

2. Making reasonable inquiries of current and former employees and agents whose duties include or included any responsibility for hazardous substances, hazardous wastes, or pollutants, and any other current and former employees or agents who may have knowledge or documents relevant to the inquiry.

“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, hazardous waste or pollutant into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters, or natural resources within the jurisdiction of the State.

“Discharge to ground water proposal” or “DGW proposal” means a proposal for a new discharge to ground water (DGW) designed to occur during or as part of the site remediation process.

“Effective solubility” means the theoretical aqueous solubility of an organic constituent in ground water that is in chemical equilibrium with a separate phase mixed product (product containing several organic chemicals). The effective solubility of a particular organic chemical can be estimated by multiplying its mole fraction in the product mixture by its pure phase solubility.

“Engineered system response” means a system that is designed to mitigate risk or remediate an IEC or free product and as further described in the Department’s Immediate Environmental Concern (IEC) guidance.

“Engineering controls” means any physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences, physical access controls, ground-water monitoring systems and groundwater containment systems including, without limitation, slurry walls and ground-water pumping systems.

“Environmental medium” means any component such as soil, air, sediment, structures, ground water or surface water.

“Environmentally sensitive natural resources” means all areas defined at N.J.A.C. 7:1E-1.8(a), ground water, and areas and/or resources that are protected or managed pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. and the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50.

“EPA” means the United States Environmental Protection Agency.

“Feasibility study” means a study designed to develop and evaluate options for remedial action using data gathered during the remedial investigation to develop the objectives of the remedial action, and to develop possible remedial action

alternatives, to evaluate those alternatives and create a list of feasible alternatives, and to analyze the engineering, scientific, institutional, human health, environmental, and cost of each selected alternative.

“Fill material” means non-indigenous material, used to replace soil in an area or raise the topographic elevation of the site.

“Final remediation document” means a document defined as such pursuant to N.J.A.C. 7:26C-1.3.

“Free product” means a separate phase material, present in concentrations greater than a contaminant’s residual saturation point. This definition applies to solids, liquids, and semi-solids. The presence of free product shall be determined pursuant to the methodologies described in N.J.A.C. 7:26E-2.1(a)14.

“Full laboratory data deliverables” means those deliverables identified as follows:

1. For non-EPA/Contract Laboratory Program analyses, the regulatory format data deliverables listed in the version of the Professional Laboratory Analytical Services contract issued by the New Jersey Department of Treasury, Division of Purchase and Property in effect as of the date on which the laboratory is performing the analysis; and

2. For EPA/Contract Laboratory Program analyses, the deliverables listed in the EPA Contract Laboratory Program “Statement of Work” documents in effect as of the date on which the laboratory is performing the analysis as modified by specific requirements listed in Appendix A, incorporated herein by reference.

“Ground water use area” means any area, as determined by a well search conducted pursuant to N.J.A.C. 7:26E-1.17 and an evaluation of the current and potential ground water uses of an area using a 25-year planning horizon pursuant to N.J.A.C. 7:26E-8.3(b)4ii, where any domestic, irrigation, industrial, public supply well, or well with a water allocation permit exists, is proposed, or where there is reasonable expectation a well will be installed within the 25-year planning horizon.

“Ground water” means the portion of the water beneath the land surface that is within the zone of saturation where all pore spaces of the geologic formation are filled with water.

“Hazardous waste” means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26G.

“Highly permeable soils” means soils having less than 15 percent silts and/or clays. Soils may be classified in the field using a standard system texture analysis.

“Historic fill material” means non-indigenous material, deposited to raise the topographic elevation of the site, which

was contaminated prior to emplacement, and is in no way connected with the operations at the location of emplacement and which includes, without limitation, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, or non-hazardous solid waste. Historic fill material does not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag or tailings. In addition, historic fill material does not include a municipal solid waste landfill site.

“Immediate environmental concern” means a condition at a contaminated site where any of the following types of contamination or any of the following conditions related to the discharges at the site are found at the site:

1. Contamination in a well used for potable purposes at concentrations at or above the Class II ground water remediation standards;
2. Contamination in indoor air at a level greater than any vapor intrusion indoor air screening level described in the Department’s Vapor Intrusion Guidance;
3. Contamination in an occupied or confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services;
4. Contamination that exceeds the Department’s acute human health exposure levels in surface soil such that dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure, as further described in the Department’s IEC Guidance; or
5. Any other condition that poses an immediate threat to the environment or to the public health and safety as further described in the Department IEC Guidance.

“Impermeable” means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of 10^{-7} cm/sec at the maximum anticipated hydrostatic pressure.

“Indoor air screening level” means a screening level for indoor air defined in the Department’s Vapor Intrusion Guidance.

“Injury” means any adverse change or impact of a discharge on a natural resource or impairment of a natural resource service, whether direct or indirect, long term or short term, and includes the partial or complete destruction or loss of the natural resource.

“Innovative remedial action technology” means a new or alternative method, procedure or process that does not have a substantial operational record. An innovative remedial action technology with a substantial operational record in one field could be considered innovative if it is proposed for a new or different environmental problem.

“Institutional controls” means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a site at levels above the applicable remediation standard which would allow for the unrestricted use of the property. Institutional controls may include, without limitation, structure, land, and natural resource use restrictions, well restriction areas, classification exception areas, deed notices, and declarations of environmental restrictions.

“Landfill” means a sanitary landfill as defined pursuant to N.J.S.A. 13:1E-1 et seq.

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

“Light non-aqueous phase liquid” or “LNAPL” means hydrocarbons that exist as a separate and immiscible phase liquid when in contact with water and/or air, can exist as a continuous phase (mobile) and/or a discontinuous mass (immobile) and is less dense than water at ambient temperature.

“Limited restricted use remedial action” means any remedial action for soil that requires the continued use of institutional controls but does not require the use of an engineering control in order to meet the established health risk or environmental standards.

“Method detection limit” or “MDL” means the minimum concentration of a substance that can be measured and reported with a 99 percent confidence that the analyte concentration is greater than zero and is determined from the analysis of a sample in a given matrix containing the analyte.

“Mineral oil” means an oil of mineral origin, refined from crude oil, possessing electrical insulating properties.

“Natural background soil level” means the chemical concentration of a substance which is found in soil and which is not attributable to human activity.

“Natural ground water remediation” means any form of ground water remediation in which only degradation, retardation, and dispersion mechanisms are used to achieve applicable remediation standards. For active ground water remediations, this definition shall also apply to portions of plumes that are not captured by the active ground water remediation, but are expected to be naturally remediated after separation from the source plume.

“Natural resources” means all land, biota, fish, shellfish, and other wildlife, air, waters and other such resources.

“No further action letter” means a written determination by the Department defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

“Non-targeted compound” means a compound detected in a sample using a specific analytical method that is not a targeted compound, a surrogate compound, a system monitoring compound or an internal standard compound.

