remediation funding source surcharge with the remediation funding source as required in N.J.A.C. 7:26C-5.2 and annually thereafter on the same date or within 30 days after receipt of an invoice from the Department, whichever date occurs sooner, and until the Department or a licensed site remediation professional issues a final remediation document.

(c) The surcharge is not applicable to the financial assurance established for a remedial action permit.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (b)2; and added (c).

7:26C-5.10 Remediation cost review

(a) The person responsible for conducting the remediation shall submit to the Department 365 days after the date that that person is required to submit a remediation funding source pursuant to N.J.A.C. 7:26C-5.2(m), and annually thereafter on the same calendar day, a detailed cost review on a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, that is certified by the person responsible for conducting the remediation and by the licensed site remediation professional, that includes the following:

1. A summary of all monies spent to date to remediate the contaminated site;

2. An estimate of the remaining costs to complete the remediation pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, including the cost to operate, maintain and inspect engineering controls and the Department's fees and oversight costs pursuant to N.J.A.C. 7:26C-5.3; and

3. An explanation of any changes from the most recently submitted cost review.

(b) The person responsible for conducting the remediation who is subject to a remedial action permit shall submit to the Department, on the same schedule that the person is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.4(b)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls, on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. A summary of all monies spent as of the date of the estimate to comply with the remedial action permit;
2. An estimate of the remaining costs to comply with the remedial action permit; and
3. An explanation of any changes from the most recently submitted cost review for implementing the remedial action that is the subject of a remedial action permit.

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In the introductory paragraph of (a), substituted "form, found" for "Remediation Cost Review Form available".

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In the introductory paragraph of (a), substituted "(m)" for "(h)" and "form" for "Remediation Cost Review Form", and deleted "if applicable" following "professional"; in (a)1, deleted "detailed" preceding "summary"; rewrote (a)2; and added (b).

7:26C-5.11 Changes in the remediation funding source or financial assurance amount or type and return of the remediation funding source or financial assurance

(a) A person required to establish a remediation funding source or financial assurance pursuant to this subchapter who wishes to decrease the amount of the remediation funding source shall submit a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, that provides a revised estimate of the cost of the remediation, that indicates why that cost is less than previously estimated, and is certified by the person responsible for conducting the remediation and by the licensed site remediation professional.

(b) The person required to establish a remediation funding source or financial assurance pursuant to this subchapter may reduce the amount of the remediation funding source or financial assurance to the amount of the estimate submitted to the Department pursuant to (a) above upon either:

1. For cases where the person responsible for conducting the remediation is subject to direct oversight, receipt from the Department of written approval in response to a request submitted pursuant to (a) above, provided, however, that the Department will respond to requests within 45 calendar days after the Department's receipt of the request; or

2. Submission to the Department of a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, pursuant to N.J.A.C. 7:26C-5.10.

(c) The person required to establish the remediation funding source or financial assurance pursuant to this subchapter shall increase the remediation funding source or financial assurance amount within 30 days after:

1. Submission to the Department of any remediation cost review, required pursuant to N.J.A.C. 7:26C-5.10, that indicates that the cost of remediation has increased to an

amount greater than the existing remediation funding source; or

2. For cases where the person responsible for conducting the remediation is subject to direct oversight, receipt of a demand from the Department to increase the amount of the remediation funding source or financial assurance to match the amount of the estimated costs; or

3. Receipt of written certification, with a copy provided to the Department, from a licensed site remediation professional that the estimated cost of the remediation has increased.

(d) The person responsible for conducting the remediation that is required to establish a remediation funding source or financial assurance pursuant to this subchapter may at any time submit a written request to the Department on a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to substitute another type of financial mechanism specified in this subchapter for the existing financial mechanism. The Department shall return the original financial mechanism after such proof is provided that an acceptable alternate mechanism has been established.

(e) The Department shall return:

1. The remediation funding source when:

- i. A person has substituted another form of remediation funding source;
- ii. When another person has established a remediation funding source; or
- iii. The Department or a licensed site remediation professional has issued a final remediation document for the entire site pursuant to N.J.A.C. 7:26C-6; and

2. The financial assurance when:

- i. A permittee has substituted another form of financial assurance;
- ii. When another permittee has established financial assurance; or
- iii. The Department has terminated the remedial action permit, pursuant to N.J.A.C. 7:26C-7.13.

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In (a) and (e), substituted "form, found" for "Remediation Cost Review Form, available"; and in (b)2, substituted "form, found on the Department's website at www.nj.gov/dep/srp/srra/forms," for "Remediation Cost Review Form".

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Section was "Changes in the remediation funding source amount or type and return of the remediation funding source". Rewrote the section.

7:26C-5.12 Disbursements from the remediation funding source

(a) Except as provided in (b) below, a person who is required to establish and maintain a remediation funding source

2. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;

3. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;

4. The county planning board for each county in which the ground water classification exception area will be located;

5. The Pinelands Commission if the ground water classification exception area is located within the jurisdiction of that Commission;

6. New Jersey Department of Environmental Protection, Water Supply Administration:

- i. Bureau of Safe Drinking Water; and
- ii. Bureau of Water Systems and Well Permitting of Water Allocation; and

7. Each owner of any real property that will be within the foot print of the ground water classification exception area.

(e) The Department shall establish a ground water classification exception area based upon the actual and projected area and depth of the contaminant plume in the ground water based on the information submitted pursuant to (b) and (c) above by posting the map of the ground water classification exception area and well restriction area on its website at www.nj.gov/dep/gis/geoweb splash.htm and the CEA/Well Restriction Area (WRA) Fact Sheet at http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=Site+Case+sub-category. The Fact Sheet shall include the effective date establishing the CEA and its anticipated expiration date.

(f) The Department may revise or reestablish a ground water classification exception area at any time to more accurately reflect ground water conditions using any relevant data. The Department shall post an updated CEA/Well Restriction Area (WRA) Fact Sheet if it has revised the ground water classification exception area.

(g) The Department shall remove a ground water classification exception area based upon ground water data, collected pursuant to N.J.A.C. 7:26C-7.9(f), that indicate that the concentrations of contaminants in the ground water are at or below all of the applicable ground water quality standards.

(h) The ground water classification exception area established for historic fill pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.7(b) shall remain effective indefinitely. However, a ground water remedial action permit is not required for the ground water classification exception area.

Amended by R.2011 d.251, effective October 3, 2011.
See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In (a)1, substituted "form, found on the Department's website" for "Soil Remedial Permit Application Form available from the Department".

Repeal and New Rule, R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Section was "Remedial action permits".

7:26C-7.4 Permittees of remedial action permits

(a) Each of the following persons shall comply with this section and N.J.A.C. 7:26C-7.5 through 7.13, including any applicable remedial action permit the Department issues pursuant to this section and N.J.A.C. 7:26C-7.5 through 7.13:

1. A person subject to N.J.A.C. 7:26C-2.2; and
2. A statutory permittee.

(b) If more than one person is responsible for compliance with a remedial action permit pursuant to (a) above, each such person, as a co-permittee, is jointly and severally liable for:

1. Compliance with the conditions of a remedial action permit pursuant to this subchapter;
2. Payment of all remedial action permit fees pursuant to N.J.A.C. 7:26C-4;
3. Payment of penalties for violations of a remedial action permit pursuant to N.J.A.C. 7:26C-9; and
4. Maintenance of financial assurance for engineering controls pursuant to N.J.A.C. 7:26C-7.7.

Administrative correction.

See: 42 N.J.R. 1862(a).

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In (a)1ii, substituted "Recovery" for "Remediation"; and in the introductory paragraph of (b), deleted "there is" preceding "more", and inserted "is" preceding "responsible".

Recodified from N.J.A.C. 7:26C-7.2 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (a). Former N.J.A.C. 7:26C-7.4, General conditions applicable to all remedial action permits, recodified to N.J.A.C. 7:26C-7.7.

7:26C-7.5 Application for a remedial action permit

(a) The person responsible for conducting the remediation shall apply for a remedial action permit pursuant to this section, according to the schedules in N.J.A.C. 7:26C-7.6, when the remedial action includes any of the following:

1. A deed notice or a declaration of environmental restrictions;
2. A ground water classification exception area;
3. Any other institutional or engineering control; or
4. Any obligations for monitoring, maintenance and evaluation of a remedial action.

