

CHAPTER 26E
TECHNICAL REQUIREMENTS
FOR SITE REMEDIATION

Authority

N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., and 58:10B-1 et seq.

Source and Effective Date

R.2003 d.29, effective December 17, 2002.
 See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26E, Technical Requirements for Site Remediation, was extended by gubernatorial directive from December 17, 2007 to December 17, 2009. See: 40 N.J.R. 150(b).

Chapter Historical Note

Chapter 26E, Technical Requirements for Site Remediation, was adopted as R.1993 d.245, effective June 7, 1993 (operative July 1, 1993). See: 24 N.J.R. 1695(a), 25 N.J.R. 2281(b).

Pursuant to Executive Order No. 66(1978), Chapter 26E, Technical Requirements for Site Remediation, was readopted as R.1997 d.124, effective February 18, 1997. As a part of R.1997 d.124, effective May, 19, 1997 (operative July 18, 1997), Subchapter 5, Remedial Alternative Analysis, was repealed and a new Subchapter 5, Remedial Action Selection, was adopted. See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).

Chapter 26E, Technical Requirements for Site Remediation, was readopted as R.2003 d.29, effective December 17, 2002, and Subchapter 8, Engineering and Institutional Controls, was adopted as R.2003 d.29, effective February 3, 2003. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.1 Scope

(a) This chapter constitutes the minimum technical requirements to investigate and remediate contamination at any site.

(b) Any remediation performed pursuant to this chapter shall not relieve any person from:

1. Complying with more stringent requirements or provisions imposed by any other Federal, State or local applicable statutes or regulations; or
2. Obtaining any and all permits required by State, Federal or local statute or regulation, except as expressly provided herein.

(c) No provision of this chapter shall be construed to limit the Department's authority to require additional remediation based upon site-specific conditions in order to protect human health and the environment.

(d) The Department's approval of any document pursuant to this chapter shall not be interpreted as an approval of any remediation costs eligible for reimbursement pursuant to N.J.S.A. 13:1E-116, N.J.S.A. 58:10B-28, or any other law.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Added (d).

7:26E-1.2 Liberal construction

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

7:26E-1.3 Applicability

(a) This chapter establishes the minimum technical requirements that form the basis of the Department's review of the remediation of any contaminated site in New Jersey, including, without limitation, those sites and activities subject to:

1. The Industrial Site Recovery Act (ISRA);
2. The New Jersey Underground Storage of Hazardous Substances Act (UST);
3. The Spill Compensation and Control Act;
4. The Solid Waste Management Act;
5. The Water Pollution Control Act;
6. The Resource Conservation and Recovery Act (RCRA);
7. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.) (CERCLA); and
8. The Brownfield and Contaminated Site Remediation Act.

(b) Any person seeking Department review of work undertaken pursuant to this chapter shall:

1. Execute an oversight document with the Department pursuant to N.J.A.C. 7:26C;
2. Comply with the requirements of N.J.A.C. 7:26B; or
3. Comply with the requirements of N.J.A.C. 7:14B.

(c) The requirements of this chapter are applicable as follows:

1. For any site at which a particular phase of remediation was commenced prior to July 1, 1993, the Department shall evaluate such work to determine whether the work is in substantial compliance with this chapter, as originally adopted effective June 7, 1993 (see 25 N.J.R. 2881(b)), and therefore acceptable to the Department.
2. Any work conducted after February 3, 2003 shall be in full compliance with this chapter, except that work conducted pursuant to workplans which were submitted to the Department prior to February 3, 2003 may be conducted pursuant to N.J.A.C. 7:26E in effect as of August 2, 1999, as long as work is conducted within six months of Department approval of the workplan.

(d) The person responsible for conducting the remediation of a site shall remediate:

1. To meet the remediation standards at N.J.A.C. 7:26D and the impact to groundwater soil remediation standards set by the Department for a particular site pursuant to its authority under N.J.S.A. 58:10B-12a; or

2. To meet the standards or criteria developed by the Department under N.J.S.A. 58:10B-12a for that site prior to June 2, 2008, provided:

i. A remedial action workplan or a remedial action report containing standards or criteria developed for the site under N.J.S.A. 58:10B-12a is submitted to the Department before December 2, 2008;

ii. The remedial action workplan or a remedial action report meets the requirements of N.J.A.C. 7:26E-6; and

iii. The standards or criteria developed by the Department under N.J.S.A. 58:10B-12a for the site are not greater by an order of magnitude or more, than the remediation standards otherwise applicable under N.J.A.C. 7:26D.

(e) All applicable remediation standards and remedial actions that involve real property located in the Pinelands area shall be consistent with the provisions of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. and any rules promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 4711.

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)1, substituted "Industrial Site Recovery Act (ISRA)" for "Environmental Cleanup and Responsibility Act (ECRA)"; added (a)6 through (a)8; subdivided (c), inserting the introductory paragraph; in (c)1, substituted "shall evaluate" for "may evaluate" and inserted reference to original adoption; added (c)2; and added (d).

Administrative correction.

See: 29 N.J.R. 2664(b).

In (c)2, in the second clause, changed "May 19, 1997" to "July 18, 1997".

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

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

Rewrote (a)8.

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

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

In (c)2, substituted "February 3, 2003" for "July 18, 1997" throughout, and substituted "in effect as of August 2, 1999" for "as originally adopted".

Amended by R.2008 d.144, effective June 2, 2008.

See: 39 N.J.R. 1574(a), 39 N.J.R. 2307(a), 40 N.J.R. 3187(a).

Added new (d); and recodified former (d) as (e).

7:26E-1.4 Notification and public outreach

(a) Immediately after a discharge commences, any person or persons responsible for a discharge who knows or should reasonably know of a discharge shall immediately notify the Department by following the requirements of the Discharge of Petroleum and Other Hazardous Substances rules at N.J.A.C. 7:1E-5.3.

(b) The person responsible for conducting the remediation shall immediately notify the assigned Department case manager, or the hotline at 1-877 WARNDEP or 1-877-927-6337 if a case manager for the site has not been assigned or the case manager is unavailable when:

1. Contamination is identified that has been caused by a discharge that is not already known to the Department; or

2. Immediate environmental concern conditions are identified at a contaminated site.

(c) The person responsible for conducting the remediation shall notify the Department pursuant to this subsection if that person determines that contamination migrated onto the site from another site. The person responsible for conducting the remediation shall notify the assigned case manager, or if a case manager for the site has not been assigned, the hotline at 1-877 WARNDEP or 1-877-927-6337.

(d) The person responsible for conducting the remediation shall provide a copy of the remedial action workplan and any updates or status reports to the municipality in which the site is located, when requested by the municipality.

(e) The person responsible for conducting the remediation of an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential dwelling or the person responsible for conducting an emergency response action shall comply with the notification requirements of (a) through (c) above and (l) below only.

(f) Except as provided in (e) above, the person responsible for conducting the remediation shall identify sensitive populations and resources located within 200 feet of the site boundary as follows:

1. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multiphase remediation or initiating a single phase remediation, identify all of the following sensitive populations and resources that are located within 200 feet of the site boundary and record this information on the Sensitive Population and Resource Checklist provided by the Department at <http://www.nj.gov/dep/srp/community>:

- i. Residences;
- ii. Potable wells;
- iii. Public and private schools that teach students in any of the grades kindergarten through twelve;
- iv. Child care facilities;
- v. Public parks and playgrounds;
- vi. Surface water; and
- vii. Tier 1 well-head protection areas. This information is available at www.state.nj.us/dep/njgs/geodata/dgs02-2md.htm;

2. Determine if the site is located in a municipality where an Environmental Justice Petition neighborhood has been designated by either EPA or the New Jersey Environmental Justice Task Force. This information is available at www.nj.gov/dep/ej;

3. Determine if a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the property boundary and record this information on the Sensitive Population and Resource Checklist pursuant to (f)1 above;

4. Generate a scaled map, in hard copy or electronic form, that shows the location of the site and the location of each sensitive population and resource identified pursuant to (f)1 above. The Department prefers electronic maps and it prefers that electronic maps be compatible with the New Jersey Department of Environmental Protection "Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards" outlined in N.J.A.C. 7:1D, Appendix A. The Department's website at <http://www.state.nj.us/dep/GIS/newmapping.htm> provides user guidance and links to internet mapping applications and data downloads; and

5. No later than two weeks prior to either initiating the field activities associated with the remedial investigation of a multi-phase remediation or initiating a single phase remediation, submit a paper copy and an electronic copy (disk or CD) of the completed Sensitive Population and Resource Checklist and the map generated pursuant to (f)4 above to the following:

i. The Department case manager. If a case manager for the site has not been assigned, a copy of the Sensitive Population and Resource Checklist shall be submitted as part of the remedial investigation report or remedial action report required by this chapter. The submission to the Department shall include documentation that the Checklist and map was sent to the municipal clerk and the designated health official;

ii. The DEP Office of Community Relations at the following address:

Division of Remediation Support
New Jersey Department of Environmental
Protection
401 East State Street, 6th Floor
P.O. Box 413
Trenton, NJ 08625-0413
Attention: Office of Community Relations;

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

iv. The designated local health official.

(g) Except as provided in (e) above, the person responsible for conducting the remediation shall provide public notice, either by posting a sign pursuant to (h) below or by sending periodic notification letters pursuant to (i) below, as follows:

1. All public notices, whether in the form of a sign or a notification letter, shall be in English. Additionally, where, pursuant to (f) above, the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, notice shall also be provided in the non-English language; and

2. The person responsible for conducting the remediation may, at any time, change the form of notification pursuant to this subsection from posting a sign pursuant to (h) below to sending periodic notification letters pursuant to (i) below, or from sending notification letters pursuant to (i) below to posting a sign pursuant to (h), below.

(h) If the person responsible for conducting the remediation chooses to provide public notice by posting a sign, the following shall apply:

1. A minimum of one sign shall be posted so that it is clearly visible to the public;

2. The sign shall be posted as follows:

i. No later than two weeks prior to either initiating field activities associated with a remedial investigation of a multi-phase remediation or initiating a single phase remediation; or

ii. For sites where the remedial investigation or single phase remediation was initiated prior to September 2, 2008, no later than September 2, 2009;

3. The sign shall remain posted and shall be maintained so that it is legible at all times, until such time as the Department issues a No Further Action and Covenant Not to Sue letter pursuant to N.J.A.C. 7:26C;

4. The sign shall be at least two feet by three feet in size and shall include the following wording, printed in font that is of sufficient size to be readable from the street or sidewalk:

i. "Environmental Investigation/Cleanup In Progress at This Site";

ii. "For Further Information Contact. . ." followed by the telephone number for the person responsible for conducting the remediation and the telephone number for Department's Office of Community Relations, which is posted on the Department's website at www.state.nj.us/dep;

iii. The Department's Preferred ID, as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report or the valid EPA site identification number. If neither number is available, the number provided by the Department's hotline may be substituted (1-877 WARNDP or 1-877-927-6337); and

iv. "Posted on," followed by the date the sign was posted;

5. Within two weeks after the sign is posted, the person responsible for conducting the remediation shall submit the site information required at (i)4 below, and a photograph of the sign showing its location and content in both electronic/digital format and in hard copy to:

i. The assigned case manager. If a case manager for the site has not been assigned, include a copy of the photograph as part of the remedial investigation report or remedial action report required by this chapter;

ii. The Department's Office of Community Relations at the address provided in (f)5ii above;

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

iv. The designated local health official; and

6. The person responsible for conducting the remediation shall comply with all local laws and requirements relevant to the posting of signs.

(i) If the person responsible for conducting the remediation chooses to provide public notice by sending notification letters, the following shall apply:

1. Notification letters shall be sent:

i. No later than two weeks prior to either initiating field activities associated with a remedial investigation of a multi-phase remediation or initiating a single phase remediation; or

ii. For sites where the remedial investigation or single phase remediation was initiated prior to September 2, 2008, no later than September 2, 2009.

2. Additional notification letters that reflect the current condition and progress of the remediation shall be sent every two years after the initiation of the single phase remediation or the remedial action until a No Further Action and Covenant Not to Sue letter is issued by the Department pursuant to N.J.A.C. 7:26C, or on a schedule approved by the Department.

3. The notices prepared pursuant to (i)1 and 2 above shall be sent to the following persons by certified mail or by using the certificate of mailing service:

i. Each owner of all real property, as shown on the current municipal tax duplicate, and tenants of those properties, located within 200 feet of the site boundary; and

ii. The administrator of each school and child care facility identified in the sensitive population and resource checklist required pursuant to (f) above.

4. The notice shall include the following site information:

i. The name and address of the site;

ii. The tax block(s) and lot(s);

iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the number provided by the Department's hotline may be substituted (1-877 WARNDEP or 1-877-927-6337);

iv. A statement that contamination has been identified;

v. A brief description of the type of contamination in common language, the affected environmental media and action(s) being taken at the site;

vi. Contact information for the person responsible for conducting the remediation and for the Department's Office of Community Relations; and

vii. A statement that the person responsible for conducting the remediation will provide a copy of all environmental reports to the municipality upon the municipality's request.

5. Each time notification letters are sent, the person responsible for conducting the remediation shall submit an electronic copy and a paper copy of one notification letter and list of recipients to the following:

i. The assigned case manager. If a case manager for the site has not been assigned, include a copy of the notification letter and list of recipients as part of the remedial investigation report or remedial action report required by this chapter;

ii. The Department's Office of Community Relations at the address provided in (f)5ii above;

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

iv. The designated local health official.

(j) If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements or to construct the engineering controls approved by the Department in either a remedial action workplan pursuant to N.J.A.C. 7:26C-8 or a landfill closure plan pursuant to N.J.A.C. 7:26-2A.9, the person shall:

1. Send a notification letter to each of the following persons by certified mail or by using the certificate of mailing service:

i. Each owner of real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary;

- ii. The mayor of each municipality where the site located;
 - iii. The county designated solid waste coordinator;
 - iv. The designated local health official; and
 - v. The assigned case manager. If a case manager for the site has not been assigned, to the Department's Office of Community Relations at the address provided in (f)5ii, above; and
2. Include the following in the additional notification:
- i. A description of the proposed use of contaminated material at the site;
 - ii. The concentrations of contaminants in the material;
 - iii. The amount of material proposed to be brought on to the site;
 - iv. The controls designed to reduce or eliminate exposure to the contamination; and
 - v. A tentative schedule for the activity.
- (k) Except as provided in (e) above and (l) and (m) below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute and publish a fact sheet as follows:
1. The fact sheet shall be prepared and distributed:
 - i. Within two weeks after the determination that contamination has migrated off site; or
 - ii. For sites where contamination has migrated off site prior to September 2, 2008, no later than September 2, 2009;
 2. The fact sheet shall be updated and redistributed with the relevant information regarding the extent of the contamination at the completion of the remedial investigation, when the extent of contamination has been determined;
 3. The fact sheet and any updates shall be distributed by certified mail or by using the certificate of mailing service, to each owner of all real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary;
 4. The fact sheet and any updates shall be in English. Additionally, where, pursuant to (f) above, the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners and tenants in the area within 200 feet of the site boundary, the fact sheet and any updates shall also be provided in the non-English language;
 5. The fact sheet shall include the following information:
 - i. The name and address of the site;
 - ii. The tax block(s) and lot(s);
 - iii. The Department's Preferred ID number as provided in the most recent edition of the "Department's Known Contaminated Sites in New Jersey" report found at <http://www.nj.gov/dep/srp/kcs-nj/>, or the valid EPA site identification number. If neither number is available, the number provided by the Department's hotline may be substituted 1-877 WARNDP or 1-877-927-6337;
 - iv. A description of the commercial and industrial history of the site based on information gathered during the preliminary assessment conducted pursuant to N.J.A.C. 7:26E-3.1(c);
 - v. A description of contamination including:
 - (1) The contaminants of concern;
 - (2) The affected environmental media;
 - (3) Contaminant concentrations;
 - (4) The remediation standard applicable to each contaminant;
 - (5) The extent of contamination;
 - (6) The date contamination was identified;
 - (7) The source of contamination; and
 - (8) A list of online resources for information about the contaminants;
 - vi. A description of the actions performed to minimize the impact to the public;
 - vii. The date that the fact sheet was prepared;
 - viii. Contact information for the person responsible for conducting the remediation; and
 - ix. Contact information for the Department's Office of Community Relations, at the address provided in (f)5ii above;
 6. Within four weeks of the discovery of off-site contamination, the person responsible for conducting the remediation shall:
 - i. Publish the fact sheet prepared pursuant to (k) above as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site; and
 - ii. Submit a copy of the fact sheet, a list of persons to whom the fact sheet was mailed pursuant to (k)3 above, and a copy of the display advertisement to:
 - (1) The assigned case manager. If a case manager for the site has not been assigned, include a copy of the fact sheet, list of recipients and a copy of the

display advertisement as part of the remedial investigation report or remedial action report required by this chapter;

(2) The Department's Office of Community Relations at the address provided in (f)5ii above;

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

(4) The designated health official; and

7. Within four weeks after the horizontal and vertical extent of contamination has been determined pursuant to N.J.A.C. 7:26E-4.1, the person responsible for conducting the remediation shall:

i. Publish an updated fact sheet prepared pursuant to (k)2 above, as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site; and

ii. Submit a copy of the fact sheet, a list of persons to whom the fact sheet was mailed pursuant to (k)3 above, and a copy of the display advertisement to:

(1) The assigned case manager. If a case manager for the site has not been assigned, include a copy of the fact sheet, list of recipients and a copy of the display advertisement as part of the remedial investigation report or remedial action report required by this chapter;

(2) The Department's Office of Community Relations at the address provided in (f)5ii above;

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

(4) The designated local health official.

(l) If the contamination has only affected one adjoining property and the affected contaminated medium is limited to the soil, the person responsible for conducting the remediation shall notify only that adjoining property owner and tenant in writing via certified mail or by using the certificate of mailing service. The notice shall describe the nature and extent of the contamination.

(m) If contamination migrates off site and the affected media is limited to historic fill, the person responsible for conducting the remediation is exempt from the requirements of (k) above.

(n) The person responsible for conducting the remediation who is performing the remediation with the Department's oversight in accordance with N.J.A.C. 7:26C may propose a plan for public notice and outreach as an alternative to (h) or (i) above. The alternative plan shall be submitted to the assigned case manager and Department's Office of Community Relations at the address in (f)5ii above for the Department's review.

1. If the Department determines that the application is complete and that the proposed alternative plan provides adequate public notice, the Department will provide the person responsible for conducting the remediation with a written approval of the alternative plan; or

2. If the Department determines that the application is deficient, the Department will provide written comments to the person responsible for conducting the remediation describing the deficiencies in the application, in which case the person may submit a revised application addressing the deficiencies to the Department.

(o) The person responsible for conducting the remediation shall conduct additional public outreach if the Department determines that additional outreach is needed due to site-specific circumstances, or when the Department determines that there is substantial public interest in remediation activities concerning a contaminated site.

1. The Department may determine that there is substantial public interest when it receives:

i. A petition containing the signatures of 25 or more people who live or work within 200 feet of the site, if contamination has not migrated off site;

ii. A petition containing the signatures of 25 people that live or work within 200 feet of the extent of contamination, if contamination has migrated from the site boundary; or

iii. A written request by a municipal official, such as the mayor or the chairperson of an environmental commission, or a designated local health official.

2. When the Department determines that there is substantial public interest, the Department shall notify the person responsible for conducting the remediation and post a summary of this determination on the Department's web site at www.state.nj.us/dep; and

3. The person responsible for conducting the remediation shall develop and implement additional public outreach based on the needs expressed by the community. The outreach may include the following:

i. Publicizing and hosting an information session or public meeting;

ii. Publishing a notice containing basic information about the site in the local paper of record; or

iii. Establishing a local information repository.

(p) The notifications required pursuant to this section are not intended to satisfy the public participation requirements applicable to sites subject to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., and the National Contingency Plan regulations, 40 CFR Part 300.

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

1. Submit copies of all final reports or workplans for preliminary assessments, site investigations, remedial investigations and remedial actions to the Pinelands Commission concurrently with submission of such documents to the Department;
2. Submit, for approval, a copy of the remedial design and construction documents and a completed Pinelands application to the Pinelands Commission prior to implementing a remedial action; and
3. Not commence any construction activity at the site until the Pinelands Commission approves the remediation in writing; and
4. Send the information required pursuant to this subsection to the Pinelands Commission at the following address:

The Pinelands Commission
P.O. Box 7
15 Springfield Road
New Lisbon, NJ 08064

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)1, inserted "contaminated"; added (a)2; recodified former (a)2 as (a)3; in (b), inserted first two sentences; inserted new (c); recodified former (c) and (d) as (d) and (e), and inserted new (d)3, 9 and 10; recodified former (d)3 through 7 as (d)4 through 8; in (e), deleted "and (b)" following "pursuant to (a)", inserted "assigned case manager ... assigned, to the", and amended address; and added (f) through (h).

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), rewrote the introductory paragraph.

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

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

In (d)3 and (h), changed the hotline for the department.

Administrative correction.

See: 35 N.J.R. 1928(a).

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

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

Section was "Notification". Rewrote the section.

7:26E-1.5 Certifications

(a) If a document prepared pursuant to this chapter is to be submitted to the Department, it shall be signed and certified pursuant to N.J.A.C. 7:26C, 7:26B or 7:14B.

7:26E-1.6 Documenting compliance with the technical requirements

(a) All work being conducted at a site pursuant to this chapter, whether or not being done with Department oversight, shall be documented and included in reports which follow the format and contain the information required pursuant to the reporting sections of N.J.A.C. 7:26E-2 through 8. If a report has already been submitted to the Department pursuant

to another Department regulatory program, including, but not limited to, N.J.A.C. 7:14B, 7:26B or 7:26C, then a summary of what was included in the previously submitted report may be submitted. The summary shall include a reference to the Department program to which the report was submitted and the date that it was submitted. Any reports prepared pursuant to this chapter may be combined into a single report.

(b) When the remediation is conducted with Department oversight, the person responsible for conducting the remediation shall submit workplans (if applicable) and reports in a timely manner pursuant to the schedule contained in the oversight document which the person executed with the Department pursuant to N.J.A.C. 7:26C, or as the Department requires pursuant to ISRA or UST. The workplan and/or report shall comply with the format and contain the information required pursuant to N.J.A.C. 7:26E-2 through 8.

(c) In order to provide flexibility in the technical requirements for site remediation described in this chapter, the Department has identified certain limited situations, as specified through this chapter, when alternate sampling, analytical, or investigatory methods may be used without Department pre-approval.

1. Such alternate methods may be used if the person responsible for conducting the remediation documents in the applicable remedial phase report (that is, preliminary assessment, site investigation, remedial investigation, remedial action) rationale acceptable to the Department for using the alternate method.

2. The Department will review the documentation, either as part of the Department's oversight during the remediation or at a later time when the site becomes a Department priority for site remediation.

3. The Department will evaluate the alternate method in terms of its site-specific application, based upon the documentation provided and other appropriate information available to the Department, in terms of the extent to which the alternate method:

- i. Has previously been either used successfully or approved by the Department in writing in other similar situations; or
- ii. Reflects current technology as documented in peer-reviewed professional journals; and
- iii. Provides results which are verifiable and reproducible;
- iv. Can be expected to achieve the same results or objectives as the method which it proposes to replace;
- v. Furthers the attainment of the goals of the specific remedial phase for which it is used; and
- vi. Is consistent with the overall scheme of this chapter to ensure the remediation of contaminated sites in a manner which is protective of human health and the environment.

(d) Any person responsible for conducting the remediation may petition the Department for a variance from any of the requirements in N.J.A.C. 7:26E-2 through 6 inclusive pursuant to the procedural criteria in (d)1 and the substantive criteria in (d)2, below. The petition shall include a request for use of an alternative approach to be utilized in place of the requirement for which the variance has been requested. The variance is not effective until it has been approved by the Department. The decision as to whether or not to grant the variance rests solely with the Department. A variance petition may be submitted within an oversight document executed in accordance with N.J.A.C. 7:26C, or pursuant to the program requirements of N.J.A.C. 7:26B or N.J.A.C. 7:14B. The Department shall make reasonable efforts to provide timely responses to variance petitions.

1. To petition for a variance from a requirement in N.J.A.C. 7:26E-2 through 6, the petitioner shall submit the following information to the Department at the address in the applicable oversight document or in accordance with the program requirements of N.J.A.C. 7:26B or N.J.A.C. 7:14B prior to the utilization of the alternate approach:

- i. The name and address of the person submitting the petition;
- ii. The name and address of the person conducting the remediation;
- iii. The names and addresses of the owner(s) and occupant(s) of the site which is the subject of the variance;
- iv. The street address and all tax block and lot numbers of the site which is the subject of the variance;
- v. A description of the proposed alternate approach and applicable N.J.A.C. 7:26E citation;
- vi. A description of site specific conditions applicable to the variance;
- vii. The technical basis for the variance pursuant to (c) above; and
- viii. Any other information or data the Department requests to thoroughly evaluate the petition.

2. The Department will evaluate the petition for a variance from the requirements of N.J.A.C. 7:26E-2 through 6 according to the same criteria as those listed in (c) above for approval of alternate methods.

3. Verbal variances may be granted pursuant to N.J.A.C. 7:26E-3.4(a)4.

(e) The person responsible for conducting the remediation shall have a continuing obligation to ensure that the Department receives all complete, accurate and relevant information regarding remediation at the site.

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 (b), deleted N.J.A.C. reference and substituted "ISRA" for "ECRA"; in (d), substituted "A variance petition may be submitted within" for "The

Department will review a petition for a variance pursuant to" and added the last sentence; in (d)1, inserted N.J.A.C. reference; and added (d)3 and (e). Amended by R.1999 d.241, effective August 2, 1999.

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

In (b), inserted "in a timely manner" following "reports" in the first 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) and (b), amended the N.J.A.C. references.

7:26E-1.7 Criteria for going beyond the minimum technical requirements

(a) The Department may require additional work beyond the minimum technical requirements set forth in this chapter for whenever necessary for the Department to ensure adequate protection of human health and the environment based upon a review of the following areas:

- 1. The number or magnitude of the discharge(s) being investigated;
- 2. The nature of the substances discharged;
- 3. A change in the certification or other authorization of the laboratory performing analyses previously submitted for the site in question or any other site;
- 4. The identification of additional exposure pathways not otherwise fully investigated pursuant to the minimum requirements;
- 5. The identification of additional receptors not otherwise fully investigated pursuant to the minimum requirements;
- 6. Distance to and sensitivity of receptors;
- 7. When the Department determines that additional data or information is needed to fully evaluate the site; and
- 8. Any other site-specific conditions the Department identifies which necessitate the need for additional work.

7:26E-1.8 Definitions

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

"Acid extractable organic compounds" means semivolatle compounds amenable to analysis by extraction of the sample with a pH acidic organic solvent. For the purposes of this chapter, analysis of acid extractable organic compounds means the analysis of a sample for either:

- 1. Those priority pollutants listed as acid compounds in Appendix B, Table II of N.J.A.C. 7:14A; or
- 2. Those target compound list compounds which are phenol and phenolic compounds under the listing of semivolatle compounds 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.

“Active ground water remediation” means any form of ground water remediation which requires physical action to alter the nature of the impacted aquifer for the purposes of achieving applicable remediation standards. Active ground water remediation includes, but is not limited to, pumping that consistently depresses the water table over an areal extent, air sparging, and bioremediation involving the addition of nutrients and/or organisms below the water table.

“Aquifer” means “aquifer” as defined in the Ground Water Quality Standards, N.J.A.C. 7:9C-1.4.

“Area of concern” means any existing or former location where hazardous substances, hazardous wastes, or pollutants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, disposed, or where hazardous substances, hazardous wastes, or pollutants have or may have migrated, including, but not limited to, all current and former:

1. Bulk storage tanks and appurtenances, including, without limitation:
 - i. Tanks and silos;
 - ii. Rail cars;
 - iii. Piping, above and below ground pumping stations, sumps and pits; and
 - iv. Loading and unloading areas;
2. Storage and staging areas, including:
 - i. Storage pads and areas;
 - ii. Surface impoundments and lagoons;
 - iii. Dumpsters; and
 - iv. Chemical storage cabinets or closets;
3. Drainage systems and areas, including, without limitation:
 - i. Building floor drains and piping, sumps and pits, including trenches and piping from sinks that potentially receive process waste;
 - ii. Roof leaders (when process operations vent to roof);
 - iii. Drainage swales and culverts;
 - iv. Storm sewer collection systems;
 - v. Storm water detention ponds and fire ponds;
 - vi. Surface water bodies;
 - vii. Leach fields; and
 - viii. Dry wells and sumps;
4. Discharge and disposal areas, including, without limitation:
 - i. Areas of discharges pursuant to N.J.A.C. 7:1E;
 - ii. Waste piles as defined by N.J.A.C. 7:26;
 - iii. Waste water treatment, collection and disposal systems, including, without limitation, septic systems, seepage pits and dry wells;
 - iv. Landfills;
 - v. Landfarms;
 - vi. Sprayfields;
 - vii. Incinerators; and
 - viii. Historic fill material areas or any other fill material areas;
5. Other areas of concern, including, without limitation:
 - i. Electrical transformers and capacitors;
 - ii. Hazardous materials storage or handling areas;
 - iii. Waste treatment areas;
 - iv. Discolored areas or spill areas;
 - v. Open areas away from production operations;
 - vi. Areas with stressed vegetation;
 - vii. Other discharge areas;
 - viii. Underground piping including industrial process sewers;
 - ix. Compressor vent discharges;
 - x. Non contact cooling water discharges;
 - xi. Areas that may have received floodwater or stormwater runoff from potentially contaminated areas; and
 - xii. Any other area suspected of containing contaminants;
6. Environmental media at a site, including:
 - i. Ground water, including, without limitation, present or past regulated activities under the New Jersey Pollutant Discharge Elimination System (NJPDES) Discharge to Ground Water regulations, N.J.A.C. 7:14A, including: seepage pits; dry wells; lagoons; and septic systems which received industrial waste;
 - ii. Surface water, including, without limitation, all surface water areas and associated sediment which receive or may have received any point or non-point source discharge from the site; and
 - iii. Soil, pursuant to a Department approved work plan or report.

“Background ground water contamination” means concentrations of hazardous substances, hazardous waste and pollutants in ground water that originated from either natural

sources (that is, non-man-made) or upgradient, offsite discharges (that is, man-made, non-site-related discharges). Background ground water contamination may include, but is not limited to, the same contaminants present both on the site and off the site at upgradient locations, or parent contaminants detected off the site at upgradient locations and daughter products of these parent contaminants detected on the site.

“Base neutral organic compound” means semivolatile compounds amenable to analysis by extraction of the sample with a pH neutral and a pH basic organic solvent. For the purposes of this chapter, analysis of base neutral organic compounds means the analysis of a sample for either:

1. Those priority pollutants listed as base neutral compounds in Appendix B, Table II of N.J.A.C. 7:14A; or
2. Those target compound list compounds identified as semivolatiles except phenol and phenolic compounds 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.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.).

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

“Containment” or “containment activities” means actions to limit or prevent discharges or the spread of contamination.

“Contaminated site” means all portions of environmental media at a site and any location where contamination is emanating, or which has emanated, therefrom, that contain one or more contaminants at a concentration which fails to satisfy any applicable remediation standard.

“Contamination” or “contaminant” means any discharged hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant as defined pursuant to N.J.S.A. 58:10A-3.

“Contract laboratory program” or “CLP” means a program of chemical analytical services developed by the EPA to support CERCLA.

“Damages” means the amount of money the Department has determined is necessary to restore, rehabilitate, replace or otherwise compensate for the injury to natural resources as a result of a discharge.