“Order of magnitude” means a factor of 10.

“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 its political subdivisions of or found within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

“Person responsible for conducting the remediation” means any person defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

“Pollutant” means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

“Practical quantitation level” or “PQL” means the lowest quantitation level of a given analyte that can be reliably achieved among laboratories within the specified limits of precision and accuracy of a given analytical method during routine laboratory operating conditions.

“Preliminary assessment” means the first phase in the process of identifying areas of concern pursuant to N.J.A.C. 7:26E-3.

“Prospective purchaser” means any person contemplating acquiring contaminated property who:

1. Is not in any way responsible under any statute, Federal or state, or common law for any hazardous substances, hazardous wastes, or other pollutants discharged at a contaminated site; and
2. Is not a corporate successor to, or capitalized by, any person who is in any way responsible under any statute, Federal or state, or common law for any hazardous substances, hazardous wastes, or other pollutants discharged at a contaminated site.

“Quality assurance” means the total integrated program for assuring the reliability of monitoring and measurement data which includes a system for integrating the quality planning, quality assessment and quality improvement efforts to meet data end-use requirements.

“Quality assurance project plan” means a document which presents in specific terms the policies, organization, objectives, functional activities and specific quality assurance/quality control activities designed to achieve the data quality goals or objectives of a specific project or operation.

“Quality control” means the routine application of procedures for attaining prescribed standards of performance in the monitoring and measurement process.

“Receptor” means any human or other ecological component which is or may be affected by a contaminant from a contaminated site.

“Reduced laboratory data deliverables” means, for both EPA/Contract Laboratory Program and non-EPA/Contract Laboratory Program analyses, the laboratory data deliverables listed in Appendix A, Sections III and IV.

“Region of the site” means the area on and adjacent to the site.

“Remedial action” means those actions taken at a contaminated site as may be required by the Department, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any discharged contaminant is remediated in compliance with the applicable remediation standards pursuant to N.J.A.C. 7:26E-6.

“Remedial action selection” means the process of selecting the most appropriate remedy for a site or area of concern that will ensure protection of the public health, and safety and the environment, based upon careful consideration of a variety of factors, including, without limitation, future site use, surrounding land uses, remediation goals and objectives, cost, implementability, reliability and effectiveness.

“Remedial action selection report” means a report describing how a proposed non-CERCLA/non-RCRA remedial action was determined to be the most appropriate remedy pursuant to N.J.A.C. 7:26E-5.

“Remedial investigation” means actions to investigate contamination and the problems presented by a discharge. The requirements of a remedial investigation are set forth at N.J.A.C. 7:26E-4.

“Remedial phase” means a distinct component of the remediation process. Such components may include preliminary assessment, site investigation, remedial investigation, remedial alternative analysis, and remedial action.

“Remediation” or “remediate” means all necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action; provided, however, that “remediation” or “remediate” shall not include the payment of compensation for damage to, or loss of, natural resources.

“Remediation costs” means costs defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

“Remediation standards” means the combination of numeric standards that establish a level or concentration, and narrative standards, to which contaminants must be treated, removed or otherwise cleaned for soil, ground water or surface water, as provided by the Department pursuant to N.J.S.A. 58:10B-12, in order to meet the health risk or environmental standards.

“Residual product” means a separate phase material present in concentrations below a contaminant’s residual saturation point, retained in soil or geologic matrix pore spaces or fractures by capillary forces. This definition applies to solids, liquids, and semi-solids. The presence of residual product shall be determined pursuant to the methodologies described in N.J.A.C. 7:26E-2.1(a)14.

“Residual saturation point” means the saturation point below which non-aqueous phase liquid becomes discontinuous and is immobilized by capillary forces, and fluid drainage will not occur.

“Restricted use remedial action” means any remedial action for soil that requires the continued use of engineering and institutional controls in order to meet the established health risk or environmental standards.

“Restricted use standard” means a numeric soil remediation standard which, when achieved, restores the contaminated soil to a condition suitable for only certain specified uses.

“Retardation” means any process that acts to inhibit the movement of a solute in ground water, such that the solute travels more slowly than the ground water itself.

“Sanitary landfill” or “landfill” means a landfill defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

“School” means 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.

“Semivolatile organic compounds” means compounds amenable to analysis by extraction of the sample with an organic solvent. For the purposes of this chapter, analysis of semivolatile organic compounds means the analysis of a sample for those target compound list compounds identified as semivolatiles in the version of the EPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis.

“Site investigation” means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels of excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assess-

ment. The requirements of a site investigation are set forth at N.J.A.C. 7:26E-3.

“Soil” means the unconsolidated mineral and organic matter on the surface of the earth that has been subjected to and influenced by geologic and other environmental factors.

“Soil gas” means vapors or gases present in unsaturated pore spaces of subsurface material.

“Soil gas screening level” means a screening level for soil gas defined in the Department’s Vapor Intrusion Guidance document.

“Specific discharge event” means a discharge that meets the criteria in N.J.A.C. 7:26E-3.7(b).

“Spill Act” means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq.

“Surface water” means water defined as surface water pursuant to the Surface Water Quality Regulations, N.J.A.C. 7:9B.

“SWMA” means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

“Tank” means a stationary device designed to contain an accumulation of hazardous substances, hazardous wastes, or pollutants which is constructed of non-earthen materials (for example, concrete, steel, plastic) that provide structural support.

“Target analyte list” or “TAL” means the list of inorganic compounds/elements designated for analysis as contained in the version of the EPA Contract Laboratory Program Statement of Work for Inorganics Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis. For the purpose of this chapter, a Target Analyte List scan means the analysis of a sample for Target Analyte List compounds/elements.

“Targeted compound” means a hazardous substance, hazardous waste, or pollutant for which a specific analytical method is designed to detect that potential contaminant both qualitatively and quantitatively.

“Target compound list plus 30” or “TCL + 30” means the list of organic compounds designated for analysis (TCL) as contained in the version of the EPA “Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration” in effect as of the date on which the laboratory is performing the analysis, and up to 30 non-targeted organic compounds (plus 30) as detected by gas chromatography/mass spectroscopy (GC/MS) analysis. For the purposes of this chapter, a Target Compound List + 30 scan means the analysis of a sample for Target Compound List compounds and up to 10 non-targeted volatile organic compounds and up to 20 non-targeted semivolatile organic compounds using GC/MS analytical methods. Non-targeted compound criteria shall be pursuant to the version of the EPA

“Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration” in effect as of the date on which the laboratory is performing the analysis.

“Tentatively identified compound” or “TIC” means a non-targeted compound detected in a sample using a GC/MS analytical method which has been tentatively identified using a mass spectral library search. An estimated concentration of the TIC is also determined.

“Timely manner” means in compliance with all mandatory time frames, expedited site specific time frames, and regulatory time frames set forth in these rules and in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

“Underground storage tank” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, hazardous wastes or pollutants, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more beneath the surface of the ground.