(b) The person responsible for conducting the remediation shall apply for a remedial action permit for a soil remedial

action that includes an engineering or institutional control by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the soil remedial action permit that is to be supplied by filling out the form includes:

- i. The site name and location;
- ii. The permit type and fees;
- iii. The person responsible for conducting the remediation;
- iv. The owner of the site;
- v. The deed notice;
- vi. The engineering control(s), if applicable, and financial assurance;
- vii. The use of the engineering controlled area(s) and the contaminants that require the use of the deed notice/engineering control; and

viii. The signature and certification of the person(s) responsible for conducting the remediation, the Licensed Site Remediation Professional or the certified subsurface evaluator (if the site is an unregulated heating oil tank);

2. A copy of the notice that complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices or a declaration of environmental restrictions that has been recorded with the county clerk and stamped "Filed;"

3. As-built drawings for each engineering control for contaminated soil;

4. A copy of each of the following:

i. The soil remedial action report that either the Department or a licensed site remediation professional has approved for the area(s) addressed in the deed notice and/or by the engineering control(s); and

ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012;

5. An engineering control monitoring and maintenance plan, if applicable, and schedule to support the biennial certification required pursuant to N.J.A.C. 7:26C-7.6(b);

6. An estimate of the future costs to operate, maintain, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

7. A permit application fee for a soil remedial action permit, pursuant to N.J.A.C. 7:26C-4.4(a).

(c) The person responsible for conducting the remediation shall apply for a ground water remedial action permit for a monitored natural attenuation remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the ground water remedial action permit to be supplied by filling out the form includes:

- i. The site name and location;
- ii. The permit type and fees;
- iii. The person responsible for conducting the remediation;
- iv. The owner of the site;
- v. The classification exception area at the site;
- vi. Monitoring, maintenance and evaluation information concerning the type of remediation;
- vii. The engineering control and financial assurance;
- viii. The use of the property;
- ix. The use of the property abutting the site;
- x. A summary of the receptor evaluation concerning the site;
- xi. A list of other remediation permits, if applicable; and

xii. The signature and certification of the person(s) responsible for conducting the remediation, the Licensed Site Remediation Professional or the certified subsurface evaluator (if the site is an unregulated heating oil tank);

2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the permit application;

3. A copy of each of the following:

i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates monitored natural attenuation is an effective remedial action; and

ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012; and

4. A ground water monitoring plan and schedule to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, and to assess the effectiveness of the monitored natural attenuation remedy, including a downgradient sentinel well, and any other additional monitoring wells necessary to document natural attenuation processes;

5. An evaluation plan and schedule to evaluate the effectiveness of the natural attenuation ground water remedial action and to determine whether natural attenuation is protective or further remediation is required for ground water;

6. An estimate of the future costs to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, and to assess the effectiveness of the natural attenuation, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

7. A permit application fee for a ground water remedial action permit, pursuant to N.J.A.C. 7:26C-4.4(a).

(d) The person responsible for conducting the remediation shall apply for a ground water remedial action permit for an active ground water remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms, as described in (c)1 above;

2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the permit application;

3. As-built drawings, and operations manual, if applicable, for any engineering control for contaminated ground water;

4. A copy of each of the following:

i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates that the active ground water treatment system is operating and functioning as designed; and

ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012;

5. A ground water monitoring plan and schedule designed to evaluate the active ground water remedial action in order to:

i. Optimize the system's performance as the remediation progresses; and

ii. Determine whether:

(1) The plume of contaminated ground water is migrating horizontally or vertically into an aquifer zone below or adjacent to the plume of contaminated ground water; or

(2) The plume of contaminated ground water is contained and therefore not reaching a sentinel well, and the ground water remedial action is performing as designed;

6. An evaluation plan and schedule to evaluate the effectiveness of the active ground water remedial action and to determine whether the active ground water remedial system is protective or further remediation is required for ground water;

7. An estimate of the future costs to operate, maintain, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

8. A permit application fee for a ground water remedial action permit, pursuant to N.J.A.C. 7:26C-4.4(a).

New Rule, R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Former N.J.A.C. 7:26C-7.5, Specific conditions applicable to soil remedial action permits, recodified to N.J.A.C. 7:26C-7.8.

7:26C-7.6 Remedial action permit application schedule

(a) The person responsible for conducting the remediation shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-7.4 within two years after the last biennial certification was due to the Department, but in no case later than May 7, 2014, when both of the following apply:

1. The Department has not yet issued a remedial action permit for a remedial action; and

2. The Department has issued a restricted or limited restricted use no further action letter.

(b) For all other situations not included in (a) above, the person responsible for conducting the remediation shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-7.4 according to the following schedule:

1. For a soil remedial action that includes an engineering or institutional control, within 30 days after the owner complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices or June 7, 2012, whichever is later;

2. For a natural attenuation ground water remedial action, when the person responsible for conducting the remediation is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that the natural attenuation remedial action is effective; and

3. For an active ground water remedial action, when the person responsible for conducting the remediation is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that an active ground water remedial action for the site or area of concern is operational and functioning as designed.

New Rule, R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Former N.J.A.C. 7:26C-7.6, Specific conditions applicable to ground water remedial action permits, recodified to N.J.A.C. 7:26C-7.9.

7:26C-7.7 General conditions applicable to all remedial action permits

(a) The permittee shall:

1. Prepare and submit to the Department biennially a remedial action protectiveness certification on a form

available on the Department's website at www.nj.gov/dep/srp/srra/forms, as required by this subchapter and the remedial action permit. Information concerning the protectiveness of the remedial action to be supplied by filling out the form includes:

- i. The site name and location;
 - ii. The current owner and operator of the site;
 - iii. The current lessee of the site, if applicable;
 - iv. Any areas of immediate environmental concern at the site;
 - v. The results of the analysis of statutory and regulatory changes subsequent to the establishment of the deed notice or the last submittal of the biennial certification and report;
 - vi. The use of the property;
 - vii. Any land disturbances at the site;
 - viii. If any additional remediation was conducted at the site; and
 - viii. The signature and certification of the person(s) responsible for conducting the remediation and the Licensed Site Remediation Professional;
2. If there is more than one remedial action permit for a site:
 - i. Submit a separate biennial certification form for each remedial action permit; and
 - ii. Submit all of the biennial remedial action protectiveness certification forms at the same time, when the first biennial certification is due to the Department pursuant to (b)1 above, and biennially thereafter on that same date;
 3. Maintain financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and
 4. Pay all applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.4.

(b) The permittee of a remedial action permit shall comply with all conditions in the remedial action permit.

Recodified from N.J.A.C. 7:26C-7.4 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote the section. Former N.J.A.C. 7:26C-7.7, Financial assurance for remedial action permits for remedial actions that include engineering controls, recodified to N.J.A.C. 7:26C-7.10.

7:26C-7.8 Specific conditions applicable to soil remedial action permits

(a) Each permittee of a soil remedial action permit shall comply with all of the following concerning the soil remedial action:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.7;
2. The conditions in each notice that meets the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices, recorded for the property pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
3. The biennial certification requirements pursuant to (b) through (e) below; and
4. All other conditions that the Department includes in the soil remedial action permit.

(b) The permittee shall determine the protectiveness of the soil remedial action in preparation for submitting a soil biennial remedial action protectiveness certification report form by:

1. Determining whether any actual or pending zoning or land-use change is consistent with the use restrictions in the deed notice or declaration of environmental restrictions or whether it could undermine the protectiveness of the remedial action in a manner that could prevent the remedial action from:
 - i. Meeting the applicable health risk standard pursuant to N.J.S.A. 58:10B-12g(3)(b); and
 - ii. Continuing to be protective of public health, safety, and of the environment pursuant to N.J.S.A. 58:10B-12g;
2. Periodically inspecting the site to identify whether:
 - i. Any excavation or other disturbance activities have taken place within the restricted areas;
 - ii. Any disturbances of the soil within the restricted area have resulted in unacceptable human exposure to the soil contamination; and
 - iii. All engineering or institutional controls that are part of the remedial action continue to function as designed to limit human exposure to contamination above the unrestricted use standard;
3. Comparing New Jersey laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations, or remediation standards to determine whether:
 - i. Any subsequently promulgated or modified laws, regulations, or remediation standards apply to the site; and
 - ii. Each engineering and institutional control is consistent with the requirements of the subsequently promulgated or modified laws, regulations, and remediation standards; and
4. Keeping records, including a detailed log, completed for the time since the implementation of the remedial

action, or the last certification and monitoring report was submitted to the Department, whichever is more recent, of how the permittee has maintained and evaluated the engineering control in compliance with this section.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (b) above in a certification to the Department biennially, according to the schedule in the permit, pursuant to the instructions on the form, as well as to the following persons and entities:

1. The municipal and county clerks for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;
2. The local, county and regional health department for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;
3. Each owner of the property which is included in the deed notice or declaration of environmental restrictions;
4. The Pinelands Commission if the deed notice or declaration of environmental restrictions is recorded within the jurisdiction of that Commission; and
5. Each permittee.