“Deed notice” means a document which is identical in wording to N.J.A.C. 7:26E, Appendix E and which provides notice of the following for a specific real property:

1. That the contamination on the real property exists at a level above the applicable unrestricted use soil remediation standards;
2. The restrictions to the applicable property due to contamination; and
3. The engineering controls applicable to the property.

“Department” means the New Jersey Department of Environmental Protection.

“Department certified laboratory” means a laboratory that is currently certified pursuant to N.J.A.C. 7:18, the Regulations Governing Laboratory Certification and Standards of Performance, to perform laboratory analyses for a specific certification category and a specific parameter within the certification categories.

“Diligent inquiry” means:

1. Conducting a diligent search of all documents which are reasonably likely to contain information related to the object of the inquiry, which documents are in such person’s possession, custody or control, or in the possession, custody or control of any other person from whom the person conducting the search has a legal right to obtain such documents; and
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.

“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.

“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, groundwater monitoring systems and groundwater containment systems including, without limitation, slurry walls and groundwater 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.

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

“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)11.

“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.

“Groundwater use area” means any area, as determined by a well search conducted pursuant to N.J.A.C. 7:26E-3.7(e)3 and an evaluation of the current and potential groundwater 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. 7:26-8.

“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 which poses an acute threat to human health or a direct threat to the drinking water of the State including, but not limited to:

1. Dermal contact, inhalation or ingestion of contaminated materials;
2. Potable water supplies contaminated above the applicable drinking water standard; and
3. Contaminants which are confirmed to exist in an occupied or confined space, producing a toxic or harmful gas resulting in a potential for an acute short-term human health exposure, or producing an oxygen deficient atmosphere, or resulting in demonstrated physical damage to essential underground services.

“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.

“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.

“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 that based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations.

“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.

“Oversight document” means any document defined as an oversight document pursuant to N.J.A.C. 7:26C.

“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 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” includes any person who executes or is otherwise subject to an oversight document, and any person who is performing the remediation or has control over the person (for example, contractor or consultant) who is performing the remediation, including, without limitation, an owner or operator who is subject to either ISRA or UST.

“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.

“Priority pollutant plus 40” or “PP + 40” means the priority pollutant list of 126 compounds and elements developed by the EPA pursuant to Section 307(a)(1) of the Clean Water Act and 40 non-targeted organic compounds detected by gas chromatography/mass spectroscopy (GC/MS) analysis. For the purposes of this chapter, a PP + 40 scan means the analysis of a sample for all priority pollutants except asbestos and 2,3,7,8-tetra-chloro-dibenzo-p-dioxin, and up to 15 non-targeted volatile organic compounds and up to 25 non-targeted semivolatile organic compounds as analyzed using GC/MS analytical methods. Non-targeted compound criteria shall be used pursuant to the version of the EPA “Contract Laboratory Program Statement of Work for Organic Analysis, Multi-media, Multi-concentration” in effect as of the date which the laboratory is performing the analysis.

“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 costs” means all costs associated with the development and implementation of a remedial action including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, natural resource damages, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and legal, administrative and capital costs associated with the placement of institutional controls on a property. Remedial action costs shall be expressed as net present worth of all such costs over time by discounting all future costs to the current calendar year. The discount rate to be used for all present worth analyses shall be the current rate as specified by the EPA at the time of remedial action selection and shall be applied before taxes and after inflation. The period of performance for present worth costing analyses shall not exceed 30 years.

“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 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) 11.

“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.

“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 either:

1. Those priority pollutants listed as base neutral and acid compounds in Appendix B, Table II of N.J.A.C. 7:14A; or
2. 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 assessment. 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.

“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 that, except for immediate environmental concern cases, the person responsible for conducting the remediation completes the remedial activities at a contaminated site or area of concern either:

1. Within five years, if soil is the only contaminated media at the site and the remediation will achieve unrestricted or limited restricted use standards; or
2. In compliance with a remedial action schedule approved in writing by the Department.

“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 either those priority pollutants listed as amenable for analysis using EPA method 624 or 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).

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 Envtl. 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 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.

7:26E-1.10 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.

7:26E-1.11 Bias for action

(a) As a first priority, the person responsible for conducting the remediation shall implement an interim response action to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors.

(b) If an immediate environmental concern (IEC) condition is identified at a site, the person responsible for conducting the remediation shall conduct the following interim response actions:

1. Notify the Department pursuant to N.J.A.C. 7:26E-1.4(a) and (b) as appropriate;

2. Immediately stabilize the IEC condition with Department oversight pursuant to N.J.A.C. 7:26C; and

3. When potable water sources have been impacted by contamination at levels above the ground water remediation standards at N.J.A.C. 7:26D-2, treat the contaminated drinking water to a point at which the contaminant levels do not exceed the ground water remediation standards, or provide an alternative water supply.

(c) The person responsible for conducting the remediation shall submit written documentation to the Department of all interim response actions conducted in compliance with (a) or (b) above within 14 days of initiating each such action.

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.

7:26E-1.12 Requirement for Department oversight of remediation

(a) The person responsible for conducting the remediation shall investigate and remediate contaminated sites with Department oversight as specified in N.J.A.C. 7:26C and, in addition, in the following circumstances:

1. Sites suspected or known to be contaminated with anthropogenic radionuclide contamination of any media; and
2. Sites with immediate environmental concern conditions.

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).

7:26E-1.13 (Reserved)

New Rule, R.2003 d.29, effective February 3, 2003.

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

Administrative correction.

See: 35 N.J.R. 1928(a).

Administrative correction.

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

Repealed by R.2008 d.144, effective June 2, 2008.

See: 39 N.J.R. 1574(a), 39 N.J.R. 2307(a), 40 N.J.R. 3187(a).

Section was "Minimum groundwater and surface water remediation standards".

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

- iv. For the analysis of aqueous and non-aqueous samples for parameters or categories of parameters not contained in (a)li 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)li through iii above, the procedures in N.J.A.C. 7:18 shall be followed.

2. The Department shall reject analytical data as follows:

- i. For laboratories performing analyses pursuant to (a)li 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)lii 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)liii 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 solution within 48 hours of sampling need not be preserved in the field.

5. If an analytical method as described in (a)3 above does not exist for a specific contaminant or parameter within a specific matrix, or if an analytical method as described in (a)3 above for a given contaminant or parameter is demonstrated to be inappropriate for the matrix analyzed, then the person responsible for conducting the remediation shall:

i. Select an appropriate method from another source;

ii. Document the rationale for selecting the method pursuant to N.J.A.C. 7:26E-1.6(c); and

iii. Develop a standard operating procedure for the method, including a quality control section.

6. If analytical methods are not available for a contaminant, analysis of indicator parameters (for example, pH may be used as an indicator parameter for acid or base discharges) may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

7. Laboratories shall follow all quality assurance/quality control procedures specified in the analytical methods.

8. For solid sample analysis, including without limitation, soils and sediments, all results shall be reported on a dry weight basis, except for those results required by the method to be otherwise reported.

9. Sample matrix cleanup methods shall be performed if:

i. Petroleum contaminated soils, sediments, or other solids are analyzed for semivolatile organics, and the method detection limits are elevated above the applicable remediation standard because of matrix interference;

ii. Gas chromatographic peaks are not adequately separated due to matrix interference. A peak shall be considered inadequately separated when a rise in baseline or extraneous peaks interferes with:

(1) The instrumental ability to correctly identify compounds present (including internal standards and surrogates); and/or

(2) The integration of peak area and subsequent quantification;

iii. So specified by the analytical method; or

iv. Matrix interferences prevent accurate quantification and/or identification of target compounds.

10. Acceptable matrix cleanup methods include, without limitation, those methods contained in the EPA Publication SW846 or the EPA "Contract Laboratory Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date of sample analysis.

11. Methods acceptable to the Department shall be utilized for the determination of the presence of free and/or residual product in soil or water. Such methods include, without limitation, visual identification of sheens or other visible product, measurable thickness of product on the water table, the use of field instruments, ultraviolet fluorescence, soil-water agitation, centrifuging, and hydrophobic dye testing.

i. For contaminants that in their pure phase and at standard state conditions (20 degrees Celsius to 25 degrees Celsius and one atmosphere pressure) have densities greater than water, free and/or residual product shall be considered to be present if the contaminant is detected in ground water at concentrations equal to or greater than one percent of the water solubility of the contaminant if ground water contains only that organic contaminant. If a mixture of such contaminants is present, then the effective water solubility of the contaminant shall be estimated for this determination.

12. Gas chromatography methods with a mass spectrometer detector system shall be used for analysis of volatile/semi-volatile contaminants (exclusive of herbicides, pesticides, and PCBs). Chromatography methods with a mass spectrometer detector system shall be used for the analysis of organic analytes amenable only to non-gas chromatographic methods. A mass spectrometer detector system is not required if:

i. Contaminant identity is known;

ii. The contaminant chromatographic peak is adequately resolved from any other peak. A peak is considered adequately resolved when:

(1) Adjacent or coeluting chromatographic peaks do not result in retention time shifts causing misidentification;

(2) Coeluting chromatographic peaks do not interfere with quantification of the contaminant's chromatographic peak; and

(3) Matrix interferences as described in (a)9ii above are not present; and

iii. At least 10 percent of the sample analyses are confirmed using the appropriate chromatograph/mass spectrometer detection system.

13. Laboratory data deliverables, as listed in Appendix A, shall be as follows unless otherwise specifically required pursuant to a NJPDES permit:

i. Full laboratory data deliverables shall be submitted for all potable water and polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans sample results, and for all hexavalent chromium soil sample results;

ii. Reduced laboratory data deliverables shall be submitted for all other analyses; and

iii. Analytical results without all quality control and raw data as required in full and reduced laboratory data deliverables, may be provided for all delineation samples which necessitate additional delineation sampling, and for all long-term ground water monitoring samples where the site has Department oversight, provided the following information is submitted:

(1) A cover page, including facility name and address, laboratory name and address, laboratory certification number, if applicable, date of analytical report preparation and signature of laboratory director;

(2) A listing of all field sample identification numbers and corresponding laboratory sample identification numbers;

(3) A listing of all analytical methods used;

(4) The method detection limit and practical quantitation level for each analyte for each sample analysis;

(5) All sample results including date of analysis;

(6) All method blank results; and

(7) All chain of custody documentation.

iv. Upon written request, the Department may require that a "reduced" data deliverables package shall be upgraded to a "full" data deliverables package for any sample analysis pursuant to N.J.A.C. 7:26E-1.7.

14. Sampling methods, sample preservation requirements, sample handling times, decontamination procedure for field equipment, and frequency for field blanks, field duplicates and trip blanks shall conform to applicable industry methods such as those specified in the NJDEP "Field Sampling Procedures Manual" in effect as of the date on which sampling is performed. The person responsible for conducting the remediation shall document the rationale for any deviations from the methods in the "Field Sampling Procedures Manual" pursuant to N.J.A.C. 7:26E-1.6(c).

15. Samples shall be preserved in the field immediately after collection and submitted to the laboratory as soon as possible and no later than 48 hours after sample collection.

(b) Field screening methods are limited as follows:

1. Field screening methods for all sampling matrices (soil, water, air, interior surfaces) can only be used under the following conditions:

i. For contaminant delineation if contaminant identity is known or if there is reasonable certainty that a specific contaminant may be present (for example, benzene, toluene, ethyl benzene, xylene in the case of sampling for a gasoline release); or

ii. To bias sample location to the location of greatest suspected contamination.

2. Field screening methods shall not be used to verify contaminant identity or clean zones. However, where 10 or more samples are required for initial characterization sampling at an area of concern, field screening methods listed in (b)3 and 4 below may be used to document that up to 50 percent of sampling points within the area of concern are not contaminated.

3. The field screening methods described in the version of the following references in effect as of the date of the field screening activities may be used:

i. The NJDEP "Field Sampling Procedures Manual";

ii. The NJDEP Site Remediation Program "Field Analysis Manual";

iii. "Field Measurements," EPA/530/UST-90-003; or

iv. The "Field Screening Methods Catalog," EPA/540/2-8 8/005.

4. Other field screening methods may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

(c) The following requirements apply for selection of analytical parameters:

1. Samples from each area of concern shall be analyzed for contaminants which may be present.

2. Analysis of Target Compound List plus 30/Target Analyte List (TCL + 30/TAL) or Priority Pollutant plus 40 (PP + 40) scans, petroleum hydrocarbons, and pH shall be conducted when contaminants in an area are unknown or not well documented, although a limited contaminant list may be used subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

(d) For all petroleum storage and discharge areas, sample analysis shall be conducted pursuant to the requirements in Table 2-1. Samples taken in non-petroleum storage and discharge areas shall be analyzed for the stored material. Analysis of soil and sediment samples for petroleum hydrocarbons may be in accordance with the revision of NJDEP Method OQA QAM 025 '10/91: "Quantitation of Semi-volatile Petroleum Products in Water, Soil, Sediment and Sludge" in effect as of the date on which sampling is performed. Analysis shall be conducted by a laboratory that is certified for any gas chromatography method pursuant to N.J.A.C. 7:18. Laboratory deliverables shall be as specified in the NJDEP method listed above.

TABLE 2-1
ANALYTICAL REQUIREMENTS FOR
PETROLEUM STORAGE AND DISCHARGE AREAS¹¹

| Sampling Objective | Soil Initial Screening/ Post-Remediation ¹ | Water Initial Screening |
|--|--|--|
| Gasoline, Mineral Spirits Kerosene, Jet Fuel | VO + 102, Lead ⁷ VO + 102 Naphthalenes ⁵ | VO + 102, MTBE ³ TBA ³ , Lead ⁷ B/N + 152, VO + 102 |
| Fuel Oil No. 2, Diesel Fuel Fuel Oil Nos. 4 & 6, Hydraulic Oils, Cutting Oil, Crude Oil, Lubricating Oil Waste Oil | TPHC ⁹ | B/N + 1510, VO + 102 |
| Waste Vehicular Crankcase Oil Waste Mineral Oil | TPHC, PAH ⁸ , TPHC ⁶ , VO + 10 B/N + 1510, PCBs, Priority Pollutant Metals or EPA Target Analyte List TPHC ⁶ , VO + 102 B/N + 1510, PCBs, lead TPHC | B/N + 1510, VO + 102 PP + 40 or TCL/TAL ⁴ VO + 102, B/N + 1510 |

Footnotes

- Analytical parameters may be limited based on previous analytical results.
- EPA target compound list volatile organic or priority pollutant volatile organic scans including xylene with a library search.
- Methyl-tertiary-butyl-ether (MTBE), tertiary-butyl alcohol (TBA) analysis required if gasoline tanks were in service after 1979 and 1969 respectively.
- Priority Pollutant plus forty (PP+40) including xylene, excluding PCB/pesticide analysis, or EPA Target Compound List plus 30 and EPA Target Analyte List, excluding PCB/pesticide analysis.
- Naphthalene, including Naphthalene, Methyl Naphthalenes, Dimethyl Naphthalenes; may be analyzed in B/N + 15 fraction or in VO fractions; if analyzed in VO fraction, instrument must be calibrated for these analytes. Quantitation of all isomers found shall be performed against at least one Methyl Naphthalene standard and at least one Di-Methyl Naphthalene standard.
- Total Petroleum Hydrocarbon (TPHC) analysis required on all samples. Other parameters required on 25 percent of samples where TPHC was detected (minimum of one sample); other parameters shall be analyzed for in the sample with the highest TPHC.
- Lead Analysis required if source was or is leaded gasoline.
- TPHC analysis required on all samples. Polynuclear aromatic hydrocarbons (per EPA Priority Pollutant List) analysis required on 25 percent of samples where TPHC exceeds 100 ppm (minimum of one sample); samples for PAH analysis shall be those with the highest TPHC concentration.
- TPHC analysis required on all samples; VO + 10 analysis required on 25 percent of samples in which TPHC level in soil exceeds 1000 PPM (minimum of one sample); samples for VO analyses shall be those with the highest TPHC concentration.
- EPA Target Compound List Base Neutral or Priority Pollutant Base Neutral scan with a library search.
- Analyses are required on all samples unless otherwise noted.

(e) If tentatively identified compounds or unknown compounds are detected at concentrations in excess of the applicable remediation standard, they shall be addressed in either of two ways:

1. If the area will be remediated and it is likely that the concentration of the tentatively identified compounds/unknown compounds will be reduced by the remediation, the tentatively identified compounds/unknown compounds shall be analyzed in post remediation samples to document that it is no longer present in excess of the applicable remediation standard; or

2. An attempt shall be made to positively identify and accurately quantify the tentatively identified compounds/unknown compounds using an analytical method consistent with this section so that a remediation standard can be developed.

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).

Substantially amended 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 (a)4.

7:26E-2.2 Quality assurance project plan

(a) If the Department requires a Quality Assurance Project Plan (QAPP) pursuant to an oversight document or the ISRA, UST, or any other regulatory program, the person responsible for conducting the remediation shall submit the Quality Assurance Project Plan in accordance with the schedule contained in the oversight document or applicable regulation, and in a format that corresponds directly to the outline of this section.

1. For each remedial phase at a site involving less than 10 areas of concern, the following shall be included in the Quality Assurance Project Plan:

- The project's scope and complexity and how the project relates to the overall site remediation strategy;
- The data quality objectives specific to the site and sampling event (for example, initial site characterization, delineation of contamination, selection of a remedial action);
- The names, addresses and Department laboratory certification number (if applicable) of the laboratories to be used for sample analysis. This shall be updated if changes occur during the project;

iv. The name and telephone number of each of the individuals responsible for the following functions. (This shall be updated if changes occur during the project):

- Overall project coordination;
- Sampling activities, including quality assurance and quality control; and
- Laboratory activities, including quality assurance and quality control;

v. An "Analytical Methods/Quality Assurance Summary Table" which shall include the following informa-

tion for all environmental, performance evaluation, and quality control samples:

- (1) Matrix type;
 - (2) Number or frequency of samples to be collected per matrix;
 - (3) Number of field and trip blanks per matrix;
 - (4) Analytical parameters to be measured per matrix;
 - (5) Analytical methods to be used per matrix pursuant to N.J.A.C. 7:26E-2.1;
 - (6) If proposed, the number and type of matrix spike and matrix spike duplicate samples to be collected;
 - (7) If proposed, the number and type of duplicate samples to be collected;
 - (8) If proposed, the number and type of split samples to be collected;
 - (9) If proposed, the number and type of performance evaluation samples to be analyzed;
 - (10) Sample preservation to be used per analytical method and sample matrix;
 - (11) Sample container volume and type to be used per analytical method and sample matrix; and
 - (12) Sample holding time to be used per analytical method and sample matrix;
- vi. A detailed description of site specific sampling methods to be used pursuant to N.J.A.C. 7:26E-2.1(a) 14, sample storage in the field and sampling handling time requirements;
- vii. A detailed description of all calibration and preventative maintenance procedures for all field analytical instrumentation;
- viii. A detailed description of procedures used to obtain duplicate and split samples, if applicable;
- ix. A detailed description of the chain of custody procedures to be utilized in the field and in the laboratory;
- x. A detailed description of sample storage procedures to be utilized by the laboratory; and
- xi. Laboratory data deliverable formats to be used.
2. For any remedial phase at a site involving 10 or more areas of concern, the following shall be included in the Quality Assurance Project Plan:
- i. The requirements contained in (a)1i through x above;

ii. A detailed description of field quality control audit procedures to be used, including without limitation, corrective action procedures;

iii. The procedures to be followed to ensure the complete documentation of all field sampling activities; and

iv. A detailed description of the data reporting procedures and format for all analytical data generated by the laboratory, including without limitation, the following:

(1) Laboratory data deliverable format(s);

(2) The laboratory's review and cross-check procedures for the elimination of errors during routine data transfer, in calculations, preparation of data deliverable packages and off-line storage; and

(3) If required by the Department, a description of the laboratory's capability to provide EPA Contract Laboratory Program analytical methodology data on diskette in standard EPA Contract Laboratory Program format utilizing the requirements in the versions of the applicable EPA Contract Laboratory Program Statements of Work documents in effect as of the date on which the laboratory is performing the analysis.

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 "ISRA" for "ECRA"; and in (a)1vi, amended N.J.A.C. reference.

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.1 Preliminary assessments

(a) The purpose of a preliminary assessment is to identify the presence of any potentially contaminated areas of concern. If any potentially contaminated areas of concern are identified, then there is a need for a site investigation pursuant to N.J.A.C. 7:26E-3.3. If no potentially contaminated areas of concern are identified, then no further remediation is required at the site.

(b) A preliminary assessment is the first step in the process to determine whether or not a site is contaminated.

(c) A preliminary assessment shall be based on diligent inquiry and include an evaluation of the following:

1. Historical information concerning the site history shall be part of the preliminary assessment unless the remediation is directed at either a specific discharge event (rather than a particular area of concern) or any underground tank or underground tank system. The site history shall include an evaluation of the following to the extent available from diligent inquiry:

i. Site history information from sources including, but not limited to, the following:

- (1) Sanborn Fire Insurance Maps;
- (2) MacRae's Industrial Directory;
- (3) Title and Deed;
- (4) Site plans and facility as-built drawings;
- (5) Federal, State, county and local government files; and
- (6) The Department Geographic Information System;

ii. The site history from the time the site was naturally vegetated, including without limitation:

- (1) Names of all owners and operators;
- (2) Dates of ownership of each owner;
- (3) Dates of operation of each operator; and
- (4) Brief descriptions of the past industrial/commercial usage of the site by each owner and operator;

iii. All raw materials, finished products, formulations and hazardous substances, hazardous wastes, and pollutants which are or were present on the site, including intermediates and by-products;

iv. Present and past production processes, including dates, and their respective water use shall be identified and evaluated, including ultimate and potential discharge and disposal points and how and where materials are or were received onsite (for example, rail, truck);

v. All former and current containers, container or bulk storage areas, above and below ground tanks, above and below ground waste and product delivery lines, surface impoundments, landfills, septic systems and other structures, vessels, conveyances or units that contain or previously contained hazardous substances, hazardous waste, and pollutants, including:

- (1) Type;
- (2) Age;
- (3) Dimension of each container;
- (4) Location;
- (5) Chemical content;
- (6) Integrity (for example, tank test reports);
- (7) Volume;
- (8) Construction materials; and

(9) Inventory control records unless a Department-approved leak detection system pursuant to N.J.A.C. 7:1E or 7:14B has always been in place and there is no discharge history;

vi. If the site area exceeds two acres, an interpretation of the aerial photographic history of the site, based on available current and historical color, black and white and infrared aerial photographs (scale 1:18,000 or less) of the site and surrounding area at a frequency which provides the evaluator with a historical perspective of site activities. The photographic history shall date back to 1932 or to the earliest photograph available. Aerial photographic coverage is available for review at the New Jersey Department of Environmental Protection and Energy, Tidelands Management Program, Aerial Photo Library, 9 Ewing Street, Trenton, New Jersey;

vii. Any data or information concerning known discharges that have occurred on the site;

viii. Remediation activities previously conducted or currently underway at the site including dates of previous discharges, remedial actions, and all existing sampling data concerning contaminants at the site. If a government agency was involved, the name of the lead government agency, case identification number, and current case status;

ix. All remedies previously approved by the Department in a remedial action workplan or equivalent document to determine if the remedy remains protective of public health, safety and the environment;

x. All existing environmental sampling data concerning contaminants at the site;

xi. Any known changes in site conditions or new information developed since completion of previous sampling or remediation;

xii. All Federal, State and local environmental permits including permits for all previous and current owners or operators, applied for or received, or both, for the site including:

- (1) The name and address of permitting agency;
- (2) The reason for the permit;
- (3) The permit identification number;
- (4) The application date;
- (5) The date of approval, denial, or status of application;
- (6) The name and current address of all permittees;
- (7) The reason for denial, revocation or suspension if applicable; and
- (8) The permit expiration date;

xiii. All administrative, civil and criminal enforcement actions for alleged violations of environmental laws concerning the site, including:

- (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; and

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.

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

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).

7:26E-3.2 Preliminary assessment

(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(c);
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(c)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, which has not been remediated under Department oversight, 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; and

5. For each area of concern identified at the site, for which a No Further Action Letter was issued, the person responsible for conducting the remediation shall compare the contaminant concentrations remaining in the area of concern or the site 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 or the site was remediated using engineering and institutional controls approved by the Department and these controls are still 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 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 or site 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 or site was remediated using engineering and institutional controls approved by the Department 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.

(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 approved remedial action workplan 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.

(c) The Department will determine the extent to which prior submissions or completions may satisfy the specific items required for the preliminary assessment. If the Department approves any such prior work in writing, then that work may be included as part of the preliminary assessment.

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”.

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 unrestricted use 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 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) It is often appropriate to phase the site investigation so that the areas of concern most likely to be contaminated above the applicable remediation standards are sampled first. If at any time during the site investigation, any contamination is found above the applicable remediation standards, then the site investigation may be discontinued and the remediation continued at either the remedial investigation or remedial action phase.

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 “remedia-

tion 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".

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

(a) Sampling shall be conducted in all potentially contaminated areas of concern, whether relating to current or former uses of the site 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, upon prior verbal or written approval by the Department, sampling may be modified subject to the technical criteria in N.J.A.C. 7:26E-1.6(c)3. Confirmation of any verbal or written approval by the Department shall be provided in the site investigation report. For verbal approvals, the date of the verbal approval and the name of the Department representative who granted the approval shall be provided in written correspondence to the Department within seven days of the verbal approval.

(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. 7:26-8.

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.

7:26E-3.5 Site investigation—building interiors

The site investigation of building interiors shall be conducted 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. Minimum requirements for investigating contaminants inside buildings which have the potential to migrate to the environment outside the building are specified in N.J.A.C. 7:26E-3.9, and requirements for investigating contaminants outside buildings which have the potential to migrate into buildings shall be specified by the Department on a site specific basis.

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.

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 graded 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)11;

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.

(b) Soil gas detection methods may be used to bias soil or ground water sample locations. The use of soil gas tech-

niques is recommended, where appropriate, to assist in the evaluation of potentially contaminated or contaminated soil, where extensive sampling would otherwise be required, such as for lengthy sections of below-grade piping. Guidance for the use of soil gas techniques may be found in the NJDEP "Field Sampling Procedures Manual."

(c) The site investigation of soil shall be conducted:

1. For the purposes of a site investigation pursuant to N.J.A.C. 7:26E-3.3(a); and

2. According to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.

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)2, substituted "Soil samples shall be collected for chemical analysis" for "Soil borings shall be extended to a depth appropriate for collection of soil samples,;" in (a)2i, substituted "soil samples" for "borings", inserted "and/or residual", and added N.J.A.C. reference; substantially amended (a)2iii; rewrote (a)4; and in (b), added the second sentence.

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.

7:26E-3.7 Site investigation—groundwater

(a) Except as provided in (b) below, the site investigation of each area of concern shall include at least one groundwater sample if any soil contaminant detected in the area of concern has a water solubility greater than 100 milligrams per liter at 20 degrees Celsius to 25 degrees Celsius as documented by a peer-reviewed reference; and

1. All of the soil between the contaminant and the saturated zone is less than 15 percent silt and clay; or

2. Any part of the area of concern at which the soil contamination was detected is located within 2,000 feet of a public supply well, as determined from a map of public supply wells which is available from the Department's Bureau of Revenue, Maps and Publications (609-777-1038), or through the Department's internet home page (<http://www.state.nj.us/dep/njgs>, then select "Geodata"). A groundwater sample is not required if documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.13) demonstrating that groundwater sampling was not necessary.

(b) Ground water sampling may not be necessary during a site investigation for a particular area of concern if the person responsible for conducting the remediation documents that ground water contamination from the discharge is unlikely based on the following criteria:

1. The date and duration of the discharge is known;

2. The identity and the volume of the contaminants are known;

3. The date the remediation in response to the single discharge was completed;

4. Post remediation soil sampling data establish that the remediation meets all applicable remediation standards in effect at the time of the remediation, regardless of when the Department is informed of the remediation; and

5. Any other data or information that is relevant to the determination of the likelihood of ground water contamination.

(c) The site investigation of groundwater shall be conducted for the purposes of a site investigation pursuant to N.J.A.C. 7:26E-3.3(a) according to the following:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Ground water samples may be taken pursuant to any generally acceptable sampling method pursuant to N.J.A.C. 7:26E-1.6(c). Sampling methods generally acceptable to the Department include, but are not limited to, those specified in the NJDEP Field Sampling Procedures Manual or the NJDEP Alternative Ground Water Sampling Techniques Guide in effect as of the date on which the sampling is performed; and

3. The groundwater sampling points shall be located in:

i. The excavation of any source(s) of contaminants, if possible, including without limitation, tanks, tank distribution systems, and underground injection control (UIC) units such as seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-5; or

ii. The expected downgradient flow direction of the area of concern and within 10 feet of the area of concern; groundwater flow direction shall be predicted based on topographic relief, the location of surface water bodies, structural controls in the bedrock or soils, location of pumping wells and subsurface conduits at or below the water table. Groundwater flow direction may also be predicted based on data from adjacent sites if groundwater flow direction at the adjacent site has been determined pursuant to N.J.A.C. 7:26E-3.7(e)3iv.

(d) The minimum number of ground water samples collected shall be as follows:

1. At least one ground water sample for each area of concern which is classified as an Underground Injection Control (UIC) unit including, without limitation, seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-5 sampled pursuant to N.J.A.C. 7:26E-3.9(e)3;

2. At least one ground water sample for sites with leaking underground storage tanks and tank fields containing up to three tanks with a maximum capacity of 10,000 gallons per tank. If a leaking tank is excavated, the ground water sampling point shall be located within the excavation, if possible;

3. Pump islands and associated piping greater than 25 feet from the tank field shall be considered separate areas of concern and shall require a separate ground water sample location; and

4. At least one ground water sample for all other areas of concern unless the area of concern is within 10 feet hydraulically upgradient of a ground water sampling location.

(e) The results of each groundwater site investigation analysis shall be evaluated as follows:

1. If the contaminant concentrations found in all ground water samples are below the applicable remediation standards, no further remediation is necessary for ground water;

2. If the contaminant concentrations found in any ground water samples exceed the applicable remediation standards, the ground water may be resampled to confirm the presence of contamination; this confirmation sampling shall include at least two additional samples taken over a 30 day period, the results of which may be averaged with the original result to determine compliance with the applicable remediation standards; and

3. If groundwater contamination is confirmed, the person responsible for conducting the remediation shall, except as provided in (f) below:

i. Within six weeks after identifying groundwater contamination, conduct a well search including:

(1) Locating wells through a file search using all available Department, county and local records for all monitoring and domestic wells within one-half mile of each point of groundwater contamination, and all irrigation, industrial, public supply wells, and wells with water allocation permits within one mile of the area of concern. Available Department records include, without limitation, paper, microfiche, electronic and antique well records maintained by the Bureau of Water Allocation. The Department Geographic Information System shall be used as part of the file search. If the site is located in a groundwater use area the Department will determine if further action, such as a door-to-door survey, is required;

(2) Identifying the type of well 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, copies of well records and/or well logs on file with the Department's Bureau of Water Allocation, and any additional records available in county or municipal records; and

(3) Documenting all sources referenced in performing the well search, including agencies that were unable to provide the information requested, including the name of the person within each agency that was contacted and when, and that the request for information was denied or information was unavailable;

ii. Within two weeks after completing the well search, determine if any potable wells exist within 1,000 feet of each area of concern with groundwater contamination and:

(1) Within 24 hours after determining the existence of a potable well, notify the assigned case manager by telephone. If a case manager is not assigned, notify the Department hotline at 1-877 WARNDP (877) 927-6337;

(2) Within eight weeks after identifying the potable wells, sample each existing potable well identified pursuant to the well search suspected to be contaminated by the site in question; and

(3) Within 45 days after completing sampling of the potable wells, submit all analytical results to the Department as full laboratory data deliverables, pursuant to N.J.A.C. 7:26E-2(a)13;

iii. Perform the following actions if any of the analytical results for the potable well samples collected pursuant to (e)3ii(2) above indicate that any of the potable wells are contaminated above the drinking water standards for contaminants that are suspected to be from the site:

(1) Within two weeks after submitting the analytical results to the Department, identify each potable well that exists within 1,000 feet to one-half mile of each area of concern with groundwater contamination and perform all sampling and reporting requirements as set forth at (e)3ii; and

(2) Repeat the process of identifying and sampling potable wells pursuant to (e)3i, ii and iii(1) above, by identifying and sampling potable wells at each successive half-mile intervals until either no more potable wells are identified, or no contaminants above the drinking water standard are identified;

iv. Determine the direction of groundwater flow for each affected aquifer as follows:

(1) Install a minimum of three groundwater monitoring wells or piezometers in each affected aquifer or water bearing zone to determine the groundwater flow direction in that zone. Install and survey the monitoring wells or piezometers pursuant to N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:26E-4.4(g) to provide for adequate triangulation;

(2) Collect a minimum of two rounds of synoptic static water levels a minimum of 30 calendar days apart to provide a more accurate indication of the groundwater flow direction. The water levels may be taken to evaluate seasonal variations in flow direction;

(3) If the site is located in an area that is tidally influenced, synoptic ground and surface water levels shall be collected during two fair weather sampling events separated by a minimum 30-day period where

each event entails collecting hourly water levels from all applicable wells and the surface water for a minimum 71-hour period; and

(4) Collect water level measurements and determine groundwater flow direction, taking into account activities in the area which may affect flow direction, such as pumping wells or seasonally used pumping wells and injection wells; and

v. Conduct a groundwater remedial investigation pursuant to N.J.A.C. 7:26E-4.4.