“Unknown compound” means a non-targeted compound which cannot be tentatively identified. Based on the analytical method used, the estimated concentration of the unknown compound may or may not be determined.

“Unrestricted use remedial action” means any remedial action for soil that does not require the continued use of either engineering or institutional controls to meet the established health risk or environmental standards.

“Unrestricted use standard” means a numeric soil remediation standard that, when achieved, restores the contaminated soil to a condition or quality suitable for any use. The unrestricted use standard is the lowest of any numeric standard, without limitation, any residential soil remediation standard, any non-residential soil remediation standard and any applicable impact-to-groundwater soil standard.

“UST” means the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

“Volatile organics” means organic compounds amenable to analysis by the purge and trap technique. For the purposes of this chapter, analysis of volatile organics means the analysis of a sample for those target compounds identified as volatiles in the version of the EPA “Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration” in effect as of the date on which the laboratory is performing the analysis.

“Waste oil” means a petroleum based or synthetic oil which, through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

“Waters” means the ocean and its estuaries to the seaward limit of the State’s jurisdiction, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State.

“Wetland” means any freshwater or coastal wetland.

“WPCA” means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

Added “Active ground water remediation”, “Background ground water contamination”, “Contamination”, “Damages”, “Effective solubility”, “Engineering controls”, “Environmentally sensitive area”, “Historic fill material”, “Immediate environmental concern”, “Injury”, “Institutional controls”, “Mineral oil”, “Natural background soil level”, “Natural ground water remediation”, “Non-permanent remedial action”, “Order of magnitude”, “Permanent remedial action”, “Region of the site”, “Remedial action costs”, “Remedial action selection”, “Remedial action selection report”, “Residual product”, “Residual saturation point”, “Restricted use standard”, “Retardation”, “Specific discharge event”, “Unrestricted use standard” and “Waste oil”; amended “Applicable remediation standard”, “Area of concern”, “Commissioner”, “Contaminated site”, “Department”, “Diligent inquiry”, “Discharge”, “Fill material”, “Free product”, “Person responsible for conducting the remediation”, “Preliminary assessment”, “Remedial action”, “Remedial investigation”, “Remediation”, “Site investigation”, “Surface water”, “Tank”, “Targeted compound”, and “Underground storage tank”; and deleted “Contaminant”, “ECRA”, “Hazardous constituent”, “Hazardous substance”, “Innovative and emerging treatment technologies”, “Permanent remedy”, and “Remedial alternative analysis”.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Added “Declaration of environmental restrictions”.

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

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

Rewrote the section.

Amended by R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

Rewrote the section.

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

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

Rewrote “Area of concern”.

Administrative correction.

See: 37 N.J.R. 4245(a).

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

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

Rewrote definitions “Area of concern”, “Immediate environmental concern”, “No further action letter”, “Person responsible for conducting the remediation” and “Timely manner”; added definitions “Child care center”, “Day”, “Discharge to ground water proposal”, “Engineered system response”, “Feasibility study”, “Final remediation document”, “Indoor air screening level”, “Licensed site remediation professional”, “Light non-aqueous phase liquid”, “Remediation costs”, “Sanitary landfill”, “School”, “Soil gas” and “Soil gas screening level”; substituted definition “Ground water use area” for definition “Groundwater use area”; and deleted definitions “Oversight document” and “Remedial action costs”.

Administrative correction.

See: 42 N.J.R. 778(a), 1862(a).

Case Notes

In cases involving environmental cleanup, an entity may be strictly liable under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 58:10-23.24, for damages for the loss of use of natural resources adversely affected by its discharge of hazardous substances. New Jersey Dep’t of Env’t. Protection & Administrator v.

Exxon Mobil Corp., 393 N.J. Super. 388, 923 A.2d 345, 2007 N.J. Super. LEXIS 174 (App.Div. 2007).

7:26E-1.9 General remediation requirements

(a) The person responsible for conducting the remediation shall conduct remediation pursuant to the regulatory timeframes established in this chapter and shall submit all documents, forms, and other submissions as required in this chapter. That person may, based on site specific conditions or circumstances, request an extension of a regulatory timeframe pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3.1.

(b) The person responsible for conducting the remediation shall comply with the Site Remediation Program's guidance documents in effect at the time that the work is conducted. All guidance documents can be found in the Site Remediation Program's Guidance Library on the Department's web site at <http://www.nj.gov/dep/srp/srra/guidance>.

(c) The person responsible for conducting the remediation shall direct each licensed site remediation professional he or she hires to conduct the remediation pursuant to N.J.A.C. 7:26C-2.4.

(d) The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter as follows:

1. One paper copy and three copies on CD in Adobe portable document format (PDF) of all forms, applications and documents, except as provided in (d)2 through 4 below;

2. One copy on CD of the site-specific health and safety plan pursuant to N.J.A.C. 7:26E-1.10; quality assurance project plan, pursuant to N.J.A.C. 7:26E-2.2, with each remedial phase report as applicable;

3. Three electronic copies of all analytical data using the format outlined in the Site Remediation Program's Electronic Data Interchange guidance;

4. One paper copy of all required maps and one electronic copy of all GIS compatible electronic maps prepared using the Department's GIS guidance;

5. Three electronic copies of all full laboratory data deliverables on CD in Adobe portable document format (PDF) or in a format determined by the Department and one paper copy of all full laboratory deliverables for drinking water, indoor air, chromium and dioxin samples; and

6. Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

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

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

Former N.J.A.C. 7:26E-1.9, Health and safety plan, was recodified as N.J.A.C. 7:26E-1.10.

Administrative correction.

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

7:26E-1.10 Health and safety plan

Any person conducting remediation activities shall prepare a site-specific health and safety plan which shall be adhered to by all personnel involved in the remediation. The plan shall be in accordance with the most recently adopted and applicable general industry (29 CFR 1910) and construction (29 CFR 1926) standards of the Federal Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as well as any other Federal, State or local applicable statutes or regulations.

Special recodification from N.J.A.C. 7:26E-1.9 by R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

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

Former N.J.A.C. 7:26E-1.10, Severability, was recodified as N.J.A.C. 7:26E-1.11.

7:26E-1.11 Severability

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

Special recodification from N.J.A.C. 7:26E-1.10 by R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

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

Former N.J.A.C. 7:26E-1.11, Bias for action, was recodified as N.J.A.C. 7:26E-1.12.

7:26E-1.12 Control of ongoing sources and implementation of interim remedial measures

(a) As a first priority, the person responsible for conducting the remediation shall:

1. Identify the need for any interim remedial measures necessary to remove, contain, or stabilize a source of contamination to prevent contaminant migration and exposure to receptors; and

2. Whenever site-specific data support the need for an interim remedial measure, include in each remedial phase report a description of each interim remedial measure implemented and each interim remedial measure that is planned.