(d) As part of the evaluation of the protectiveness of the soil remedial action, the permittee shall either:

1. Certify to the Department that:
 - i. The deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained; and
 - ii. The soil remedial action continues to be protective of the public health and safety and the environment; or
2. If the permittee cannot provide the certification required in (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary, modifying the remedial action, proposing a revision to the deed notice, and applying for a modification of the soil remedial action permit.

(e) The permittee shall submit both a paper and electronic copy of the biennial remedial action protectiveness certification for the soil remedial action to the Department according to the schedule on a form available from the Department at www.nj.gov/dep/srp/srra/forms.

Recodified from N.J.A.C. 7:26C-7.5 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote the section. Former N.J.A.C. 7:26C-7.8, Transfer of a remedial action permit, recodified to N.J.A.C. 7:26C-7.11.

7:26C-7.9 Specific conditions applicable to ground water remedial action permits

(a) The permittee shall comply with all of the following concerning the ground water remedial action:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.7;
2. The ground water monitoring reporting requirements in any remedial action workplan or remedial action report approved for the site by either the Department or a licensed site remediation professional;
3. The ground water monitoring plan and schedule as required in N.J.A.C. 7:26C-7.5(c)4 or 7.5(d)5;
4. The well restrictions associated with each ground water classification exception area for the site;
5. The remedial action protectiveness evaluation in (b) through (d) below; and
6. All other conditions that the Department includes in the ground water remedial action permit.

(b) The permittee shall determine the protectiveness of the ground water remedial action in preparation for submitting a ground water biennial remedial action protectiveness certification report form by:

1. Determining the effectiveness of the remediation by evaluating the data gathered by the monitoring program required pursuant to N.J.A.C. 7:26C-7.4(c)4 and (d)5;
2. Comparing New Jersey laws, Ground Water Quality Standards, and other regulations applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws, regulations, or remediation standards to determine whether:
 - i. Any subsequently promulgated or modified laws, regulations, or remediation standards apply to the site; and
 - ii. Each ground water classification exception area is consistent with the requirements of the subsequently promulgated or modified laws, regulations and remediation standards;
3. Determining whether there are any planned changes within a 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located since the Department established the ground water classification exception area or the last completed protectiveness evaluation;
4. Identifying whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed protectiveness evaluation;

5. Inspecting all ground water monitoring wells associated with the ground water classification exception area and maintaining a log for each monitoring well;

6. Identifying any land use disturbance, such as the installation of a detention basin, that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water. If any such disturbance is identified, sample the ground water and surface water downgradient and proximate to the land use disturbance to determine whether the ground water meets the more stringent of either:

- i. The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; or
- ii. The Federal Surface Water Quality Criteria, 40 CFR Part 131; and

7. Determining whether:

- i. The current fate and transport analysis remains accurate with regard to the risk of vapor intrusion; and
- ii. There are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (b) above in a certification to the Department biennially, according to the schedule in the permit, on the form, found on the Department's website, www.nj.gov/dep/srp/srra/forms, as described in (a)5 above, as well as to the following:

1. The municipal and county clerks for each municipality and county in which any property included in the ground water classification exception area is located;
2. The local, county and regional health department for each municipality and county in which any property included in the ground water classification exception area is located;
3. The county planning board for each county in which the ground water classification exception area will be located;
4. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;
5. Each owner of any real property that will be within the footprint of the ground water classification exception area; and
6. Each permittee listed on the permit.

(d) As part of the evaluation of the protectiveness of the ground water remedial action, the permittee shall either:

1. Certify to the Department that:

i. The ground water classification exception area is being properly maintained; and

ii. The ground water remedial action continues to be protective of public health and safety and the environment; or

2. If the permittee cannot provide the certification required in (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary:

i. Modifying the remedial action, re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, and applying for a modification of the ground water remedial action permit; and

ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, then conduct public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk.

(e) The permittee shall submit both a paper and electronic copy of the biennial remedial action protectiveness certification for the ground water remedial action to the Department according to the schedule in the permit and on a form available from the Department at www.nj.gov/dep/srp/srra/forms.

(f) Within 180 calendar days after the anticipated expiration date of the ground water classification exception area posted by the Department on its website pursuant to N.J.A.C. 7:26C-7.3(e), the permittee shall collect at least two rounds of ground water samples such that the time between sampling events accounts for seasonal fluctuations in the ground water table and the number of ground water samples collected is representative of the entire horizontal and vertical extent of the ground water classification exception area, and:

1. If ground water samples indicate that contaminant concentrations have decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then any person may request that the Department remove the ground water classification exception area pursuant to N.J.A.C. 7:26C-7.3(g) and terminate the ground water remedial action permit pursuant to N.J.A.C. 7:26C-7.13; or

2. If ground water samples indicate that contaminant concentrations have not decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then:

- i. Modify the remedial action by re-modeling the fate and transport of the ground water contaminant

plume, proposing a revision to the ground water classification exception area, and applying for a modification of the ground water remedial action permit; and

ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, then perform public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk.

Recodified from N.J.A.C. 7:26C-7.6 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote the section. Former N.J.A.C. 7:26C-7.9, Modification of specific requirements in a remedial action permit, recodified to N.J.A.C. 7:26C-7.12.

7:26C-7.10 Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided in (c) below, the permittee implementing a remedial action that includes an engineering control shall:

1. Submit to the Department, biennially on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.7(b)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls that are part of each remedial action at the site; and

2. Maintain financial assurance in accordance with N.J.A.C. 7:26C-5.2(e):

i. In an amount equal to or greater than the most recent estimated full cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit; and

ii. Until the Department terminates the permit pursuant to N.J.A.C. 7:26C-7.13.

(b) In the event that more than one permittee is required to establish financial assurance pursuant to this section and one or more of the permittees is exempt from this requirement pursuant to (c) below, the non-exempt permittee(s) shall establish the full amount of the financial assurance required.

(c) The following persons are not required comply with this section:

1. A government entity;

2. A person who is not otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, who purchased a contaminated site prior to May 7, 2009, and is remediating, or

has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g,d;

3. A person who undertakes remediation at that person's primary or secondary residence;

4. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs remediation at the licensed child care center;

5. The person responsible for performing remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.; and

6. The owner or operator of a small business who is responsible for performing a remediation at his or her business property.

(d) The remediation funding source surcharge payable in accordance with N.J.A.C. 7:26C-5.9 is not applicable to the financial assurance posted pursuant to this subsection.

(e) A permittee may change the amount of the financial assurance in accordance with N.J.A.C. 7:26C-5.11.

(f) A permittee may disburse monies from the funding posted in accordance with N.J.A.C. 7:26C-5.12.

(g) If any permittee fails to comply with the actions required pursuant to a remedial action permit or this subchapter, the Department, or another party as the Department may authorize, may draw on the financial assurance to achieve compliance.

Recodified from N.J.A.C. 7:26C-7.7 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote the section. Former N.J.A.C. 7:26C-7.10, Termination of a remedial action permit, recodified to N.J.A.C. 7:26C-7.13.

7:26C-7.11 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.4(a)2) may, prior to changing such status, request that the Department transfer the permit to a new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-4.6 and has the burden of showing that its permittee status is so limited by law.

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit by providing the following information on a form appropriate for the specific remedial

action permit, found on the Department's website at www.nj.gov/dep/srp/srra/forms:

1. Contact information of the current permittee intending to transfer the permit;
2. Contact information of the prospective permittee, if any;
3. Site identification;
4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and
5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:
 - i. Is the new owner, operator, or tenant of or at the contaminated site;
 - ii. Has acknowledged in writing that it accepts its responsibility as a permittee; and
 - iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.10, if applicable.