(f) A prospective purchaser shall commence a potable water investigation no later than 30 calendar days after acquiring the property, in accordance with the requirements and schedule in (e)3 above.

(g) To support a claim that all or part of groundwater contamination detected in onsite groundwater samples is caused by background groundwater contamination, a background groundwater investigation shall be conducted as follows:

1. Groundwater flow direction shall be determined pursuant to N.J.A.C. 7:26E-3.7(e)3iv;

2. A minimum of one background monitoring well shall be installed in each water bearing zone that is believed to contain background groundwater contamination. A sufficient number of additional monitoring wells shall be installed to evaluate all offsite sources potentially affecting onsite groundwater quality. All monitoring wells shall be installed in accordance with N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9D. Each background monitoring well shall be located:

i. Beyond the influence of all onsite areas of concern;

ii. At the upgradient property boundary of the site, as determined by N.J.A.C. 7:26E-3.7(e)3iv;

iii. Such that the offsite ground water impacting this well will migrate along a predicted ground water flow path that will intercept the area of concern; and

iv. Outside the zone of influence of any nearby pumping wells that would prevent upgradient ground water from flowing onto the site;

3. Background monitoring well(s) shall be sampled concurrently with collection of onsite ground water samples for all onsite contaminants believed to be originating from background sources;

4. Results of the background ground water investigation shall be evaluated as follows:

i. No further remediation is required for ground water if:

(1) Contaminants detected in the area of concern monitoring well, as well as the contaminants' parent

products, were never historically used on the site as documented pursuant to N.J.A.C. 7:26E-3.1 and 3.3;

(2) There is no additional evidence of an onsite discharge; and

(3) Contamination is present in the background monitoring well(s); and

ii. Additional remediation may be required when contamination is present in the area of concern monitoring well but not in the background monitoring well or contamination is present in both the area of concern monitoring well and the background monitoring well. In these cases, the Department shall consider the contribution of the background contamination in the determination of the applicable ground water remediation standards for the site. Factors for determining the contribution of the offsite contamination to onsite contamination shall include, but not be limited to, contaminant attenuation rates, contaminant degradation rates, and ground water flow velocity; and

5. The person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4(c) if that person determines, pursuant to (c)4 above, that groundwater contamination exists upgradient of the site. The person responsible for conducting the remediation shall notify their assigned case manager, or if they are not assigned a case manager, the Department hotline at (1-877 WARNDEP or 1-877-927-6337).

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), added "any soil contaminant ... reference; and"; deleted (a)1; recodified former (a)2 as (a)1; added new (a)2; in (b)4, substituted "in effect ... informed of the remediation" for "at the time of remedial action workplan approval"; in (c)2, deleted "; any method-specific requirements pursuant to N.J.A.C. 7:26E-4.4(g) shall be conducted, if groundwater monitor wells or piezometers are used" and added the last sentence; in (c)3i, increased types of excavations which previously included only underground storage tanks which were source of contamination; in (c)3ii, added last sentence; and added (f).

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.

Administrative correction.

See: 35 N.J.R. 1928(a).

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

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

In (g)5, updated the N.J.A.C. reference and substituted "(c)4" for "(g)4".

7:26E-3.8 Site investigation—surface water and sediment

(a) If a surface water body is on or adjacent to the site, the person responsible for conducting the remediation shall determine if there is any evidence that discharges to the surface water body have occurred or are occurring. Such evidence shall include, without limitation:

1. Known historical or on-going discharges to the surface water body, as determined pursuant to N.J.A.C. 7:26E-3.1;

2. Stressed vegetation, sheens, seeps, discolored soil or sediment along the shoreline or on the surface water body;

3. Evidence of stream impacts from historical discharges including historical ecological studies documenting differences in organism population density and diversity in areas potentially impacted by the site relative to areas not impacted by the site; or

4. Existing onsite ground water contamination in excess of the applicable State Surface Water Quality criteria, N.J.A.C. 7:9B or the Federal Surface Water Quality criteria, 40 C.F.R. Part 131, whichever is more stringent, which discharges to the surface water body. Onsite ground water contamination in excess of the applicable surface water criteria shall be delineated to the applicable surface water criteria. Ground water delineation samples shall be collected along the ground water flow path between the area of concern and the surface water body and analyzed for applicable contaminants.

(b) If there is evidence that discharges to the surface water body have occurred, pursuant to (a) above, then a surface water investigation is required. The investigation of surface water and sediment shall be conducted according to the following:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Surface water samples are required to evaluate standing water bodies, or, for flowing water, upgradient, downgradient, and discharge point water samples are required when there is reason to believe surface water may have been impacted by contamination emanating from the site. Sampling shall be designed to account for seasonal or short-term flow and water quality fluctuations due to dry versus wet weather flow, system hydraulics (obtaining flow-proportioned samples where applicable) and potential contaminant characteristics (for example, density, solubility); and

3. Sediments in surface water bodies shall be analyzed when there is reason to believe sediments may have been impacted by contamination emanating from the site as follows:

i. Sediment sampling for streams and similar water bodies shall be completed in accordance with N.J.A.C. 7:26E-3.9(d)3 (Swales/Culverts).

ii. Sediment sampling for ponded bodies of water shall be completed in accordance with N.J.A.C. 7:26E-3.9(c) (Surface Impoundments).

iii. In addition to other required analyses, surface water sediments shall also be analyzed for total organic carbon, pH, and particle size. These data are required to develop appropriate remediation standards.

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 (a); added (a)1 through 4; rewrote (b); and in (b)3, added "as follows:".

7:26E-3.9 Site investigation—area specific requirements

(a) The site investigation shall also satisfy the following sampling requirements for bulk storage tanks and appurtenances, including, without limitation, all in-use and out of service storage tanks with a storage capacity greater than 55 gallons, and associated piping and fill points.

1. For above ground tanks over unpaved soil:

i. Sampling around tanks with shell or bottom in direct contact with soil now or in the past shall meet all the following criteria:

(1) Sampling to detect surface contamination shall be conducted around the base of the tank with at least one sample per 100 linear feet, and shall include expected areas of contamination based on soil discoloration/odors, history of repairs/replacement, soil beneath valves, or low areas where spills or leaks from valves may accumulate.

(2) Unless the tank has always been in compliance with N.J.A.C. 7:1E-2 and has no discharge history, at least one boring shall be located adjacent to or within two feet of the tank and continuous two foot split spoon sampling performed to the water table (if water table is less than 10 feet). The sample in each boring evidencing the highest apparent contamination based on soil discoloration, odor, field screening result or other field indicator shall be laboratory analyzed. If there is no evidence of contamination, samples shall be collected from the zero to six inch interval above the saturated zone. At least one boring shall be located in the expected downgradient ground water flow direction from the tank. For tanks in excess of 100 feet in circumference, at least three borings, spaced equidistantly, are required.

(3) In cases where the depth to ground water is greater than 10 feet, sampling shall be conducted to 10 feet as in (a)1i(2) above. If there is no evidence of contamination, samples shall be collected at 9.5 to 10 feet.

ii. Elevated tanks (that is, shell or bottom not in contact with ground) require soil sampling when there is any physical or documentary evidence of discharges, when soil discoloration is observed or when field monitoring or other evidence indicates that a discharge has occurred.

(1) At least one soil sample shall be taken below tanks which store or may have stored hazardous substances, hazardous wastes, or pollutants that do not cause obvious soil discoloration (such as volatile organics), in the area most likely to be contaminated, including without limitation, valve or former leak or rupture areas. If samples cannot be obtained from

below the tank because soils are not accessible to sampling equipment, the sample may be located within two feet of the tank.

2. For above ground tanks over paved surfaces:

i. Soil around above ground tanks on paved surfaces shall be sampled pursuant to (b)1 below (Pads) if there are stained soils adjacent to pad or if the potential contaminant would not cause discoloration (volatile organics), or if there is a history of spillage or other evidence that a discharge has occurred.

ii. Tanks within a paved containment area shall be sampled at the drainage discharge point, if one exists, pursuant to (d) below (Drainage Areas).

iii. Soil sampling below the pavement shall be conducted only when the pavement has deteriorated so as to allow potential contaminant contact with the soil, or if pavement was not present over the life of the tank or former tanks.

iv. Instead of sampling soil beneath pavement, samples around the pad may be taken pursuant to (b)1 below subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why boring through pavement was not considered practical (for example, concrete slabs with berms, synthetic liners).

3. For underground storage tanks:

i. Underground storage tanks and distribution systems containing potential contaminants shall be evaluated to identify any past or present discharges. No sampling is required for tanks and distribution systems which have always had secondary containment and leak detection pursuant to N.J.A.C. 7:14B and no discharge history. At least four soil samples around each tank shall be collected. If tanks will be closed, refer to N.J.A.C. 7:26E-6.3(b) for requirements.

(1) The soil samples shall be collected within two feet of the tank with one sampling location located at each end, and additional sampling locations located along the length of the entire tank pursuant to (a)3i(2) below;

(A) If sampling within two feet of the tank is not possible due to the presence of bedding gravel, or there are safety considerations (such as danger of tank puncture), which have been identified through field investigations or review of as built plans, soil samples shall be taken as close as possible to the tank. However, no samples shall be collected from further than five feet from the tank and a ground water sample shall be collected within five feet and down-gradient of the tank.

(B) If, because of safety considerations, the distance between adjacent tanks precludes locating soil samples between the tanks, a ground water

sample may be collected within five feet and down gradient of the tanks, at the appropriate depth in lieu of the required soil samples between the tanks;

(2) The total number of required sampling locations per tank are as follows:

| Total Tank Capacity (Gallons) | Approximate Tank Length (Feet) | Minimum Number of Sampling Locations |
|-------------------------------|--------------------------------|--------------------------------------|
| 56-2,000 | to 10' | 4 |
| 2,001-10,000 | to 30' | 6 |
| 10,001-25,000 | to 40' | 8 |
| 25,000+ | to 40'+ | 10 |

(3) Soil samples collected for analysis shall be taken at zero to six inches below the tank bottom unless the tank is within the saturated zone (see (a)3i(5) below);

(4) Additional soil samples for volatile organics analysis shall be collected in accordance with the requirements at N.J.A.C. 7:26E-3.6(a)4;

(5) For underground storage tanks within the saturated zone:

(A) If volatile organic compounds are considered potential contaminants, either a soil investigation shall be conducted as stated in (B) below, or a ground water sample shall be collected at the appropriate depth pursuant to N.J.A.C. 7:26E-3.7(c) through (e);

(B) If volatile organic compounds are not considered potential contaminants, a soil investigation shall be conducted. For a soil investigation, samples shall be collected zero to six inches above the saturated zone if the potential contaminant's density is less than water, and zero to six inches below the depth of the tank bottom if the potential contaminant's density is greater than water;

ii. Precision tests pursuant to N.J.A.C. 7:14B-6.5(a)3 may be used in lieu of soil samples if tanks are beneath buildings or otherwise inaccessible and it is the original tank with no history of leaks or repairs, or if there is insufficient soil to collect a sample (for example, tank is located in bedrock).

iii. To verify tank contents for out of service tanks, one sample shall be taken of any product or residue remaining in the tank and analyzed using ASTM fingerprint method D3328 or other appropriate method.

4. For all above grade piping:

i. Sampling is necessary if there is evidence of a discharge (for example, discolored soil, etc.) or reports of past discharges.

ii. Any sampling conducted shall be pursuant to (e) below (Discharge/Disposal Areas).

5. For all below grade piping:

i. Below grade piping shall be evaluated to identify any past or present discharges using soil samples located zero to six inches below the piping and within two feet of piping unless the system has always had secondary containment with leak detection pursuant to N.J.A.C. 7:14B and no discharge history. Samples for volatile organic compounds shall be collected in accordance with the requirements at N.J.A.C. 7:26E-3.6(a)4. Precision tests pursuant to N.J.A.C. 7:14B-6.1(a)3 and 6.6(a)2 may be used if the piping is original and there is no history of discharges or repairs.

ii. For total piping length of one to 15 feet, a minimum of one soil sample shall be collected. An additional soil sample shall be collected for each additional 15 linear feet of piping or portion thereof from 16 to 50 feet of piping length. Sampling locations shall be biased to include joints, dispensers, and other potential discharge areas.

iii. Piping runs within two feet of another pipe run may be considered a single pipe run. Soil samples for multiple pipe lines shall be collected midway between/among the lines, or biased toward any pipe for which evidence of a discharge exists. For pipes that are separated by a distance greater than two feet vertically, soil samples shall be collected below each pipe, pursuant to (a)5i above.

iv. For total piping lengths in excess of 50 feet, sampling frequency may be reduced subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced number was considered adequate.

6. For all loading and unloading areas:

i. Exposed soils at loading or unloading areas associated with tanks shall be sampled at a minimum rate of one sample per fill connection or valved discharge point;

ii. For loading or unloading points located over impervious cover, sampling shall be conducted pursuant to (b)1 below (Pads).

(b) The site investigation shall also satisfy the following requirements for all storage and staging areas, dumpsters and transformers, whether temporary or permanent, including exposed soil areas adjacent to above ground vessels on pads; tank loading/unloading areas on pads; dumpster staging areas; electrical transformers, heat exchanger and other outdoor equipment and drum storage pads.

1. For all pads:

i. Pads shall have a minimum of one sampling location per side adjacent to exposed soil for sides up to 30 feet long; for sides greater than 30 feet long, one additional sample location is required for each additional 30 feet of length;

ii. Each sampling point shall be located immediately adjacent to the pad and biased toward the expected location of greatest contamination;

iii. If a pad shows evidence of deterioration that may allow contaminant contact with the soil, or its surface has been modified (repaved), or aerial photographs or site history indicate potential for previous discharges to the soil, soil samples beneath the pad shall be collected pursuant to (b)2ii below; and

iv. Bermed pads and pads surrounded by impermeable cover shall be sampled at any drainage discharge point pursuant to (d) below (Drainage Areas).

2. For all storage and staging areas over permeable cover:

i. Storage and staging areas with evidence of discharges which are or were used for storage of hazardous substances, hazardous wastes, or pollutants shall be sampled pursuant to (e) below (Spills/ Disposal Areas).

ii. Sample frequency shall be one per 900 square feet of surface area to characterize soils below a storage or staging area up to 300 feet in perimeter with a minimum of one sample. Sample frequency may be reduced for larger areas subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why sample frequency was considered adequate. Sampling locations shall be biased toward the suspected location of greatest contamination based on low points, drainage patterns, discoloration, stressed vegetation, field instrument measurements or other field indicators.

(c) The site investigation shall satisfy the following requirements for all surface impoundments, including without limitation, lagoons, fire ponds, waste ponds or waste pits, storm water detention basins, excavations, natural depressions or diked areas, which are designed to hold an accumulation of liquid substances or substances containing free liquids. Active surface impoundments with impermeable liners which may be damaged as a result of sample collection shall have liner integrity verified by physical inspection and/or evaluation of monitoring well water quality data associated with the surface impoundment, if available.

1. Sediments within all unlined surface impoundments shall be sampled if the impoundment receives runoff from areas of potential contaminant sources;

2. Sediment sample locations shall be biased towards inflow/outflow areas, and areas where sediments may be expected to accumulate;

3. Core samples shall be taken for contaminant analysis and to fully characterize sediment type, thickness of sediment layers, and vertical extent of sediment.

4. Distinct layers of sediments thicker than six inches, as evidenced by color, particle size, or other physical characteristics, shall be sampled individually.

5. Sediment quantity within the surface impoundment shall be estimated.

(d) The site investigation shall also satisfy the following requirements for all drainage systems.

1. For all floor drains and collection systems, if there is reason to believe contaminants were discharged into the floor drain or collection system:

i. The point of discharge for any floor drain or collection system shall be sampled if the system discharges or ever may have discharged to soil, ground water or surface water;

ii. If the point of discharge is unknown, tracer tests (for example, dye or smoke) shall be conducted to determine the discharge point(s);

iii. Collection system integrity shall be documented by representative soil sampling at potential leak areas, video inspection, hydrostatic test or pressure test. Other methods may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the methods were considered effective; and

iv. Sampling soil below floor drains, or collection system laterals, shall be conducted when corrosives (as defined in N.J.A.C. 7:26 or, if plastic piping is or was used, organic solvents are considered corrosive) are or were discharged to floor drains or the collection system or there has been a history of collection system discharges, rupture or repairs. In such cases, representative soil sampling at known or suspected leak areas is required for potential contaminants.

2. Soil at each roof leader discharge point shall be sampled if storage units or process operations using hazardous substances, hazardous wastes, or pollutants vent or may have vented to the roof;

3. For all swales and culverts:

i. Sampling shall be conducted when the swale/culvert receives or received runoff from other contaminated areas of concern;

ii. Sediment and soil sampling shall be conducted at the points where contamination from runoff/spills enter or have entered the drainage system; and

iii. If flow could have scoured sediments from the receiving structure, sampling shall be conducted at on-site downgradient structures laden with sediments;

4. For all storm sewer and spill containment collection systems:

i. Sampling shall be conducted when the collection system is or was the runoff/spill discharge point from other contaminated areas of concern;

ii. Sediment sampling shall be conducted at the manhole, catchbasin, sump, or other structure where contaminated runoff or discharges enter the drainage system;

iii. Sampling shall be conducted in the soils around catch basins, manholes, sumps or other structures which contain or may have contained hazardous substances, hazardous wastes, or pollutants, and are not hydraulically sound (that is, water percolates through the floor and walls), through the use of adjacent soil borings. A single boring located within two feet of the downstream side of the structure shall be sampled at a depth corresponding to the bottom of the structure. Samples for volatile organic compounds shall be collected in accordance with the requirements at N.J.A.C. 7:26E-3.6(a)4; and

iv. Ground water discharging from storm sewer systems which contain dry weather flow (that is, five days following the most recent rainfall) shall be sampled at the discharge point and analyzed for potential contaminants discharged or potentially discharged into the system; and

5. For all boiler and compressor discharges, if there is reason to believe a potential contaminant discharge has occurred, sampling shall be conducted pursuant to (e) below (Discharge/Waste Disposal Areas).

(e) The site investigation shall also satisfy the following requirements for all discharge and waste disposal systems and areas.

1. For any discharge areas and areas of discolored soil or stressed vegetation where specific requirements are not otherwise provided in this section:

i. Each distinct area shall be evaluated independently as an area of concern; and

ii. Initial characterization samples shall be biased based on field indicators such as soil discoloration, stressed vegetation, or field instrument measurements toward those areas of greatest suspected contamination. Sample frequency shall be at least one sample for every 900 square feet for areas up to 300 feet in perimeter. Sample frequency may be reduced for larger areas, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced sample frequency was considered adequate.

2. Above ground treatment systems shall be sampled pursuant to the requirements for the functional portions of the system pursuant to (a) above (Tanks). For example, any above ground waste treatment tanks over unpaved soil shall be sampled pursuant to (a)1 above.

3. For below grade wastewater treatment systems:

i. For tanks, septic tanks, separators, and neutralization pits, two samples shall be collected from within the tank, one aqueous and one sludge sample, for analysis unless documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the site investigation report (N.J.A.C. 7:26E-3.13) specifying why such sampling was not considered necessary to confirm that only sanitary waste was discharged to the system during the entire life of the system. Documentation shall include, without limitation, an affidavit certifying that only sanitary waste was ever discharged to the system and that no present or former floor drains, sinks, or other units in process areas were ever connected to the system.

ii. For septic disposal fields:

(1) Soil borings shall be completed as specified below for onsite disposal fields unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.13) specifying why soil borings were not considered necessary to confirm that only sanitary waste was discharged to the system pursuant to (e)3i above.

(2) At least one boring per 500 square feet of field area shall be completed, with a minimum of four borings per disposal field.

(3) Borings shall be located within two feet of the edge of the bed area in active disposal fields, but shall be angled so that samples are taken below the infiltrative surface as defined in N.J.A.C. 7:9A-2.1, and directly below laterals within abandoned fields.

(4) Borings shall be located to include the first five feet of the infiltrative surface as defined in N.J.A.C. 7:9A-2.1 and shall be spaced so that samples are representative of the entire disposal field.

(5) Soil samples shall be taken at a depth corresponding to zero to six inches below the bottom of the infiltrative surface as defined in N.J.A.C. 7:9A-2.1.

(6) Samples for volatile organic compounds shall be collected in accordance with the requirements at N.J.A.C. 7:26E-3.6(a)4.

iii. For cesspools, seepage pits, as defined in N.J.A.C. 7:9A-2.1, and dry wells:

(1) Sampling shall be conducted in accordance with (e)3iii(2) through (5) below, unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.10) specifying why sampling was not considered necessary, for example, to confirm that only sanitary waste or storm water was discharged to the system pursuant to (e)3i above;

(2) One representative sample of sludge/sediment in each pit shall be obtained for laboratory analysis;

(3) A soil boring shall be placed within two feet of the suspected downgradient side of the pit and shall extend to a minimum of two feet below the pit bottom. The soil shall be cored and inspected for evidence of discharge and samples collected in accordance with N.J.A.C. 7:26E-3.4(a)1 and 2. Samples for volatile organic compounds shall be collected in accordance with requirements at N.J.A.C. 7:26E-3.6(a)4.

(4) If the pit bottom is within two feet of the saturated zone or bedrock, a ground water sample will be obtained within two feet of the suspected downgradient side of the pit; and

(5) At a minimum, the laboratory analysis shall target the contaminants suspected to have been discharged to the seepage pit.

iv. Collection lines shall be sampled pursuant to (d)1 above (Floor Drains).

(f) The site investigation shall also satisfy the following requirements for any other potentially contaminated areas away from process areas not otherwise addressed pursuant to (a) through (e) above:

1. The sample locations shall be biased toward suspected areas of the greatest contamination. If there is no basis for biasing, then random sampling of these areas is required as follows, except as provided in (f)2 below:

i. The area to be sampled shall be gridded and each grid node given an identification number;

ii. The grid nodes chosen for sampling shall be based on the numbers selected from a random number chart;

iii. Areas of less than 10 acres shall be sampled at a rate of at least one sample for every two acres; and

iv. Areas greater than 10 acres may be sampled at a reduced frequency subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why a reduced frequency was considered appropriate, but a minimum of five locations shall be sampled.

2. If the person responsible for conducting the remediation documents, pursuant to N.J.A.C. 7:26E-1.6(c), that the area is not and has not been used for any purpose which may have included hazardous substances, hazardous wastes, or pollutants, including, without limitation, the activities described in (a) through (e) above, then no samples are required. Such documentation shall be based upon the following:

i. An aerial photographic history pursuant to N.J.A.C. 7:26E-3.1(c)1vi (Preliminary Assessment); and

ii. An affidavit signed by the person certifying the site investigation attesting that, based on diligent inqui-

ry, no potential contaminants were discharged in the area.

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).

Deleted reference to structures storing hazardous constituents throughout the section; made numbering correction at (a)1ii(1); inserted new (a)2; recodified former (a)2 and (a)2i through iii as (a)2i through vi, respectively; substantially amended (a)3 and 5 throughout; in (e)3i and (e)3ii(1), amended N.J.A.C. reference; in (e)3iii(5), changed sample depth from 0.6 inches to zero to six inches; rewrote (e)3iii(1) and (2); and added (e)3iii(3) through (5).

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)3, rewrote i(4) and amended the N.J.A.C. reference in ii. Administrative correction.

See: 35 N.J.R. 1928(a).

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

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

In (a), amended the N.J.A.C. references in 3i(3) and 5i, and deleted "N.J.A.C." preceding "(b)1 below" in 6ii; in (b), deleted "N.J.A.C." preceding "(b)2ii below" in 1iii.

7:26E-3.10 Site investigation—background investigation in soil

(a) If during the site investigation, a suspected contaminant is found in any area of concern in excess of the applicable remediation standard, the following approach may be used to demonstrate to the Department that the contaminant concentration is due to natural background:

1. Demonstrate that a previous background investigation in the region of the site, conducted pursuant to (a)3 below, identified contaminant concentrations in soil in the region of the site at the same concentration as the soil found on the site under investigation;

2. Demonstrate that the contaminant concentrations at the site are due to natural background conditions as follows:

i. The contaminant of concern was never used, stored, or disposed on the site as documented pursuant to N.J.A.C. 7:26E-3.1;

ii. The chemical concentrations detected in the soil at the site are within the ranges reported in appropriate references for background levels for New Jersey;

iii. The distribution of the chemical in the soil does not follow a concentration gradient indicative of a discharge; and

iv. Soil boring logs indicate the samples were not collected from historic fill material; or

3. Conduct a background soil investigation as follows:

i. A minimum of 10 background samples shall be collected from onsite or in the region of the site. Two samples shall be collected from each of five locations with one sample collected at a depth of zero to six inches and one sample at a depth of greater than 12 inches at each location;

ii. Background samples shall be collected at locations unaffected by current and historic site operations as documented by the preliminary assessment, including aerial photographs. Wherever possible, background samples shall be collected from locations which are topographically upgradient and upwind of contaminant sources;

iii. Background samples shall not be collected from the following areas:

- (1) Parking lots, roads, or roadside areas;
- (2) Areas where potential contaminants were loaded, handled, or stored;
- (3) Waste disposal areas;
- (4) Areas near railroad tracks;
- (5) Areas of historic fill material;
- (6) Areas receiving runoff from areas (a)3iii(1) to (5) above or from adjacent sites;
- (7) Storm drains or ditches receiving runoff from the site or adjacent sites; or
- (8) Any other area of concern;

iv. Background samples shall be collected and analyzed using the same methods as were used for area of concern samples;

v. Background samples shall be collected from soil types similar to the area of concern samples. Similar soil types shall be identified using standard classification systems pursuant to N.J.A.C. 7:26E-3.6(a)2ii;

vi. The background data set shall be examined for statistical outliers as follows:

(1) An outlier is defined as a concentration greater than 1.5 times the range of the 25th to 75th percentile, plus the concentration of the 75th percentile. For example, if the 75th percentile concentration in a data set is nine ppm and the 25th percentile is three ppm, subtract three from nine and multiply the result by 1.5. This would equal nine ppm. Add the result to the 75th percentile for a concentration of 18 ppm. Any sample point above 18 ppm would be considered an outlier. The background sample data shall be transformed to natural logarithms before performing the outlier test because it is assumed that natural background chemical concentrations are log normally distributed; and

(2) An outlier shall not be considered part of background unless the chemical concentration is confirmed with the analysis of an additional sample from the outlier location. If the difference between the original and confirmation sample results is no greater than 20 percent, the average concentration of the two samples shall be considered the highest background concentration;

vii. The highest contaminant concentration found in the background samples shall be applied as an upper limit for the contaminant concentrations found on the site. If contaminant concentrations are found at any sampling location on the site exceeding the highest concentration found in the background samples, a remedial investigation shall be conducted; and

viii. Samples collected for area of concern investigation shall not be averaged for background comparisons.

(b) If during the site investigation a contaminant concentration is found in any area of concern in excess of the applicable remediation standard, it may be demonstrated to the Department that the elevated contaminant concentration is not due to an onsite discharge on a case by case basis.

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).
 Former section recodified to N.J.A.C. 7:26E-3.13.

7:26E-3.11 Site investigation—ecological evaluation

(a) A baseline ecological evaluation shall be completed for each contaminated site or area of concern, except an area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one to four family residential building. This baseline evaluation shall be qualitative in nature and based on site investigation sample results and a site inspection by a person experienced in the use of techniques and methodologies for conducting ecological risk assessment in accordance with EPA guidance. This evaluation shall be used to determine when further sampling and evaluation is required, pursuant to N.J.A.C. 7:26E-4.7. The results of the baseline evaluation shall be included as part of the site investigation report submitted to the Department. The baseline ecological evaluation shall:

1. Evaluate all data identified or collected in the preliminary assessment and the site investigation to identify all of the site-specific contaminants that are of ecological concern. Contaminants of ecological concern shall include, without limitation, those that exhibit the ability to biomagnify or bioaccumulate, or contaminants with concentrations that exceed applicable standards, criteria or guidelines recommended by the Department, NOAA, U.S. Department of the Interior, EPA or other Federal natural resource agencies for use in conducting ecological assessments and investigations. Such standards, criteria and guidelines shall include, without limitation:

i. For sediments:

(1) EPA, Briefing Report to the EPA Science Advisory Board on the Equilibrium Partitioning Approach to Generate Sediment Quality Criteria, EPA 440/5-89-002;

(2) EPA, Technical Basis for Deriving Sediment Quality Criteria for Nonionic Organic Contaminants for the Protection of Benthic Organisms by Using Equilibrium Partitioning, EPA-822-R-93-011;

(3) Long, E.R., and D.D. MacDonald, S.L. Smith and F.D. Calder, Incidence of adverse biological effects within ranges of chemical concentrations in

marine and estuarine sediments, Environmental Management 19:81-97, 1995; and

(4) Persaud, D., R. Jaagumagi, and A. Hayton, Guidelines for the Protection and Management of Aquatic Sediment Quality in Ontario, Environmental Monitoring and Reporting Branch, Ontario Ministry of the Environment, Ottawa, 24p., 1993;

ii. For surface water:

(1) Federal Surface Water Quality Criteria for Acute/Chronic Aquatic Life Protection, 40 C.F.R. Part 131; and

(2) New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B;

iii. For soil:

(1) Contaminant Hazard Reviews, Fish and Wildlife Service, U.S. Department of the Interior, various dates, Eisler, R.; and

(2) Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Terrestrial Plants: 1994 Revision, Oak Ridge National Laboratory, Oak Ridge, TN, Will, M.E. and G.W. Suter II;

iv. Other peer-reviewed published literature on the impact that specific contaminants have on non-human species;

2. Identify environmentally sensitive natural resources within the site boundaries and on properties immediately adjacent to the site. The boundaries of these sensitive areas shall be defined to the extent necessary to estimate the sensitive area size and location with respect to the contaminated site or area of concern. The Department of Geographic Information System shall be used as a source of information for identifying these sensitive areas;

3. Identify potential contaminant migration pathways to any environmentally sensitive natural resources identified in (a)2 above; or any observations of potential impact to the identified environmentally sensitive natural resources that might be attributed to site contamination; such observations shall include, but not be limited to:

i. Stressed or dead vegetation;

ii. Discolored soil, sediment or water;

iii. Absence of biota in a specified area of the system as compared to other similar areas of the same system; or

iv. Presence of a seep or discharge; and

4. Draw conclusions regarding the need to conduct further investigations. Continued ecological investigations shall be required during the remedial investigation, pursuant to N.J.A.C. 7:26E-4.7, whenever the baseline

evaluation indicates the co-occurrence of the following conditions:

- i. Contaminants of ecological concern exist onsite;
- ii. An environmentally sensitive natural resource exists on, or immediately adjacent to, the site; and
- iii. Potential contaminant migration pathways to an environmentally sensitive natural resource exist, or an impact to an environmentally sensitive natural resource is indicated based on visual observation.