(b) The person responsible for conducting the remediation shall follow the Department's Light Non-aqueous Phase Liquid (LNAPL) Free Product Interim Remedial Measures guidance concerning free product removal as follows:

1. Within 60 days after either March 1, 2010 or LNAPL is identified, whichever is later, initiate the re-

covery of free product and notify the Department on a form available from the Department; and

2. Within 270 days after either March 1, 2010 or LNAPL is identified, whichever is later, complete delineation of the free product; and complete the installation of a LNAPL recovery system, initiate operational monitoring, and submit an Free Product Interim Remedial Measures Report with a form to the Department that documents the actions taken pursuant to this subsection.

Amended by R.2008 d.262, effective September 2, 2008.

See: 39 N.J.R. 2687(a), 40 N.J.R. 5010(a).

Rewrote the section.

Special recodification from N.J.A.C. 7:26E-1.11 and amended by R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

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

Section was "Bias for action". Rewrote the section. Former N.J.A.C. 7:26E-1.12, Requirement for Department oversight of remediation, was recodified as N.J.A.C. 7:26E-1.13.

7:26E-1.13 Requirement for Department oversight of remediation

(a) The person responsible for conducting the remediation shall investigate and remediate contaminated sites with the Department's prior approval, in the following circumstances:

1. Sites suspected or known to be contaminated with anthropogenic radionuclide contamination of any media;
2. Sites with immediate environmental concern conditions; and
3. Sites with a landfill, if:
 - i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;
 - ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, a Brownfield redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or
 - iii. The person conducting the remediation wants a final remediation document.

New Rule, R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

Special recodification from N.J.A.C. 7:26E-1.12 and amended by R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

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

Rewrote the section. Former N.J.A.C. 7:26E-1.13 was reserved.

7:26E-1.14 Immediate environmental concern requirements

(a) The person responsible for conducting the remediation that identifies an immediate environmental concern (IEC) condition shall follow the Department's IEC guidance and address the IEC condition pursuant to this section.

(b) The person responsible for conducting the remediation that identifies an IEC condition shall:

1. Immediately notify the case manager if one is assigned. If no case manager is assigned or if the case manager is not available, immediately call the Department's hotline at 1-877 WARNDEP or 1-877-927-6337;

2. Within five days after identifying the IEC condition, mitigate the IEC impacts as applicable as follows:

- i. Provide bottled water to the residents of each property where contaminant concentrations exceed any remediation standard for Class II ground water;
- ii. Mitigate the infiltration of vapors into structures impacted by vapor intrusion;
- iii. Restrict access to soil contaminated above acute levels;

3. Within five days after identifying the IEC condition, submit the following to the Department:

- i. A completed IEC Response Action form available from the Department;
- ii. A completed IEC Information Spreadsheet available from the Department;
- iii. A map indicating the location of the site and the location of the IEC condition; and

iv. All analytical results with full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2.1(a)16, with a Potable Water Data form available from the Department;

4. Within five days after identifying the IEC condition submit the analytical results from all indoor air sampling to the New Jersey Department of Health and Senior Services at the following address:

NJDHSS
 Indoor Environments Program
 135 E. State Street
 PO Box 369
 4th Floor
 Trenton, NJ 08625-0369; and

5. Within 60 days after identifying the IEC condition, implement the following IEC engineered system response actions:

i. Provide water treatment or an alternative water supply to the residents of each property where contaminant concentrations in their potable well exceed any remediation standard for Class II ground water quality standard;

ii. Install a vapor mitigation system at each property where contaminant concentrations exceed any applicable vapor intrusion indoor air screening level that is available in the Department's Vapor Intrusion Guidance; and

iii. Otherwise reduce exposure to contaminants or hazardous conditions to acceptable levels as applicable.

(c) Within 120 days after identifying the IEC condition, the person responsible for conducting the remediation shall submit an IEC engineered system response action report with an updated IEC Response Action form available from the Department, that includes the following:

1. A description of all immediate response actions and engineered system response actions that have been completed, including the date that each action that was conducted pursuant to (b) above;

2. A summary of all analytical data related to the IEC and the engineered system response action;

3. All maps and figures related to the IEC and the engineered system response action;

4. A description of the contaminant source control that will be implemented as required pursuant to (d) below; and

5. A GIS compatible map of the estimated area of ground water contamination prepared pursuant to the Department's IEC Guidance.

(d) Within 270 days after identifying the IEC condition, the person responsible for conducting the remediation shall initiate control of the IEC contaminant source using the Department's IEC Guidance, complete the delineation of the IEC contaminant source, and submit an IEC contaminant source control report, with an updated IEC Response Action form available from the Department that includes descriptions of each of the following:

1. Remedial actions being implemented to remediate the IEC contaminant source;

2. A monitoring plan for the mitigation system; and

3. A monitoring plan for the wells or structures that are located downgradient of the wells or structures that are impacted by the IEC condition.

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

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

Administrative correction.

See: 42 N.J.R. 778(a), 1862(a).

7:26E-1.15 Receptor evaluation—general and reporting requirements

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation pursuant to the requirements of N.J.A.C. 7:26E-1.16 through 1.19.

(b) The person responsible for conducting the remediation who completes an unrestricted remedial action is not required to conduct a receptor evaluation when a final remediation document is issued or is filed with the Department within 270 days after initiating the remediation.

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation, on a Receptor Evaluation form available from the Department, by November 26, 2010, or with the submittal of a site investigation report, whichever is later.

(d) The person responsible for conducting the remediation shall submit an updated receptor evaluation report on a Receptor Evaluation form available from the Department with the following documents, as applicable:

1. A remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4.8; and

2. A remedial action report submitted pursuant to N.J.A.C. 7:26E-6.7.

(e) The person responsible for conducting the remediation shall also send a copy of each receptor evaluation to the following:

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

2. The designated local health official.

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

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

7:26E-1.16 Receptor evaluation—land use

(a) The person responsible for conducting the remediation shall identify all current land uses at the site and of each property located within 200 feet of the site boundary.

(b) The person responsible for conducting the remediation shall provide the address of each residence, school or child care center, as well as each park, playground or other recreation area that is identified at the site and within 200 feet of the site boundary.

(c) The person responsible for conducting the remediation shall generate and submit a map that shows the location of the site and the location of each residence, school or child care center, a park, playground or other recreation area land use that is identified pursuant to (b) above.

(d) The person responsible for conducting the remediation shall identify and describe any proposed changes of land use at the site and of each property located within 200 feet of the site boundary that the municipality has approved, with a map depicting the location of the change in relation to the areas being remediated.

Special New Rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).