(c) The Department shall not rescind a person's status as a permittee until all of the following occur:

1. The permittee requesting transfer of the permit complies with the notice requirements in (b) above;
2. The permittee requesting transfer of the permit actually terminates its status as subsequent owner, operator, or tenant; and
3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.10.

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In the introductory paragraph of (b), substituted "a form" for "the Remedial Action Permit Form" and "found on the Department's website" for "available from the Department".

Recodified from N.J.A.C. 7:26C-7.8 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a), (b)5iii and (c)3, updated the N.J.A.C. references throughout.

7:26C-7.12 Modification of specific requirements in a remedial action permit

(a) The Department may modify a remedial action permit as needed to protect the public health and safety and the environment.

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after the occurrence of any of the following, by submitting a completed form appropriate for the specific remedial action permit, as described in (c) below, as appropriate, found on the Department's website at www.nj.gov/dep/srp/srra/forms:

1. A determination that the remedial action is not adequately protective of the public health and safety and of the environment;

2. A determination that the size, duration, or contaminants of a ground water classification exception area, or the frequency and parameters of the ground water monitoring, need to be modified;

3. A person proposes to change the engineering or institutional controls applicable to the site, as described in the notice that complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices;

4. The person responsible for conducting the remediation modifies the remedial action;

5. A determination that the municipality has revised the lot and block designations of the property; or

6. The permittee changes its address.

(c) To request modification of any remedial action permit pursuant to (b) above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit modification to the Department as follows:

1. The form appropriate for the specific remedial action permit, found on the Department's website at www.nj.gov/dep/srp/srra/forms, which includes:

i. Identification of the contaminated site; and

ii. Identification and contact information of the applicant;

2. A copy of the following as applicable:

i. The filed copy of a new deed notice;

ii. A revised ground water classification exception area application; or

iii. A revised remedial action workplan; and

3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4.

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In the introductory paragraphs of (b) and (c)1, substituted "form" for "Remedial Action Permit Form" and "found on the Department's" for "available from the Department on its".

Recodified from N.J.A.C. 7:26C-7.9 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (b).

7:26C-7.13 Termination of a remedial action permit

(a) The Department may terminate a remedial action permit upon request of a permittee if the Department finds that the remedial action:

1. Meets all applicable remediation standards without the need for the remedial action permit; and

2. Is protective of the public health and safety and of the environment without the presence of the remedial action permit.

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the form appropriate for the specific remedial action permit, found on the Department's website at www.nj.gov/dep/srp/srra/forms, the following:

1. The name, address and telephone number of the permittee requesting termination of the permit;

2. The name, address and telephone number of the prospective permittee;

3. Site identification;

4. A detailed written rationale on why the permittee believes that the engineering or institutional controls, the remediation systems, or the remedial action implemented for the site no longer require oversight over time in order to be protective of the public health and safety and the environment;

5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix D to this chapter, incorporated herein by reference; and

6. Confirmation that the permittee requesting termination of the remedial action permit does not have any outstanding fees pursuant to N.J.A.C. 7:26C-4.

(c) Upon written notice that the Department has terminated a remedial action permit, the permittee may cease compliance with the remedial action permit that the Department has terminated and have the owner of the property file the termination of deed notice, if applicable.

Administrative correction.

See: 42 N.J.R. 778(a).

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In the introductory paragraph of (b), substituted "form" for "Remedial Action Permit Form" and "found on the Department's" for "available from the Department on its".

Recodified from N.J.A.C. 7:26C-7.10 and amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In the introductory paragraph of (b), substituted "form" for "Remedial Action Permit Form"; and in (b)5, substituted "D" for "B".

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

This subchapter identifies the minimum requirements for the person responsible for conducting the remediation of real property not owned by that person, to obtain access to that property.

7:26C-8.2 Site access

(a) The person responsible for conducting remediation shall take all appropriate actions, as outlined in (b) below, to obtain the access to property, not owned by that person, which is necessary to implement the remediation.

(b) The person responsible for conducting the remediation that requires access to the property of another shall send to each owner a written request, via certified mail, for access to the property. The person responsible for conducting remediation shall include the following information in the written request:

1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;

2. A site map indicating each area for which access is needed;

3. A description of the reason access is needed and the extent of access needed;

4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and

5. A request that the property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

(c) If the owner of the property does not respond, the person responsible for conducting the remediation shall send a second written request to the property owner by certified mail. The person responsible for conducting the remediation shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the property owner does not grant access, the person responsible for conducting the remediation shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The person responsible for conducting the remediation shall provide written confirmation to the Department of the filing of such action. Upon request by the Department, the person responsible for conducting the remediation shall submit a copy of the court order that indicates that the Superior Court denied access to the property.

(e) The person responsible for conducting the remediation shall provide to the Department all appropriate information as detailed in this section when applying for an extension of a regulatory, mandatory, or expedited site specific timeframe, pursuant to N.J.A.C. 7:26C-3.

(f) Nothing contained in this section shall be construed to relieve any person conducting the remediation of that person's obligations to conduct remediation at any portion of a site or area of concern to which the person has access.

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.1 Scope

(a) This subchapter governs administrative enforcement actions the Department may take for a person's violation of any of the following:

1. An administrative order issued pursuant to any of the Department's statutory authorities;
2. An administrative consent order;
3. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., including any of the following:
 - i. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; and
 - ii. A remediation agreement issued pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
4. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and this chapter;
5. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1.3, and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; or
7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.

(b) This subchapter:

1. Identifies those violations where a grace period will be afforded;
2. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period;
3. Governs the procedures the Department will follow when it issues an administrative order;
4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; and
5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.

7:26C-9.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a rule, or a remedial action permit constitutes an additional, separate, and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Each day during which a violation continues constitutes an additional, separate, and distinct offense.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by any other statute or rule in connection with the violation for which the assessment is levied.

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty provisions may request in writing that the Department amend its document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-9. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

7:26C-9.3 Administrative orders

(a) Whenever the person responsible for conducting the remediation fails to comply with any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial action permit, or guidance the Department may issue an administrative order that:

1. Specifies the provision or provisions of any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial permit or guidance of which that person is in violation;
2. Cites the action or omission that caused the violation;
3. Requires compliance with such provision or provisions; and
4. Gives notice to that person of a right to an administrative hearing to contest a notice of an administrative order issued pursuant to this subchapter.

7:26C-9.4 Grace period applicability; procedures

(a) Each violation identified in the penalty table at (c) below by an "M" in the Type of Violation column, for which

violator shall include the following information in each hearing request:

1. The name, address, and telephone number, and if available, the fax number and email address, of the violator and its authorized representative;

2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;

3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;

4. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order stated in short and plain terms;

5. An admission or denial of each of the Department's findings of fact in the notice of administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours); and

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) The Department shall deny the hearing request if:

1. The violator fails to include all the information required by (a) above; or

2. The Department does not receive the request within 20 calendar days after the violator received the enforcement document being contested.

(c) The Department shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The violator shall send the request for an adjudicatory hearing to:

1. The Office of Legal Affairs
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request; and

2. New Jersey Department of Environmental Protection
Bureau of Enforcement and Investigations
PO Box 028
Trenton, New Jersey 08625-0028
Attention: Hearing Request

Administrative correction.
See: 42 N.J.R. 1862(a).

7:26C-9.11 Spill Compensation and Control Act directive

(a) A Spill Compensation and Control Act directive is a clear, written notice that the Department has determined that it is necessary to cleanup and remove discharges, and that notifies the respondents that the Department believes them to be responsible for the hazardous substances that were discharged.

(b) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a hazardous substance at a site to:

1. Clean up and remove the discharge or threatened discharge of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or

2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(c) To the extent possible, the Department will provide in the directive general notice as to:

1. The location of the discharge or threatened discharge;

2. The identity of those responsible parties receiving the directive;

3. The connection of each such responsible party to the hazardous substances at the site;

4. The scope of the necessary remediation or the estimated remediation costs;

5. The actions that the responsible parties are directed to take;

6. The manner and timetable for the undertaking action pursuant to the directive; and

7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

(f) The responsible party shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party shall make such payment in mitigation of any liability that it may possess and comply with (g) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the responsible party decides not to comply with the directive, the directive recipient shall comply with (g) below, indicating in writing that it chooses not to take any actions to comply with the directive.