New Rule, R.1997 d.124, effective May 19, 1997 (operative July 18, 1997: 7:26E-3.11(a)2 operative November 19, 1997).

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

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), added an exception at the end of the first sentence, substituted "with concentrations that exceed applicable standards," for "exhibiting concentrations that exceed available" following "contaminants" and inserted a reference to the U.S. Department of the Interior in the first sentence and inserted a reference to standards in the second sentence in 1, substituted references to environmentally sensitive natural resources for references to environmentally sensitive areas in 2 through 4, and inserted "from an area of concern" following "pathways" in 4iii. 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)1, rewrote the first sentence.

7:26E-3.12 Site investigation—historic fill material

(a) If historic fill material is present at the site, it may be assumed that the fill material is contaminated above an applicable residential soil remediation standard and a remedial investigation of the historic fill material may be conducted pursuant to N.J.A.C. 7:26E-4.6(b).

(b) As an alternative to (a) above, if historic fill material is present at the site, it may be demonstrated that the historic fill is not contaminated above the applicable residential soil remediation standards on a case by case basis.

(c) An appropriate number of ground water samples (minimum of one sample) are required when a high degree of certainty is needed to document that ground water is not contaminated, including, without limitation, if the historic fill site is in an area where ground water is used for potable water. All ground water sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.7(c).

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).

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) and (b), substituted references to residential soil remediation standards for references to unrestricted use remediation standards.

7:26E-3.13 Site investigation report

(a) The site investigation report shall present and discuss all of the information identified or collected pursuant to N.J.A.C. 7:26E-3.3 through 3.12.

(b) The site investigation report shall include the following:

1. Historical information pursuant to N.J.A.C. 7:26E-3.2 (preliminary assessment report) unless the remediation is directed at either a specific discharge event, rather than a particular area of a site, or any underground tank or underground tank system;

2. A physical setting section which shall include descriptions of the following unless the remediation is directed at either a specific discharge event, rather than a particular area of concern, or any underground tank or underground tank system:

i. The physical conditions of the site and surroundings, including a general description of soils, geology, hydrogeology, and topography;

ii. Use of, distance to, flow direction, and names of surface water bodies within one-half mile of the site with emphasis upon water bodies topographically or hydraulically downgradient of the site that may receive site discharges or runoff;

iii. The results of the well search conducted pursuant to N.J.A.C. 7:26E-3.7(e)3, using the well search format at Appendix B; and

iv. The direction of groundwater flow, as determined pursuant to N.J.A.C. 7:26E-3.7(e)3iv.

3. A technical overview which shall present a general profile of the site investigation execution and results. The following items shall be discussed in the technical overview:

i. Reliability of laboratory analytical data as indicated by compliance with sample holding times, ability to achieve method detection limits and precision and accuracy criteria for the analytical method, and other indicators of data quality;

ii. A summary of the overall nature of contamination on the site, including, without limitation, the numbers of areas of concern requiring further remediation; and

iii. Any significant events or seasonal variation which may have influenced sampling procedures or analytical results; and

4. Findings/recommendations which shall include;

i. A discussion, by area of concern, of the site investigation execution and analytical results. The discussion shall consist of specific findings at the areas of concern;

ii. A discussion of the following items, for each area of concern:

(1) A detailed description of each area of concern including dimensions, suspected and actual contamination, and suspected source of discharge;

(2) Results and implications of field measurements or area-specific changes in sampling protocol due to field conditions;

(3) Significance of information generated in the library search of tentatively identified compounds/unknown compounds; and

(4) Recommendations for either additional remediation or no further remediation for each area of concern.

(c) The site investigation report shall also include the following data and information:

1. Results of all analyses, copies of all laboratory data sheets and the required laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1 (Quality Assurance Requirements). Laboratory data deliverables may be submitted as a separate attachment;

2. A summary table of analytical methods and quality assurance indicators pursuant to N.J.A.C. 7:26E-2.2(a)1v;

3. A table summarizing all sampling results, including sample location, media, sample depth, field and laboratory identification numbers, analytical results, and comparison to applicable remediation standards organized by area of concern:

i. All contaminant concentrations exceeding the applicable remediation standards shall be identified;

ii. Samples with method detection limits (MDLs) (or practical quantitation levels (PQLs) if available) exceeding the applicable remediation standard shall be identified and an explanation provided in the table key;

iii. Soils/solids sample results shall be reported in milligrams per kilogram on a dry weight basis, and aqueous sample results shall be reported in micrograms per liter;

iv. All ground water data for the same aquifer zone shall be located in the same section of the table; and

v. The data in the summary table shall be presented both as a hard copy and an electronic deliverable using the format outlined in detail in the Site Remediation Program's Electronic Data Interchange Manual in effect as of the date the report is submitted. The Electronic Data Interchange Manual may be obtained at <http://www.state.nj.us/dep/srp/hazsite/index.html> or by calling (609) 292-9418. Electronic deliverables are not required if the summary table is prepared as part of the remediation of a specific discharge event.

(1) The following locational information shall be submitted:

(A) Horizontal data points shall be reported in New Jersey state plane coordinates using the North American Datum of 1983 (NAD 1983), in accordance with the Department's Mapping and Digital Data Standards at N.J.A.C. 7:1D Appendix A, using units of U.S. survey feet;

(B) Locational information collected in latitude and longitude shall be converted to New Jersey state plane coordinates. Conversion programs can be obtained at <http://www.state.nj.us/dep/srp/hazsite/index.html>.

(2) All vertical data points should be reported as depth below ground surface, and in mean sea level using the North American Vertical Datum of 1988 (NAVD 1988) in accordance with the Department's mapping and digital data guidance which can be referenced at <http://www.state.nj.us/dep/gis/>.

(3) All submissions of electronic data which contain locational information should also include a metadata file. For guidance in creating a metadata file, see the version of the Department's mapping and digital data guidance most recent to the time of submission. This guidance document is located at <http://www.state.nj.us/dep/gis/>.

4. Stratigraphic logs, which include soil/rock physical characteristics and field instrument readings detected during drilling for each soil boring, test pit and monitoring well;

5. Stratigraphic cross sections of the site using information from monitoring wells, test pits and borings, if available;

6. All soil boring, piezometer, and monitoring well records, including the State permit numbers and as-built specifications, if applicable;

7. The following information shall be reported for each monitoring well sampled for each ground water sampling event. All measurements shall be to the nearest 0.01 feet:

i. Before purging:

(1) The date, time, and weather conditions;

(2) The well identification number and State well permit number;

(3) The photoionization detector (PID) and/or flame ionization detector (FID) reading taken from the well immediately after the cap is removed;

(4) The thickness of free product, if present, as determined pursuant to N.J.A.C. 7:26E-2.1(a)11;

(5) pH, dissolved oxygen, temperature, and specific conductance;

(6) The total depth of the well from the top of casing or surveyors mark if present;

(7) The depth from the top of the casing to the top of the screen;

(8) The depth from the top of the casing to the water; and

(9) The estimated water volume in the well.

ii. After purging:

(1) The start and end time for purging;

(2) The purge method;

(3) The purge rate(s);

(4) The total volume purged;

(5) The depth from the top of the casing to the water after purging; and

(6) pH, dissolved oxygen, temperature, and specific conductance.

iii. Before sampling:

(1) The depth from the top of the casing to the water before sampling.

iv. After sampling:

(1) The start and end time for sampling;

(2) pH, dissolved oxygen, temperature, and specific conductance; and

(3) The sampling method.

v. Any comments concerning field observations during the ground water sampling event, such as slow recharge, turbidity, odor, sheen, PID and/or FID readings, model number and ionization potential of PID and/or FID used, shall also be reported; and

8. Any other data and information obtained pursuant to N.J.A.C. 7:26E-3.3 through 3.12.

(d) The site investigation report shall also include the following legible maps and diagrams:

1. Site and area of concern base maps pursuant to N.J.A.C. 7:26E-3.2(a)3i;

2. Sample location map(s), including:

i. All sample locations, sample depths and contaminant concentrations shall also be plotted on the map. Where an entire contaminant class is not detected or is less than the applicable remediation standard, contaminants need not be listed individually;

ii. Map scale (including bar scale) and orientation (including north arrow);

iii. Field identification numbers for all samples; and

iv. If more than one map is submitted, maps shall be presented as overlays, keyed to the base map in (d)1 above; sample locations may be superimposed on the site or area of concern map in (d)1 above. Alternatively, individual maps may be submitted which have a common coordinate system and common scale, provided

each map details the features of the base map in (d)1, above;

3. If applicable, a map of the distribution of surface water, structure and airborne contaminants, including sample location numbers and contaminant concentrations;

4. Photos may be submitted to document the location of all soil and sediment sample locations; and

5. A groundwater elevation contour map and a Contour Map Reporting Form set forth in Appendix G, incorporated herein by reference, for each aquifer for which groundwater flow was determined. Each map shall indicate the direction of groundwater flow relative to site features, and include a north arrow and bar scale.

Recodified from 7:26E-3.10 and 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), amended N.J.A.C. reference; in (b)4ii(4), substituted "remediation" for "action"; in (c)3, added "organized by area of concern"; added (c)3iv and v; inserted new (c)7; recodified former (c)7 as (c)8; and in (c)8, amended N.J.A.C. reference.

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)3v, inserted "or for an area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no ground water impact" following "event" in 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).

Rewrote the section.

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (c)3v, deleted "or for an area of concern that consists of a storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no groundwater impact" from the end.

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) A remedial investigation is necessary at each area of concern with contaminants which exceed the applicable unrestricted use soil remediation standards or the applicable groundwater or surface water remediation standard pursuant to N.J.A.C. 7:26E-1.13. The purposes of a remedial investigation are to:

1. Delineate the horizontal and vertical extent of contaminants in all media at the site pursuant to (b) below;

2. Determine the general surface and subsurface characteristics of the site, including, without limitation, the depth to ground water;

3. Identify the migration paths and actual or potential receptors of contaminants on or through air, soil, bedrock, sediment, ground water, surface water, and structures at a contaminated site;

4. Collect and evaluate all data necessary to evaluate remedial action alternatives. These data may be gathered

through studies including, without limitation, treatability studies, bench scale studies and pilot scale studies (these studies may be conducted pursuant to EPA 540/2-89/058 "Guide for Conducting Treatability Studies Under CERCLA").

i. Any such data collection, shall be initiated as soon as the general extent of contamination is known, usually after the first delineation phase and, at a minimum, these studies shall be initiated by the end of the second delineation phase;

5. Collect and evaluate all data necessary to evaluate the actual and potential ecological impacts and to characterize all natural resource injuries, including the nature and extent of injury to soil, water, flora and fauna, caused by the contaminants of potential ecological concern at the site;

6. Collect all data necessary to develop permit limitations for any discharge to an environmental medium which may be required for any remedial action alternative under consideration;

7. Identify containment and/or stabilization activities to prevent contaminant exposure to onsite receptors and to prevent the offsite migration of contaminants while remedial alternatives are being evaluated.

(b) The delineation of the horizontal and vertical limits of contamination to the applicable unrestricted use remediation standard for all media shall be conducted as part of the remedial investigation. When the future use of an area under investigation is known to be restricted and the property owner has agreed to place a deed notice on the property appropriately restricting its use, the person responsible for conducting the remediation may delineate the horizontal and vertical limit of the soil contamination to the applicable restricted use standard or the applicable ground water impact soil cleanup criteria, whichever is lower. The person responsible for conducting the remediation at the site shall determine if soil contamination has migrated off the property, at any depth, above the applicable unrestricted use standard. Delineation samples shall be biased to identify any migration paths of the contaminant. Samples shall be biased based on professional judgment, area history, discolored soil, stressed vegetation, drainage patterns, field instrument measurements, odor and other field indicators. Delineation shall be accomplished by either:

1. Presentation of sample data that indicates contamination is below the applicable remediation standard. This may be accomplished after a remedial action has been implemented; or

2. By establishment of a contaminant gradient as follows:

i. Contaminant levels decrease by:

(1) Ten percent or more between the initial characterization sample and each of two sequential delineation samples; or

(2) A factor of five or more between the initial characterization sample and a single delineation sample; and

ii. Once a contaminant gradient has been established, the approximate limits of contamination may be reasonably estimated by extrapolation in order to complete the remedial investigation. However, when a contaminant gradient is used to estimate the limits of contamination, the extent of contamination above the applicable unrestricted use remediation standard shall be confirmed using laboratory analyses prior to the completion of a remedial action; and

3. If a vertical soil contaminant gradient has not been established to the water table:

i. For contaminants having water solubility greater than 100 milligrams per liter at 20 degrees Celsius to 25 degrees Celsius, saturated zone soil shall be delineated for residual product pursuant to N.J.A.C. 7:26E-2.1(a)11, and for direct contact soil cleanup criteria; and

ii. For other contaminants, delineate for direct contact soil cleanup criteria.

(c) The person responsible for conducting the remedial investigation shall conduct notification and public outreach pursuant to N.J.A.C. 7:26E-1.4.

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 "restricted use"; deleted (a)4ii, substantially amended (a)5; deleted (a)7; recodified former (a)8 as (a)7; substantially amended (b); in (b)2ii, added "in order to complete ... completion of the remedial action; and"; and added (b)3.

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 "soil" preceding "remediation standards" and "or the applicable groundwater or surface water remediation standard pursuant to N.J.A.C. 7:26E-1.13" preceding "The purposes".

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

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

Added (c).

7:26E-4.2 Remedial investigation workplan

(a) If a remedial investigation workplan is required by the Department in an oversight document or by the ISRA or UST programs, the workplan shall include proposals to complete all applicable requirements pursuant to N.J.A.C. 7:26E-4.1 and 4.3 through 4.7. The remedial investigation workplan shall be presented in a format that corresponds to the outline of this section.

(b) The remedial investigation workplan shall include:

1. A detailed schedule for all remedial investigation activities, including timelines and target dates for:

i. The start and completion of all field activities;

ii. Receipt of analytical results required in N.J.A.C. 7:26E-4.1 and 4.3 through 4.7; and

- iii. Submission of all reports to the Department;
- 2. A description of the role of principal personnel who will participate in the remedial investigation:
 - i. The information in (b)2i(1) and (2) below about project personnel, including the project manager and, if applicable, a facility contact, legal contact, and contractor and subcontractor contacts, shall be provided. In addition, the telephone number of the project manager shall be provided.
 - (1) Responsibilities; and
 - (2) Authority on the project.
 - ii. If the principal personnel designated on the project change, information for the new personnel shall be submitted to the Department within 30 calendar days of such change;
- 3. The following historical information, unless the remediation is directed at either a specific discharge event, rather than a particular area of concern at a site, or any underground tank or underground tank system:
 - i. Historical site plans, if available, after completion of a due diligence search, and facility as-built construction drawing detailing, at a minimum, all information pursuant to N.J.A.C. 7:26E-3.2(a) and, in addition, topography using two-foot contours, potential contaminant conduits including all subsurface utilities. Maps depicting the entire site shall be scaled at one inch to 200 feet or less and individual area of concern maps shall be scaled at one inch to 40 feet or less. If more than one map is submitted, maps shall be presented as overlays, keyed to a base map; and
 - ii. An interpretive aerial history pursuant to N.J.A.C. 7:26E-3.1(c) 1vi including all photos. Matched pairs shall be provided, if available, to allow for stereo viewing. Photos shall include a north arrow, bar scale, date and source of photo, and site boundaries. Matte finish reproductions are preferred;
- 4. Descriptions of the following unless the remediation is directed at either a specific discharge event, rather than a particular area of concern at a site, or any underground tank or underground tank system. If applicable, the Department Geographic Information System shall be used as a source of information for (b)4i through vi below:
 - i. The physical conditions of the site and surroundings, including a general description of soils, geology, hydrogeology, and topography;
 - ii. The usage, distance to, flow direction, and names of surface water bodies within one-half mile of the site boundary, with emphasis upon water bodies topographically or hydraulically downgradient of the site that may receive site discharges or runoff;
 - 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 shall be required. This map shall be that USGS revision in effect at the time of the report 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;

iv. In addition, a wetlands map from the "National Wetlands Inventory" which provides a wetlands map superimposed on a USGS 7.5 minute topographic quadrangle shall be included;

v. Copies of boring logs from on-site construction; and

vi. Land use within a 1,000 foot radius of the site boundary including proximity of the site to environmentally sensitive areas and/or sensitive human receptors (for example, residences, schools, parks);

5. A description of each area of concern including dimensions, suspected contaminants, and suspected source of discharge;

6. An area of concern sampling summary table of proposed sampling and analysis shall be presented in the remedial investigation workplan text or on the sample location map specified in (b)7 below, according to the following headings (a suggested format is included in Table 4-1):

i. Location: Use the same alpha or numeric designation as shown on the scaled sampling location map;

ii. Matrix: Waste, soil, surface water, ground water, or sediment;

iii. Sample depth:

(1) Soil/sediment—depth of sample increment which will be analyzed;

(2) Ground water—indicate water bearing zone to be sampled (water table, confined, and semi-confined) and sample depth;

(3) Surface water—indicate depth of water sample.

iv. Analytical parameters for each sample (for example, priority pollutant metals, full priority pollutant scan); and

v. Sampling method;

7. Proposed sample locations shall be indicated on a sample location map, scaled as in (b)3i above. Sample locations may be superimposed on maps presented pursuant to (b)3i above;

8. Other sampling proposals including any proposals to conduct the following studies:

- i. Treatability, bench scale, pilot studies pursuant to N.J.A.C. 7:26E-4.1(a)4i;
- ii. Data necessary to develop discharge permit effluent limitations; and
- iii. Ecological investigations for the purposes of characterizing natural resource injuries pursuant to N.J.A.C. 7:26E-4.7;

9. Quality assurance project plan including proposed sampling/ analytical methods pursuant to N.J.A.C. 7:26E-2.2; and

10. Health and safety plan pursuant to N.J.A.C. 7:26E-1.9.

TABLE 4-1
Suggested Format Sampling Summary Table

| <u>Location</u> | <u>Medium</u> | <u>Sample Depth</u> | <u>Analytical Parameters</u> | <u>Sampling Method</u> |
|------------------|--------------------------------|---------------------|--|----------------------------|
| Area T: MWT-1 | Seepage Pit Ground Water | Water Table (20') | Priority Pollutants | Bailer |
| MWT-2 | Ground Water | Water Table (20') | Priority Pollutants | Bailer |
| MWT-3 | Ground Water | Water Table (20') | Priority Pollutants | Bailer |
| MWT-4 | Ground Water | Confined (50') | Priority Pollutants | Bailer |
| Area S: S-1 | Drum Storage Pad Soil | 0-6" | Priority Pollutant Metals and Cyanide | Trowel |
| S-2 | Soil | 0-6" 18-24" | Priority Pollutant Metals and Cyanide | Trowel |
| S-3 | Soil | 0-6" | Priority Pollutant Metals and Cyanide | Coring Device Trowel |

Repeal and New Rule, R.1997 d.124, effective May 19, 1997 (operative July 18, 1997; 7:26E-4.2(b)4 operative November 19, 1997).
See: 28 N.J.R. 1098(a), 28 N.J.R. 2298(a), 29 N.J.R. 2278(b).
Section was "Remedial investigation of building interiors".
Amended by R.2003 d.29, effective February 3, 2003.
See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).
In (b), inserted "bar scale," following "north arrow," in 3ii, inserted "(including a bar scale)" following "the scale" in 4iii.

7:26E-4.3 Remedial investigation of soil

(a) The remedial investigation shall include an investigation of all soil which may contain contaminants above the applicable soil remediation standards.

(b) The remedial investigation of the soil shall be conducted for the purposes of a remedial investigation pursuant to N.J.A.C. 7:26E-4.1 according to:

- 1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2; and
- 2. The technical requirements for soil investigation pursuant to N.J.A.C. 7:26E-3.6.

7:26E-4.4 Remedial investigation of ground water

(a) A remedial investigation of groundwater for an area of concern shall be conducted if:

- 1. A ground water sample previously collected from that area of concern contains a contaminant above the applicable ground water remediation standard;
- 2. A soil sample collected from that area of concern within two feet of the saturated zone or bedrock contains a contaminant above the applicable soil remediation standard;
- 3. A soil sample collected in the area of concern anywhere in the soil column contains a contaminant above the applicable soil remediation standard and the contaminant is not going to be actively remediated or removed;
- 4. Any contaminant in an area of concern has a water solubility greater than 100 milligrams per liter at 20 degrees Celsius to 25 degrees Celsius as listed in a peer reviewed reference; and
 - i. All of the soil between the contaminant and the saturated zone is less than 15 percent silt and/or clay; or
 - ii. Any part of the area of concern at which the soil contamination was detected is located within 2,000 feet of a public supply well, as determined from a map of

public supply wells which is available from the Department Bureau of Revenue, Maps and Publications (609-777-1038) or through the Department's Internet home page (<http://www.state.nj.us/dep/njgs>, then select "Geodata"). A groundwater sample is not required if documentation acceptable to the Department is provided in the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why such sampling was not considered necessary.

(b) A ground water sample may not be necessary in a remedial investigation for a particular area of concern if the person responsible for conducting the remediation documents that ground water contamination from the discharge is unlikely based on the following criteria:

1. The date and duration of the discharge is known;
2. The identity and the volume of the contaminants are known;
3. The date the remediation in response to the single discharge was completed;
4. Post remediation soil sampling data establish that the remediation meets all applicable remediation standards at the time of the remedial action workplan approval or, in cases where the remedial action workplan did not require Department approval prior to initiation of the remedial action, in the approved remedial action report; and
5. Any other data or information that is relevant to the determination of the likelihood of ground water contamination.

(c) The remedial investigation of ground water shall be conducted for the purposes of a remedial investigation pursuant to N.J.A.C. 7:26E-4.1 according to:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2; and
2. The requirements in (d) through (i) below.

(d) Ground water samples shall be taken pursuant to acceptable professional methods, such as those described in the NJDEP Field Sampling Procedures Manual in effect as of the date the samples were taken. The person responsible for conducting the investigation may implement an alternate sampling method not described in the Manual, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

(e) All initial ground water sampling points shall be located in:

1. The excavation of each source of a contaminant, if possible, including without limitation, tanks and tank distribution systems, and Underground Injection Control (UIC) units such as seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-5; or

2. The expected downgradient flow direction of the area of concern and within 10 feet of the area of concern; ground water flow direction shall be predicted based on topographic relief, the location of surface water bodies, structural controls in the bedrock or soils, location of pumping wells and subsurface conduits at or below the water table.

(f) The minimum number of ground water samples collected shall be as follows:

1. At least one ground water sample for each area of concern which is classified as an Underground Injection Control (UIC) unit including, without limitation, seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-5;

2. At least one ground water sample for sites with leaking underground storage tanks and tank fields containing up to three tanks with a maximum capacity of 10,000 gallons per tank. If a leaking tank is excavated, the ground water sampling point shall be located within the excavation, if possible;

3. Pump islands and associated piping greater than 25 feet from the tank field shall be considered separate areas of concern and shall require a separate ground water sample location; and

4. At least one ground water sample for all other areas of concern unless the area of concern is within 10 feet hydraulically upgradient of a ground water sampling location.

(g) All groundwater monitoring wells and piezometers shall:

1. Be constructed pursuant to N.J.A.C. 7:9D. Variations from the well construction procedures in N.J.A.C. 7:9D shall be proposed to the assigned case manager prior to requesting a variance under N.J.A.C. 7:9D. Failure to install a well or piezometer in accordance with current well construction specifications in N.J.A.C. 7:9D can result in rejection of results, and requirements to decommission the well or piezometer;

2. Be installed after the required well drilling permits are obtained pursuant to N.J.A.C. 7:9D;

3. Be installed by a licensed New Jersey well driller pursuant to N.J.A.C. 7:9D;

4. Have split spoon samples collected during drilling through unconsolidated or overburden material using American Society of Testing Materials (ASTM) Method D1586-84, incorporated herein by reference, if appropriate. Split spoon samples shall be logged every five feet and at any change in soil lithology and at all zones that show obvious signs of contamination. At least one drilling location per area of concern shall include continuous split spoon samples to define the subsurface stratigraphy. Drilling logs shall include all data required pursuant to N.J.A.C. 7:26E-3.6, Soil investigations. Other methods may be used if documentation acceptable to the Department is provided indicating that the methods were appropriate;

5. Have a sufficient number of rock cores collected during the drilling of bedrock monitoring wells, piezometers and other borings, if appropriate, to obtain a general understanding of the fracture patterns beneath the site. The corings shall be conducted using the ASTM 2113 Diamond Drilling Method, as amended and supplemented, incorporated herein by reference. Other methods may be used if documentation acceptable to the Department is provided indicating that the methods were appropriate. The core logs shall include:

- i. Lithology;
- ii. Fracture frequency;
- iii. Degree of weathering;
- iv. Fracture spacing;
- v. Orientation of fractures;
- vi. Odors and discoloration in the rock core;
- vii. Percent recovery; and
- viii. Any other information appropriate for the investigation.

6. If appropriate, an evaluation of the bedrock structure at the site including strike and dip of the bedding planes, orientation of faults, joints and fractures; plunges and trends of folds, must be completed through a field evaluation. Published geologic literature may be used if appropriate.

7. Be surveyed by a New Jersey licensed surveyor as follows:

- i. The inner well casing must be surveyed to the nearest hundredth (0.01) foot in relation to the permanent, on-site datum and horizontally to an accuracy of one-tenth of a second latitude and longitude; and
- ii. A permanent water level measurement mark shall be etched onto the top of the inner well casing to allow for accurate, consistent and comparable water level measurements over time.

8. Be developed to yield a non-turbid discharge, when possible;

9. Be decommissioned upon completion of the investigation in accordance with N.J.A.C. 7:9D unless otherwise approved by the Department;

10. Have the monitoring well permit number and site specific well identification number prominently displayed and permanently affixed to the monitoring well; and

11. Be constructed with a locking cap and generally protected from damage and vandalism. Any damage or vandalism to a monitoring well or piezometer shall be reported to the Department, and the damaged monitoring well or piezometer shall be properly repaired or decommissioned in accordance with N.J.A.C. 7:9D.

(h) The results of initial ground water analyses shall be evaluated as follows:

1. If the contaminant concentrations found in all ground water samples are below the applicable remediation standards, no further remediation is necessary for ground water;

2. If the contaminant concentrations found in any ground water samples exceed the applicable remediation standard, the ground water may be resampled to confirm the presence of contamination. This confirmation sampling shall include at least two additional samples taken over a 30 day period, the results of which may be averaged with the original result to determine compliance with the applicable remediation standard; and

3. If ground water contamination above the applicable remediation standards has been confirmed, the person responsible for conducting the remediation shall perform the requirements in (h)3i through ix below. If the person responsible for conducting the remediation claims that groundwater contamination is from an offsite source, then a background ground water investigation shall be performed pursuant to N.J.A.C. 7:26E-3.7(g).

i. Delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including, but not limited to, the extent of free and/or residual product as determined pursuant to N.J.A.C. 7:26E-2.1(a)11;

ii. Confirm the direction of groundwater flow in each affected aquifer or water bearing zone, using all monitoring wells located within each specific aquifer or water bearing zone pursuant to N.J.A.C. 7:26E-3.7(e)3iv; and

iii. Conduct aquifer tests, which may include pumping tests, packer tests, and slug tests or other appropriate analysis to adequately characterize the impacted aquifer at the site. At a minimum, this shall include the site water table gradient, hydraulic conductivity (K), and an estimate of the rate of ground water and contaminant flow in the aquifer. If pumping the aquifer is determined to be a feasible option for remediation, then additional aquifer characteristics such as

transmissivity (T) and storativity (S) must be determined through the use of a pumping test;

iv. If a model to further define characteristics of the ground water flow system is used, documentation acceptable to the Department shall be provided in the remedial investigation report (N.J.A.C. 7:26E-4.8) indicating that the model was appropriate. Specific details on the type of model, input parameters used and referenced, boundaries and limitations of the model shall be submitted to the Department upon request along with a justification as to why the model was selected;

v. Perform an updated well search pursuant to N.J.A.C. 7:26E-3.7(e)3i, based on the results of:

- (1) The delineation performed in (h)3i above; and
- (2) The confirmed groundwater flow direction determined in (h)3ii above;

vi. Sample any existing potable and supply wells identified pursuant to the well search which are suspected to be contaminated by the site in question;

vii. Evaluate any surface water body that may be impacted by the contaminated ground water pursuant to N.J.A.C. 7:26E-3.8 and 4.5 (Surface Water Investigations);

viii. Evaluate any subsurface utilities, basements or other structures to determine whether vapor hazards as a result of the ground water contamination may exist for receptors associated with the utility or structure. Measurement of oxygen levels, lower explosive limits (LEL) and the presence of organic vapors should be included in this evaluation; and

ix. Evaluate the current and potential ground water uses using a 25-year planning horizon utilizing municipal and water purveyor planning data.

(i) If geologic conditions are suitable, soil gas studies shall be conducted to locate sources of ground water contamination when ground water contamination by volatile organic compounds is identified but no apparent source is identified. If geologic conditions are not suitable for soil gas studies, other suitable field investigation techniques shall be used for source identification.

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997; 7:26E-4.4(h)3v(1) operative November 19, 1997).

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

Substantially amended 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.

Administrative correction.

See: 35 N.J.R. 1928(a).

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

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

In (h), updated the N.J.A.C. reference in 3.

7:26E-4.5 Remedial investigation of surface water, wetlands and sediment

(a) The remedial investigation shall include an investigation of any surface water, wetlands and sediments which may have been impacted by contamination emanating from the site.

(b) The remedial investigation of surface water, wetlands and sediment shall be conducted for the purposes of a remedial investigation pursuant to the requirements for the appropriate media in N.J.A.C. 7:26E-3.4 and 4.1 according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.

(c) The surface water investigation shall be conducted pursuant to (d) below to evaluate the relationship between contaminated ground water, sediments and surface waters, unless:

1. Documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided with the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why this migration pathway was not considered significant; or

2. The Department approves a less stringent water quality analysis:

- i. Based on site-specific conditions; and
- ii. Supported by appropriate supporting documentation.

(d) The surface water investigation shall include:

1. Sampling designed to account for seasonal or short-term flow and water quality fluctuations (dry vs. wet weather), system hydraulics (obtaining flow proportioned samples) and potential contaminant characteristics (density, solubility).