7:26E-1.17 Receptor evaluation—ground water

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water remediation standard as follows:

1. Within 90 days after ground water contamination is detected, conduct a well search to identify each well that may be impacted by contamination that has or may have emanated from the site as follows:

i. Locate all wells by conducting a file search of all available Department, county and local records for all monitoring and potable wells located within one-half mile of each point of ground water contamination, and all irrigation, industrial wells, and wells with water allocation permits located within one mile of each point of ground water contamination;

ii. If the person responsible for conducting the remediation finds any of the wells described in (a)1i above, that person shall conduct a door-to-door survey by following the Department’s well search guidance;

iii. For each well located, identify the type (potable, irrigation, noncontact cooling water) and the status of the well (active, inactive, properly abandoned pursuant to N.J.A.C. 7:9D), including, as available, total depth, casing length, open bore hole or screened interval, and obtain copies of well records and/or well logs on file with the Department’s Bureau of Water Systems and Well Permitting, and any additional records available in county or municipal records;

iv. Document all sources used in conducting the well search, including the names of any agency that was unable to provide the information requested; and

v. For each point of ground water contamination, determine if the ground water contamination is located within a Tier 1 or a Tier 2 well head protection area; and

2. Within 120 days after ground water contamination is detected at the site above a Class II ground water remediation standard, the person responsible for conducting the remediation shall:

i. Notify the Department, pursuant to N.J.A.C. 7:26E-1.4(e), prior to conducting potable well sampling;

ii. Sample each potable well identified by the well search that is located within 1000 feet of any point of ground water contamination, or if ground water flow direction is known, limit sampling to wells 250 feet upgradient, 500 feet sidegradient and 1,000 feet downgradient from any point of ground water contamination; and

iii. Sample irrigation wells identified by the well search when there are concerns about exposure or when information about the characteristics of the plume is needed.

(b) If the person responsible for conducting the remediation determines that a contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard pursuant to N.J.A.C. 7:26D-2.2(a)1, the person shall:

1. Notify the Department of the IEC condition and conduct all actions pursuant to N.J.A.C. 7:26E-1.14; and

2. Within 14 days after completing the first round of potable well sampling, the person responsible for conducting the remediation shall:

i. Continue to delineate ground water contamination, including the extent of free product, pursuant to N.J.A.C. 7:26E-4.4; and

ii. Continue to identify potential wells and conduct additional sampling pursuant to the Department’s IEC Guidance.

(c) If no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)16 with the Full Laboratory Data Deliverables form available from the Department; and

2. If a licensed site remediation professional is overseeing the remediation, conduct the following:

i. Notify each person whose potable well was sampled of the analytical results; and

ii. Provide the Department with a copy of each notification letter.

(d) The person responsible for conducting the remediation shall provide a detailed report of all potable well sampling activities in the applicable remedial phase report that that person submits to the Department.

Special New Rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Administrative correction.
See: 42 N.J.R. 1862(a).

7:26E-1.18 Receptor evaluation—vapor intrusion

(a) The person responsible for conducting the remediation shall conduct a vapor intrusion investigation pursuant to this section and Department's Vapor Intrusion Guidance (VIG) when any of the following conditions exist in shallow ground water:

1. A ground water plume containing petroleum hydrocarbon contamination at a concentration greater than any vapor intrusion ground water screening level, is identified within 30 feet of a building;
2. A ground water plume containing volatile contamination that is not petroleum based at a concentration greater than any vapor intrusion ground water screening level is identified within 100 feet of a building;
3. Free product is identified in ground water within 100 feet of a building; or
4. When any of the following conditions are identified:
 - i. Soil gas or indoor air contamination is detected at concentrations that exceed the applicable vapor intrusion soil gas or indoor air screening levels;
 - ii. A landfill is located on or adjacent to the site;
 - iii. A wet basement or sump in a building contains free product and/or ground water containing any contaminant listed in Table 1 of the VIG;
 - iv. Methanogenic (methane generating) conditions are present that may cause an explosion; or
 - v. Any other information that indicates that human health may be impacted via the vapor intrusion pathway.

(b) Within 60 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. Identify all structures and subsurface utilities located within 200 feet of the currently known extent of the shallow ground water that contains contamination at a concentration greater than any vapor intrusion ground water screening level, or within 200 feet of any condition listed in (a)3 or 4 above;
2. Determine the specific use for each structure identified, including the presence of residences, schools or child care centers, whether each structure has a basement, crawl space, or is constructed on a slab, and the approximate square footage of each building footprint;
3. Determine the specific use, depth of the invert, diameter, and construction specifications of all subsurface utilities identified;
4. Determine the flow direction of the shallow ground water pursuant to N.J.A.C. 7:26E-3.7(e)3; and

5. Determine whether free product pursuant to N.J.A.C. 7:26E-2.1(a)14 is present at each ground water sampling location.

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

1. Notify the Department prior to conducting indoor air or sub-slab sampling pursuant to N.J.A.C. 7:26E-1.4(e); and
2. Implement the Vapor Intrusion Guidance, including, but not limited to:
 - i. If indoor air samples are to be collected, remove sources of potential background volatile organic chemicals from inside the structure, if possible;
 - ii. Determine the number and locations of indoor air and/or sub-slab samples;
 - iii. Collect indoor air and sub-slab samples at structures that may be impacted by vapor intrusion;
 - iv. Collect other vapor intrusion related samples such as soil gas samples, background samples and ground water samples as necessary to fully evaluate the vapor intrusion pathway;
 - v. Analyze indoor air samples and sub-slab soil gas samples and any other samples collected using certified analytical methods; and
 - vi. Evaluate the results of indoor air sampling as follows:
 - (1) If the results are greater than the Department's vapor intrusion indoor air screening level, the person shall determine whether contaminants are likely to be associated with a discharge at the site or may be attributed to background sources;
 - (2) If the results are greater than the vapor intrusion indoor air screening level the person shall immediately notify the Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14;
 - (3) If the results are greater than the Department's Health Department Notification Levels for indoor air the person shall immediately notify:
 - (A) The Department of an immediate environmental concern condition and conduct all actions required pursuant to N.J.A.C. 7:26E-1.14; and
 - (B) The New Jersey Department of Health and Senior Services at 609-631-6749;
 - (4) If the person identifies potentially explosive conditions in a structure or subsurface utility, the person shall immediately notify:

(A) 911 and report explosive conditions to the local emergency response agency;

(B) The Department of the emergency condition at 1-877-WARNDEP or 1-877-972-6337; and

(C) The New Jersey Department of Health and Senior Services at 609-631-6749;

(d) If no contaminant concentration is detected in any indoor air sample in excess of any Department indoor air screening level, within 14 days after receipt of the analytical results from the laboratory, the person responsible for conducting the remediation shall:

1. Submit all analytical results to the Department with full laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1(a)16 with the Full Laboratory Data Deliverables form available from the Department;

2. Submit all analytical results to the New Jersey Department of Health and Senior Services at the following address:

NJDHSS
 Indoor Environments Program
 135 E. State Street
 PO Box 369
 4th Floor
 Trenton, NJ 08625-0369; and

3. If a licensed site remediation professional is overseeing the remediation, conduct the following:

- i. Notify each person whose indoor air was sampled of the analytical results; and
- ii. Provide the Department with a copy of each notification letter.