(g) If the responsible party chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the responsible party shall submit a written response to the Department according to the requirements in the directive. The responsible party shall include in the response a detailed explanation of the person's reasons for its decision, including all good cause defenses to the directive.

Administrative correction.
See: 42 N.J.R. 1862(a).

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.1 Scope

(a) This subchapter contains provisions that:

1. Establish the eligibility requirements for technical assistance grants, at N.J.A.C. 7:26C-10.3;
2. Establish the pre-application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.4;
3. Establish the application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.5;

4. Establish the eligible technical assistance grant activities, at N.J.A.C. 7:26C-10.6; and

5. Establish the reporting requirements for a community group receiving a technical assistance grant, at N.J.A.C. 7:26C-10.7.

7:26C-10.2 General requirements

(a) The Department shall award a technical assistance grant in an amount not to exceed \$10,000 per remediation phase for each of the following phases of remediation:

1. The remedial investigation phase; and
2. The remedial action phase.

(b) The money awarded in a technical assistance grant shall be used for the limited purposes of hiring a licensed site remediation professional to support and advise a grant recipient concerning the technical assistance grant activities described at N.J.A.C. 7:26C-10.6(b).

(c) The Department shall not award a technical assistance grant to more than one community group at any one time for any contaminated site.

(d) The Department may provide reimbursement to any community group for costs incurred pursuant to N.J.A.C. 7:26C-10.4(d).

7:26C-10.3 Eligibility

(a) A community group is eligible for a technical assistance grant if it meets the following criteria:

1. One or more members of the community group lives near the site;
2. No member of the community group is associated with any person responsible for conducting the remediation of the site;
3. No person responsible for conducting the remediation of the site established or is currently supporting the community group;
4. The community group must not be affiliated with a national organization;
5. The community group is not an academic institution;
6. The community group does not consist of a political subdivision (example: township or municipality);
7. The community group is incorporated or in the process of incorporating;
8. The community group must be:
 - i. A non-profit organization pursuant to the Internal Revenue Code, 26 U.S.C. §501(c)3;
 - ii. In the process of obtaining status pursuant to 26 U.S.C. §501(c)3 status; or

- i. Invoices associated with the services provided by the licensed site remediation professional;
 - ii. A project summary sheet prepared in accordance with the Department's Cost Guide at www.nj.gov/dep/srp/srra/community;
 - iii. A list of technical assistance grant project milestones;
 - iv. A description of the community group's progress towards completing its technical assistance grant project;
 - v. A description of any problems the community group encountered that prevented progress toward completing the technical assistance grant project; and
 - vi. Annual financial status reports;
2. An electronic copy of each final written product the licensed site remediation professional prepares for the group within 30 days after the community group's receipt of the document;
 3. A final report, submitted to the Department within 180 days after the date of termination of the technical assistance grant, which shall include:
 - i. A description of project goals and objectives;
 - ii. Activities undertaken to achieve goals and objectives;
 - iii. Difficulties encountered;
 - iv. Successes achieved; and
 - v. Technical advisor's work products; and
 4. A final financial report, submitted to the Department 180 days after the date of the termination of the technical assistance grant, which shall include a detailed description of all funds spent.

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

7:26C-11.1 Scope and requirements

This subchapter provides the requirements for a person to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund.

7:26C-11.2 Application for loans and grants

A person or public entity as defined pursuant to N.J.S.A. 58:10B-1 may apply for financial assistance from the Hazardous Discharge Site Remediation Fund by submitting a completed form, found on the Department's website at www.nj.gov/dep/srp/srra/forms and by following the Hazardous Discharge Site Remediation Fund Application Guidance.

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

Deleted designation (a); and substituted "form, found on the Department's website" for "Hazardous Discharge Site Remediation Fund Application Form available from the Department".

7:26C-11.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs that were incurred prior to an application pursuant to this subchapter provided that:

1. The remediation costs were incurred after June 16, 1993; and
2. The Department has approved the remediation associated with the remediation costs.

7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation using a loan or a grant as part of the remediation funding source requirement shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 12. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

7:26C-12.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, to fund projects eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.

7:26C-12.2 Application for loans and grants

A person may apply for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund by submitting to the Department a completed Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Form available from the Department at www.nj.gov/dep/srp/finance/ustfund and by following the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Instructions and Cost Guide, both of which are a part of the application package.

7:26C-12.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

1. The remediation costs were incurred after August 30, 1997; and

2. The remediation associated with the remediation costs was conducted with Department oversight.

7:26C-12.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 13. REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-13.1 Scope

(a) This subchapter contains provisions that specify the:

1. General requirements for a person responsible for conducting the remediation of an unregulated heating oil tank system, in N.J.A.C. 7:26C-13.2;

2. Requirements for a person responsible for conducting the remediation using a certified subsurface evaluator to conduct the remediation, in N.J.A.C. 7:26C-13.3; and

3. Requirements for a person responsible for conducting the remediation using a licensed site remediation professional to conduct the remediation, in N.J.A.C. 7:26C-13.4.

7:26C-13.2 General requirements

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall hire either a subsurface evaluator certified pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16 or a licensed site remediation professional to perform the remediation of the discharge.

(b) If a person responsible for conducting the remediation uses a certified subsurface evaluator to perform the remediation, upon completion of the remediation the Department will issue a no further action letter pursuant to N.J.A.C. 7:26C-13.3(b).

(c) If a person responsible for conducting the remediation uses a licensed site remediation professional to perform the remediation, upon the completion of the remediation the licensed site remediation professional will issue a response action outcome pursuant to N.J.A.C. 7:26C-13.3.

7:26C-13.3 Person responsible for conducting the remediation of an unregulated heating oil tank system using a certified subsurface evaluator

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system who uses a certified subsurface evaluator to remediate the discharge shall employ an individual working for a business firm

certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16.

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation in accordance with N.J.A.C. 7:26C-6, upon receipt and review of the following:

1. A certification by the subsurface evaluator certified pursuant to N.J.A.C. 7:14B-13 or 16 to perform the remediation, that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein 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, I believe that 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 may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated was remediated pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover evidence of a discharge of a hazardous substance, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery and to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.7. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties";

2. A completed Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire. The questionnaire may be obtained from the Department's website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable review fee as set forth at N.J.A.C. 7:26C-4.4; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.7.

(c) All submissions required by this section shall be made to:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment and Initial Notice
401 E. State St.
P.O. Box 434
Trenton, NJ 08625-0434

Amended by R.2012 d.095, effective May 7, 2012.
See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (b)1, substituted "Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.7" for "Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.4"; and in (b)3 and (b)4, updated the N.J.A.C. references.

7:26C-13.4 Person responsible for conducting the remediation of an unregulated heating oil tank system using a licensed site remediation professional

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil system who uses a licensed site remediation professional to conduct the remediation shall submit the applicable review fee as set forth at N.J.A.C. 7:26C-4.4.

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-6 upon receipt and review of a certification by the licensed site remediation professional pursuant to N.J.A.C. 7:14B-1.7(e), and the submissions listed in N.J.A.C. 7:26C-13.3(b)2 through 4.

(c) All submissions required by this section shall be made to:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment and Initial Notice
401 E. State St.
P.O. Box 434
Trenton, NJ 08625-0434

Amended by R.2012 d.095, effective May 7, 2012.
See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a), updated the N.J.A.C. reference; rewrote (b); and added (c).

7:26C-13.5 Special conditions

(a) The person responsible for conducting the remediation of the unregulated heating oil system shall comply with N.J.A.C. 7:26E-1.11 when the discharge from the unregulated heating oil tank system results in an immediate environmental concern.

(b) The person responsible for conducting the remediation shall obtain the appropriate Departmental approvals when:

1. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit pursuant to N.J.A.C. 7:26E-5.6;

2. The remedy includes a discharge to surface water requiring a New Jersey Pollution Discharge Elimination System General Permit pursuant to N.J.A.C. 7:14A-6.13; or

3. The remedy requires an On-Scene Coordinator Discharge Authorization pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan (NCP) regulations at 40 CFR Part 30.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a) and (b)1, updated the N.J.A.C. reference; and in (a), deleted "condition" from the end.