2. A receiving water body analysis on any surface water body to which contaminated groundwater is discharging, including a water quality analysis program with sampling stations upstream and downstream of the contaminated site, any existing point source discharges at that site, and any proposed discharge locations as follows:

- i. Procedures in accordance with the methods identified in (d)2ii below, including, without limitation:

- (1) Water quality sampling for each constituent of concern potentially emanating from a site;

- (2) At least two sample sets must be taken during critical, low flow conditions;

- (3) At least one sediment sample shall be taken and analyzed for the appropriate parameters identified in (d)2i(1) above, during one of the sampling events;

(4) For non-tidal water bodies, samples shall be taken at the area of discharge, and at least one location downstream;

(5) For tidal water bodies, samples shall be taken at the area of discharge at high, low, and slack tides; and

(6) Depending upon site-specific conditions, additional samples may be necessary to define loads from other point sources, tributaries, and other non-point sources; and

ii. All methods shall be consistent with generally accepted professional methods, such as those described in the NJDEP "Field Procedures Manual For Water Data Acquisition," or the EPA Handbook "Instream Sampling for Waste Load Allocation Applications;" any deviations from these two documents shall be documented pursuant to N.J.A.C. 7:26E-1.6.

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 (c)1 and (d)2ii, 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).

Rewrote (d).

7:26E-4.6 Remedial investigation of landfills and historic fill material

(a) The remedial investigation shall include, unless the remedial investigation is being conducted pursuant to ISRA, an investigation of all landfills as follows:

1. The remedial investigation of landfills shall be conducted pursuant to N.J.A.C. 7:26E-4.1 according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Landfill investigations shall characterize the contents of the landfill through a complete file review, which shall include a review of the Department's Geographic Information System. In addition, the horizontal and vertical extent of fill material and impact on the soil, ground water, air and surface waters shall be evaluated;

3. The boundaries of the landfill shall be identified through geophysical sensing techniques, or subsurface exploration techniques including test pits or borings, or an aerial photographic history, or local government records, or use of the Department's Geographic Information System. Other methods may be used if documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the remedial investigation report (N.J.A.C. 7:26E-4.8) specifying why the methods were considered appropriate; and

4. The person responsible for conducting the remediation shall review all records pertaining to the landfill to determine if any hazardous waste pursuant to N.J.A.C. 7:26 may have been disposed in the landfill.

(b) The remedial investigation of historic fill material shall identify the location of the fill and characterize the fill material, including a determination of the presence of any contaminated non-historic fill material and any free and/or residual product pursuant to N.J.A.C. 7:26E-2.1(a)11, as follows:

1. The remedial investigation of historic fill material shall be conducted to identify the location, vertical limits, and physical characteristics of the historic fill material using borings, test pits, or trenches. All contaminated fill material, including both historic and non-historic fill, shall be logged and mapped. The investigation shall include:

i. At least four borings or test pits per acre of historic fill material with a minimum of four borings or test pits per site. The location of the borings or test pits shall be representative of the areal extent of the fill and shall be advanced through the fill material to native soil, meadow mat, or bedrock so that the vertical limit of the fill material is established. If the contaminated fill material extends below the water table, borings or test pits shall extend below the water table as necessary to establish the vertical limit of the fill material;

2. The remedial investigation of historic fill material shall identify the horizontal boundaries of the contaminated fill material area as follows:

i. A minimum of four borings or test pits shall be installed in non-fill areas spaced equidistantly around the perimeter of the contaminated fill material area;

ii. If fill material is known to be ubiquitous in the vicinity of the site, aerial photos or other applicable documentation, such as information obtained from the Department's Geographic Information System, may be submitted in lieu of perimeter borings or test pits to verify that historic fill is site-wide; and

iii. Delineation of historic fill material is not required beyond the property boundary;

3. The historic fill material may be characterized by using the optional historic fill database maximum and average contaminant levels for historic fill material as set forth in Table 4-2 below or by collecting and analyzing contaminant characterization samples from each type of historic fill present (for example, ash and demolition debris are considered to be different types of fill material) to determine the site specific contaminant levels, as follows:

i. At least four samples per acre, per fill type are required;

ii. The actual number and location of samples collected shall be based on the variability of fill types and contaminant ranges present in a historic fill area and selected in accordance with N.J.A.C. 7:26E-3.4(a);

iii. At least one sample for laboratory analysis shall be collected from each boring and analyzed as follows:

(1) Analysis of rubble, ash, cinders, and dredge spoils shall be conducted for total petroleum hydrocarbons and priority pollutant metals in all samples, polynuclear aromatic hydrocarbons (per EPA Priority Pollutant List) and PCB analysis required on 25 percent of the samples, biased to samples having the

highest total petroleum hydrocarbon levels, and field screening for volatile organic compounds shall be conducted during the installation of all exploratory borings and test pits with volatile organic laboratory analysis performed on all samples with elevated field instrument measurements (greater than five times background);

(2) Any other fill material shall be analyzed for total petroleum hydrocarbon in all samples, and Priority Pollutant plus forty analysis or EPA Target Compound List/Target Analyte List analysis shall be conducted for 25 percent of all samples;

(3) In addition to contaminant analysis required in (b)3iii(1) and (2) above, samples shall also be analyzed for any other suspected contaminants based on diligent inquiry of the origin of the fill material and site history; and

(4) If more than one type of historic fill material is encountered in any boring or test pit, one sample is required for each type of fill material encountered. For example, if ash and demolition debris are encountered in the same boring, one sample of each is required from that boring; and

4. Areas of concern located in historic fill material shall be investigated independently of the historic fill material. To differentiate between contaminants in fill and those from site discharges, an evaluation of the contaminant type and concentration gradient in each area of concern and the contaminant distribution in the fill shall be conducted. If this evaluation is not conclusive the Department may require additional data or information;

5. If at any time during the remedial investigation of fill material the person responsible for conducting the remediation encounters materials that do not meet the definition of historic fill material because it includes 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, free and/or residual product, as determined pursuant to N.J.A.C. 7:26E-2.1(a)11, or containerized waste, the remediation of each such area shall be conducted as a separate area(s) of concern pursuant to N.J.A.C. 7:26E-4; and

6. An appropriate number of ground water samples (minimum of one sample) are required when a high degree of certainty is needed to document that ground water is not contaminated, including, without limitation, if the historic fill site is in an area where ground water is used for potable water. Any ground water sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.7(c).

TABLE 4-2

Summary of Target Contaminant Concentrations in
Typical Historic Fill Material (mg/kg)

| Contaminant (ppm) | Maximum | Average |
|------------------------|---------|---------|
| Benzo(a)anthracene | 160 | 1.37 |
| Benzo(a)pyrene | 120 | 1.89 |
| Benzo(b)fluoranthene | 110 | 1.91 |
| Benzo(k)fluoranthene | 93 | 1.79 |
| Indeno(1,2,3-cd)pyrene | 67 | 1.41 |
| Dibenz(a,h)anthracene | 25 | 1.24 |
| Arsenic | 1098 | 13.15 |
| Beryllium | 80 | 1.23 |
| Cadmium | 510 | 11.15 |
| Lead | 10700 | 574 |
| Zinc | 10900 | 575 |

Amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997; 7:26E-4.6(a)2 operative November 19, 1997).

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

Added "and historic fill" to section heading; in (a), substituted "ISRA" for "ECRA" and "as follows:" for "which may contain contaminants above the applicable remediation standards,;" recodified former (b) through (e) as (a)1 through 4; in (a)3, inserted reference to Geographic Information System and amended N.J.A.C. reference; in (a)4, substituted "responsible for conducting the remediation" for "responsible for the investigation"; and inserted new (b).

7:26E-4.7 Remedial investigation of ecological receptors

(a) If further ecological investigation is required pursuant to N.J.A.C. 7:26E-3.11(a)4, additional investigation shall be conducted during the remedial investigation to characterize the extent of contamination along contaminant migration pathways and within an environmentally sensitive natural resources. Neither an ecological investigation nor an ecological risk assessment is required for contaminated ground water, but see N.J.A.C. 7:26E-4.8(c)12 for reporting requirements. Ecological investigations and risk assessments shall be conducted by a person experienced in the use of techniques and methodologies for conducting ecological risk assessments in accordance with EPA guidance. Ecological investigations and risk assessments shall be conducted in accordance with EPA and other Federal guidance, as applicable, including, without limitation, the following, incorporated herein by reference:

1. "Ecological Assessment of Hazardous Waste Sites: A Field and Laboratory Reference," EPA/600/13-89/013;
2. "Risk Assessment Guidance for Superfund, Volume II, Environmental Evaluation Manual," EPA/540/1-89/001, and the associated supplementary guidance Ecological Update Series—Volumes 2 and 4; and
3. "Framework for Ecological Risk Assessment," EPA/630/R-92/001;
4. Eisler, R., "Contaminant Hazard Reviews," Fish and Wildlife Service, U.S. Department of Interior, various dates;
5. EPA, "Wildlife Exposure Factors Handbook," Vol. I and II, EPA 600/R-93/187a, b;
6. EPA, "BTAG Forum," Intermittent Bulletin published by USEPA, Office of Emergency and Remedial Response;

7. EPA, "ECO Update," Intermittent Bulletin published by USEPA, Office of Emergency and Remedial Response;

8. Opresko, D.M., B.E. Sample and G.W. Suter, "Toxicological Benchmarks for Wildlife: 1994," Oak Ridge National Laboratory, Oak Ridge, TN; and

9. Will, M.E. and G.W. Suter II, "Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Terrestrial Plants: 1994 Revision," Oak Ridge National Laboratory, Oak Ridge, TN.

(b) A site specific ecological risk assessment report, in accordance with (a) above, shall be completed during the remedial investigation and shall be submitted as part of the remedial investigation report. The ecological risk assessment report shall:

1. Describe actual impacts and potential risks to identified environmentally sensitive natural resources;
2. Present appropriate ecologically-based, site specific remediation standards for site contaminants of ecological concern, if applicable; and
3. Recommend measures for incorporation into the remedial action workplan, pursuant to N.J.A.C. 7:26E-6.2, to mitigate actual impact or ecological risks, if applicable.

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).

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), rewrote the introductory paragraph; and in (b), inserted "report" following "assessment" in the introductory paragraph, rewrote 1, and substituted "Present" for "Develop" and inserted "of ecological concern" in 2.

7:26E-4.8 Remedial investigation report

(a) The remedial investigation report shall comply with all requirements in N.J.A.C. 7:26E-3.13 (site investigation report) and in addition shall present and discuss any additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the approved remedial investigation workplan as outlined in N.J.A.C. 7:26E-4.2, if applicable. The remedial investigation report shall be presented in a format that corresponds to the outline of this section.

(b) The remedial investigation report shall include the following:

1. Historical information pursuant to N.J.A.C. 7:26E-4.2(b)3;
2. Physical setting pursuant to N.J.A.C. 7:26E-4.2(b)4, including, but not limited to:
 - i. The results of the groundwater flow direction confirmation conducted pursuant to N.J.A.C. 7:26E-4.4(h)3ii; and

- ii. The results of the updated well search conducted pursuant to N.J.A.C. 7:26E-4.4(h)3v, including a conclusion as to whether any wells may be impacted by the contaminant plume. The results of the well search shall be presented on the well search form at Appendix B.

3. Technical overview pursuant to N.J.A.C. 7:26E-3.13(b)3 and, in addition, the following items shall be discussed:

- i. A summary of the results of any treatability, bench scale, or pilot studies conducted to support remedy selection;
- ii. A summary of the results of any data collected to develop permit limitations for any permits which may be required during potential remedial actions; and
- iii. A summary of the results of any ecological assessments conducted; and

4. Findings/recommendations pursuant to N.J.A.C. 7:26E-3.13(b)4.

(c) The remedial investigation report shall include the following data and information:

1. Results of all analyses, copies of all laboratory data sheets and the required laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1 (Quality Assurance Requirements). Laboratory data deliverables may be submitted as a separate attachment;
2. A summary table of analytical methods and quality assurance indicators pursuant to N.J.A.C. 7:26E-2.2 (Quality Assurance Workplan);
3. Sampling Results Summary Table(s) of all analyses, including sample location, media, sample depth, and field and lab identification numbers pursuant to N.J.A.C. 7:26E-3.13(c)3 and, in addition:

i. All summary tables shall be organized by area of concern. For each area of concern, average concentrations for each contaminant shall be presented along with individual sample results if averaging will be used for compliance with applicable remediation standards.

(1) All contaminant concentrations exceeding the applicable remediation standard shall be identified; and

(2) Samples with MDLs (or PQLs if available) exceeding the applicable remediation standard shall be identified and an explanation provided in the table key; and

(3) If some contaminants are detected and quantified and some contaminants are "estimated" or non-detectable, for purposes of calculating the average, the person submitting the site investigation report shall substitute one half the reported method detection limit for all contaminants reported as non-de-

tectable, and "estimated" values shall be included in the contaminant average "as is."

(4) "Non-detectable" values for contaminants in samples which have been diluted shall not be included in the area of concern average for those contaminants. "Detectable" values for contaminants in diluted samples shall be included in the area of concern average for those contaminants.

(5) The average shall be calculated for the contaminated area only, and shall not include clean zone data (data from outside the boundaries of the contaminated area as defined by samples contaminated greater than the applicable remediation standard). For example, if data points within a 50 foot "clean" buffer zone around an area of concern were identified during pre-remedial sampling, this clean zone shall not be included in the average. Samples from different depth intervals shall not be averaged together to determine compliance with applicable remediation standards.

(6) Post excavation sample data shall not be averaged for compliance with applicable remediation standards.

ii. The data in the Sampling Results summary table shall be presented pursuant to N.J.A.C. 7:26E-3.13(c)3.

4. Stratigraphic logs, which include soil/rock physical descriptions and field instrument readings detected during drilling for each soil boring, test pit and monitoring well, if applicable:

i. For fill material and historic fill material the logs shall include a description of fill type, any layering of the fill material, texture and size of materials, an assessment of fill homogeneity, field indicators of contamination including, without limitation, odors, staining or other discoloration, and field measurements of organic vapors using a calibrated PID/FID or other suitable instrument. The presence of any process waste including metal processing waste such as slag, tailings or free and/or residual product determined pursuant to N.J.A.C. 7:26E-2.1(a)11 shall be noted;

5. Stratigraphic cross sections of the site using information from monitoring wells, test pits and borings;

6. All soil boring, piezometer, and monitoring well records, including the State permit numbers and as-built specifications, if applicable;

7. For each monitoring well sampled, the information required pursuant to N.J.A.C. 7:26E-3.13(c)7 shall be reported for each ground water sampling event.

8. If applicable, ground water elevation, for each monitoring well, to the nearest hundredth (0.01) foot relative to a permanent, on-site datum taken prior to evacuation, from the top of well casing with locking cap removed;

9. A summary of the review of inventory control records to identify product loss and any actions taken to investigate potential discharge areas;

10. Results of any treatability, bench scale, or pilot studies or other data collected to support remedy selection;

11. Any data collected to develop permit limitations;

12. The results of any ecological assessments and evaluations conducted, including, without limitation, characterization of natural resource injuries, in accordance with N.J.A.C. 7:26E-4.7(b). This information shall be submitted in a format compatible with the Department's Geographic Information System (see N.J.A.C. 7:1 Appendix A. For additional guidance, see the version of the Department's "Guidance for the submission and use of Data in GIS Compatible Formats" most recent to the time of submission. This guidance document may be found at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>.) In lieu of an ecological investigation or an ecological risk assessment for groundwater, the person responsible for conducting the remediation shall include the following information in the remedial investigation report:

i. The area of contaminated ground water plume;

ii. The degradability of the individual ground water contaminants; and

iii. The period during which the ground water is estimated to exceed the applicable ground water quality standards;

13. For landfills, a summary of any records pertaining to the nature of waste disposed at the landfill. Copies of the records shall be submitted as a separate attachment to the report;

14. For historic fill material, the following documentation shall be submitted:

i. A statement that, based on diligent inquiry of the history of the parcel of land, including use of the Department's Geographic Information System, the fill material is non-indigenous material, was used to replace soil in an area or raise the topographic elevation of the site, was contaminated prior to emplacement, and was in no way connected with the operations at the location of emplacement; and

ii. A statement that, based on the results of the remedial investigation, the 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; and

15. Any other data and information obtained pursuant to N.J.A.C. 7:26E-4.1 through 4.7.

(d) The remedial investigation report shall include the following legible maps and diagrams:

1. Site and area of concern base maps pursuant to N.J.A.C. 7:26E-4.2(b) 3i. If more than one map is submitted pursuant to (d)2 below, maps shall be presented as overlays, keyed to the base map or each map shall include all the information shown on the base map. Sample locations may be superimposed on the base maps.

2. Sample location map(s), including:

i. All ground water, soil, sediments and other sample locations; sample depth and contaminant concentration shall also be plotted on the map;

ii. Map scale (including bar scale) and orientation (including north arrow);

iii. Field identification numbers for all samples;

iv. A groundwater elevation contour map and a completed Contour Map Reporting Form (see Appendix G) for each set of static water level measurements for each aquifer for which groundwater flow was determined, indicating the direction of groundwater flow and site features, and including a north arrow and appropriate bar scale;

v. Top of bedrock contour map if bedrock was encountered in a sufficient number of borings to prepare a map;

vi. Isopleth maps for ground water contaminant concentrations for each round of sampling; isopleth maps for soil sample results may also be provided;

vii. Maps depicting the horizontal and vertical extent of any free and/or residual product zones in ground water or soil, as determined pursuant to N.J.A.C. 7:26E-2.1(a)11, for each round of sampling;

viii. If data for more than 25 samples are presented for an area of concern, soil, ground water and sediment contaminant isopleth maps and cross section diagram(s) showing concentrations of potential contaminants shall be submitted, including:

(1) Horizontal and vertical distribution of contaminants in the soil and sediment, with sample point location numbers and contaminant concentrations; and

(2) Horizontal and vertical distribution of contaminants in the ground water, with sample point location numbers and contaminant concentrations; and

ix. All monitoring well, piezometer, or other ground water sampling point locations including depth of the open borehole interval and/or screened interval;

3. If applicable, map of the distribution of surface water, structure and airborne contaminants, including sample location numbers and contaminant concentrations;

4. The same alpha or numeric labels, if assigned in the remedial investigation workplan, shall be used in the remedial investigation report; and

5. Photos may be submitted to document the location of all soil and sediment sample locations.

Recodified from 7:26E-4.9 and amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997); 7:26E-4.8(c)14i operative November 19, 1997).

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

N.J.A.C. references amended throughout section; substantially amended (c)3i; added (c)3i(6); substantially amended (c)3ii; added (c)4i; rewrote (c)7; in (c)12, inserted reference to evaluations and added second sentence; inserted new (c)14; recodified former (c)14 as (c)15; inserted new (d)2vii; recodified former (d)vii and viii as (d)viii and ix; and deleted Tables 4-2 through 4-3a, providing database information. Former section "Remedial investigation workplan" was repealed.

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

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

Rewrote (c)12.

Administrative change.

See: 32 N.J.R. 1796(a).

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

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

Rewrote (b) and (d).

Administrative correction.

See: 35 N.J.R. 1928(a).

7:26E-4.9 (Reserved)

Recodified to 7:26E-4.8 and amended by R.1997 d.124, effective May 19, 1997 (operative July 18, 1997).

SUBCHAPTER 5. REMEDIAL ACTION SELECTION

7:26E-5.1 Remedial action selection

(a) The purpose of remedial action selection is to select, develop and implement the most appropriate action for a particular contaminated site or area of concern being investigated pursuant to N.J.A.C. 7:26E-3 and 4.

(b) A person selecting a remedial action shall first establish the remedial action objectives/goals for the site or area of concern by:

1. Identifying all media of concern;
2. Selecting applicable remediation standards based on the current and future land use for the site;
3. For each media of concern, selecting between active treatment versus containment and exposure controls; and
4. For contaminated soil, selecting among an unrestricted use, limited restricted use or restricted use remedial action.

(c) A person responsible for conducting a remediation for a site shall select a remedial action that reduces or eliminates exposure to contaminants above the applicable remediation standard. In determining the appropriate remedial action that will reduce or eliminate exposure to contaminants above the applicable remediation standard, the person responsible for

conducting the remediation shall select, develop, and implement a remedial action that is based on the following factors:

1. The ability of the remedial action to protect the public health and safety and the environment, including:

i. The technical performance and effectiveness of the remedial action in attaining compliance with the applicable remediation standards;

ii. The reliability of the remedial action in maintaining compliance with the applicable remediation standards;

iii. The degree to which the proposed remedial action reduces toxicity, mobility, or volume of contaminants through treatment, reuse or recycling;

iv. The degree to which the remedial action minimizes risks and short-term impacts associated with the implementation of the remedy and with any contamination left on-site, while still providing long-term protection; and

v. The degree to which the potential for off-site migration of contamination through erosion, subsurface migration or other migration pathways is mitigated or eliminated;

2. The implementability of the proposed remedial action, including:

i. The engineering and scientific feasibility and availability of the technologies that the proposed remedial action would employ. If treatability, bench scale, or pilot studies have been conducted pursuant to N.J.A.C. 7:26E-4.1(a)4, these results shall be utilized to determine whether or not the proposed remedial action is technically feasible;

ii. The ability of the person responsible for conducting the remediation to implement the proposed remedial action within a reasonable time frame. A proposed remedial action will be considered timely if it will achieve the applicable remediation standard within five years from the time the remedy is implemented, or in the case where Department approval of a remedial action workplan is required or sought, five years from remedial action workplan approval. Remedial actions to address immediate environmental concerns shall be considered timely as specific by the Department in an oversight document pursuant to N.J.A.C. 7:26C; and

iii. The property owner's written agreement to the implementation of the limited restricted use or restricted use remedial action including all requirements for engineering and institutional controls pursuant to N.J.A.C. 7:26E-8;

3. The consistency of the proposed remedial action with other applicable Federal, State and local laws and regulations, including, without limitation, the provisions of

the Pinelands Protection Act, P.L. 1979, c.111 (N.J.A.C. 13:18A-1 et seq.), any rules promulgated pursuant thereto, and the provisions of section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 4711;

4. The potential impacts of the proposed remedial action on the local community, including, without limitation:

i. The potential impacts to the community identified by the responses that the person responsible for conducting the remediation receives from the notices provided in accordance with N.J.A.C. 7:26E-1.4; and

ii. The degree to which the proposed remedial action is consistent with the local land use Master Plan; and

5. The potential for the selected action to cause natural resource injury.

i. Examples of remedial actions that may cause natural resource injury include, without limitation:

(1) Pumping ground water that deprives a wetland of its primary water source;

(2) Capping a landfill which involves destroying adjacent wetland; and

(3) Pump and treat ground water remedial action with discharge to surface water.

ii. Examples of information that would be evaluated when assessing a ground water remedial action include, without limitation:

(1) Whether the site is located in a water supply surplus or deficit area as defined in the State's Water Supply Master Plan (New Jersey Department of Environmental Protection, "Water for the 21st Century: The Vital Resource," August 1996) or the version most recent to the submission;

(2) Whether the remedial action will be active or passive; and

(3) If a pump and treat remedial action is proposed, the volume of water to be pumped over the life of the action, the estimated duration of pumping, and where the treated water would be discharged.

(d) A person responsible for conducting the remediation may select an innovative remedial action technology for any site, area of concern or contaminated media, upon review and approval of an application submitted to the Department. The application for use of an innovative remedial action technology shall include:

1. Information demonstrating that the proposed technology has been verified by:

i. The U.S. Environmental Protection Agency;

- ii. Another state regulatory agency that has a current reciprocity agreement with the Department for technology acceptance;
- iii. An independent verification organization which maintains a current agreement with the Department for technology acceptance; or
- iv. The Department; and

2. A report that includes detailed description of the following:

- i. The technology, including, without limitation, a process flow diagram, and a detailed description of the operational and environmental data of the technology under a full range of conditions, including, without limitation, laboratory scale and pilot test scale operational results clearly demonstrating the effectiveness and efficiency of the technology under various conditions;
- ii. The sampling and analytical methods including the quality assurance/quality control protocols to generate the data to verify or certify that the technology will operate as claimed and achieve acceptable and reproducible results;
- iii. The resource requirements, natural resource impacts, discharges and by-products and co-products generated through implementation of the technology and description of the environmental controls to be utilized to address impacts; and
- iv. The demonstrated performance range of the technology, including, without limitation, the anticipated reduction of contaminant concentrations achieved for each constituent and for each media of concern;

(e) A person responsible for conducting the remediation who selects a limited restricted use or restricted use remedial action for soil contamination shall comply with the Department's requirements for the use of engineering and institutional controls at N.J.A.C. 7:26E-8.

(f) Nothing in this subchapter shall be construed to limit the requirements to conduct a feasibility study pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) or a corrective measures study pursuant to the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.).

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

Rewrote (b)4; in (c), deleted a former 5, and rewrote former 6 as 5; inserted a new (d), recodified former (d) and (e) as (e) and (f); and rewrote the new (e).

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), deleted the second sentence in the introductory paragraph; in (c), added 1v and 2iii; rewrote (e).

Amended by R.2008 d.262, effective September 2, 2008.
See: 39 N.J.R. 2687(a), 40 N.J.R. 5010(a).

In (c)4i, deleted "to the local government" following "provided" and updated the N.J.A.C. reference.

7:26E-5.2 Remedial action selection report

(a) The person responsible for conducting the remediation shall demonstrate to the Department that the proposed remedial action is appropriate by submitting a remedial action selection report to the Department for approval, prior to implementation of the remedial action, when:

- 1. The selected remedial action is a restricted use remedial action, except for interim response actions immediately necessary to contain or stabilize a discharge in order to prevent damage to public health, safety or the environment.
- 2. The selected remedial action utilizes an innovative remedial action technology;
- 3. The selected remedial action will take longer than five years to complete from the time the remedial action is implemented, or the remedial action workplan is approved by the Department; or
- 4. The selected remedial action is being implemented to address ground water, surface water or sediment contamination or ecological impact.

(b) A remedial action selection report is not required if the site being remediated is subject to the requirements for preparing a feasibility study pursuant to CERCLA or a corrective measures study pursuant to RCRA.

(c) A remedial action selection report is not required if the site or area of concern being remediated is an unregulated heating oil tank system, unless the person responsible for conducting the remediation is required to enter into a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order in order to obtain a No Further Action letter pursuant to the Department Oversight of the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.5(d).

(d) The remedial action selection report shall be presented in a format that corresponds to the outline of this section, except that for innovative remedial action technologies the format shall include the information required at N.J.A.C. 7:26E-5.1(d), and shall include:

- 1. A detailed description of the selected remedial action including, without limitation, specifications for engineering and institutional controls and a plan for monitoring of such controls pursuant to N.J.A.C. 7:26E-8;
- 2. A list of the remediation standards that the proposed remedial action will comply with for each media of concern at each area(s) of concern;
- 3. A discussion of how the proposed remedial action satisfies all of the criteria pursuant to N.J.A.C. 7:26E-5.1(c), (d), if applicable, and (e); and
- 4. The Department may require the submittal of any additional information regarding remedial action selection which is necessary for the Department to determine if the remedy is appropriate.

(e) Where Department pre-approval of a remedial action workplan is required pursuant to N.J.A.C. 7:26E-6.1(b), or sought, the remedial action selection report should be submitted in conjunction with the final remedial investigation report, N.J.A.C. 7:26E-4.8. If the remedial action selection report is not submitted with the final remedial investigation report, the remedial action selection report shall be submitted with the remedial action workplan, N.J.A.C. 7:26E-6.2.

(f) Where Department pre-approval of a remedial action workplan is not required or sought, the remedial action selection report shall be submitted with the remedial action report, N.J.A.C. 7:26E-6.7.

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

Rewrote (a) and (c).

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

In (c)1 and (e), amended the N.J.A.C. references.

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Added new (c); and recodified former (c) through (e) as (d) through (f).

APPENDIX

(RESERVED)

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

SUBCHAPTER 6. REMEDIAL ACTION

7:26E-6.1 Remedial action requirements

(a) The person responsible for conducting the remedial action shall notify the Department and the local governing body pursuant to N.J.A.C. 7:26E-1.4.

(b) Each remedial action implemented at a contaminated site shall:

1. Be approved by the Department prior to implementation, if a remedial action selection report is also required pursuant to N.J.A.C. 7:26E-5.2(a);

2. Comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department, provided, however, that if the applicable numeric remediation standards decrease by an order of magnitude or more prior to the issuance of a No Further Action Letter for the area of concern or the site, the person responsible for conducting the remediation shall be responsible for any additional necessary remediation to achieve the new remediation standards;

3. Comply with all applicable Federal, State, and local laws, regulations, and requirements; and

4. Not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another.

(c) Single phase remediations, where the remedial action is conducted concurrently with sampling to delineate the contamination and to confirm contaminant removal, are acceptable.

(d) Free and/or residual product determined to be present pursuant to N.J.A.C. 7:26E-2.1(a)11 shall be treated or removed when practicable, or contained when treatment or removal are not practicable. Likewise, natural ground water remediation for dissolved phase contamination may be implemented if it is determined by the Department that active ground water remediation for the dissolved phase is impracticable or not cost-effective. Decisions regarding the practicability of a remedial decision shall be made by the Department on a case by case basis. Natural remediation of free and/or residual product will not be allowed.

(e) Institutional controls shall be required whenever a restricted use remedy or a limited restricted use remedy is used to remediate a site.

(f) The person responsible for conducting the remediation of historic fill material shall do so pursuant to N.J.A.C. 7:26E-6.2(c). Remedies for any other fill material, not meeting the definition of historic fill material, shall be selected pursuant to N.J.A.C. 7:26E-5.1.

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 reference to notifying local governing body; in (b)1, substituted "if a remedial action selection report is also required pursuant to criteria in N.J.A.C. 7:26E-5.2(a)" for "unless the remedial action is a permanent remedy pursuant to N.J.A.C. 7:26E-5.1(c)"; in (b)2, added "in effect at the time ... new remediation standards"; rewrote (b)5; and added (d) through (g).

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

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

Added (b)5i and (b)5ii.

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

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

In (b), rewrote 5; and in (e), substituted "restricted use remedy or a limited restricted use" for "non-permanent" preceding "remedy".

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

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

In (b), deleted 5; deleted (g).

7:26E-6.2 Remedial action workplan

(a) If a remedial action workplan is required by the Department in an oversight document or pursuant to the ISRA or UST programs, or if the person responsible for conducting the remediation elects to obtain Department pre-approval for the workplan, the workplan shall be submitted in accordance with the schedule contained in that document, if applicable, and shall be presented in a format that corresponds directly to the outline of this section. The workplan shall include:

1. The remedial investigation report, pursuant to N.J.A.C. 7:26E-4.8, shall be presented as the first section of the remedial action workplan. If the remedial investigation report was previously submitted to the Department, either a summary of the report or a copy of the findings/recommendation section of the report may be submitted;

2. A sampling summary table for post remediation samples pursuant to N.J.A.C. 7:26E-4.2 (remedial investigation workplan).
3. A proposal to complete all requirements in N.J.A.C. 7:26E-6;
4. The identification of all applicable remediation standards;
5. A detailed description of the remedial action and the remedial technology to be conducted for each area of concern;
6. The identification of all areas where remedial action will be conducted on a scaled site map pursuant to N.J.A.C. 7:26E-4.8 (remedial investigation report). In addition, the map shall specify:
 - i. The location of remedial treatment units;
 - ii. The volume of each environmental medium to be remediated;
 - iii. The vertical and horizontal extent of area to be remediated;
 - iv. The location, depth and concentration of all contaminants in excess of the remediation standard; and
 - v. Sample locations, depths and parameters for all post-construction samples;
7. A quality assurance project plan including proposed sampling and analytical methods pursuant to N.J.A.C. 7:26E-2.2;
8. A list of all required permits;
9. If any construction activity is planned, the following items shall be provided in the workplan:
 - i. The location of any such construction facilities with additional details describing construction design;
 - ii. All applicable requirements and standards relating to construction for onsite remedial units including inspection and professional engineer certification.
10. A description of soil and sediment erosion control and monitoring, and dust and odor control and monitoring procedures to be implemented during remedial activities, if applicable;
11. A health and safety plan pursuant to N.J.A.C. 7:26E-1.9;
12. A detailed description of site restoration plans to comply with N.J.A.C. 7:26E-6.4 (post-remediation action requirements);
13. A description of procedures for dismantling and removal of remedial structures and equipment from the site, if applicable;
14. A cost estimate of the remedial action;
15. The proposed completion date of the remedial action and a schedule of the remedial action as required pursuant to N.J.A.C. 7:26E-6.5;

16. The following documentation whenever a deed notice is required as a component of the remedial action:

- i. A copy of the property owner's written agreement to record the deed notice, pursuant to N.J.A.C. 7:26E-8.2(b); and
- ii. A draft deed notice, including all of the exhibits, pursuant to N.J.A.C. 7:26E-8.2(c);

17. All documentation required pursuant to N.J.A.C. 7:26E-8.3 whenever a classification exception area is to be established; and

18. A plan for the maintenance and evaluation of all engineering and institutional controls pursuant to N.J.A.C. 7:26E-8.5, 8.6, and 8.7, as applicable.

