

CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

Authority

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

Source and Effective Date

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

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 26B, Industrial Site Recovery Act Rules, expires on August 23, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

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

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

Chapter 26B, Environmental Cleanup Responsibility Act Rules, was repealed and a new Chapter 26B, Industrial Site Recovery Act Rules, was adopted as R.1997 d.498, effective November 17, 1997.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

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

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

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

Subchapter 4, Remediation Agreement, was renamed Remediation Agreement and Remediation Certification; Subchapter 5, Expedited Compliance Options, was renamed Alternate Compliance Options; Subchapter 8, Fee Schedule and Direct Billing Fees, was renamed Program Fees and Oversight Costs; and Appendix A, Standard ISRA Remediation Agreement, was repealed by special adoption R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011). See: 41 N.J.R. 4667(a). Provisions of R.2009 d.361 were readopted without change as R.2011 d.251, effective September 8, 2011. See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

Subchapter 3, General Information Notice, was renamed Notification and Remediation Requirements; and Subchapter 4, Remediation Agreement and Remediation Certification, Subchapter 6, Remediation Procedures and Subchapter 7, Protection of Confidential Information, were repealed by R.2012 d.095, effective May 7, 2012. See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Law Review and Journal Commentaries

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

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

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL INFORMATION

- 7:26B-1.1 Scope and authority
- 7:26B-1.2 Construction
- 7:26B-1.3 Severability
- 7:26B-1.4 Definitions
- 7:26B-1.5 Forms and submissions
- 7:26B-1.6 Certifications and signatories
- 7:26B-1.7 (Reserved)
- 7:26B-1.8 ISRA authorization
- 7:26B-1.9 (Reserved)
- 7:26B-1.10 Liability for ISRA compliance
- 7:26B-1.11 Civil penalties
- 7:26B-1.12 Confidentiality claims

SUBCHAPTER 2. APPLICABILITY

- 7:26B-2.1 Operations and transactions not subject to ISRA
- 7:26B-2.2 through 7:26B-2.3 (Reserved)
- 7:26B-2.4 Revisions to North American Industry Classification System Codes for purposes of definition of "industrial establishment"

SUBCHAPTER 3. NOTIFICATION AND REMEDIATION REQUIREMENTS

- 7:26B-3.1 (Reserved)
- 7:26B-3.2 Notification requirements
- 7:26B-3.3 Remediation requirements
- 7:26B-3.4 Remediation funding source requirements

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. ALTERNATE COMPLIANCE OPTIONS

- 7:26B-5.1 through 7:26B-5.2 (Reserved)
- 7:26B-5.3 Regulated underground storage tank waiver
- 7:26B-5.4 Remediation in progress waiver
- 7:26B-5.5 through 7:26B-5.6 (Reserved)
- 7:26B-5.7 Limited conveyance
- 7:26B-5.8 (Reserved)
- 7:26B-5.9 De minimis quantity exemption

SUBCHAPTERS 6 THROUGH 7. (RESERVED)

SUBCHAPTER 8. PROGRAM FEES AND OVERSIGHT COSTS

- 7:26B-8.1 Fee schedule
- 7:26B-8.2 through 7:26B-8.4 (Reserved)

APPENDIX A. (RESERVED)

APPENDIX B. STANDARD LANDLORD/TENANT PETITION

APPENDIX C. ISRA SUBJECT NAICS CODES

SUBCHAPTER 1. GENERAL INFORMATION

Law Review and Journal Commentaries

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

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

7:26B-1.1 Scope and authority

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

7:26B-1.2 Construction

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

7:26B-1.3 Severability

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

7:26B-1.4 Definitions

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

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

“Agricultural commodity” means any plant or part thereof, or animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

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

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

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

“Change in ownership” means:

1. The sale or transfer of the business of an industrial establishment;

2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;

3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;

4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:

i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;

ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or

iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation;

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

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

ii. The limited partnership has the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation;

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

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) An owner or operator who is required to complete and submit a General Information Notice pursuant to (a) above shall use the form found on the Department's website at www.nj.gov/dep/srp/srra/forms, 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. Site identification information, including site identification number if known;

2. Current property owner identification and contact information;

3. Current business operator and/or business owner identification and contact information;

4. Identification and description of the transaction triggering ISRA;

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

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

7. 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;

8. The proposed date for closing or transferring operations;

9. 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;

10. The applicable fees required pursuant to N.J.A.C. 7:26C-4;

11. Written authorization to allow access; and

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

(c) An owner or operator may withdraw the notice required pursuant to (a) above if the owner or operator determines that none of the transactional events listed in (a) above 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.

(d) 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.

(e) An owner or operator that is closing operations shall amend the General Information Notice submitted in accordance with (b) above for any subsequent event listed in (a) above that occurs prior to the issuance of a final remediation document, or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment.