SUBCHAPTER 14. DIRECT OVERSIGHT

7:26C-14.1 Scope

(a) This subchapter contains provisions that specify:

1. The compulsory direct oversight triggers and requirements applicable when the person responsible for conducting the remediation becomes subject to the compulsory statutory provisions for direct oversight in N.J.A.C. 7:26C-14.2;

2. The discretionary direct oversight triggers and the criteria the Department will evaluate when considering a remediation of a contaminated site for direct oversight in N.J.A.C. 7:26C-14.3; and

3. The criteria the Department will evaluate in determining whether to adjust the applicable requirements for the remediation of a contaminated site in direct oversight in N.J.A.C. 7:26C-14.4.

7:26C-14.2 Compulsory direct oversight

(a) The person responsible for conducting the remediation shall comply with the statutory requirements for direct oversight, pursuant to N.J.S.A. 58:10C-27, whenever:

1. The person responsible for conducting the remediation has been the object of two enforcement actions, concerning the remediation, during any five-year period after May 7, 2009;

2. The person responsible for conducting the remediation has failed to meet:

i. A mandatory remediation timeframe established by the Department pursuant to N.J.A.C. 7:26C-3.3, including any extension thereof granted by the Department;

ii. An expedited site-specific timeframe established by the Department pursuant to N.J.A.C. 7:26C-3.4, including any extension thereof granted by the Department; or

iii. A schedule established pursuant to an administrative order or court order; or

3. A discharge was discovered prior to May 7, 1999 and the person responsible for conducting the remediation has failed to complete the remedial investigation of the entire contaminated site by May 7, 2014.

(b) The person responsible for conducting the remediation that is in direct oversight as described in (a) above, shall:

1. Proceed with the remediation as the Department directs, including retaining a licensed site remediation professional if one has not yet been retained;

2. Conduct and submit a feasibility study to the Department for approval;

3. Implement each remedial action the Department selects for the site;

4. Submit an initial remediation cost review, pursuant to N.J.A.C. 7:26C-5.10(a), within 60 days after the applicable event in (a) above, and submit an annual remediation cost review on the same calendar day each year thereafter;

5. Establish a remediation trust fund pursuant to N.J.A.C. 7:26C-5.4 in the amount of the estimated cost of the remediation, within 90 days after the applicable event in (a) above, and maintain a remediation trust fund in the amount of the estimated cost of the remediation;

6. Pay an annual remediation funding source surcharge pursuant to N.J.A.C. 7:26C-5.9;

7. Obtain the Department's prior approval before making any disbursements from the remediation trust fund;

8. Ensure that all submissions prepared by the licensed site remediation professional concerning the remediation required by the Department are provided simultaneously to the Department and the person responsible for conducting the remediation;

9. Submit a proposed public participation plan, with a schedule, to the Department for approval pursuant to N.J.S.A. 58:10C-27.c7, that contains the strategy for soliciting public comment concerning the remediation from the members of the surrounding community concerning the remediation of the site, within 30 days after the applicable event in (a), above; and

10. Implement the Department-approved public participation plan to solicit public comment concerning the remediation from the members of the surrounding community.

7:26C-14.3 Discretionary direct oversight

(a) The Department may evaluate undertaking direct oversight of a portion, a condition, or the entire remediation of a contaminated site when the contamination at the site:

1. Includes chromate chemical production waste and either of the following apply:

i. Hexavalent chromium (Cr+6) is detected in the soil in excess of 20 milligrams per kilogram of dry weight soil (mg/kg or ppm); or

ii. The Cr+6 contamination in ground water exceeds 70 micrograms per liter of solution ($\mu\text{g/l}$ or ppb);

2. Has injured more than one environmentally sensitive natural resource;

3. Has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface water above the Department's Ecological Screening Criteria as found on the Department website at www.nj.gov/dep/srp/guidance/ecoscreening, and the concentration of any of these substances exceeds either of the following:

i. The severe effects level for freshwater conditions; or

ii. The effects range medium for saline conditions; or

4. The Department has ranked the site in the category requiring the highest priority pursuant to the ranking system developed pursuant to N.J.S.A. 58:10-23.16.

(b) The Department will consider the following criteria when evaluating, pursuant to (a) above, whether to undertake direct oversight of a portion, a condition, or the entire remediation of a contaminated site:

1. The extent that the person responsible for conducting the remediation:

i. Is in compliance with all applicable remediation statutes and regulations;

ii. Has implemented an interim response action necessary to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors;

iii. Has entered into a voluntary agreement with the Department to resolve the natural resource injury caused by discharges at a site if such damage has occurred; and

iv. Has implemented green remediation as part of remediation; and

2. Whether:

i. Ground water contamination is greater than five acres;

ii. Wetland soil or sediment contamination is greater than five acres;

iii. Surface water sediment contamination exceeds, for any given contaminant, the severe effects level concentration for freshwater conditions or the effects range medium concentration for saline conditions pursuant to the Department's Ecological Screening Criteria as found on the Department's website at www.nj.gov/dep/srp/guidance/ecoscreening;

iv. Surface water contamination exceeds, for any given contaminant, an acute aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [name of witness] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [name of corporate owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[Signature]
[Print Name and Title of Attesting Witness], Notary Public
[Signature]
[Print Name]

C. [If owner is a general or limited partnership]

WITNESS: [name of partnership]
By: [Signature], General Partner
[Signature]
[Print name and title] [Print name]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [name of person executing document on behalf of owner partnership] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [name of partnership owner], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [name of partnership owner]; and

(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

[Signature], Notary Public
[Signature]
[Print name]

D. [If Owner is a Limited Liability Company]

WITNESS: [Name of Limited Liability Company]

By: [Signature]
[Signature]
[Print name and title of witness] [Print name and title]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [Name of Witness] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) This person is the [insert either secretary/assistant secretary of the owner limited liability company] of [insert full name of limited liability company];

(b) This person is the attesting witness to the signing of this document by the proper officer who is the [insert title of person signing on behalf of limited liability company] of the [insert name of owner limited liability company];

(c) This document was signed and delivered by the limited liability company as its voluntary act and was duly authorized;

(d) This person knows the proper seal of the limited liability company which was affixed to this document; and

(e) This person signed this proof to attest to the truth of these facts.

[Signature]
[Print Name and Title of Attesting Witness], Notary Public
[Signature]
[Print Name]

[Note: In situations where the person signing the document on behalf of the owner limited liability company is a member of the limited liability company, the attesting witness shall certify under oath that he/she knows that the document was signed and delivered by the owner limited liability company as its voluntary act, that the member is authorized to execute the document on behalf of the owner limited liability company, and that the person signing the document is authorized to sign the document on behalf of the member. Where the member is a partnership, corporation or other limited liability company, the attesting witness shall also certify that the person signing the document is authorized to sign on behalf of the corporation, partnership or limited liability company, as the case may be. To the extent that such corporation, partnership, or limited liability company, in turn, is directly or

indirectly controlled by another corporation, limited liability company, or partnership, and the person signing the document is an officer of that corporation or limited liability company or a partner of that partnership, the attesting witness shall also certify under oath that such person is authorized to sign on behalf of the corporation, limited liability company, or partnership, as the case may be.]

WITNESS: New Jersey Department of Environmental Protection

By: [Signature] [Signature]
[Print name and title] [Print name and title]

STATE OF NEW JERSEY SS.:
COUNTY OF MERCER

I certify that on [month day, year], [Insert name of person executing document on behalf of the New Jersey Department Environmental Protection] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is [insert title] and is authorized to execute this document on behalf of the New Jersey Department of Environmental Protection;

(b) Signed, sealed and delivered this document as his or her act and deed in his capacity as [title] of the New Jersey Department of Environmental Protection; and

(c) This document was signed and delivered by the New Jersey Department of Environmental Protection as its voluntary act, duly authorized.

[Signature], Notary Public
[Print name]

RECORD AND RETURN TO:

[Name of person who prepared the Termination of Deed Notice]
[Address]

EXHIBIT A

Metes and Bounds Description

EXHIBIT B

Scaled Tax Map of the Property and Institutional/Engineering Control Boundaries

Administrative correction. See: 42 N.J.R. 1862(a).