(b) If contaminated soil will be reused at a site, an evaluation pursuant to N.J.A.C. 7:26E-6.4(d) shall be conducted and a soil reuse proposal shall be submitted to the Department as part of the remedial action workplan. The soil reuse proposal may also be submitted at any time during the remediation process, as appropriate. At a minimum, the soil reuse proposal shall include:

1. A description of the originating site or area of concern by the submission of a remedial investigation report or, as applicable, a remedial action report for the contaminated soil. If the reports were previously submitted to the Department, a summary of the report may be submitted;
2. A determination in accordance with N.J.A.C. 7:26-8.5 as to the waste classification of the soil, including any supporting data requested by the Department; and
3. A detailed description of the proposed reuse and conditions at the site of reuse including:
 - i. The location of the site including state, county, municipality, block and lot numbers;
 - ii. The volume of soil to be reused;
 - iii. Identification of the specific location on the site where the reuse will be conducted on a scaled maps pursuant to N.J.A.C. 7:26E-3.2(a)3i through iii;
 - iv. The depth to ground water on the receiving site, including the method of determination;
 - v. The receiving site use;
 - vi. A discussion of the performance, effectiveness and reliability of the proposed reuse and any potential negative impacts to human health, safety or the environmental as a result of the reuse; and
 - vii. All other applicable data and information required pursuant to (a)8 through 15.

(c) If historic fill material will not be treated or removed from the site, engineering and institutional controls shall be proposed in accordance with the Department's procedures in effect at the time of proposal, provided that the information is pursuant to N.J.A.C. 7:26E-4.8(c)14 and the following documentation is presented in the remedial action workplan:

1. A statement that all other areas of concern located in the historic fill material area have been addressed as separate areas of concern. Remedies for any such areas, not meeting the definition of historic fill material, shall be selected pursuant to N.J.A.C. 7:26E-5.1.

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 "ISRA" for "ECRA", inserted reference to electing to obtain Department pre-approval, and inserted ", if applicable," following "schedule contained in that document"; in (a)1, 2, and 6, amended N.J.A.C. references; in (a)1, inserted reference to copy of findings/recommendation section; in (a)2, inserted "for post remediation samples"; in (a)14, substituted "; however," for "and"; and added (a)16, (a)17, (b) and (c).

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

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

Added (a)18.

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), deleted N.J.A.C. reference in 14, substituted "deed notice" for "declaration of environmental restrictions or other similar document" following "A draft", substituted "deed notice" for "declaration of environmental restrictions" following "where the" and substituted "residential soil" for "unrestricted use" following "applicable" in 16, and rewrote 17iii.

Administrative change.

See: 32 N.J.R. 1796(a).

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), rewrote 15 through 18.

7:26E-6.3 Specific remedial action requirements

(a) As a first priority during remedial action, contaminants in all media shall be contained and/or stabilized to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.

(b) The following requirements shall be followed for the closure of an underground storage tank:

1. The associated piping shall be drained and the tanks pumped out and cleaned thoroughly using the American Petroleum Institute's recommended Practice for the Abandonment or Removal of Used Underground Service Tanks, as amended and supplemented. Copies can be obtained from the American Petroleum Institute, 1220 L Street Northwest, Washington, DC 20005;

2. All of the openings in the tank shall be plugged except for one vent hole;

3. The soil around the tank shall be excavated and the tank shall be removed and secured;

4. After the tank is secured, it shall be examined for holes and the Department hotline at 1-877 WARNDP or (877) 927-6337 shall be called if any holes are discovered and/or a discharge has been confirmed pursuant to N.J.A.C. 7:14B-7.3, unless a discharge from the tank was previously reported to the Department;

5. The tank shall then be prepared for disposal by labeling the tank regarding its site of origin, ultimate destination site and the substance(s) that were stored in it during its use as a storage tank; and

6. The tank shall be removed from the site according to all applicable laws and regulations.

i. During tank removal, the following observations shall be made and documented:

(1) A description of tank condition (with photographic documentation);

(2) The excavation floor and sidewalls shall be examined for any physical evidence of soil contamination;

(A) When tanks that contained volatile organics, including No. 2 fuel oil, diesel fuel, gasoline, kerosene, jet fuel, waste oil, are removed, the excavation floor and sidewalls shall be field screened with a properly calibrated flame ionization detector (FID), or photoionization detector (PID) along transects spaced no more than five feet apart.

(B) If the tank did not contain volatile organics (for example, No. 4, No. 6 fuel oil), the excavation shall be examined visually for evidence of a discharge.

(3) If there is no evidence of a discharge, soil samples for laboratory analysis shall be taken immediately after tank removal as follows:

(A) If there is no ground water in the excavation, center line soil samples are required at a frequency equal to the total length of the tank divided by five (minimum of one sample), provided that samples are spaced equidistantly and that the outermost samples obtained are no greater than 2.5 feet from each respective end of the tank. If the total length of a tank is not evenly divisible by five, one additional sample shall be obtained for any fraction remaining;

(B) If there is ground water in the excavation, soil samples shall be taken as follows:

(I) If potential contaminants have a specific gravity of one or less, independent of the number of tanks in the excavation, one sample shall be taken from the zero to six inch interval above the water table from each excavation sidewall for every 30 linear feet of sidewall (minimum of one sample per sidewall); except that, for no. 2 fuel oil or diesel oil tanks of 550 gallon capacity or less, one sample, biased to the suspected location of greatest contamination, shall be taken from one excavation sidewall at the zero to six inch interval above the water table;

(II) If potential contaminants have a specific gravity of more than one, samples shall be taken pursuant to (b)6i(3)(A) above; or

(III) If the tanks contained mixed substances such that some contaminants had a specific gravity of more than one and some contaminants had a specific gravity of less than one (for example no. 6 fuel, or waste oil potentially contaminated with chlorinated solvents), samples shall be taken below the water table pursuant to (b)6i(3)(A) above, and, independent of the number of tanks in the excavation, from the zero to six inch interval above the water table from each excavation sidewall for every 30 linear feet of sidewall (minimum of one sample per sidewall); and

(IV) Soil samples taken from below the water surface shall be taken using appropriate sediment sampling methods; and

(4) If there is evidence of a discharge and a soil remedial action will occur, refer to N.J.A.C. 7:26E-6.4. If there is evidence of a discharge, but there is insufficient soil to conduct a soil remedial action, (for example, tank is located in bedrock) or any portion of the tank is located within or immediately above the ground water table, a ground water sample shall be taken pursuant to N.J.A.C. 7:26E-3.7(c);

(5) If there is any evidence of ground water contamination, including without limitation, a sheen or odor, a ground water sample shall be collected pursuant to N.J.A.C. 7:26E-3.7; and

(6) A description of product type and quantity spilled from tank or tank system during excavation.

ii. The following requirements shall be followed for the abandonment in-place of a physically accessible underground storage tank. If contamination is detected above an applicable remediation standard and remedial action will occur, the tank system shall be removed to facilitate remedial action, if feasible. If it is not feasible to remove the tank system, a certification shall be submitted, signed and sealed by a licensed New Jersey professional engineer, stating why the removal is not feasible;

(1) The tank system and associated piping shall be drained and the system pumped out and cleaned thoroughly using American Petroleum Institute guidance applicable at the time of cleaning. Because vapors in the tank atmosphere will be displaced during the tank cleaning and abandonment operation, particular emphasis shall be placed on health and safety concerns;

(2) After the tank is cleaned, the tank shall be inspected and any areas of questionable integrity, including, without limitation, any cracks or corrosion,

or evidence of discharge, shall be documented. Photographs may be submitted to document that the integrity of the system has been breached, if the evidence is clearly visible in the photograph;

(3) Upon completion of tank cleaning, soil sampling shall be conducted by completing borings through the bottom of the tank, along the center line, at a frequency equal to the total length of the tank divided by five (minimum of one sample), provided that the samples are spaced equidistantly and that the outermost samples obtained are no greater than 2.5 feet from each respective end of the tank. If the total length of a tank is not evenly divisible by five, one additional sample shall be obtained from any fraction remaining;

(4) Additional soil samples for volatile organics analysis shall be collected in accordance with the requirements at N.J.A.C. 7:26E-3.6(a)4;

(5) If ground water has been determined to be in contact with the tank invert and there is no evidence of a discharge, sampling shall be conducted in accordance with N.J.A.C. 7:26E-3.9(a)3i(5);

(6) Decommissioning of the tank system, including all fill pipes, shall be completed by completely filling the tank system with sand, cement or other inert material with similar physical/chemical properties;

(7) All fill pipes shall be removed to a depth of a minimum of one foot below ground surface; and

(8) Procedures shall comply with all local ordinances;

iii. If the underground storage tank is located under a permanent structure or is physically inaccessible or a certification is submitted, signed and sealed by a licensed New Jersey professional engineer, stating that the sampling requirements at (b)6ii(3), (4), and (5) above for closure of the underground storage tank will cause damage to an adjacent structure, an alternate method for documenting the integrity of the tank may be submitted pursuant to N.J.A.C. 7:26E-1.6(d);

iv. No sampling is required for the closure (removal or abandonment) of an underground storage tank system which has always had secondary containment and leak detection pursuant to N.J.A.C. 7:14B, provided that there is no evidence of a discharge during tank closure and no history of any leaks or repairs; and

v. All piping systems associated with the underground tank shall be remediated in accordance with N.J.A.C. 7:26E-3.9(a)5.

(c) For a proposed remediation that includes a discharge to ground water described by the New Jersey Pollutant Discharge Elimination System (NJPDES) permit-by-rule at N.J.A.C. 7:14A-7.5(b)3vii, the following requirements apply:

1. The person seeking authorization under this permit-by-rule shall submit a remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 that includes the following:

i. A detailed description of how the discharge would comply with the Ground Water Quality Standards, N.J.A.C. 7:9-6, and the Surface Water Quality Standards, N.J.A.C. 7:9B;

ii. A detailed explanation of why the proposed ground water treatment system would be appropriate for the discharge. The explanation shall include, but not be limited to, plans for operating the proposed treatment system by a person licensed pursuant to the Licensing of Water Supply and Wastewater Treatment System Operators rules, N.J.A.C. 7:10A, where a licensed operator would be required to run the system;

iii. A detailed description of the type, location, volume and duration of the discharge that would be required for the remediation of ground water or soil, and a detailed description of the effect that the proposed discharge would have on ground water or any other receptor;

iv. A detailed description of the concentrations of all contaminants expected to be present in the discharge;

v. A detailed description of the chemical content of all fluids and/or substances to be discharged and/or placed into or onto the ground to implement remediation;

vi. A detailed monitoring plan, including, but not limited to, the monitoring wells to be sampled, the frequency of sampling for wells, and if applicable, the fluid to be discharged, and a list of all the analytes to be monitored;

vii. A detailed proposal to, as applicable, modify any existing Classification Exception Area or establish a new Classification Exception Area, as defined in the Ground Water Quality Standards, N.J.A.C. 7:9-6;

viii. A detailed schedule for the submission of reports of all discharge-related activities;

ix. If applicable, specifications for the design of an underground injection system. Such specifications shall be in accordance with New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A-8; and

x. A draft public notice, worded exactly as the model in Appendix H, for approval prior to publication in accordance with (c)2 below.

2. The person seeking authorization under this permit-by-rule shall publish the approved public notice of the request for permit-by-rule authorization required by (c)1x above in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least 45 days prior to the proposed startup date of the ground water discharge, that includes the following:

i. The name and location of the site;

ii. A brief description of the proposed discharge; and

iii. A public comment period of at least 30 days from the date of publication of the public notice;

3. The person seeking authorization under this permit-by-rule shall provide a copy of the remedial action workplan, which includes the request for permit-by-rule authorization, to the mayor, clerk, and planning board for each municipality where the contaminated site is located, and any sewerage authority, health officer and environmental commission with jurisdiction for each area in which the contaminated site is located;

4. The person seeking authorization under this permit-by-rule shall submit to the Department proof of publication of the public notice required by (c)2 above within 15 calendar days after the notice is published;

5. The Department shall hold a public hearing on a request for authorization under this permit-by-rule if there is or may be a significant degree of public interest in favor of holding a public hearing. The Department may hold a public hearing if it determines that a hearing is likely to clarify one or more legal or factual issues regarding a request for permit-by-rule authorization and that oral testimony is essential to adequately express all issues and concerns;

i. The Department shall publish a notice of the public hearing at least 30 days prior to the hearing; and

ii. The Department shall extend the public comment period to the close of the public hearing;

6. Written comments and requests for a public hearing on the request for permit-by-rule authorization shall be submitted to the Department to the address provided in the public notice in accordance with (c)2 above.

7. The Department shall consider comments received during the public comment period and respond to the comments when it issues the written decision to approve or deny the permit-by-rule authorization. The Department shall provide a copy of the decision to each commenter and to each person or entity to whom the notice was sent pursuant to (c)3 above.

8. The person to whom the Department issues a permit-by-rule authorization shall comply with the record-keeping requirements of the New Jersey Pollutant Discharge Elimination System (NJPDES) rules set forth at N.J.A.C. 7:14A-6.6.

(d) When submitting a remedial action workplan for natural groundwater remediation, the person responsible for conducting the remediation shall demonstrate to the Department that:

1. Groundwater contaminant concentrations will decrease to applicable remediation standards pursuant to N.J.A.C. 7:26E-1.13 through degradation, retardation, or dispersion under present site conditions.

i. The person responsible for conducting the remediation shall evaluate the following site conditions to determine the viability of natural remediation:

- (1) Contaminant mass, as determined by free or residual product and dissolved phase delineation and dissolved contaminant concentrations;
- (2) Dissolved oxygen content of ground water;
- (3) Presence or absence of microorganisms in soil and ground water;
- (4) Ground water flow velocity; and
- (5) Applicable physical and chemical characteristics of contaminants and contaminant degradation products present in both soil and ground water;

ii. The person responsible for conducting the remediation may evaluate the following site conditions to determine the viability of natural remediation, if applicable:

- (1) Sorptive and desorptive characteristics of the soil; and
- (2) Other applicable physical and chemical characteristics of soil;

2. Free and/or residual product in the unsaturated and saturated zones, as determined pursuant to N.J.A.C. 7:26E-2.1(a)11, is treated or removed, if practicable, or contained if treatment or removal are not practicable;

3. All soil contamination in the unsaturated zone has been or will be remediated to the applicable numeric soil remediation standard in accordance with a schedule approved by the Department;

4. Groundwater contamination has been delineated to the remediation standard applicable to the nearest down-gradient receptor;

5. Ground water contaminated above the applicable standard will not reach the nearest downgradient receptor, as estimated by an appropriate ground water flow/contaminant transport model selected pursuant to N.J.A.C. 7:26E-4.4(h)3iv;

6. The fate of the contaminant plume has been documented pursuant to N.J.A.C. 7:26E-8.3(b)2;

7. Contaminant levels in ground water do not present a vapor risk to any receptors. This determination shall be made on a case-by-case basis;

8. Predicted impacts to potential receptors are consistent with the current and potential ground water uses based on a 25-year planning horizon as projected by local and county land use documents. This shall include,

without limitation, information pertaining to the existence of water lines, proposed future installation of water lines, local and/or county ordinances restricting installation of potable wells;

9. All necessary access agreements needed to monitor the ground water quality pursuant to (e) below have been obtained; and

10. If a classification exception area needs to be established, the person responsible for conducting the remediation has provided the Department all necessary information in accordance with N.J.A.C. 7:26E-8.

(e) Monitoring and performance requirements for natural remediation are as follows:

1. A ground water monitoring program shall be implemented to monitor plume characteristics and movement, to calibrate the model used to estimate the eventual extent of the plume, and to assess the effectiveness of the natural ground water remediation. This program shall consist of the following:

i. Sampling shall be conducted on a quarterly basis at monitoring wells associated with the natural remediation, for a minimum of eight quarters, including:

(1) At least one area of concern monitoring well located at the source area to monitor plume conditions at the source area;

(2) At least one plume sampling point located downgradient of the source area but within the contaminant plume except as provided in (e)1i(3) below;

(3) At least one plume fringe monitoring well located at the limit of the plume, as determined pursuant to (d)4 above. Depending on the areal extent of the contaminant plume, the Department may determine that one monitoring well may satisfy the requirements of both (e)1i(2) above and this subparagraph; and

(4) At least one downgradient sentinel well located beyond the zone delineated pursuant to (d)4 above. Contaminant levels in this sentinel well shall remain below the applicable standard. The sentinel well shall be located no closer than three years travel time to the nearest potential downgradient receptor and no further than five years travel time from the delineated downgradient extent of the contaminant plume;

2. A classification exception area shall be established for the area of the aquifer impacted by the migrating contaminant plume, pursuant to N.J.A.C. 7:26E-8;

3. Data collected pursuant to (e)1 above shall be evaluated and the person responsible for conducting the remediation shall document the effectiveness of that natural ground water remediation as follows:

i. No further remediation is required for ground water if:

(1) Contaminant levels in the sentinel well do not exceed the applicable standards at any time during the monitoring program. A proposal regarding the duration of the monitoring program at the sentinel well may be made by the person responsible for conducting the remediation, based upon site specific data;

(2) The contaminant levels at the source area monitoring well(s) are at or below the applicable standards for two consecutive seasonal high water table monitoring events; and

(3) The contaminant concentrations at all plume monitoring wells are at or below the applicable standards for two consecutive quarterly monitoring events;

ii. Additional remediation will be required if:

(1) Contaminant levels in the sentinel well exceed the applicable standards;

(2) The contaminant levels detected in any of the plume or plume fringe monitoring wells installed pursuant to (e)1i(2) and/or (3) above are not reflective of the contaminant levels predicted by the ground water flow/contaminant transport model; or

(3) Contaminant levels are not decreasing in any area of concern monitoring well, as demonstrated by applying the statistical Mann-Whitney U-Test to eight consecutive quarters of ground water sampling data. The test shall be applied to individual contaminants detected in each area of concern monitoring well, pursuant to Appendix C, incorporated herein by reference; and

iii. Proposals to sample the monitoring wells at a decreased frequency for the purpose of monitoring the Classification Exception Area shall be considered by the Department if:

(1) Contaminant levels in the sentinel well do not exceed the applicable standards at any time during the monitoring program. A proposal regarding the duration of the monitoring program at the sentinel well shall be made by the person responsible for conducting the remediation, based upon site-specific data;

(2) The contaminant levels detected in the plume or plume fringe monitoring wells above are reflective of the contaminant levels predicted by the ground water flow/contaminant transport model; and

(3) Contaminant levels above the applicable remediation standard remain, but a decreasing trend of contaminant levels is demonstrated in, at a minimum, the area of concern monitoring well(s). The decreasing trend shall be demonstrated by applying the statistical Mann-Whitney U-Test to eight consecutive quarters of ground water sampling data. The test shall be applied to individual contaminants detected in each monitoring well pursuant to Appendix C; and

4. Ground water sample data shall not be averaged for the purpose of the Mann-Whitney U-Test.

5. Alternative non-parametric statistical tests may be proposed. The Department shall determine the acceptability of such tests on a case by case basis.

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 (b), substituted "closure" for "removal", added (b)6i(3)(A) and (B); rewrote (b)6i(4); inserted new (b)6i(5); recodified former (b)6i(5) as (b)6i(6); rewrote (b)ii; and added (b)6iii through v, (c), (d) and (e).

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.2005 d.222, effective July 5, 2005.

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

Rewrote (c).

7:26E-6.4 Post-remedial action requirements

(a) The following sampling shall document the effectiveness of the remedial action:

1. All sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.3 through 3.12 and 4.1 through 4.7.

2. For soils, if excavation is conducted, the minimum post remediation sampling frequency shall be:

i. For excavations less than 20 feet in perimeter, at least one bottom sample and one sidewall sample biased in the direction of surface runoff.

ii. For excavations 20 to 300 feet in perimeter:

(1) For surface spills, one sample from the top of each sidewall for every 30 linear feet of sidewall and one sample from the excavation bottom for every 900 square feet of bottom area.

(2) For subsurface spills, one sample from the bottom of each sidewall for every 30 linear feet of sidewall and one sample from the excavation bottom for every 900 square feet of bottom area.

iii. For larger excavations, sampling frequency may be reduced if documentation acceptable to the Department is provided in the remedial action progress report (N.J.A.C. 7:26E-6.6) or the remedial action report (N.J.A.C. 7:26E-6.7) if the remedial action is completed in less than three months. Documentation shall specify why the reduced sample frequency was considered adequate.

iv. For volatile organics bottom samples taken within 24 hours of excavation, samples shall be taken from the zero to six inch interval at the excavation floor. Samples taken after 24 hours shall be taken at six to 12 inches. For excavations open longer than two weeks, volatile organics sample depth for bottom samples shall be in accordance with N.J.A.C. 7:26E-3.6(a)4 (site investigation requirements).

v. Each excavation within a larger excavation shall be considered a separate excavation and shall comply with (a)2i through iv above.

vi. For tanks, if contaminated soil is removed, post remediation soil samples for laboratory analysis shall be taken immediately after contaminated soil removal pursuant to N.J.A.C. 7:26E-6.3(b)6i(3). If the excavation is enlarged horizontally beyond the immediate tank removal area, additional soil samples shall be taken pursuant to (a)2i through iv above.

3. For soils, if in situ remediation is conducted, the minimum post-remediation sampling frequency shall be one sample per 900 square feet of contaminated area. Where the contaminated zone exceeds two feet in depth, one additional sample per 900 square feet of contaminated area shall be taken for each two feet of depth.

4. Post-remediation sample locations and depth shall be biased towards the areas and depths of highest contamination identified during previous sampling episodes unless field indicators such as field instrument measurements or visual contamination identified during the remedial action indicate that other locations and depths may be more heavily contaminated. In all cases, post-remediation samples shall be biased toward locations and depths of the highest expected contamination.

5. If the extent of contamination above the applicable residential soil remediation standard was estimated during the remedial investigation, the extent of contamination above the applicable residential soil remediation standard shall be confirmed using laboratory analysis prior to the completion of a remedial action or the execution of a deed notice.

6. If the Department established a groundwater classification exception area as part of the remedial action, sampling shall be conducted pursuant to N.J.A.C. 7:26E-8.6(a)7i.

(b) All areas subject to remediation shall be restored, to the extent practicable, to pre-remediation conditions with respect to topography, hydrology and vegetation, unless alternate restoration is approved by the Department pursuant to N.J.A.C. 7:26e-1.6(d).

1. Sites located adjacent to or in wetlands or in or near other environmentally sensitive natural resources, may have further requirements under N.J.A.C. 7:7E (Coastal Zone Management) or N.J.A.C. 7:7A (Wetlands Act).

2. Fill material used to restore a site after the remediation has been completed shall be similar in physical properties to the material removed unless otherwise approved in advance by the Department. Fill used for new building foundations or other construction in remediated areas are exempt from this requirement.

i. If the excavated material is native soil, the fill shall be of equal or less permeability than the soil removed.

ii. If the excavated material is not native soil, the fill material shall be of equal or less permeability than the native soil in or adjacent to the area of concern or, at a minimum, have a permeability equal to or less than that of loam.

iii. Fill shall be uncontaminated pursuant to any applicable remediation standard and free of extraneous debris or solid waste.

iv. Documentation of the quality of the fill shall be provided by a certification stating that it is virgin material from a commercial or noncommercial source or decontaminated recycled soil.

v. Uncontaminated soil from the site pursuant to any applicable remediation standard may be returned to excavations or may be used elsewhere on the site.

vi. The bills of lading shall be provided to the Department to document the source(s) of fill. The documentation shall include:

(1) The name of the affiant and relationship to the source of the fill;

(2) The location where the fill was obtained, including the street, town, lot and block, county, and state, and a brief history of the site which is the source of the fill; and

3. A statement that to the best of the affiant's knowledge and belief the fill being provided is not contaminated pursuant to any applicable remediation standards and a description of the steps taken to confirm such.

(c) After completion of remediation all monitoring and extraction wells shall be decommissioned in accordance with N.J.A.C. 7:9D unless otherwise approved by the Department.

(d) If contaminated soils will be reused at a site, a soil reuse evaluation proposal shall be conducted and submitted to the Department prior to the reuse of contaminated soils and shall satisfy the following sampling requirements:

1. The contaminated soil intended for reuse shall be fully characterized and delineated pursuant to the site investigation, N.J.A.C. 7:26E-3, and remedial investigation, N.J.A.C. 7:26E-4, or, if the soil has not been fully characterized and delineated, the soil shall be sampled in

accordance with all applicable requirements at N.J.A.C.
7:26E-1, 2, 3.4, and 3.6, at the following frequencies:

i. Field screening methods, if available pursuant to N.J.A.C. 7:26E-2.1(b), shall be used to determine sample locations. Each 20 cubic yards of soil shall be screened with borings or test pits throughout the depth of the soil pile, at two foot intervals. Two samples shall be collected for laboratory analysis for the first 100 cubic yards of excavated material and one sample for each additional 100 cubic yards; or

ii. If contamination is not detectable by field screening methods, samples shall be collected for laboratory analysis from mid-depth in the pile at a frequency of one sample per 20 cubic yards for the first 100 cubic yards of soil and one sample for each additional 100 cubic yards; and

iii. For quantities of soil greater than 1,000 cubic yards, a lower sampling frequency may be acceptable, subject to prior Departmental approval pursuant to N.J.A.C. 7:26E-1.6(d);

2. When soils are excavated to access underground storage tank systems or other subsurface structures and there is no evidence of a discharge pursuant to N.J.A.C. 7:26E-6.3(b), soil analysis of the excavated soil is not required prior to reuse. The results of post-remedial sampling required pursuant to N.J.A.C. 7:26E-6.3 shall be evaluated prior to reuse of the soils to confirm that no discharge occurred at the underground storage tank system; and

3. Excavated soil from drill cuttings or test pit excavations, may be returned to the original location provided that:

i. The activity was performed in accordance with the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1;

ii. Neither free nor residual product is present, as determined pursuant to N.J.A.C. 7:26E-2.1(a)11;

iii. The contamination present shall be addressed as part of the remediation of the area of concern; and

iv. The replacement of the soil shall not pose any additional threat to public health, safety or the environment.

(e) If the person responsible for conducting the remediation required for real property not owned by that person does not obtain the property owner's written consent to implement the institutional and/or engineering control at the property and to record a deed notice, the person shall remediate the property to an applicable unrestricted soil remediation standard.

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)1 and (a)2iv, amended N.J.A.C. references; in (a)2vi, substituted N.J.A.C. reference for specific sampling guidelines; deleted (a)4, relating to sampling frequencies for building interiors; recodified former (a)5 as (a)4; inserted new (a)5; added (a)6; in (b), inserted

N.J.A.C. reference; in (b)1, substituted "environmentally sensitive areas" for "critical habitat areas as defined in N.J.A.C. 7:26D-5"; and added (d).

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

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

Added (e) and (f).

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)5, substituted references to residential soil remediation standards for references to unrestricted use remediation standards throughout, and substituted "deed notice" for "Declaration of Environmental Restriction or other similar document approved by the Department" at the end; in (b)1, substituted a reference to environmentally sensitive natural resources for a reference to environmentally sensitive areas; rewrote (e); in (f), substituted "deed notice" for "declaration of environmental restrictions" following "record a"; and added (g) and (h).

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.

7:26E-6.5 Remedial action schedule

(a) The person responsible for conducting the remediation shall prepare a schedule of the remedial action pursuant to this section if the remedial action requires more than three months to complete.

(b) The person responsible for conducting the remediation shall include the following in the remedial action schedule:

1. Monthly time frames, for the initiation and completion of each remedial action task, including a consideration of Department review time for submitted reports. Specific dates shall not be listed, as these will be contingent upon Department approval of the remedial action workplan;

2. Time frames for contractor bidding/review/acceptance process;

3. A critical path schedule for all Federal, State, and local permit applications and final permit approvals;

4. A listing of all anticipated report submittals to the Department including, without limitation, progress reports, groundwater monitoring reports, post-remedial action data reports for individual areas of concern, construction design reports and final remedial action reports;

5. Time frames for submission of remedial action progress reports pursuant to N.J.A.C. 7:26E-6.6 and the remedial action report pursuant to N.J.A.C. 7:26E-6.7, including consideration of:

i. Review times of not only the person preparing each report, but all other persons who will be reviewing the report prior to submission to the Department, including, but not limited to, owners, operators, subcontractors, and legal advisors; and

ii. Laboratory analysis and data reduction time;

6. A timeframe for submitting a request for a waste classification to the Department for disposal or treatment

of waste generated during implementation of the remedial action; and

7. A timeframe for site restoration pursuant to N.J.A.C. 7:26E-6.4(b), and the Department's final inspection.

(c) Within 30 calendar days after the Department approves the remedial action workplan, the person responsible for conducting the remediation shall revise the remedial action schedule to identify the projected month/year for each task, and submit the revised schedule to the Department.

Repeal and New Rule. R.2003 d.29, effective February 3, 2003.
See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

7:26E-6.6 Remedial action progress reports

(a) The person responsible for conducting the remediation shall submit remedial action progress reports to the Department pursuant to this section and according to the remedial action schedule pursuant to N.J.A.C. 7:26E-6.5.

(b) The person responsible for conducting the remediation shall include the following in each remedial action progress report, as appropriate:

1. A description of each remedial action:

i. Scheduled to be initiated or completed during the reporting period;

ii. Actually initiated or completed during the reporting period; and

iii. Scheduled but not initiated or not completed during the reporting period, including the reasons for the noncompliance with the Department approved schedule;

2. Discussion of problems and delays in the implementation of the remedial action workplan, including proposals for corrections;

3. Any proposal for a deviation from, or modification to, the approved remedial action workplan. The Department must approve proposed modifications in writing prior to implementation;

4. A revised schedule pursuant to N.J.A.C. 7:26E-6.5, to reflect the changes described pursuant to (b)1 through 3 above;

5. The status of all permit applications relative to the critical path schedule for permits in the remedial action schedule pursuant to N.J.A.C. 7:26E-6.5(b)3;

6. A list of each remedial action to be performed during the next reporting period;

7. The cost of each remedial action, including:

i. An annual summary of all remedial action costs incurred to date; and

ii. A revised cost estimate for remedial actions remaining to be performed;

8. A tabulation, pursuant to N.J.A.C. 7:26E-3.13(c)3, of all sampling results received during the reporting period and a summary of the data and any conclusions in a format consistent with N.J.A.C. 7:26E-4.8;

9. For active groundwater remedial actions:

i. Groundwater elevation contour maps representative of groundwater flow conditions immediately preceding initiation of the active groundwater remedial action and during the active groundwater remedial action;

ii. Graphs depicting changes in contaminant concentrations over time for all contaminated monitoring wells and all downgradient delineation monitoring wells;

iii. A summary, in narrative and table format, of the volume of groundwater treated since the last reporting period, and the total volume of groundwater treated since the active remedial action commenced; and

iv. A summary regarding groundwater contamination stating that either:

(1) Contamination remains at concentrations above the applicable remediation standards, and a proposal detailing what additional remedial actions will be taken to address this contamination; or

(2) All contamination concentrations are at or below the applicable remediation standards;

10. For natural remediation groundwater remedial actions:

i. A summary table of the groundwater monitoring results collected; and

ii. If applicable, conclusions whether data indicate that natural remediation is no longer appropriate, and submit a revised remedial action workplan, pursuant to N.J.A.C. 7:26E-6.2;

11. A description of all wastes generated as a result of the remedial action, including:

i. Tabulation of waste classification and/or characterization samples collected, including the physical state of the material (solid, liquid, sludge), the volume of material, number of samples collected, analyses performed and results;

ii. A listing of all types and quantities of waste generated by the remedial action during the reporting period and to date;

iii. The name of the disposal facility used;

iv. The transporters' dates of disposal; and

v. If appropriate, the manifest numbers of each waste shipment; and

12. Any additional support documentation that is available (for example, photographs).

Repeal and New Rule, R.2003 d.29, effective February 3, 2003.
See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).
Section was "Remedial action report".

