

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

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

9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an industrial establishment, where the indirect owner's assets would be available for remediation.

"Closing operations" means:

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

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

ii. For industrial establishments which product output is undefined:

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

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

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

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

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

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

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

7. The assignment of a lease or sublease, unless there is no change in the operator of the industrial establishment and there is no disruption in operations of the industrial establishment.

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

"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity.

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department's ability to reach those assets, or otherwise hinder the owner's or operator's ability to remediate the industrial establishment.

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

"Direct owner or operator" means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

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

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

"Final remediation document" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

"GIN" means General Information Notice described at N.J.A.C. 7:26B-3.2(a).

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

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

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

“Industrial establishment” means any place of business or real property at which such business is conducted, having the North American Industry Classification System (NAICS) codes listed in chapter Appendix C, incorporated herein by reference, dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002-502024, subject to the specified exceptions and limitations and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. For properties which are owner occupied or are leased to a single tenant, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For leased properties with two or more leased spaces, the industrial establishment includes the leasehold and any areas of concern that provide, are associated with, or are utilized for, hazardous substances and wastes to or from the leasehold, regardless of their location.

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

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

“Licensed site remediation professional” means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

any other property with appropriate engineering and institutional controls.

“Operator” means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

“Owner” means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an owner of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

“Person” means any individual or entity, including without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

“Preliminary assessment” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial action” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

“Remedial investigation” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remediation” or “remediate” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remediation agreement” means a document the Department issued before November 4, 2009 for the transfer of an industrial establishment prior to the completion of the remediation.

“Remediation certification” means a certification prepared pursuant to N.J.A.C. 7:26B-4.3 which, when submitted to the Department by the owner or operator of an industrial establishment, authorizes the owner or operator to transfer ownership or operations prior to the issuance of a final re-

mediation document or a licensed site remediation professional's certification of a remedial action workplan.

"Remediation standard" means a remediation standard defined as such pursuant to the Remediation Standards, N.J.A.C. 7:26D.

"Response action outcome" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

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

"SIC" means Standard Industrial Classification.

"Site investigation" means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Transferring ownership or operations" means:

1. Any transaction or proceeding through which an industrial establishment undergoes a change in ownership;

2. The sale or transfer of more than 50 percent of the assets of an industrial establishment, excluding real property within any five-year period as measured on a constant, annual date-specific basis. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery;

3. The execution of a lease for a period of 99 years or longer for an industrial establishment;

4. The dissolution of an entity that is an owner or operator or indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred; or

5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, "family" means any of the relations included at N.J.A.C. 7:26B-2.1(a)5.

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

Amended by R.1999 d.241, effective August 2, 1999.  
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Rewrote "Applicable remediation standard", "Remedial action" and "Remediation" or "remediate"; inserted "Area of concern", "Engineering controls", "Innovative remedial action technology", "Institutional controls", "Limited restricted use remedial action", "Restricted use remedial action", and "Unrestricted use remedial action"; and deleted "Declaration of environmental restriction".

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

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

Deleted "Applicable remediation standard"; added "Remediation standard".

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

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

In "Closing operations", in subparagraph 5, substituted "North American Industry Classification System" for "Standard Industrial Classification"; amended "Industrial establishment"; deleted "SIC manual".

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

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

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

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

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

Added definitions "Final remediation document", "Licensed site remediation professional", "Remediation certification", and "Response action outcome"; and in definition "Remediation agreement", substituted "issued before November 4, 2009" for "issues".

Administrative correction.

See: 42 N.J.R. 1862(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 with changes incorporated at 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 definition "Change in ownership", rewrote the introductory paragraph and 4iii, 5ii and 9; rewrote the introductory paragraph of definition "Closing operations" and definitions "Controlling interest", "Corporate reorganization not substantially affecting ownership", "Industrial establishment", "Remediation certification", "Remediation standard" and "Site investigation"; substituted definition "Engineering control" for definition "Engineering controls" and definition "Institutional control" for definition "Institutional controls"; in definition "GIN", updated the N.J.A.C. reference; in definition "Hazardous waste", updated the N.J.S.A. reference and substituted "rules at" for "Regulations"; deleted definitions "Negative declaration", "Restricted use standard" and "Unrestricted use standard"; in definition "Person", deleted "of" preceding "within"; in definition "Preliminary assessment", substituted "those actions" for "the first phase of remediation"; in definition "Remedial investigation", deleted "to investigate a discharge" following "actions"; in definition "Remediation" substituted "those" for "all necessary"; and in definition "Unrestricted use remedial action", updated the N.J.A.C. reference.

### 7:26B-1.5 Forms and submissions

Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter by downloading it from the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms) or by contacting the Department at the address at N.J.A.C. 7:26C-1.6. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the Department pursuant to N.J.A.C. 7:26C-1.6.

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

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

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

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

Section was "Forms and submissions".

Administrative correction.

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

Readoption of special repeal and new rule, 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 changes incorporated at 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).

Rewrote the section.

### 7:26B-1.6 Certifications and signatories

Any person submitting an application, form, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include a certification that is executed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.5.

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

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

In (d)3, rewrite the last sentence of the certification.

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

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

Rewrote the section.

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.

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

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

Inserted "form,".

### 7:26B-1.7 (Reserved)

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

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

Section was "Department review".

### 7:26B-1.8 ISRA authorization

(a) An owner or operator is authorized to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, without, or prior to the issuance of, a final remediation document in the following circumstances:

1. The owner's or operator's submission of a remediation certification pursuant to N.J.A.C. 7:26B-3.3(c);
2. The Department's approval of a regulated underground storage tank waiver application pursuant to N.J.A.C. 7:26B-5.3(e);
3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d); and
4. The Department's approval of a de minimis quantity exemption pursuant to N.J.A.C. 7:26B-5.9.

(b) The issuance of an authorization letter pursuant to (a) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial

establishment pursuant to ISRA, this chapter and any other applicable law.

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

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

Section was "No further action letter and authorization letter". In (a), substituted "In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the" for "The"; deleted former (b); recodified former (c) and (d) as (b) and (c); in the introductory paragraph of (b), substituted "An" for "The Department may authorize a" and "final remediation document" for "no further action letter", inserted "is authorized" and deleted "through the issuance of an authorization letter" preceding "without"; rewrote (b)1; in (b)4, deleted "and" from the end; in (b)5, substituted "; and" for a period at the end; and added (b)6.

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 (b)6, substituted "de minimis" for "deminimis".

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 "No further action letter and ISRA authorization". Deleted former (a); recodified former (b) and (c) as (a) and (b); in (a)1, updated the N.J.A.C. reference; in (a)3, inserted "and" at the end; deleted former (a)4 and (a)5; recodified (a)6 as (a)4; and in (b), substituted "(a)" for "(c)".

### 7:26B-1.9 (Reserved)

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 (b), inserted ", or the owner or operator of the industrial establishment that has submitted a remediation certification"; in (b)1, substituted a comma for "or" preceding "transferee" and inserted "or owner or operator"; and in (b)2, inserted a comma following "workplan" and inserted "or remediation certification".

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.

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

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

Section was "Right of entry and inspection".

### 7:26B-1.10 Liability for ISRA compliance

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

(b) An owner or operator shall not transfer ownership or operations of an industrial establishment until:

1. A licensed site remediation professional has issued a response action outcome for the industrial establishment pursuant to N.J.A.C. 7:26C-6;
2. A licensed site remediation professional has certified a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);
3. The owner or operator has executed prior to November 4, 2009 a remediation agreement or remediation