APPENDIX D

MODEL RESPONSE ACTION OUTCOME DOCUMENT

[Only Insert Name and address of Person(s) Responsible for Conducting the Remediation]

[Date]

Re: Response Action Outcome

Remedial Action Type: [Select One Restricted Use with Permit Requirements OR Limited Restricted Use with Permit Requirements OR Unrestricted Use]

Scope of Remediation: [Select One Area(s) of Concern: (followed by a list of the remediated area(s) of concern) and no other areas OR Entire Site OR ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Entire Site OR ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Leasehold OR Child Care Facility Note: Entire Site, Child Care Facility or ISRA Industrial Establishment Response Action Outcomes can only be issued if a complete preliminary assessment and site investigation, as applicable was completed for the Entire Site, Child Care Facility or an ISRA Industrial Establishment]

Case Name:

Address:

Municipality:

County:

Block: ___ Lot: ___ [Include when issued for an ISRA Industrial Establishment or Child Care Center that is only a smaller leasehold portion of a larger site\$\$ (Leasehold Portion)]

Preferred ID: 000000

Child Care License #

KCSL # NJL000000000

Communication Center # 00-00-00-0000-00 [List all that apply], UST Registration # 0000000, UST Closure #C00-0000

ISRA Transaction: [Select as applicable to this ISRA Case: Sale of Property, Cessation, Sale of Business, Bankruptcy - List Type, Foreclosure, Partnership Change, Sale of Assets, Stock Transfer/Corporate Merger, List Other Applicable ISRA Transactions]

ISRA Case # E00000

Well Permit #

Dear:

As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New

Jersey, I hereby issue this Response Action Outcome for the remediation of the [Select one: site OR, industrial establishment as defined according to N.J.A.C. 7:26B OR area(s) of concern] specifically referenced above. I [Select one or both of the following: directly oversaw and supervised all of the referenced remediation, AND/OR personally reviewed and accepted all of the referenced remediation] and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4.

This remediation includes the completion of a [Select all that apply: Preliminary Assessment, Site Investigation, Remedial Investigation and Remedial Action] as defined pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E),

My decision in this matter is made upon the exercise of reasonable care and diligence and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time these professional services are performed.

As required pursuant to N.J.A.C. 7:26C-6.2(b)2ii, a copy of all records related to the remediation that occurred at this location is being simultaneously filed with the New Jersey Department of Environmental Protection (Department). These records contain all information upon which I based my decision to issue this Response Action Outcome.

By operation of law a Covenant Not to Sue pursuant to N.J.S.A. 58:10B-13.2 applies to this remediation. The Covenant Not to Sue is subject to any conditions and limitations contained herein. The Covenant Not to Sue remains effective only as long as the real property referenced above continues to meet the conditions of this Response Action Outcome [Select if Limited Restricted Use or Restricted Use RAO: and applicable permits].

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12o, [Insert Name of Person(s) Responsible for Conducting the Remediation] and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. shall inform the Department in writing, on a form available from the Department, within 14 calendar days after its name or address changes. Any notices you submit pursuant to this paragraph shall reference the above case numbers and shall be sent to:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment and Initial Notice -
Case Assignment Section
P.O. Box 434
Trenton, N.J. 08625-0434

[Add the Following if a Remedial Action Permit has been Issued Related to this Response Action Outcome: Any such name or address change may also trigger a transfer or modification of the remedial action permit pursuant to N.J.A.C. 7:26C-7.11 and 7.12.]

[Select if Limited Restricted Use or Restricted Use Response Action Outcome: Based on my professional opinion you have obtained all applicable permit(s) and authorization(s) to ensure this remedial action remains protective of public health, safety and the environment into the future provided that you, and any other persons responsible for conducting remediation, remain in full compliance with the terms and conditions of those permit(s) and authorization(s). The designated remedial action permit number(s) is/are Add Permit Number(s) effective Insert Date(s)]

NOTICES

[Insert All of the Following Notices that are Applicable to this Remediation].

Well Decommissioning

[Select One: Pursuant to N.J.A.C. 7:9D-3, all wells installed as part of this remediation have been properly decommissioned by a New Jersey licensed well driller of the proper class in accordance with the procedures set forth in N.J.A.C. 7:9D and the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. OR Pursuant to N.J.A.C. 7:9D-3 any wells installed as part of this remediation that will no longer be used for remediation have been properly decommissioned. If any wells have been properly decommissioned, the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. Pursuant to N.J.S.A. 58:4A, any monitoring wells remaining onsite shall be properly decommissioned prior to the termination of the applicable remedial action permit. A New Jersey licensed well driller shall decommission the well(s) in accordance with the requirements of N.J.A.C. 7:9D-3 and submit the decommissioning report on your behalf to the Bureau of Water Allocation and Well Permitting. More information about regulations regarding the maintenance and decommissioning of wells in New Jersey can be found at www.nj.gov/dep/watersupply. For a list of New Jersey licensed well drillers, click on the "reports" button in the left column and select "access the well permit reports." Questions can be emailed to wellpermitting@dep.state.nj.us.] [Select if applicable: Please note that [add count of wells to which this applies] well(s) could not be located or properly decommissioned. Contact has been made with the Bureau of Water Allocation and Well Permitting regarding appropriate steps to document and conclude efforts in this regard.]

Building Interiors Not Addressed (Non-Child Care)

Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon,

asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains. [Select if applicable: The only exception to this building interior exclusion is the release of specify contaminant from specify the AOC that discharged outside the building.] A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

Building Interiors Addressed

Site specific: to be developed by licensed site professional in coordination with the Department.

Regional Natural Background Levels of Materials in Soil

Please be advised that concentrations of [Insert specific materials] were detected in the soil at this site above the Department's (Select: Residential OR Non-residential) Direct Contact Remediation Standards. However, these concentrations are associated with natural background levels of these material(s) in the soil. Pursuant to N.J.S.A. 58:10B, remediation beyond natural background levels is not required. [Select for Response Action Outcomes involving Child Care Facilities Only: However, to minimize potential direct contact at this Child Care Center an impermeable barrier should be installed over the surface of the outdoor play area in its entirety in accordance with Department guidance for presumptive remedies found at www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance_DRAFT.pdf. The Department recommends that any such barrier consists of impermeable materials, such as hard surfacing, poured rubber, or rubber matting, etc. Finally, the Department recommends that the Child Care Center maintain documentation that provides proof of installation and proper maintenance of the integrity of the barrier.]

Existing Classification Exception Area or Deed Notice from Prior Remediations

Please be advised that this Response Action Outcome does not address the contamination at this site covered under the [Select if applicable: *Classification Exception Area(s)* OR *Deed Notice(s)* OR *Classification Exception Area(s) and Deed Notice(s)*] for the case(s) covered under Department Program Interest # 00000.

Child Care Building Interiors Not Addressed

Please be advised that this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. [Select one: As a result, any risks to human health presented by any building interior or equipment remains. The requirements in the Department of Children and Families licensing regulation requires you to contact the Department of Health and Senior Services, Indoor Environments Program to determine what steps, if any, are necessary to address the risks posed by the prior historical use. The Department of Health and Senior Services, Indoor Environments Program can be reached at 609-631-6749. Department of Health and Senior Services guidance can be found at www.nj.gov/health/eoh/tsrp. OR However, these issues were evaluated as part of an Indoor Environmental

Health Assessment conducted pursuant to N.J.A.C. 8:50. Documentation related to the Indoor Environmental Health Assessment [Select one: has been OR will be] submitted to the Department of Health and Senior Services - Indoor Environments Program under separate cover.]

[Select if applicable: The only exception to this building interior exclusion is the release of specify contaminant from specify the AOC that discharged outside the building.]

Child Care Center Notices

[Select one: The potable well at this location has been sampled within the past 3 years and it has been demonstrated that the potable water utilized at the Child Care Center does not contain contaminants above the Maximum Contaminant Levels established for any of the contaminants required to be tested pursuant to N.J.A.C. 7:10-5 in nontransient noncommunity water systems or private wells, including radiological contaminants, nitrates and coliform. OR I certify that the Child Care Center is connected to a public community water system.]

This RAO is based on my determination that [Select One: there is no impact to this Child Care Center from offsite contamination. OR the impact to the Child Care Center from an offsite contamination source has been mitigated.]

[Select one: The outdoor play area is located on-site, and is adjacent to/near (Briefly describe location, size, fence and construction of play area). {Add the following sentence if there is capped play area contamination: The integrity of the play area shall be maintained at all times.} OR The outdoor play area is located off-site. (Briefly describe size and construction of play area, and provide location identification (park name, etc.), address, block and lot, and ownership with description). {Add the following sentence if the play area is on public land: This site is not listed on the Department's Known Contaminated Site List (KCSL) as either an active or pending case.} OR There is no outdoor play area for this child care center.]