(e) If the person responsible for conducting the remediation identifies vapor intrusion IEC conditions pursuant to (c) above, within 14 days after completing the first round of sampling, the person shall continue to:

- 1. Delineate ground water contamination, including the extent of free product, pursuant to N.J.A.C. 7:26E-4.4; and
- 2. Identify structures and conduct additional indoor air and/or sub-slab sampling pursuant to the Department's IEC Guidance and the VIG.

(f) If the person responsible for conducting the remediation determines that no IEC condition exists, but the vapor intrusion pathway is still of concern, the person shall complete a vapor intrusion investigation as part of the site investigation or remedial investigation, as applicable.

(g) The person responsible for conducting the remediation shall provide a detailed report of all vapor intrusion sampling activities in the applicable remedial phase report that is submitted to the Department.

(h) If the person responsible for conducting the remediation determines that the vapor intrusion pathway is not a concern at or adjacent to the site, the person shall provide a technical rationale supporting that conclusion.

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

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

Administrative correction.

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

7:26E-1.19 Receptor evaluation—ecological

As part of the receptor evaluation the person responsible for conducting the remediation shall conduct a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11, in order to determine whether a remedial investigation of ecological receptors is required pursuant to N.J.A.C. 7:26E-4.7.

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

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

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that the following quality assurance procedures are followed for all sampling and laboratory analysis activities.

1. Laboratories performing analyses shall conform to the following:

i. For the analysis of any aqueous samples for a parameter or category of parameters for which laboratory certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18;

ii. For the analysis of non-aqueous samples using specific analytical methods contained in the EPA Publication SW-846, "Test Methods for Evaluating Solid Waste", third edition, update IIB, January 1995, as amended and supplemented, for a parameter or category of parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a minimum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c);

iii. For the analysis of samples using USEPA Contract Laboratory Program (CLP) analytical methods for a parameter or category or parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a mini-

mum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c);

iv. For the analysis of aqueous and non-aqueous samples for parameters or categories of parameters not contained in (a)1i through iii above, the person responsible for conducting the remediation is also responsible for ensuring that the selected laboratory is capable of performing the analysis. At such time as N.J.A.C. 7:18 incorporates procedures for parameters or categories of parameters not contained in (a)1i through iii above, the procedures in N.J.A.C. 7:18 shall be followed;

v. For the analysis of soil gas or indoor air samples collected to investigate the vapor intrusion pathway for a parameter or category of parameters for which certification exists pursuant to N.J.A.C. 7:18, the laboratory shall be certified for that specific parameter or category of parameters pursuant to N.J.A.C. 7:18 or, at a minimum, have obtained temporary approval to analyze regulatory samples pursuant to N.J.A.C. 7:18-2.5(c);

vi. For the analysis of samples for petroleum hydrocarbons (PHC) follow the Department's Protocol for Addressing Extractable Petroleum Hydrocarbons; and

vii. For any field analytical method, the laboratory or individual conducting the analysis shall be certified for the parameter or category of parameters for field analytical methods for which the Department provides certification. If the Department does not provide certification for a field analytical method, the laboratory or person shall obtain a site-specific certification for the field analytical method from by the Department's Office of Quality Assurance;

2. The person responsible for conducting the remediation shall reject analytical data as follows:

i. For laboratories performing analyses pursuant to (a)1i above, decertification or suspension of a laboratory pursuant to N.J.A.C. 7:18 for any given parameter or category of parameters shall result in the rejection of all analytical data for that given parameter or category of parameters generated after the date of decertification or suspension.

ii. For laboratories performing analyses pursuant to (a)1ii above, decertification or suspension of a laboratory pursuant to N.J.A.C. 7:18 for any given parameter or category of parameters shall result in the rejection of all analytical data for that given parameter or category of parameters generated after the date of decertification or suspension.

iii. For laboratories performing analyses pursuant to (a)1iii above, decertification or suspension of a laboratory pursuant to N.J.A.C. 7:18 for any given parameter or category of parameters shall result in the rejection of all analytical data for that given parameter or category of

parameters generated after the date of decertification or suspension.

3. Except as provided in (a)5 below, analytical methods used shall have been published or approved by organizations with recognized expertise in the development of standardized analytical methods. These organizations include, without limitation:

- i. The EPA;
- ii. The American Society for Testing and Materials (ASTM);
- iii. The American Public Health Association (APHA);
- iv. The National Institute for Occupational Safety and Health (NIOSH);
- v. The Association of Official Analytical Chemists (AOAC);
- vi. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA);
- vii. The American Water Works Association (AWWA);
- viii. The Department;
- ix. The United States Department of Defense;
- x. The United States Department of Energy; and
- xi. The United States Department of Interior.

4. Non-aqueous samples to be analyzed for volatile organics shall be sampled using the procedures specified in either USEPA SW846 Method 5035 (USEPA Publication "Test Methods for Evaluating Solid Waste," third edition, final update III, December 1996, incorporated herein by reference, as amended and supplemented) or the USEPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi Media, Multi Concentration, Revision OLMO4.2, incorporated herein by reference, as amended and supplemented. All samples are to be preserved in the field with the appropriate preservation solution except for the following:

- i. Samples that contain high levels of carbonates which would result in rapid or vigorous reaction when the sample is added to the vial containing sodium bisulfate may be shipped in vials without preservative;
- ii. Oily waste samples when the solubility of the waste is unknown may be shipped in vials without preservative; or
- iii. Samples collected using a field core sampling/storage device (that is, En Core[®] or equivalent. En Core[®] is a product of En Novative Technologies Inc. of Green Bay, Wisconsin.) and the samples are shipped to and analyzed by the laboratory within 48 hours of sampling or the samples are shipped to the laboratory and transferred to vials containing the appropriate preservation

- (1) The name and address of agency that initiated the enforcement action;
- (2) Date of the enforcement action;
- (3) The section of statute, rule or permit allegedly violated;
- (4) The type of enforcement action;
- (5) A description of alleged violations;
- (6) The resolution or status of violation and enforcement action; and
- (7) A description of any potential environmental impact which may have resulted from the alleged violation;

xiv. All areas where non-indigenous fill materials were used to replace soil or raise the topographic elevation of the site, including the dates of emplacement;

xv. All waste disposal records for any onsite landfill that describes the nature, quantity, location, and date of the placement in the landfill. Include waste disposal records for all wastes, drums, tanks, pressurized gas cylinders and all hazardous wastes; and

xvi. All permit requirements pursuant to a Solid Waste Operating Permit, or Disruption and Closure Permit granted pursuant to N.J.A.C. 7:26, including a description of permit requirements completed to date and a description of permit requirements not yet completed.