7:26E-6.7 Remedial action report

(a) The person responsible for conducting the remediation shall prepare a remedial action report in a format that corresponds directly to the outline of this section when the remedial action is completed, except as noted in (e) below.

(b) The person responsible for conducting the remediation shall include the following in the remedial action report:

1. All information contained in the remedial investigation report pursuant to N.J.A.C. 7:26E-4.8; or if previously submitted to the Department, a summary of the following information from that report:

- i. General history of the site;
- ii. A description of the physical setting of the site; and
- iii. A summary, by area of concern, of the concentration of contaminants with a comparison to the applicable remediation standards;

2. A summary, by area of concern, of all remedial actions completed;

3. A list of the remediation standards achieved for each remedial action;

4. "As-built" diagrams for any permanent structures including, without limitation, caps or other remediation structures and engineering controls;

5. A detailed description of site restoration activities, if applicable, pursuant to N.J.A.C. 7:26E-6.4(b);

6. A report of the remedial action costs, including a cost estimate to monitor, maintain, and certify the protectiveness of each engineering and/or institutional control pursuant to N.J.A.C. 7:26E-8; and

7. Information pursuant to (c) through (e) below, as applicable.

(c) The person responsible for conducting the remediation shall include the following in the soil remedial action section and sediment remedial action section of the report:

1. Tables and figures pursuant to N.J.A.C. 7:26E-4.8 containing all pre-and post-remedial data keyed appropriately so that:

- i. Completion of the remedial action is documented; and

ii. The volume of contaminated soil or sediment which was remediated is clearly indicated;

2. Fully executed manifests documenting any offsite transport of waste material; and

3. A copy of the final draft deed notice, including all of the exhibits, pursuant to N.J.A.C. 7:26E-8.2, if applicable.

(d) The person responsible for conducting the remediation shall include graphs depicting changes in contaminant concentrations over time for all monitoring wells in the active groundwater remedial action section of the report.

(e) The person responsible for conducting the remediation shall, upon satisfying the requirements of N.J.A.C. 7:26E-6.3(e)3, include the following in the natural remediation groundwater remedial action section of the report:

1. A summary table of the groundwater monitoring results collected pursuant to N.J.A.C. 7:26E-6.3(e)1;

2. A discussion of the results of the MannWhitney U-Test applied pursuant to N.J.A.C. 7:26E-6.3(e)3;

3. A conclusion that either:

i. The groundwater quality is now in compliance with the applicable remediation standards and, therefore, the groundwater classification exception area is no longer necessary; or

ii. The groundwater contamination is expected to decrease over time and to be in compliance with the applicable remediation standards consistent with the model used to estimate the eventual extent of the plume, and, therefore, that the groundwater classification exception area is still necessary; and

4. If the groundwater classification exception area is still necessary, a plan for the monitoring, maintenance, and certification of the protectiveness of each classification exception area pursuant to N.J.A.C. 7:26E-8.

Repeal and New Rule, R.2003 d.29, effective February 3, 2003.
See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

Section was "Removal or modification of the declaration of environmental restrictions and deed notices".

SUBCHAPTER 7. PERMIT IDENTIFICATION AND APPLICATION SCHEDULE

7:26E-7.1 Permit identification

(a) Any person conducting a remedial action shall identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action including, but not limited to:

1. Soil Erosion and Sediment Control Plan Certification for Land Disturbance Control (N.J.A.C. 2:90);
 2. Permit to Construct/Install/Alter Air Quality Control Apparatus/Equipment (N.J.A.C. 7:27-8);
 3. Certificate to Operate Air Quality Control Apparatus/Equipment (N.J.A.C. 7:27-8);
 4. Coastal Area Facility Review Act (CAFRA) Permit (N.J.S.A. 13:19-1 et seq.);
 5. Waterfront Development/Upland Waterfront Permit (N.J.S.A. 12:5-3);
 6. Wetlands Permit (N.J.S.A. 13:9A-1 et seq.);
 7. Freshwater Wetlands/Open Water Fill Permit (N.J.S.A. 13:98-1 et seq.);
 8. Stream Encroachment Permit (Construction Within a Flood Plain) (N.J.S.A. 58:16A-50 et seq.; N.J.A.C. 7:8-3.15);
 9. State Water Quality Certificate (N.J.S.A. 58:10A-1 to 13; 33 U.S.C. 1251, § 401);
 10. Dewatering Permit and/or Water Diversion Permit (N.J.S.A. 23:5-29);
 11. U.S. Army Corps of Engineers Dredge and Fill Permit;
 12. Delaware River Basin Commission Docket Approval (N.J.S.A. 32:20-1 et seq.);
 13. Hackensack Meadowlands Development Commission—Zoning Certificate (N.J.S.A. 13:17-1 et seq.);
 14. New Jersey Pinelands—Letter of Approval (N.J.S.A. 13:18A-1 et seq.);
 15. Discharge Prevention and Discharge Cleanup and Removal Plans (Pertaining to Storage and Transfer of Petroleum and other Hazardous Substances) (N.J.S.A. 58:10-23.11 et seq.; N.J.A.C. 7:1E);
 16. Registration of Underground Storage Tank; UST Installation Permit and Closure Approval (N.J.S.A. 58:10A-21 et seq.);
 17. Water Quality Management Plan Consistency Determination (N.J.S.A. 58:11A-1 et seq.; N.J.A.C. 7:15);
 18. New Jersey Pollutant Discharge Elimination System (NJPDES) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
 - i. NJPDES—Discharge to Surface Water (DSW)—Industrial (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
 - ii. NJPDES—Significant Indirect User (SIU) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A); and
 - iii. NJPDES—Discharge to Ground Water (DGW) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
 19. Treatment Works Approval (TWA) (N.J.S.A. 58:12A-1 et seq.; N.J.A.C. 7:14A-22 and 23);
 20. Employer License (Asbestos) (N.J.A.C. 8:60-4), (N.J.A.C. 12:120-4);
 21. Asbestos Worker or Asbestos Supervisor Permit Certification of Training Agencies (Asbestos) Asbestos Work Notification Requirements (N.J.A.C. 8:60-6), (N.J.A.C. 12:120-6);
 22. National Emission Standards for Hazardous Air Pollutants (NESHAPs) Written Notification Requirements;
 23. Landfill Disruption/Closure Approval (N.J.S.A. 13:1E-1 et seq.; N.J.A.C. 7:26-2A.8; N.J.A.C. 7:26-2A.9);
 24. Hazardous Waste Facility Registration (N.J.S.A. 13:1E-1 et seq.; N.J.A.C. 7:26G);
 25. Short Term Water Use Report;
 26. Well Drilling Permit, and Well Certification Forms A & B; (N.J.S.A. 58:4A-14; N.J.A.C. 7:9D);
 27. Well Abandonment Form;
 28. Exemption of Waste Flow Rule (Soil Reuse);
 29. Hazardous Waste Generator Identification Number (N.J.A.C. 7:26G);
 30. Hazardous Waste TSD Facility Permit, except that hazardous waste treatment, storage, or disposal facility permits pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Hazardous Waste rules at N.J.A.C. 7:26G, shall not be required for any remediation conducted on site pursuant to any of the following:
 - i. An administrative consent order pursuant to N.J.A.C. 7:26C; or
 - ii. A memorandum of agreement expressly executed for the implementation of a Department approved remedial action pursuant to a Department approved schedule; provided, however, that if the remedial action is not implemented pursuant to the approved schedule, then this provision does not apply and the otherwise applicable hazardous waste permits shall be required;
 - iii. Approvals under authority of ISRA and UST; or
 - iv. Approvals under any State publicly funded projects; and
 31. Any other Federal, State or local approvals that may be required.
- (b) Any person conducting a remedial action shall apply for and obtain all required permits prior to initiating the remedial action.

(c) Any person conducting a remedial action pursuant to an oversight document or the ISRA or UST programs, shall develop a permit application schedule to identify the time frames for application and issuance/approval pursuant to N.J.A.C. 7:26E-6.5(b)3.

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)31iii and (c), substituted "ISRA" for "ECRA".

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.

SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS

7:26E-8.1 General requirements

(a) The purpose of this subchapter is to present the requirements for the use of engineering and institutional controls as part of remedial actions for contaminated sites.

(b) Any person proposing to use engineering and/or institutional controls shall:

1. Propose a deed notice, pursuant to N.J.A.C. 7:26E-8.2, whenever:

i. Soil contamination will remain above a concentration that would allow for the unrestricted use of the property; or

ii. A groundwater remedial action includes containment;

2. Demonstrate in the remedial action workplan submitted to the Department pursuant to N.J.A.C. 7:26E-6.2(a), that:

i. The selected remedial action will remain protective of the public health and safety and of the environment for as long as the contamination exists above a concentration that would allow for the unrestricted use of the property;

ii. Access to the site or area of concern, and human exposure to the contamination at the site or area of concern, can both be controlled when necessary to ensure the protectiveness of the remedial action; and

iii. The current and planned future uses of the site or area of concern will be consistent with all engineering and institutional controls; and

3. Monitor each engineering and institutional control until such time that the Department approves in writing the removal of the control.

(c) In evaluating the protectiveness of a remedial action that includes an engineering and/or institutional control, the

Department will consider site-specific conditions, including, but not limited to:

1. The concentration of contaminants;
2. The mobility and toxicity of the contaminants;
3. The presence of free and/or residual product, off-spec or discarded product or by-product from a manufacturing or industrial process, containerized wastes, or buried waste;
4. The current surrounding land uses;
5. The implementability of the control over the long term; and
6. Any other factors that are relevant to evaluating the protectiveness of the remedial action.

7:26E-8.2 Deed notice requirements

(a) The person responsible for conducting the remediation of a site that includes a soil remedial action that includes a proposed deed notice shall:

1. If that person is the owner of the site, record a deed notice for the site pursuant to (c) and (d) below; or

2. If that person is not the owner of the site, provide the Department documentation of the owner's consent to record the necessary deed notice pursuant to (b) below.

(b) The person responsible for conducting the remediation that proposes a remedial action that includes a deed notice shall provide the Department with a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16, as follows:

1. If the property owner is any local, county, State or Federal government agency, and a deed is not associated with the property, such as roads and sidewalks, the person responsible for conducting the remediation shall submit written documentation of the owner's agreement to provide notice pursuant to (c) below as follows:

i. For a municipality, the written agreement shall be in the form of a formal resolution by the municipal government;

ii. For a county, the written agreement shall be in the form of a formal resolution by the county freeholders; or

iii. For a State or Federal governmental agency, the head of the agency or their designee shall sign the written agreement; or

2. If the property owner is any other person than the person responsible for conducting the remediation, the person responsible for conducting the remediation shall provide the Department with written documentation of the owner's agreement to record a deed notice for the site.

(c) The person responsible for conducting the remediation proposing a remedial action that requires the owner of the site to record a deed notice shall comply with the following procedures for drafting a deed notice for the Department's approval as follows:

1. For a property that is owned by a local, county, State or Federal government agency (except as provided in (c)2 below), and no deed is associated with the site, the person responsible for conducting the remediation shall submit a draft notice worded pursuant to (d) below, to serve as the notice in lieu of a deed notice;

2. For a property that is owned by the U.S. Department of Defense, and no deed is associated with the site, the person responsible for conducting the remediation shall draft an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to (d) below, to serve as the notice in lieu of a deed notice; or

3. For a property that is owned by any person not described in (c)1 or 2 above, the person responsible for conducting the remediation shall provide the Department with a draft deed notice pursuant to (d) below.

(d) The person responsible for conducting the remediation who elects to use a deed notice as part of a remedial action for a contaminated site shall submit a draft deed notice to the Department, as part of the remedial action work plan pursuant to N.J.A.C. 7:26E-6.2(a)16, that:

1. Is worded exactly as the model document in N.J.A.C. 7:26E Appendix E; and

2. Includes copies of all required maps that:

i. Are compatible with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A. For additional guidance see the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regs/techgis/techgis05.htm>;

ii. Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary);

iii. Are scaled at one inch to 200 feet or less;

iv. Are clean, clear, and legible; and

v. Include:

(1) A bar scale;

(2) A north arrow;

(3) A legend;

(4) The applicable Program Interest name and number (Preferred ID);

(5) Tax Block and Lot numbers; and

(6) The date prepared.

(e) The person responsible for conducting the remediation who proposes to use a deed notice as part of a remedial action for a contaminated site shall submit a final draft of the deed notice to the Department as part of the remedial action report pursuant to N.J.A.C. 7:26E-6.6, unless the Department directs its submission at an earlier time.

(f) Within 45 calendar days after the receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the person responsible for conducting the remediation shall comply with the following, as applicable:

1. If there is a deed for the property, the person shall have the owner of the property record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the site is located;

2. If the property to which the notice applies is a local, county or State roadway, the person shall provide a paper copy of the document referenced in (c)1 above, and an electronic copy in a read only format, including all of the exhibits, to the following, as applicable:

i. Each road department of each municipality in which the site is located;

ii. Each road department of each county in which the site is located;

iii. The New Jersey Department of Transportation; and

iv. Utility companies with easements on the roadway, and

3. In all other circumstances, the person shall provide a paper copy of the recorded deed notice, stamped "Filed," or notice, as applicable, and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in (g) below.

(g) Within 45 calendar days after receipt of the Department's written approval of the final deed notice submitted pursuant to (e) above, the person responsible for conducting the remediation shall provide, as applicable, a paper copy of the recorded deed notice or document referenced in (c)1 above, and an electronic copy in read only format, including all exhibits, to the following:

1. The Department's assigned case manager;

2. The municipal clerk, mayor and town council of each municipality in which the site is located;

3. The local, county, and regional health department in each municipality and county in which the site is located;

4. Each gas, electric, water, sewer, cable company and all other utilities that service the site or have a license or easement to cross the site;

5. The Pinelands Commission if the site is located within an area subject to the jurisdiction of the Pinelands Commission; and

6. Any other person who requests a copy.

(h) Any person who chooses to redevelop or change the use of a site in a manner inconsistent with a remedial action that includes an engineering and/or institutional control, or conduct additional remediation or other activities that may compromise the integrity of an engineering control, such that the remedy no longer meets the applicable health risk standard, or is no longer protective of public health, safety and of the environment, shall obtain the Department's prior written approval of such activities by submitting:

1. A memorandum of agreement application, pursuant to N.J.A.C. 7:26C-3, for the Department's oversight of activity, if the person is not already subject to the Department's oversight for the site;

2. A remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 prior to implementation of such activities; and

3. A request to the Department, pursuant to (i) below, to remove or modify, as appropriate, the declaration of environmental restrictions or deed notice.

(i) Any person may submit a written request along with the memorandum of agreement application, to the assigned case manager at Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434, Attention: Case Assignment Section, to remove or modify a remedial action that includes an engineering and/or institutional control. The person shall submit a copy of the existing deed notice or declaration of environmental restrictions stamped "filed" and the reason for the removal or modification based on the following:

1. The performance of subsequent remediation;
2. A change in conditions at the site;
3. The Department's revision of soil remediation standards; or
4. A change in the maintenance or monitoring requirements in this chapter.

5. Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434, Attention: Case Assignment Section.

(j) The Department will evaluate the request submitted pursuant to (h) above and within 90 calendar days after the Department's receipt of the written request will either:

1. Approve the request with the condition that:

i. The property owner records with the office of each county recording officer, pursuant to (f) above, a notice executed by the Department, that the use of the site is no longer restricted or that the restriction has been changed and that the declaration of environmental restrictions or deed notice is therefore either terminated or modified. Any Department approved modified declaration of environmental restrictions or deed notice delineating the new restrictions shall be recorded pursuant to this section;

ii. The applicant provides written notice to each municipality in which the site is located, with a copy to the Department sent to the address provided at N.J.A.C. 7:26C-1.4, of the removal or change of the restrictive use conditions; and

iii. The applicant provides an electronic copy in a read only format, of all information required in (c) above, for the approved modified declaration of environmental restrictions or deed notice as required pursuant to (f) and (g) above; or

2. Issue a written denial of the request.

Administrative correction.

See: 35 N.J.R. 1928(a).

Amended by R.2004 d.341, effective September 7, 2004.

See: 36 N.J.R. 913(a), 36 N.J.R. 4130(a).

In (g), deleted former 5 and recodified 6 and 7 as 5 and 6.

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

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

In the introductory paragraph of (i), substituted "the assigned case manager at Division of Remediation Support, Department of Environmental Protection, 401 East State Street, P.O. Box 434, Trenton, NJ 08625-0434, Attention: Case Assignment Section" for "the address provided at N.J.A.C. 7:26C-1.4(e)"; and added (i)5.

7:26E-8.3 Groundwater classification exception areas

(a) A groundwater classification exception area serves as an institutional control by providing notice that there is groundwater pollution in a localized area caused by a discharge at a contaminated site. The area and depth of groundwater pollution will be determined based on actual groundwater contamination, as well as fate and transport modeling. The Department will establish a groundwater classification exception area as part of a remedial action for groundwater at a contaminated site when the groundwater does not meet the groundwater quality standards, pursuant to N.J.A.C. 7:9C.

(b) The person responsible for conducting the remediation shall submit the following information to the Department as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2:

1. For each groundwater sampling point, a list of all contaminants and their concentrations, that do not meet the groundwater quality standards, from the most recent 24 months of groundwater sampling;

2. A description of the fate and transport of the contaminant plume, using the most mobile and persistent contaminants present that exceed the groundwater quality standards, including:

- i. The horizontal and vertical distances that the contaminated groundwater plume is expected to travel before contaminant concentrations decrease to or below the applicable groundwater quality standards;
- ii. A proposed expiration date for the classification exception area; and
- iii. All other information required by Appendix F, incorporated herein by reference;

3. The following maps consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2;

- i. A USGS Quadrangle map (paper copy only), indicating the location of the site;
- ii. A map, in paper and electronic formats, indicating the predicted extent of the groundwater contaminant plume; and
- iii. A map (paper copy only) showing all properties, according to tax block and lot with a reference to the year of the referenced tax map, under which the contaminant plume is located and is expected to migrate;

4. Information regarding current and projected use of the groundwater in the aquifer(s) in which the groundwater classification exception area is located, as follows:

- i. The current groundwater use based on the most recent well search conducted pursuant to this chapter; and
- ii. The future groundwater use for a 25-year planning horizon based on the following, without limitation:
 - (1) The New Jersey Water Supply Master Plan;
 - (2) Department of Environmental Protection, Bureau of Water Allocation;
 - (3) Municipal master plans;
 - (4) Zoning plans;
 - (5) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;
 - (6) Local planning officials;
 - (7) County and local boards of health; and
 - (8) Local and/or county ordinances restricting installation of potable wells; and

5. Copies of the certified letters, return receipt requested, notifying the following persons of the need to establish the groundwater classification exception area:

- i. The municipal and county clerks for each municipality and county in which the groundwater classification exception area will be located;
- ii. The local, county and regional health department for each municipality and county in which the groundwater classification exception area will be located;
- iii. The designated County Environmental Health Act agency for each county in which the groundwater classification exception area will be located;
- iv. The county planning board for each county in which the groundwater classification exception area will be located;
- v. The Pinelands Commission if the groundwater classification exception area will be located within the jurisdiction of that Commission;
- vi. New Jersey Department of Environmental Protection, Water Supply Administration:
 - (1) Bureau of Safe Drinking Water; and
 - (2) Bureau of Water Allocation; and
- vii. If the groundwater classification exception area is located in a groundwater use area, each owner of any real property within the groundwater classification exception area.

(c) The Department will establish a groundwater classification exception area based upon the projected area of the contaminant plume in the groundwater, pursuant to (b) above.

(d) The Department may revise or reestablish a groundwater classification exception area at any time to more accurately reflect groundwater conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6.

(e) The Department will remove a groundwater classification exception area based upon groundwater data, collected pursuant to N.J.A.C. 7:26E-8.6(a) 7, that indicate that the contaminant concentrations in the groundwater meet all of the applicable groundwater quality standards.

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

7:26E-8.4 Monitoring, maintenance, and biennial certification—who has obligation and when

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control and for submitting the biennial certifications pursuant to this subchapter include, without limitation, each of the following:

1. Any person with a legal obligation to conduct the remediation, including, without limitation, each of the following:

i. A person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substance that was the subject of the remedial action that includes the engineering and/or institutional control;

ii. The owner of the site of the discharge at the time of the remedial action that includes the engineering and/or institutional control;

iii. An owner or operator that triggered the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., for the industrial establishment that was the subject of the remedial action that includes the engineering and/or institutional control;

iv. An owner or operator of an underground storage tank that was the subject of the remedial action that includes the engineering and/or institutional control;

v. A holder of a security interest in the site, who actively participated in the management of the site or underground storage tank facility, that was the subject of the remedial action that includes the engineering and/or institutional control; or

vi. A holder of a security interest in the site, who negligently caused a new discharge at the site after the date of foreclosure on a security interest in the site or the underground storage tank facility, that was the subject of the remedial action that includes the engineering and/or institutional control; and

2. Once the engineering or institutional control is in place, each owner, lessee and operator of any property that is subject to an engineering or institutional control; this obligation may be limited to the period of that person's ownership, tenancy, or operation depending on that person's continuing liability of the remediation pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11gd.

(b) The obligations in this subchapter for the monitoring, maintenance and certifying the protectiveness of remedial actions that include engineering and/or institutional controls apply to all of the persons described in (a) above, for sites with an engineering or institutional control that continues in effect after February 3, 2003, regardless of the date the control was established.

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control shall submit to the Department a certification, pursuant to this section and consistent with N.J.A.C. 7:26C-1.2(a)1, according to the following schedule:

1. For a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded;

2. For a groundwater classification exception area, every two years on the anniversary of the date that the Department established the groundwater classification exception area; and

3. For all other engineering and institutional controls, every two years on the anniversary of when the engineering or institutional control was in place for the site.

(d) The persons responsible for submitting biennial certifications for sites with multiple engineering and/or institutional controls for the remediation of contaminated soil at a site shall:

1. Submit one biennial certification for all remedial actions and all engineering and institutional controls for the site; and

2. Submit to the Department the first biennial certification when the first biennial certification is due to the Department pursuant to (c) above, and biennially thereafter on that same date.

(e) Submissions required pursuant to this subchapter shall be made to the Department as follows:

1. For deed notices and related engineering controls as follows:

i. If the Department continues to oversee any aspect of the remediation at the site, submit information to the following address:

Department of Environmental Protection
 Division of Remediation Management and Response
 (Insert name of Bureau overseeing the remediation)
 PO Box 028
 401 E. State Street
 Trenton, NJ 08625-0028

ii. If the Department has issued no further action letters for all areas of concern at the site, submit information to the following address:

Department of Environmental Protection
 Division of Remediation Management and Response
 Bureau of Operation, Maintenance and Monitoring
 Deed Notice Inspection Program
 PO Box 413
 401 E. State Street
 Trenton, NJ 08625-0413

2. For groundwater classification exception areas, submit information to the Bureau that established the groundwater classification exception area as follows:

Department of Environmental Protection
 Division of Remediation Management and Response
 (Insert name of appropriate Bureau)
 PO Box 028
 401 E. State Street
 Trenton, NJ 08625-0028

Administrative correction.
 See: 35 N.J.R. 1928(a).

7:26E-8.5 Monitoring, maintenance, and biennial certification—requirements for deed notices and declarations of environmental restrictions

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions shall:

1. Determine whether any actual or pending zoning or land-use change is consistent with the use restrictions in the deed notice or declaration of environmental restrictions or could undermine the protectiveness of the remedial action that includes a deed notice or declaration of environmental restrictions in a manner such that could prevent:

i. The remedial action which includes the engineering and/or institutional controls from meeting the applicable health risk standard (see N.J.S.A. 58:10B-12g(3)(b)); and

ii. The remedial action, which includes the engineering and/or institutional controls, from continuing to be protective of public health, safety, and of the environment (see N.J.S.A. 58:10B-12g).

2. Conduct periodic inspections of the site to identify whether:

i. Any excavation or other disturbance activities have taken place within the restricted areas; and

ii. Any disturbances of the soil at the site have resulted in unacceptable exposure to the soil contamination;

3. Compare New Jersey laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations or remediation standards to determine whether:

i. Any changes in applicable laws, regulations, or remediation standards have occurred; and

ii. Each engineering and/or institutional control comply with the requirements of the new laws and regulations; and

4. Develop a detailed log of how the persons responsible for monitoring the protectiveness of the remedial action have maintained and evaluated the engineering control in compliance with this section. The log shall be completed for the time since the first certification due date pursuant to N.J.A.C. 7:26E-8.4(e), or the last certification and monitoring report was submitted to the Department, whichever is more recent.

(b) The persons responsible for monitoring the protectiveness of a remedial action shall prepare a monitoring report that includes the following information:

1. The name, address and telephone number of the person responsible for maintaining the engineering and institutional controls;

2. Site identifiers (as applicable):

i. Program Interest Name;

ii. Program Interest Number (Preferred ID);

iii. The ISRA ID Number;

iv. The Case Number or Incident Report Number;

v. The UST Registration Number;

vi. The date of each no further action letter for the site;

vii. The name of the Department's case manager for the site at the time of each no further action letter;

viii. The street address;

ix. The tax block and lot number; and

x. The name of each municipality and county in which the site is located;

3. A description of:

i. The physical characteristics of the site; and

ii. The current site operations;

4. A description of each remedial action for the site that included the deed notice or declaration of environmental restrictions;

5. The results of the comparison of applicable laws and regulations pursuant to (a)5 above;

6. The maintenance and evaluation log for each engineering control pursuant to (a)4 above;

7. The dates and results of inspections and maintenance, including all test and sampling results, of each engineering and/or control;

8. A description of any changes in applicable laws, regulations or remediation standards and a proposal for all changes in the remedial action to comply with those changes;

9. A description of any additional action taken to ensure the protectiveness of the remedial action; and

10. A conclusion as to whether each remedial action that includes an engineering and/or institutional control remains protective of the public health and safety and the environment.

(c) The persons responsible for monitoring the protectiveness of a remedial action shall:

1. Certify to the Department that:

i. The deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained; and

ii. The remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of the public health and safety and the environment;

2. Include with the certification a written monitoring report pursuant to (b) above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department; and

3. Submit the certification and the report required by (c)2 above, according to the schedule in N.J.A.C. 7:26E-8.4(c), to:

i. The municipal and county clerks for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

ii. The local, county and regional health department for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

iii. Each owner of the property which is included in the deed notice or declaration of environmental restrictions; and

iv. The Department, at the appropriate address as indicated in N.J.A.C. 7:26E-8.4(e)7, along with the name and address of each person that was sent a copy of the certification pursuant to (c)3i through iii above.

(d) If the person(s) having the obligation for complying with this section pursuant to N.J.A.C. 7:26E-8.4(a)2 changes:

1. The person who is relinquishing the obligation shall notify the Department of the name, address and telephone number of the person assuming the responsibility and the effective date of the change;

2. The person who is assuming the obligation to comply with (c) above shall submit a letter signed and certified pursuant to N.J.A.C. 7:26E-1.5, stating that he or she is assuming the obligation for compliance with (a) through (c) above; and

3. The letters required by (d)1 and 2 above shall be submitted to the Department within 30 days of the effective date of the change.

Administrative correction.

See: 35 N.J.R. 1928(a).

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

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

In (b), substituted "(a)4" for "(a)6" following "pursuant to" in 6.

7:26E-8.6 Monitoring, maintenance, and biennial certification—specific requirements for groundwater classification exception areas

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes a groundwater classification exception area shall:

1. Compare the laws, Ground Water Quality Standards, and other regulations applicable at the time the Department established the groundwater classification exception area, with any relevant subsequently promulgated or modified laws or regulations to determine whether:

i. Any subsequently promulgated or modified laws or regulations apply to the site; and

ii. Each groundwater classification exception area complies with the requirements of the new laws and regulations;

2. Determine whether there are any planned changes within the 25-year water use planning horizon for the aquifer(s) in which the groundwater classification exception area is located since the Department established the groundwater classification exception area or the last completed biennial review, whichever is more recent. This determination shall be made by reviewing all plans, records and other relevant information from the following sources, without limitation:

i. The New Jersey Water Supply Master Plan;

ii. Department of Environmental Protection, Bureau of Water Allocation;

iii. Municipal master plans;

iv. Zoning plans;

v. Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

vi. Local planning officials;

vii. Local and county ordinances restricting installation of potable wells; and

viii. County and local boards of health;

3. Identify whether there have been any actual changes in the groundwater use in the water use planning area since the Department established the groundwater classification exception area or the last completed biennial review, whichever is more recent. Changes shall be identified by:

i. Completing a Department computer generated well search (contact the Bureau of Water Allocation) for all wells within one mile up-gradient, side-gradient and down-gradient of the groundwater classification exception area; and

ii. Identifying all wells, other than groundwater monitoring wells, installed within one mile up-gradient,

side-gradient and down-gradient of the groundwater classification exception area since the Department established the groundwater classification exception area or the last completed biennial review, whichever is more recent, using the well search format at Appendix B;

4. Inspect all groundwater monitoring wells associated with the groundwater classification exception area and maintain a log for each monitoring well as follows:

i. Inspect the physical integrity of each well including, determining:

- (1) The identification, integrity, and location of the well;
- (2) The presence of a functioning pad lock; and
- (3) The presence of any additional security measures such as a fence or patrolling of the site;

ii. Report to the Department, pursuant to N.J.A.C. 7:26E-4.4(g)11, any damaged monitoring wells and either repair or decommission damaged monitoring wells pursuant to N.J.A.C. 7:9D or replace the monitoring wells, as necessary; and

iii. For monitoring wells used to establish the groundwater classification exception area that have been decommissioned pursuant to N.J.A.C. 7:9D, a copy of the well closure report shall be included with the first report, pursuant to (b)7 below, submitted after each well is decommissioned;

5. Identify any land use disturbance, such as the installation of a detention basin, that may intercept the water table within the area of the groundwater classification exception area that could result in a contaminated discharge to surface water. If any such disturbances are identified, sample the groundwater/surface water down-gradient and proximate to the land use disturbance to determine whether the groundwater meets the more stringent of either:

i. The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; or

ii. The Federal Surface Water Quality Criteria, 40 CFR Part 131;

6. Determine whether:

i. Any of the actual or proposed changes in the groundwater use identified pursuant to (a)2 and 3 above have influenced or may influence the protectiveness of the remedial action that includes the groundwater classification exception area; and

ii. There is a need to reevaluate the fate and transport of the groundwater contamination plume and to revise the groundwater classification exception area to ensure that the remedial action remains protective of the public health and safety and the environment; and

7. Assess groundwater quality as follows:

i. Within 120 calendar days after the projected expiration of the groundwater classification exception area, collect at least two rounds of groundwater samples such that the time between sampling events shall account for seasonal fluctuations in the groundwater table and the number of groundwater samples collected are representative of the entire horizontal and vertical extent of the groundwater classification exception area;

ii. Evaluate the results of the groundwater sampling conducted pursuant to (a)7i above, to determine whether the contaminant concentrations in the groundwater have either:

- (1) Decreased to or below the applicable groundwater quality standards throughout the entire classification exception area; or
- (2) Not decreased to or below the applicable groundwater quality standards throughout the entire classification exception area; and

iii. At any other time prior to the projected expiration of the groundwater classification exception area, groundwater sampling is optional to determine whether the groundwater meets the applicable groundwater quality standards. The number of samples collected and the time between sampling events shall be consistent with (a)7i above. If groundwater samples indicate that contaminant concentrations have decreased to or below the applicable groundwater quality standards throughout the groundwater classification exception area, then any person may request that the Department remove the groundwater classification exception area.

