

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The following operations are not industrial establishments:

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

i. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

ii. The Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq.; or

iii. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.;

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

3. Undeveloped or vacant land provided that:

i. No industrial establishment has operated on such vacant land since December 31, 1983; and

ii. The contiguous land is not an industrial establishment under the same control or ownership as the vacant land in question.

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

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

Rewrote the section.

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

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

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

7:26B-2.2 (Reserved)

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

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

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

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

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

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

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

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

Section was "Applicability determinations".

7:26B-2.3 (Reserved)

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

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

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

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

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

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

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

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

Section was "De minimis quantity exemption".

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

In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS)

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

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

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

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

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

SUBCHAPTER 3. GENERAL INFORMATION NOTICE

7:26B-3.1 (Reserved)

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

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

Section was "Prenotice filing conference".

7:26B-3.2 Notification requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. The following events in any bankruptcy proceeding:

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

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

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

(b) The owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter, when the written notice in (a) above is required to be submitted.

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

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

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

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

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

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

Case Notes

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

7:26B-3.3 General information notice

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), on a General Information Notice form available from the Department, which is certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided on the form, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, acreage and geographic boundaries;

2. The tax block and lot numbers of the site;

3. The name, address, and telephone number of the current property owner;

4. The name, address and telephone number of the current business operator and/or business owner of the industrial establishment;

5. Identification and description of the transaction triggering ISRA;

6. Applicable NAICS number(s) for the industrial establishment;

7. The date of public release of the closure decision and a copy of the appropriate public announcement, if any;

8. The date of execution of the agreement of transfer, sale or option to purchase and the name and address of the other parties to the transfer or sale, as applicable;

9. The proposed date for closing or transferring operations;

10. A schedule for submission to the Department of the preliminary assessment report, receptor evaluation, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, remedial action report, as applicable, and any other information required by this chapter, as follows:

i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3, and in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.15; or

ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department; except that no schedule may allow for more time than is established in the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3;

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

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

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

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

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

(c) For a General Information Notice submitted to the Department prior to November 4, 2009, the Department shall review the General Information Notice, and shall respond in writing to the authorized agent as follows:

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

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

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

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

(d) For a General Information Notice submitted to the Department on or after November 4, 2009, the owner or operator shall comply with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.

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

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

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

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

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

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

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

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

In the introductory paragraph of (a), inserted "on a General Information Notice form available from the Department, which is" and substituted "on the form" for "at N.J.A.C. 7:26B-1.5"; in the introductory paragraph of (a)10, inserted "receptor evaluation,"; in (a)10i, inserted ", and in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.15"; in (a)10ii, inserted "except that no schedule may allow for more time than is established in the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3;"; in the introductory paragraph of (c), substituted "For a General Information Notice submitted to the Department prior to November 4, 2009, the" for "The"; and added (d).

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

(a) An owner or operator may withdraw the notice required pursuant to N.J.A.C. 7:26B-3.2(a) if the owner or operator determines that none of the transactional events listed in N.J.A.C. 7:26C-3.2(a) will occur; provided, however, that any such owner or operator may have statutory liability for conducting the remediation pursuant to other statutes, including, without limitation, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. The withdrawal of the notice does not alter or affect any statutory liability of the owner or operator for conducting the remediation.

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

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

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

Rewrote (a).