2. The person conducting the preliminary assessment shall conduct a site visit to verify the findings in (b)1 above.

(c) The person responsible for conducting the remediation who is conducting an evaluation of a child care center pursuant to N.J.S.A. 52:27D-130.4 and N.J.A.C. 10:122 shall conduct a preliminary assessment and/or site assessment pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers.

(d) If any potentially contaminated areas of concern are identified during the preliminary assessment, the person responsible for conducting the remediation shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.13.

(e) If no potentially contaminated areas of concern are identified during the preliminary assessment, no further remediation is required at the site except that the person who is required to submit an Industrial Site Remediation Act general information notice pursuant to N.J.A.C. 7:26B-3 shall submit a preliminary assessment report with a Preliminary Assessment form available from the Department:

- 1. By June 1, 2010; or

2. Ninety days after the person responsible for conducting the remediation has notified the Department pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-3.2, whichever is later.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

In (a), substituted "remediation" for "action"; inserted new (c)1i(6), (c)1ix and (c)1xiv; recodified former (c)1ix through xii as (c)1x through xiii; and in (c)1iii and v, deleted reference to hazardous constituents.

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

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

In (c)1ii, deleted "industrial/commercial" following "The", and deleted "or utilized as farmland" following "vegetated".

Amended by R.2005 d.222, effective July 5, 2005.

See: 37 N.J.R. 405(a), 37 N.J.R. 2499(a).

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

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

Rewrote (a); deleted former (b); recodified former (c) as (b) and rewrote (b); and added new (c), (d) and (e).

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation shall prepare a preliminary assessment report which:

- 1. Presents and discusses all of the information identified, evaluated or collected pursuant to N.J.A.C. 7:26E-3.1;

- 2. Is presented in a format that corresponds to the outline of N.J.A.C. 7:26E-3.1(b);

- 3. Shall also include:

- i. Scaled site plans detailing lot and block numbers, property and leasehold boundaries, construction or destruction of buildings, areas where fill or cover material has been brought onsite, paved and unpaved areas, vegetated and unvegetated areas, all areas of concern and active and inactive wells; and

- ii. Scaled historical site plans and facility as-built construction drawings, if available;

- iii. A copy of the United States Geologic Survey (USGS) 7.5 minute topographic quadrangle that includes the site and an area of at least a one mile radius around the site. This map shall be the most recent USGS revision and shall clearly note the facility location and property boundaries. When a portion of the USGS quadrangle is used, the scale (including a bar scale), north arrow, contour interval, longitude and latitude, along with the name and date of the USGS quadrangle shall be noted on the map; and

- iv. A summary of the data and information evaluated pursuant to N.J.A.C. 7:26E-3.1(b)1vii, viii, ix, and x shall be presented by area of concern and all phases of work for a particular area of concern shall be integrated into a single discussion of that area;

4. For each area of concern identified at the site that has not been remediated, the report shall contain a recommendation that either:

- i. The area of concern is potentially contaminated, and thus additional investigation or remediation is required; or
- ii. The area of concern is not believed to contain contaminants above the applicable remediation standards, in which case the preliminary assessment report shall include documentation for this belief;

5. For each area of concern identified at the site, for which a final remediation document was filed or issued, the person responsible for conducting the remediation shall compare the contaminant concentrations remaining in the area of concern with the Department's applicable remediation standards at the time of comparison, and the report shall contain a recommendation that either:

- i. The area of concern contains contaminants above the numerical remediation standard applicable at the time of comparison; however, no further remediation is required because:

- (1) The contaminant concentrations remaining in the area of concern or the site are less than an order of magnitude greater than the numerical remediation standard applicable at the time of comparison;

- (2) The area of concern was remediated using engineering and institutional controls and these controls are still protective of public health, safety and the environment; or

- (3) The area of concern was remediated to a site specific remediation standard and all of the factors and assumptions which are the basis for deriving the site specific remediation standard remain valid for the site;

- ii. The area of concern contains contaminants above the numerical remediation standards applicable at the time of comparison and further remediation is required because:

- (1) The contaminant concentrations remaining in the area of concern or the site are more than an order of magnitude greater than the numerical remediation standard applicable at the time of comparison;

- (2) The area of concern was remediated using engineering and institutional controls and these controls are no longer protective of public health, safety and the environment; or

- (3) The area of concern or the site were remediated to an approved site specific remediation standard and some or all of the factors and assumptions which were the basis for deriving the site specific remediation standard are no longer valid;

- iii. The area of concern or site does not contain contaminants above the numerical remediation standard applicable at the time of comparison and no further remediation is required; or

- iv. The contaminant concentration remaining in the area of concern or the site is more than order of magnitude greater than the numerical remediation standard applicable at the time of comparison. Any person who is liable for contamination pursuant to N.J.S.A. 58:10-23.11g may be required to conduct further remediation; and

6. Includes a completed case inventory document prepared pursuant to the Department's Guidance for the Preparation of the Case Inventory Documents. The case inventory document shall be provided at the front of the report.

(b) The documentation required for (a)5 above shall include a table comparing the levels of contaminants remaining in the area of concern, the numerical remediation standards which are contained in the remedial action workplan that was approved by the Department or was prepared by a licensed site remediation professional and the numerical remediation standards applicable at the time of comparison. The table shall contain all sampling results, including, but not limited to, sample location, sample media, field and laboratory identification numbers, method detection limits as necessary, and analytical results for the area of concern.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

In (a)3iv, inserted additional N.J.A.C. references; in (a)4, inserted “, which has not been remediated under Department oversight,”; added (a)5; inserted new (b); and recodified former (b) as (c).

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

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

In (a)5iv, rewrote the last sentence.

Amended by R.2003 d.29, effective February 3, 2003.

See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

In (a)3iii, inserted “(including a bar scale)” following “the scale”.

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

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

Section was “Preliminary assessment”. Rewrote the section.

7:26E-3.3 Site investigation

(a) The purpose of a site investigation is to determine if any contaminants are present at the site, or as necessary, have emanated or are emanating from the site above any of the applicable remediation standards or if no further remediation is required. If such contaminants are present at the site, then additional remediation is necessary.

(b) A site investigation shall be conducted based upon the information collected pursuant to the preliminary assessment requirements in N.J.A.C. 7:26E-3.1 and shall satisfy all of the following requirements:

1. The general sampling requirements in N.J.A.C. 7:26E-3.4;

2. The building interior sampling requirements in N.J.A.C. 7:26E-3.5, if applicable;
3. The soil sampling requirements in N.J.A.C. 7:26E-3.6;
4. The ground water sampling requirements in N.J.A.C. 7:26E-3.7, if applicable;
5. The surface water and sediment sampling requirements in N.J.A.C. 7:26E-3.8, if applicable;
6. The area specific sampling requirements in N.J.A.C. 7:26E-3.9;
7. The background soil sampling requirements in N.J.A.C. 7:26E-3.10, if applicable;
8. The ecological evaluation requirements in N.J.A.C. 7:26E-3.11; and
9. The landfill and historic fill requirements in N.J.A.C. 7:26E-3.12, if applicable.