(b) The persons responsible for evaluating the protectiveness of a remedial action that includes a groundwater classification exception area shall prepare a monitoring report that includes the following:

1. The name, address and telephone number of the person responsible for preparing the report;
2. Site identifiers, as applicable:
 - i. Program Interest Name and number (Preferred ID);
 - ii. The ISRA ID Number;
 - iii. The Case Number or Incident Report Number;
 - iv. The UST Registration Number;
 - v. The date of each no further action letter for the site;
 - vi. The street address;
 - vii. The tax block and lot number and the year of the tax map from which this information is obtained; and

viii. The name of each municipality and county in which the site is located;

- 3. A description of:
 - i. The physical characteristics of the site;
 - ii. The current site operations; and
 - iii. Each remedial action that includes a groundwater classification exception area;
- 4. The results, in table format, of the comparison of applicable laws and regulations pursuant to (a)1 above;
- 5. The results of the evaluation of the changes in groundwater use conducted pursuant to (a)2 and 3 above;
- 6. The maintenance and evaluation log for each monitoring well pursuant to (a)4 above, including:
 - i. A copy of any report submitted to the Department, pursuant to N.J.A.C. 7:26E-4.4(g)11, concerning damaged monitoring wells; and
 - ii. A copy of the well closure report for each monitoring well used to establish the groundwater classification exception area that has been decommissioned pursuant to N.J.S.A. 58:4A-1 et seq., and N.J.A.C. 7:9D since the Department established the groundwater classification exception area or the last completed biennial review, whichever is more recent;
- 7. For each land use disturbance identified pursuant to (a)5 above:
 - i. A description of the disturbance;
 - ii. The results of all groundwater sampling required pursuant to (a)5, above; and
 - iii. A discussion of whether the groundwater meets the more stringent of either:
 - (1) The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; or
 - (2) The Federal Surface Water Quality Criteria, 40 CFR Part 131;
- 8. A discussion of whether:
 - i. Any of the actual or proposed changes in the groundwater use have influenced or may influence the protectiveness of the remedial action that includes the groundwater classification exception area; and
 - ii. There is a need to reevaluate the fate and transport of the groundwater contamination plume and to revise the groundwater classification exception area to ensure that the remedial action remains protective of the public health and safety and the environment;
- 9. When groundwater sampling is required pursuant to (a)7 above, present and evaluate the contaminant concentrations in the groundwater to determine whether the concentrations have either:

- i. Decreased to or below the applicable groundwater quality standards throughout the entire classification exception area; or
 - ii. Not decreased to or below the applicable groundwater quality standards throughout the entire classification exception area;
- 10. A description and map of a proposed revised groundwater classification exception area, in both paper and electronic format consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2, if groundwater monitoring pursuant to this subchapter indicates that a revision to the groundwater classification exception area is necessary;
- 11. The dates and results of inspections and maintenance, including all test and sampling results, of each groundwater classification exception area;
- 12. A description of any additional action taken to ensure the protectiveness of the remedial action that includes the groundwater classification exception area; and
- 13. For the first biennial certification required after the projected expiration of the groundwater classification exception area, if the contaminant concentrations in the groundwater have not decreased to or below the applicable groundwater quality standards throughout the classification exception area, the person responsible for evaluating the protectiveness shall submit:
 - i. A narrative, detailing why groundwater contamination is still present; and
 - ii. A re-evaluation of the groundwater quality standards pursuant to N.J.A.C. 7:26E-8.3(b), based on the current configuration of the groundwater contaminant plume.
- (c) The persons responsible for monitoring the protectiveness of a remedial action that includes a groundwater classification exception area shall:
 - 1. Certify in a format acceptable to the Department that, based upon the monitoring report required pursuant to (b) above, the groundwater classification exception area continues to provide notice of the groundwater contamination and the remedial action continues to be protective of the public health and safety and the environment;
 - 2. Submit a report pursuant to (b) above, in both paper copy and in electronic format acceptable to the Department; and
 - 3. Submit the certification and the report required by (c)1 and 2 above, according to the schedule in N.J.A.C. 7:26E-8.4, to:
 - i. Each external agency that the Department copied when it established the groundwater classification exception area;

ii. Each property owner that the Department copied when it established the groundwater classification exception area; and

iii. The Department, at the address in N.J.A.C. 7:26E-8.4, along with the name and address of each person that was sent a copy of the certification pursuant to (c)3i and ii above.

Administrative correction.
See: 35 N.J.R. 1928(a).

7:26E-8.7 Monitoring, maintenance, and biennial certification—engineering and institutional controls

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall:

1. Monitor each institutional control by:

i. Conducting periodic inspections of the site to ensure that:

(1) The use of the site is consistent with any restrictions in the institutional control; and

(2) The institutional control and the remedial action of which it is a part continue to be protective of the public health and safety and of the environment; and

ii. Evaluating any actual or pending zoning or land-use changes that could undermine the protectiveness of any remedial action for the site;

2. Monitor each engineering control by:

i. Periodically reviewing the documented operation and maintenance records for each engineering control according to the requirements included in the deed notice;

ii. Conducting periodical inspections of each engineering control to determine:

(1) The integrity, operability, and effectiveness of the engineering control; and

(2) Whether the engineering control and the remedial action, of which it is a part, continue to be protective of the public health and safety and of the environment;

3. Compare the laws, remediation standards and other regulations applicable at the time the engineering or institutional control was established with any subsequently promulgated or modified laws, regulations or remediation standards to determine whether or not:

i. Any subsequently promulgated or modified laws or regulations apply to the site; and

ii. Each engineering and/or institutional control in place for the site meet those new laws and regulations; and

4. Develop a detailed log of how the persons responsible for monitoring the protectiveness of the remedial action that includes an engineering control have maintained and evaluated the engineering controls in compliance with this section, since the first certification due date pursuant to N.J.A.C. 7:26E-8.4(d), or the date the persons responsible submitted the last certification and monitoring report to the Department, whichever is more recent.

(b) For each engineering and institutional control, the persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall prepare a monitoring report that includes the following information:

1. The name, address and telephone number of each person responsible for maintaining the engineering and/or institutional control;

2. Site identifiers (as applicable):

i. Program Interest Name;

ii. Program Interest Number (Preferred ID);

iii. The ISRA ID Number;

iv. The Case Number or Incident Report Number;

v. The UST Registration Number;

vi. The date of each no further action letter for the site that included an engineering and/or institutional control;

vii. The name of the Department's case manager for the site at the time of each no further action letter;

viii. The street address;

ix. The tax block and lot number; and

x. The name of each municipality and county in which the site is located;

3. A description of:

i. The physical characteristics of the site; and

ii. The current site operations;

4. A description of each remedial action for the site that included an engineering or institutional control:

5. The results of the comparison of applicable laws and regulations pursuant to (a)3 above;

6. The maintenance and evaluation log for each engineering control pursuant to (a)4 above;

7. The dates and results of all inspections and maintenance, including all test and sampling results, of each engineering and/or institutional control;

8. A description of any additional action taken to ensure the protectiveness of the remedial action that includes the engineering and/or institutional control; and

9. A conclusion as to whether each remedial action that includes an engineering and/or institutional control remains protective of the public health and safety and of the environment.

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall:

1. Certify to the Department that:
 - i. Each engineering and institutional control is being properly maintained; and
 - ii. The remedial action that includes the engineering and institutional controls continues to be protective of the public health and safety and of the environment;
2. Include with the certification a written monitoring report pursuant to (b) above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department; and
3. Submit the certification to the Department pursuant to the schedule and address in N.J.A.C. 7:26E-8.4(e)1.

Administrative correction.
See: 35 N.J.R. 1928(a).

APPENDIX A

Laboratory Data Deliverables Formats

I. Full Laboratory Data Deliverables—USEPA/CLP Methods

Full laboratory data deliverables for USEPA/CLP analyses may be requested when the following Statements of Work are employed:

“USEPA Contract Laboratory Program Statement of Work for:

- A) Organics Analysis, Multi-Media, Multi-Concentration”
- B) Inorganics Analysis, Multi-Media, Multi-Concentration”
- C) Organics Analysis, Multi-Media, High-Concentration”
- D) Inorganics Analysis, Multi-Media, High-Concentration”
- E) Low Concentration Water for Organic Analysis”

F) Low Concentration Water for Volatile Organic Analysis”

G) Low Concentration Water for Inorganic Analytes”

H) Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans”

The Full laboratory data deliverables required for USEPA/CLP analyses are listed in the versions of the above noted Statements of Work in effect as of the date of sample analysis by the laboratory. Additionally, mass spectral negative proofs¹ are required where applicable, “clean” soil method blanks² for nonaqueous samples are not permitted, and laboratory internal chain of custody documentation is required.

II. Full Laboratory Data Deliverables—Non-USEPA/CLP Methods

These deliverables shall be the “Regulatory Format” data deliverables listed in the version of the Professional Laboratory Analytical Services contract issued by the N.J. Department of Treasury, Division of Purchase and Property in effect as of the date of sample analysis by the laboratory.

III. Reduced Laboratory Data Deliverables—USEPA/CLP Methods

Reduced laboratory data deliverables for USEPA/CLP analyses may be required when the “USEPA Contract Laboratory Program Statement of Work for Organic Analyses, Multi-Media, Multi-Concentration”; the “USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, Multi-Media, Multi-Concentration”; “USEPA Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, High Concentration”; and/or the “USEPA Contract Laboratory Program Statement of Work for Inorganics Analysis, Multi-Media, High Concentration are employed. Data generated via the other above noted Statements of Work may NOT be delivered in the reduced format.

A. Organics

All laboratory data deliverables required for USEPA CLP analyses for organics via the appropriate Statement of Work are the same as those listed above in the **Full Laboratory Data Deliverables—USEPA/CLP** requirements and must be submitted with the following exceptions:

1. Chromatograms of standards (calibrations) are not required.
2. Chromatograms and spectra for matrix spikes and matrix spike duplicates are not required.

B. Inorganics

The Reduced laboratory data deliverables required for USEPA/CLP analyses for inorganics are all the

Inorganics Data Reporting Forms as specified in the version of the above noted Statement of Work for Inorganics in effect as of the date of sample analysis by the laboratory.

IV. Reduced Laboratory Data Deliverables—Non-USEPA/CLP Methods

This attachment presents reduced laboratory data deliverables requirements for Non-USEPA/CLP Methods. The deliverable package is divided into six (6) sections:

1. General Requirements
2. GC/MS Requirements
3. GC Requirements
4. Metals Requirements
5. General Chemistry Requirements
6. Petroleum Hydrocarbons Requirements

1. General Requirements

A. The data deliverable package shall be bound and paginated with margins, bindings and of reproduction quality such that all pages are legible.

B. Title/Cover Page

The format for QA/QC documentation shall be simplified as much as possible for ease of review and reference. The report shall begin with a cover page that includes the laboratory certification number, if applicable, facility name, address and date of report preparation.

The report shall include a summary table that cross-references the field identification number to the laboratory identification number for each sample. This table is needed to locate laboratory information for specific field samples. Sample numbers used in the field are always different than those used in the laboratory and therefore shall be reconciled before submitting the results to Department.

E. Spike Sample Results Summary—A summary of the spike sample analysis shall be submitted. The following information shall be reported: ID number of the sample chosen for spiking, sample matrix, the concentration of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte.

F. Duplicate Sample Results Summary—A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: ID number of the original sample and the duplicate samples, sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyses and the QC limit for relative percent difference for each target analyte.

G. Laboratory Control Sample Results Summary—When specified by the analytical method, the results of the laboratory control (quality control) sample shall be submitted. The following information shall be reported: control sample matrix, list of all target analytes, the true concentration for each analyte in the control sample, the reported concentration for each target analyte in the control sample, the percent recovery for each target analyte and the QC limit for percent recovery for each target analyte.

H. Serial Dilution Summary—If required by the analytical method, a summary of the serial dilution results shall be submitted. The following information shall be reported: ID number of the original sample and the serial dilution samples, sample matrix, results of the original sample analysis, results of the serial dilution sample analysis, the percent difference of each target analyte compared to the original analytes' results and the QC limit for percent difference for each target analyte.

5. General Chemistry Requirements

A. Analytical Results Summary—An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample identification number (laboratory and/or field ID), sample matrix, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes and detected analyte concentrations and method detection limits.

B. Blank Results Summary—A blank results form shall be submitted for all method blank samples associated with all field and QC samples. Each form shall contain the following information: list of all target analytes, matrix of the method blank, concentration units of the method blank, reported concentration of all target analytes found in all method blanks.

C. Spike Sample Results Summary—A summary of the spike sample analysis shall be submitted. The follow-

ing information shall be reported: ID number of the sample chosen for spiking, sample matrix, the concentration of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte.

D. Duplicate Sample Results Summary—A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: ID number of the original sample and the duplicate samples, sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyses and the QC limit for relative percent difference for each target analyte.

6. Petroleum Hydrocarbon Requirements

A. Analytical Results Summary—An analytical results form shall be submitted for each sample. Each form shall contain the information contained in Section 2A above. In addition, the identification of the GC instrument employed and the volume of extract injected shall be included.

B. Method Blank Summary—An analytical results form shall be submitted for all method blanks as well as a listing of all field and QC samples associated with each method blank. Each form shall contain the information in Section 6A above.

C. Standards Summary—A summary form containing GC standards information for all associated samples shall be submitted for all analyses. This summary shall contain the following information: instrument ID number, GC column used, date and time of standard(s) analysis, volume injected, listing of all associated field, QC and method blank samples, identity of each analyte in the hydrocarbon standard and/or the identity of petroleum product standard(s), retention times of each analyte in the hydrocarbon standard (when applicable), retention times of the surrogates and internal standard (when applicable), retention times of pristane and phytane (when applicable), retention time windows for each surrogate (when applicable), response factors/relative response factors used for quantitative determinations, response factors/relative response factors of surrogates, and percent relative standard deviations/percent differences of the surrogates.

D. Surrogate Compound Recovery Results Summary—If required by the analytical method, a summary form shall be submitted which contains the following information for all field samples, method blanks, and QC samples: sample identification number, sample matrix, surrogate compound names, concentration of surrogate compounds used, surrogate compound recoveries and QC limits for each surrogate compound.

E. Matrix Spike Results Summary—If required by the analytical method, a summary form shall be submitted which contains the following information: ID number of the sample chosen for spiking, sample matrix, the concentration of each spiked analyte/petroleum product, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte/petroleum product and the QC limit for percent recovery for each spiked analyte/petroleum product.

F. Quality Control Check Standard—If required by the analytical method, a summary form shall be submitted which contains the following information: ID number of the sample, concentration of each spiked analyte/petroleum product, the results of the spiked sample analysis, the percent recovery for each spiked analyte/petroleum product, and the QC limit for percent recovery for each spiked analyte/petroleum product.

G. Duplicate Sample Results Summary—A summary of the duplicate sample results shall be submitted which contains the following: ID numbers of the original sample and the duplicate sample, sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference calculated from the original and duplicate sample results and the QC limit for the relative percent difference (when applicable).

H. Quantitation Reports—Instrument quantitation reports shall be submitted for all field samples, QC samples, method blanks and standards.

I. Chromatograms—Chromatograms for all field samples, QC samples, method blanks and standards shall be submitted. All surrogate, internal standard (when applicable), pristane and phytane peaks on the chromatogram shall be identified along with the retention time for each peak.

Program Interest Number (Preferred ID)

Street Address

Township

County

USGS Quadrangle

Latitude

Longitude

Instructions:

1. All sources of well records/information shall be clearly documented.
2. List all wells and State well permit numbers, including active, inactive and decommissioned, within ½ mile of the site boundary. Include all wells, active, inactive and decommissioned at the site.
3. Locate all listed wells on a site locus map.
4. Sources that shall be used:
 - a. Well records search of the Bureau of Water Allocation. There is no cost if this search is performed by the individual. Appointments shall be made to examine well records by contacting the Bureau of Water Allocation at (609) 292-2957. Upon written request, the Bureau will provide the well search for a fee.
 - b. Contact local or county Health Department or equivalent.
5. Complete chart on back.

| Well Owner | Address | Total Depth | Length of Casing | Static Water Elev. | Use Code | Source of Information |
|------------|---------|-------------|------------------|--------------------|----------|-----------------------|
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. | | | | | | |
| 6. | | | | | | |

- USE CODES**
- A =
 - B = Boring
 - C =
 - D = Domestic
 - E = Recovery/Decontamination Pollution Control/Leachate with Pump Capacity
 - F = Fire
 - G = Irrigation
 - H = Heat Pump/Geothermal
 - I = Industrial

¹ A negative proof is a mass spectrum offered as evidence to support an analyst's decision to negate the presence of a contaminant which has been qualitatively identified and reported by the instrument's data system.

² Method blanks for nonaqueous samples shall consist of performing the entire analytical procedure without any actual sample being present. The appropriate amount of sodium sulfate as specified in the current Statements of Work for Organics would be substituted as the "sample" for the semivolatiles and pesticide/rochlor fractions.

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 IV6.

APPENDIX B

Well Search Format

Preparer

Name of Site

- J = Injection/Waste Discharge
- K =
- L = Livestock
- M = Monitoring
- N = Public Non-community
- O = Oil/Gas Exploration
- P = Public Supply
- Q = Recharge
- S = Sealed
- T = Test
- U = Non-public
- V = Gas Vent
- W = Dewatering
- X = Cancelled
- Y = Cathodic Protection
- Z = Piezometer

NEW REPLACEMENT WELL CODES

- 1 = Domestic
- 2 = Public Community
- 3 = Public Non-Community
- 4 = Industrial
- 5 = Irrigation
- 6 = Monitoring
- 7 = Piezometer
- 8 = Heat Pump/Geothermal
- 9 = Recovery
- 0 = Gas Vent

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

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

In 2, substituted "decommissioned" for "abandoned"; deleted 5 and recodified former 6 as 5.

Administrative correction.

See: 35 N.J.R. 1928(a).

APPENDIX C

Mann-Whitney U-Test*

The random variable to be analyzed shall be the concentrations of the individual contaminants of concern in each individual monitoring well. The statistic to be evaluated is the Mann-Whitney "U". The test shall be a Mann-Whitney U-test with the size of the test equal to 0.1. The hypotheses (H) to be tested are:

$H_0: \theta_1 = \theta_2$ (null hypothesis)

$H_1: \theta_1 > \theta_2$ (alternate hypothesis)

where θ_1 represents the stochastic size of the population of each individual contaminant during the most recent 12 month period of sampling and θ_2 represents the stochastic size of the population of each individual contaminant during the previous 12 month period. The test is applied to each contaminant in each individual monitoring well. In other words, if benzene and trichloroethene are the contaminants of concern, and there are four monitoring wells involved in the sampling program, then a total of eight Mann-Whitney tests are to be performed (benzene in each of the four monitoring wells and trichloroethene in each of the four monitoring wells).

The U statistic shall be evaluated as follows:

1. The test is applied to eight consecutive quarters of analytical data for each individual contaminant in each individual monitoring well.

2. For each quarter of data, annotate the concentration of the specific contaminant in the specific monitoring well with either a "b" for the most recent four quarters or an "a" for the four quarters from the previous 12 month period.

3. Vertically arrange the eight contaminant concentrations, with notations, in order of increasing value: the lowest value on the top, and the greatest value on the bottom.

4. For each individual "a" concentration, count the number of "b" concentrations that occur below that "a" concentration in the column.

5. Add the four values (zero or some positive number) obtained for Step 4 to calculate the "U" value.

6. All values of non-detectable (ND) or values detected below the limits of quantitation are to be ranked as "zero." It is required that appropriate detection levels/quantitation limits be achieved.

7. If two or more concentrations are identical, then two vertical columns are necessary. In the first column, rank tying "b" concentrations first, and in the second column rank tying "a" concentrations first. Calculate an interim "U" for each column ("Ua" and "Ub"). The average of these interim values is the actual "U". This is shown in Example 2, below.

The hypotheses shall be tested as follows:

1. If "U" is three or less, the null hypothesis is rejected, and it is concluded, with at least 90 percent confidence, that the concentration for the individual contaminant has decreased with time at the specific monitoring well.

2. If "U" is greater than three, the null hypothesis is accepted, and it cannot be concluded, with 90 percent or greater confidence, that the concentration for the individual contaminant has decreased with time at the specific monitoring well.

* Adapted from Mann, H. B. and Whitney, D.R., 1947, On a test of whether one of two random variables is stochastically larger than the other., Ann. Math. Statist., 18, pp. 52-54.

EXAMPLE 1: All data points are numerically unique

1. Individual contaminant: TCE
Individual monitoring well: MW-1
2. Monitoring quarters:

| | | | | | | | | | |
|------------------|------|-------|------------------|------|---|------|------|-----|------|
| | | | $\hat{\theta}_1$ | | | | | | |
| Sampling Round: | 1 | 2 | 3 | 4 | ↑ | 5 | 6 | 7 | 8 |
| Sampling Result: | 506a | 1021a | 612a | 265a | ↑ | 543b | 261b | 77b | 379b |
| (ppb) | | | | | | | | | |
| (concentration) | | | | | | | | | |

3. 77b
261b
265a
379b
506a
543b
612a
1021a
4. 265a=2, 506a=1, 612a=0, 1021a=0
5. 2+1+0+0=3, U=3

Conclusion: "U" is three, therefore the null hypothesis is rejected, and it is concluded, with 90 percent or greater confidence, that the first sampling set ($\hat{\theta}_1$) is greater than the second sampling set ($\hat{\theta}_2$), and therefore that the concentration for the specific contaminant in the specific monitoring well has decreased over the period of the ground water monitoring program.

EXAMPLE 2: two or more numerically identical data points

1. Individual contaminant: TCE
Individual monitoring well: MW-1
2. Monitoring quarters:

| | | | | | | | | | |
|------------------|-----|-----|------------------|-----|---|-----|-----|-----|-----|
| | | | $\hat{\theta}_1$ | | | | | | |
| Sampling Round: | 1 | 2 | 3 | 4 | ↑ | 5 | 6 | 7 | 8 |
| Sampling Result: | 28a | Nda | 61a | Nda | ↑ | 63b | Ndb | 77b | 79b |
| (ppb) | | | | | | | | | |
| (concentration) | | | | | | | | | |

3. a) Ndb b) Nda
 Nda Nda
 Nda Ndb
 28a 28a
 61a 61a
 63b 63b
 77b 77b
 79b 79b
4. a) Nda=3, Nda=3, 28a=3, 61a=3
- b) Nda=4, Nda=4, 28a=3, 61a=3
5. a) 3+3+3+3=12 $U_a=12 \implies U=13.0$
- b) 4+4+3+3=14 $U_b=14$

Conclusion: "U" is 13, therefore we accept the null hypothesis, and we cannot conclude, with 90 percent or greater confidence, that the first sampling set ($\hat{\theta}_1$) is greater than the second sampling set ($\hat{\theta}_2$), and we cannot conclude that the concentration for that specific contaminant has decreased with time.

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).

APPENDIX D

Historic Fill Database
Summary Table

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

[Signature]

[Print name and title of attesting witness]

Signed and sworn before me on _____, 20____

_____, Notary Public [Print name and title]

[If Owner is a partnership]

STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 20____, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is a general partner of [Owner], the partnership named in this document;

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

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

[Signature]

_____, General Partner

[Print name]

_____, Notary Public

[Print name and title]

Repeal and New Rule, R.2003 d.29, effective February 3, 2003.

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

Administrative correction.

See: 35 N.J.R. 1928(a), 36 N.J.R. 3277(a).

Petition for Rulemaking.

See: 36 N.J.R. 2947(a), 2947(b), 3305(a), 3440(a).

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

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

In 7A and 7B, rewrote iii.

APPENDIX F

GROUNDWATER CLASSIFICATION EXCEPTION

AREA FACT SHEET

A. SITE INFORMATION

- 1. Program's Site Identification Number: _____
2. Program Interest Number (Preferred ID): _____
3. Program Interest Name: _____
4. Street address: _____
5. City: _____

- 6. County: _____
7. Block and Lots of the site (duplicate if the site is located in more than one municipality):
a. Name of the municipality in which the site is located: _____
b. Block and Lots: _____
c. Year of tax map: _____
8. United States Geological Survey Quadrangle map, indicating the location of the site, presented as Exhibit A.
9. Site Contact:
a. Name of contact person: _____
b. Company name: _____
c. Mailing address: _____
d. Phone number: (____) ____-____

B. PROPOSED CLASSIFICATION EXCEPTION AREA INFORMATION

- 1. Narrative description of proposed classification exception area:
2. Location of proposed classification exception area (duplicate if the site is located in more than one municipality):
a. Name of the municipality in which the site is located: _____
b. Block and Lots: _____
c. Year of tax map: _____
3. Affected aquifer(s):
Aquifer Name Vertical Depth Groundwater Classification
4. Contaminant concentrations:
Contaminant Concentration1 GWQS2 SWQS3
5. Proposed classification exception area boundaries:
Horizontal: Scaled map indicating projected areal extent of proposed classification exception area, as well as location of site, presented as Exhibit B.
Vertical: As stated in B.3., above.
Locational coordinates of boundary of proposed classification exception area as New Jersey State Plane Coordinates. A minimum of four coordinates shall be submitted, in a format compatible with Department's geographic information system:

Northing Easting (New Jersey State Plane Coordinates)
Latitude Longitude

1 Maximum concentration detected at the time Classification Exception Area information submitted to the Department.

2 New Jersey Ground Water Quality Standards, N.J.A.C. 7:9C.

3 New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B.

6. Estimated size of the proposed groundwater classification exception area: _____
7. Projected duration and expiration date of the proposed classification exception area:
- a. Duration (in years and or days): _____
- b. Expiration date (as calendar date): _____

New Rule, R.2003 d.29, effective February 3, 2003.
 See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).
 Administrative correction.
 See: 35 N.J.R. 1928(a).
 Administrative correction.
 See: 37 N.J.R. 4245(a).

APPENDIX G

CONTOUR MAP REPORTING FORM

This reporting form shall accompany each groundwater contour map submittal. Use additional sheets as necessary.

- Did any surveyed well casing elevations change from the previous sampling event? Yes... No.... If yes, attach new "Well Certification—Form B—Location Certification" as found in the "Guide for the Submission of Remedial Action Workplans" (NJDEP, March 1995) and identify the reason for the elevation change (damage to casing, installation of recovery system in monitoring well, etc.).
- Are there any monitor wells in unconfined aquifers in which the water table elevation is higher than the top of the well screen? Yes _____ No _____ If yes, identify these wells.
- Are there any monitor wells present at the site but omitted from the contour map? Yes... No.... Unless the omission of the well(s) has been previously approved by the Department, justify the omissions.
- Are there any monitor wells containing separate phase product during this measuring event? Yes... No.... Were any of the monitor wells with separate phase product included in the groundwater contour map? Yes _____ No _____ If yes, show the formula used to correct the water table elevation.
- Has the groundwater flow direction changed more than 45 degrees from the previous groundwater contour map? Yes _____ No _____ If yes, discuss the reasons for the change.
- Has groundwater mounding and/or depressions been identified in the groundwater contour map? Yes _____ No _____ Unless the groundwater mounds and/or depressions are caused by the groundwater remediation system, discuss the reasons for this occurrence.
- Are all the wells used in the contour map screened in the same water-bearing zone? Yes _____ No _____ If no, justify inclusion of those wells.

8. Were the groundwater contours computer generated _____, computer aided _____, or hand-drawn _____? If computer aided or generated, identify the interpolation method(s) used.

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

APPENDIX H

MODEL PUBLIC NOTICE

The model public notice in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to publication in appropriate local newspapers. As provided at N.J.A.C. 7:26E-6.3(c), the wording of this model public notice shall not be otherwise changed or modified.

This notice is being given to inform the public that as part of the remediation of [Site Name] at [street address], Block: _____ Lots: _____, in [Municipality], [_____] County, a proposal has been submitted to the New Jersey Department of Environmental Protection (Department) requesting a permit-by-rule authorization to discharge to ground water in accordance with the provisions of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., its implementing regulations the New Jersey Pollutant Discharge Elimination system, N.J.A.C. 7:14A; the Ground Water Quality Standards, N.J.A.C. 7:9-6; and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The NJDEP Site Remediation and Waste Management Program is overseeing the remediation under case # [_____].

Brief description of the proposed discharge: [Include a description of the site including the approved remedial action, type of discharge (e.g., treated ground water or in situ bioremediation), discharge unit (e.g., injection well, overland flow, lagoon, etc.) and treatment proposed and the name and description of the aquifer]. Copies of the plans, which include the proposed discharge to ground water, have been sent to the Mayor, Municipal Clerk, Planning Board, Sewerage Authority, Health Officer, and Environmental Commission of [Municipality, County].

The proposed plan to discharge to ground water is also available as part of the administrative record which is on file at the offices of the Department, Site Remediation and Waste Management Program, located at 401 East State Street, Trenton, Mercer County, New Jersey [or add alternate location]. The file may be reviewed under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq. Information regarding the OPRA procedures is available at <http://www.state.nj.us/dep/opra/oprainfo.html>.

Interested persons may submit written comments regarding the discharge to ground water portion of remediation to the Department addressed to [Case Manager, NJDEP, Address] and to the owner or operator of the facility at [name and address of person/contact submitting Plan]. All comments shall be submitted within 30 calendar days of the date of this

public notice. All persons who believe that any condition specific to the proposed discharge to ground water within the remedial action workplan is inappropriate, must raise all reasonably ascertainable issues and submit in writing to the Department all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons that relate to the requirements to be applied to the proposed discharge will be considered by the Department, provided that the Department receives the comments by the close of the public comment period. After the close of the public comment period, the Department will approve or modify the proposed discharge. The Department will respond to all significant and timely comments with its final decision. Each person who has submitted written comments will receive notice of the Department's final decision.

Any interested person may request in writing that the Department hold a non-adversarial public hearing on the plan to discharge to ground water. This request shall state the nature of the issues to be raised in the proposed meeting and shall be submitted within 30 calendar days of the date of this

public notice to the Case Manager, at the address cited above. A public hearing will be conducted whenever the Department determines that there is a significant degree of public interest in the discharge to ground water decision. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public meeting.

Comments and written requests for a non-adversarial public hearing shall be sent to:

Site Remediation and Waste Management
NJ Department of Environmental Protection
[Name of Case Manager]
[Address of Case Manager]
ATTN: Non-adversarial public hearing request

Additional information concerning the proposal may be obtained from [Name of person/contact submitting the proposal, phone #] or the [NJDEP Case Manager, Name of Bureau phone #].

New Rule, R.2005 d.222, effective July 5, 2005.
See: 37 N.J.R. 405(a), 37 N.J.R. 2499(a).