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.

Administrative correction.

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

Recodified in part from N.J.A.C. 7:26B-3.3 and 3.4 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 introductory paragraph of (a); deleted former (b); recodified N.J.A.C. 7:26B-3.3(a) as (b); rewrote (b); deleted former N.J.A.C. 7:26B-3.3(b) through (d); recodified N.J.A.C. 7:26B-3.4(a) and (b) as (c) and (d); in (c), substituted "(a) above" for "N.J.A.C. 7:26B-3.2(a)"; and added (e).

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).

An administrative law judge (ALJ) concluded that the New Jersey Department of Environmental Protection – Site Remediation, Compliance and Enforcement (DEP) was authorized to impose assessments upon a trucking company, a site operator and a related individual for violations of the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., including violations of the requirement in N.J.A.C. 7:26B-3.3(a) (now N.J.A.C. 7:26B-3.2(a)) that the DEP be notified of any transfer of ownership of that site, and that those assessments were not arbitrary, capricious or unreasonable. That conclusion was based on the ALJ's finding that DEP carried its burden to show that the parties had failed to remediate a site from which underground storage tanks had been removed, which remediation was required by reason of the cessation of operations on that site. N.J. Dep't of Env'tl. Prot. -- Site Remediation Compliance & Enforcement v. Omega Trucking Co., Inc., Alpha Omega Equities, Inc., and Salvatore Lentine, OAL Dkt. Nos. ESR 5217-13, ESR 5219-13 and ESR 5221-13, Agency Dkt. Nos. PEA 120001-004370, PEA 120007-004371 and PEA 120008-004371 (Consolidated), 2013 N.J. AGEN LEXIS 326, Final Decision (November 21, 2013).

7:26B-3.3 Remediation requirements

(a) An owner or operator shall remediate the industrial establishment in accordance with this chapter and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, when any of the events listed in N.J.A.C. 7:26B-3.2(a) occur.

(b) An owner or operator or other person who entered into a remediation agreement or a remediation agreement amendment with the Department prior to November 4, 2009, or an owner or operator who submitted a remediation certification to the Department on or after November 4, 2009, shall remediate the industrial establishment in accordance with that agreement or certification, this chapter, and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.

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

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;
2. A certification by the owner or operator of the industrial establishment describing:
 - i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;
 - ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;
 - iii. The requirement of the owner or operator to perform the remediation the Department requires;
 - iv. The requirement of the owner or operator to allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A. 13:1K-10;
 - v. The requirement of the owner or operator to comply with the provisions of the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and this chapter; and
 - vi. The requirement of the owner or operator to prepare and submit any document the Department requires for the remediation of the industrial establishment;
3. Evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with N.J.A.C. 7:26C-5; and
4. Evidence of the payment of all applicable fees in accordance with N.J.A.C. 7:26C-4.

The following annotations apply to N.J.A.C. 7:26B-3.3 prior to its recodification in part to N.J.A.C. 7:26B-3.2 by R.2012 d.095:

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).
Readoption of special amendment, R.2011 d.251, effective September 8, 2011.

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

Provisions of R.2009 d.361 readopted with one change, effective October 3, 2011: in the introductory paragraph of (a), substituted "form, found on the Department's website at <http://www.nj.gov/dep/srp/srra/forms>" for "General Information Notice form available from the Department".

The following annotation applies to N.J.A.C. 7:26B-3.3 subsequent to its recodification in part to N.J.A.C. 7:26B-3.2 by R.2012 d.095:

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. 7:26B-3.3, General information notice, recodified in part to 7:26B-3.2.

7:26B-3.4 Remediation funding source requirements

(a) The owner or operator shall establish and maintain a remediation funding source in accordance with N.J.A.C. 7:26C-5:

1. Within 30 days of the Department's approval or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment;
2. Upon the submittal of a remediation certification pursuant to N.J.A.C. 7:26B-3.2(c); or
3. In accordance with the terms of a remediation agreement or remediation agreement amendment.

The following annotations apply to N.J.A.C. 7:26B-3.4 prior to its recodification in part to N.J.A.C. 7:26B-3.2 by R.2012 d.095:

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

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

Rewrote (a).

Readoption of special amendment, R.2011 d.251, effective September 8, 2011.

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

Provisions of R.2009 d.361 readopted without change.

The following annotation applies to N.J.A.C. 7:26B-3.4 subsequent to its recodification in part to N.J.A.C. 7:26B-3.2 by R.2012 d.095:

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. 7:26B-3.4, Revisions to the general information notice or withdrawal of required notice by an owner or operator, recodified in part to 7:26B-3.2.

SUBCHAPTER 4. (RESERVED)