(c) If required pursuant to an oversight document or other applicable rule, the person responsible for conducting the remediation shall submit reports pursuant to N.J.A.C. 7:26E-3.13 in accordance with the schedules contained in the oversight document or other applicable rule.

(d) The person responsible for conducting the remediation shall conduct a comparison of all site data with the Department's applicable remediation standards, pursuant to the Department's Compliance Guidance, to determine if contaminated areas of concern are present.

(e) The person responsible for conducting the remediation shall complete the site investigation and submit a site investigation report with a Preliminary Assessment/Site Investigation form available from the Department by the later of the following:

1. By November 26, 2010; or
2. Two hundred seventy days after the initiation of remediation, pursuant to N.J.A.C. 7:26C-2.2(b).

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).
See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

In (a), inserted "unrestricted use", substituted "remediation is required" for "action is required" and deleted "prior to a Department determination that no further action is necessary" following "remediation is necessary"; added (b)7 through (b)9; and in (c), amended N.J.A.C. reference.

Amended by R.2003 d.29, effective February 3, 2003.
See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

In (a), inserted " , or, as necessary, have emanated or are emanating from the site" preceding "any of the applicable".
Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).

In (a), deleted "unrestricted use" following "applicable"; in (b)9, inserted "landfill and"; rewrote (d); and added (e).

7:26E-3.4 Site investigation—general sampling requirements

(a) Sampling shall be conducted in all potentially contaminated areas of concern to determine whether or not any contaminants are present above the applicable unrestricted use remediation standard.

1. Sampling shall be biased to the suspected location of greatest contamination.

2. Samples shall be biased based on professional judgment, area history, discolored soil, stressed vegetation, drainage patterns, field instrument measurements, odor, or other field indicators.

3. Sampling locations shall comply with requirements listed in N.J.A.C. 7:26E-3.5 through 3.9.

4. If access to sampling locations required pursuant to N.J.A.C. 7:26E-3.5 through 3.12 is impractical due to physical obstructions or safety hazards, and no practical sampling alternatives are available, the person responsible for conducting the remediation shall provide the rationale for alternative sampling location in the site investigation report.

(b) All sampling methods and laboratory analyses shall be conducted pursuant to N.J.A.C. 7:26E-2.1.

(c) Composite sampling shall not be conducted, except as necessary for waste classification pursuant to N.J.A.C. 7:26G-5.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

In (a), inserted "unrestricted use" and added (a)4.

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), deleted " , whether relating to current or former uses of the site" following "concern"; and rewrote (a)4.

Administrative correction.

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

7:26E-3.5 Site investigation—building interiors

The person responsible for conducting the remediation shall conduct a site investigation of building interiors when contaminants inside the building have the potential to migrate to the environment outside the building or when contaminants outside the building have the potential to migrate into the building. The person responsible for conducting the remediation shall conduct the site investigation of the vapor intrusion pathway required pursuant to this chapter and the Department's Vapor Intrusion Guidance.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

Rewrote section.

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.

7:26E-3.6 Site investigation—soil

(a) The site investigation shall satisfy the following requirements for all soil investigations:

1. A survey for buried drums, tanks or waste using test pits, ground penetrating radar, magnetometry electromagnetics, or other techniques capable of detecting metal containers and other waste to an average depth of 20 feet or deeper shall be conducted if:

- i. There have been any reports of buried drums, tanks or waste;
- ii. Ground water contamination is detected and no source has been identified; or
- iii. Aerial photographic history of the site indicates the presence of drums, tanks or waste in or adjacent to regraded and/or filled areas.

2. Soil samples shall be collected for chemical analysis and to provide a profile of subsurface conditions. The profile shall meet the following:

- i. Logs shall be prepared for all soil samples to document subsurface conditions including, without limitation, soil types and description of non-soil materials, field instrument measurements, depth to ground water, if ground water is encountered and document, if present, soil mottling, presence of odor, vapors, soil discoloration, and free and/or residual product, as determined pursuant to N.J.A.C. 7:26E-2.1(a)14;
- ii. Soil shall be classified according to one of the standard systems (for example, Burmeister, Unified, or United States Department of Agriculture);
- iii. All borings shall be performed in accordance with the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq. In addition, a monitoring well permit shall be obtained from the Department prior to drilling any soil boring greater than 25 feet below grade. For soil borings to a depth of less than 25 feet below grade, the Department recommends soil not be returned to the boring hole. If contaminated materials are returned to the boring hole, then the person responsible for conducting the remediation shall address the presence of this contamination as part of the remedial action workplan; and
- iv. Soil sample locations may be photo-documented.

3. Initial characterization soil samples (except samples being analyzed for volatile organics) shall be collected at zero to six inches below grade except as required pursuant to N.J.A.C. 7:26E-3.9 (Area Specific).

4. All soil samples to be analyzed for volatile organics shall be collected as follows:

i. A bulk sampling device that will collect an intact core (for example, splitspoon) shall be used to minimize contaminant loss during sampling; and

ii. Each core shall be screened with a properly calibrated direct reading instrument equipped with a photoionization detector (PID), flame ionization detector (FID), or other suitable instrument capable of detecting the contaminants pursuant to N.J.A.C. 7:26E-2.1(b) to select samples of volatile organics analysis using the following criteria:

(1) If field measurement readings are detected above background:

(A) The coring shall be extended until either background readings are achieved, groundwater is encountered, or bedrock is encountered; and

(B) An undisturbed sample from the six-inch interval registering the highest field measurement reading shall be collected, at a minimum, using the appropriate sample collection method and sampling device for volatile organics analysis pursuant to the requirements specified in N.J.A.C. 7:26E-2.1(a)4; or

(2) If all intervals register the same field measurement reading or all field measurement readings do not exceed backgrounds:

(A) The coring shall be extended to groundwater, bedrock, or 10 feet, whichever is encountered first; and

(B) One undisturbed sample at a minimum, from the six-inch interval at the bottom of the soil boring shall be collected, using the appropriate sample collection method and sampling device for volatile organics analysis pursuant to the requirements specified in N.J.A.C. 7:26E-2.1(a)4; and

iii. Contaminants that cannot be detected with field-screening instruments shall be sampled in accordance with the requirements at N.J.A.C. 7:26E-3.4(a).

5. In all cases, samples shall be collected in discrete six inch increments. If more or less than a six inch increment is sampled because of poor sample recovery or other field logistical problems, an explanation shall be provided in the soil log.

6. Additional sampling of increments below those specified in (a)3 and 4 above shall be completed in cases where the surface has been regraded or if physical evidence in borings indicate the possible presence of contamination.

7. If the designated soil sampling point is within the saturated zone, a sample of the saturated soil shall be collected, when sample recovery is possible, and analyzed.