Be advised that any relocation and/or expansion of the existing licensed Child Care Center into other portions of the building or play areas, on or off-site, requires a new RAO Letter

Child Care Center Specific - Multi-Tenant Situations

Please be advised that this Response Action Outcome is for the leasehold portion of the above referenced site only, including all play areas where the potential for direct contact with soil exists. It does not include the [Specify any known: Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility. The leasehold portion is the area defined by [Define the Area of the leasehold portion] and identified on the enclosed map. Relocation and/or expansion of the existing licensed Child Care Center into other portions of the multi-tenant facility requires a new Response Action Outcome determination.

Soils Only Response Action Outcome when Ground Water Contamination remains from that Area(s) of Concern or Site

This Response Action Outcome only applies to the soils at the referenced location. By issuing this Response Action Outcome, I have relied on both the implementation of the remedial action for soil and on the ground water data to support the determination that soil contamination is no longer affecting ground water. Please be advised that if changes in future ground water data no longer support this conclusion, additional soil remediation may be necessary. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination. Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

Known Onsite Contamination Source Not Yet Remediated

This Response Action Outcome specifically does not address the [Specify any known areas of concern at the site] contaminated with [Add contaminant type, i.e. lead, benzene, etc.]. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable: This contamination is being addressed under Department Program Interest # .] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

Ground water Contamination due to Regional Historic Fill

Please be advised that ground water contamination (specifically, [identify contaminants] at this site exists above the Ground Water Quality Standards (N.J.A.C. 7:9C) which may limit ground water use at this site. It has been determined that this contamination is solely related to regional historic fill and there is no other onsite source of contamination contributing to this ground water contamination. Based on ground water data collected as part of this remediation and provided to the Department, a Classification Exception Area (CEA) pursuant to N.J.A.C. 7:26E-4.7(b) is required for the footprint of this property. Since this contamination is from regional historic fill only, the Department will maintain the Classification Exception Area and a Remedial Action Permit for this contamination is not required. The duration of this Classification Exception Area is for an "indeterminate" period.

Ground Water Contamination not yet Investigated

This Response Action Outcome does not address the ground water contamination (specifically, [identify contaminants]) at this site. This contamination was reported to the Department and assigned the Department's Hotline incident

number 00-00-00-0000-00. Pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-4.3, a remedial investigation of ground water (including a background investigation pursuant to N.J.A.C. 7:26E-3.9 if an offsite source is being claimed) is required. In order to identify any onsite areas of concern that may be contributing to the noted contamination a preliminary assessment and site investigation (as applicable), pursuant to N.J.A.C. 7:26E-3 should be conducted. [Select if Applicable: This contamination is being addressed under Department Program Interest # .] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the contamination (not otherwise determined to be from an offsite source) within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. Be advised that ground water contamination exists above the Ground Water Quality Standards (N.J.A.C. 7:9C-1.7) which may limit ground water use at this site. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination.

Contamination Remains On-Site due to Off-site Contamination

Please be advised that contamination in the ground water at this site exists above the Ground Water Quality Standards (N.J.A.C. 7:9C-1.7) which may limit ground water use at this site. Based on completion of a preliminary assessment and site investigation (as applicable), pursuant to N.J.A.C. 7:26E-3, and completion of a background investigation pursuant to N.J.A.C. 7:26E-3.9, there is no onsite contribution to this contamination and I have confirmed the source of this contamination is from offsite. This aspect of the site was reported to the Department and assigned the Department's Hotline incident number 00-00-00-0000-00. [Select if applicable: This ground water contamination is being addressed under Department Program Interest # ____.] Any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination.

Order of Magnitude Change to a Remediation Standard after approval of a Remedial Action Workplan

Please be advised that this Response Action Outcome is based on the implementation and completion of the Remedial Action Workplan and any addenda in accordance with the terms of the [Select: [date] Department approval OR [date Remedial Action Workplan approved by ---Name LSRP---, Licensed Site Remediation Professional. Subsequent to the approval of the Remedial Action Workplan, the Department changed remediation standards as such, [list contaminants] exist on site above the current [Select as applicable: soil, ground water or surface water] remediation standards. However, as the standards for these contaminants did not change by an order of magnitude, additional remediation is not required at this time pursuant to N.J.S.A. 58:10B-(12)j.

Order of Magnitude Change to a Remediation Standard after Approval of a Final Remediation Document

Please be advised that this Response Action Outcome is being issued for a site that is subject to a No Further Action Letter issued by the [Select: [date] Department OR [date] Response Action Outcome prepared by ---Name LSRP---, Licensed Site Remediation Professional. Subsequent to the issuance of that final remediation document, the Department changed remediation standards. [list contaminants] exist on site above the current [Select as applicable: soil, ground water or surface water] remediation standards. However, these contaminant concentrations are within an order of magnitude of the current remediation standards and as a result additional remediation is not required at this time pursuant to N.J.S.A. 58:10B-(13)e.

ISRA Specific - RCRA Situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome does not cover the [Specify the Known Area(s) of Concern] area regulated under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., and currently being addressed under a RCRA Closure Plan. The environmental impact of this area was not evaluated. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable: This contamination is being addressed under Department Program Interest # .] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

ISRA Specific - Multi-Tenant Situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome is for the leasehold portion of the above referenced property only. The leasehold portion is the area defined by [Define the Area of the leasehold portion] and identified on the enclosed map. [Select One: It does not include any other areas of concern on the property. OR It does not include the [specify any known Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility including non-subject tenants. OR It does not include the [specify any known Contaminated Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility including non-subject tenants. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. Please note that there is an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, on any "person responsible for conducting remediation" to remediate the remaining contamination, within specific regulatory and mandatory timeframes. and within the statutory timeframe specified at N.J.S.A. 58:10C-27. [Select

if applicable: This contamination is being addressed under Department Program Interest # ____.]

ISRA Specific - Landfill situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome does not cover or address the [Specify Landfill Name] sanitary landfill and the environmental impacts of the landfill were not evaluated under this ISRA case. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable: This contamination is being addressed under Department Program Interest # .] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate any contamination associated with the landfill within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. Please consult www.nj.gov/dep/srp/srra/ for additional guidance.

[End APPLICABLE Notices]

In concluding that this remediation has been completed, I am offering no opinions concerning whether either primary restoration (restoring natural resources to their pre-discharge condition) or compensatory restoration (compensating the citizens of New Jersey for the lost interim value of the natural resources) has been completed.

Pursuant to N.J.S.A. 58:10C-25, the Department may audit this Response Action Outcome and associated documentation up to three years following issuance. Based on a finding by the Department that a Response Action Outcome is not protective of public health, safety and the environment, the Department can invalidate the Response Action Outcome. Other justifications for the Department's invalidation of this Response Action Outcome are listed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6, including, but not limited to, a Department audit following issuance of this document may be initiated at any time if: a) undiscovered contamination is found that was not addressed by the Response Action Outcome, b) if the Licensed Site Remediation Professional Board conducts an investigation of the Licensed Site Remediation Professional issuing the Response Action Outcome or, c) if the license of that person is suspended or revoked.

Thank you for your attention to these matters. If you have any questions, please contact me at (xxx)xxx-xxxx.

Sincerely,

Name,

Licensed Site Remediation

Professional #

Enclosure(s): Child Care Center map (including all play areas) (as applicable for Child Care Centers)

c: Local, County Environmental Health Act Agency and Regional Health Department(s)

Mayor/Clerk/Town Council, City of [City]

Municipal Clerk

Local Construction Code Official (Child Care Center applicable for Madden Bill Subject Sites in need of local construction permits)

Case Manager (If assigned)

ISRA Authorized Agent (as applicable)

Highlands Commission (as applicable)

Pinelands Commission (as applicable)

NJDEP Bureau of Case Assignment and Initial Notice

NJDEP Bureau of Enforcement and Investigations - (ACO, Remediation Agreement or Child Care Center Applicable)

NJDEP-Bureau of Safe Drinking Water (Child Care Center Applicable when water source is a private well or a non-community water system)

NJ Department of Children and Families (NJDCF) - Office of Licensing (Child Care Center applicable)

NJ Department of Health and Senior Services (NJDHSS) (Child Care Center applicable)

Others