

CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

Authority

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

Source and Effective Date

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

Chapter Expiration Date

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361, affecting Subchapters 4, 5 and 8 and Appendix A, is extended to October 31, 2011. See: 43 N.J.R. 1077(a).

Chapter Historical Note

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

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

Chapter 26B, Environmental Cleanup Responsibility Act Rules, was repealed and a new Chapter 26B, Industrial Site Recovery Act Rules, was adopted as R.1997 d.498, effective November 17, 1997.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

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

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

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

Subchapter 4, Remediation Agreement, was renamed Remediation Agreement And Remediation Certification; Subchapter 5, Expedited Compliance Options, was renamed Alternate Compliance Options; Subchapter 8, Fee Schedule And Direct Billing Fees, was renamed Program Fees And Oversight Costs; and Appendix A, Standard ISRA Remediation Agreement, was repealed by special adoption R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011). See: 41 N.J.R. 4467(a).

Law Review and Journal Commentaries

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

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

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

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APPENDIX B. STANDARD LANDLORD/TENANT PETITION

APPENDIX C. ISRA SUBJECT NAICS CODES

SUBCHAPTER 1. GENERAL INFORMATION

Law Review and Journal Commentaries

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

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

7:26B-1.1 Scope and authority

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

7:26B-1.2 Construction

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

7:26B-1.3 Severability

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

7:26B-1.4 Definitions

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

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

“Agricultural commodity” means any plant or part thereof, or animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, for-

esters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

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

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

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

“Change in ownership” means, unless otherwise provided at N.J.A.C. 7:26B-2.2:

1. The sale or transfer of the business of an industrial establishment;
2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;
3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;
4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:
 - i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;
 - ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or
 - iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a

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

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

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

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

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

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

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

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

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

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

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

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

“Restricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E-1.8.

“SIC” means Standard Industrial Classification.

“Site investigation” means the collection and evaluation of data defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Transferring ownership or operations” means:

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

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

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

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

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

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8.

“Unrestricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E.

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

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

Amended by R.2003 d.133, effective March 17, 2003.
See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

Deleted “Applicable remediation standard”; added “Remediation standard”.

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

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

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

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

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

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

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

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

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

Administrative correction.

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-1.5 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, by downloading it from the Department's website at www.nj.gov/dep/srp/srra/forms or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment and Initial Notice
401 East State Street, 5th floor
PO Box 434
Trenton, New Jersey 08625-0434
Telephone: (609) 292-2943

(b) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

1. On CD in Adobe Portable Document Format (PDF); and
2. On paper.

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

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

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

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

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

Section was "Forms and submissions".

Administrative correction.

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-1.6 Certifications and signatories

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

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

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

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

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

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

Rewrote the section.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-1.7 Department review

(a) The Department shall review and approve or disapprove all submissions by an owner or operator based on the following criteria:

1. Whether the remediation workplan and report was prepared, implemented or completed in compliance with N.J.A.C. 7:26C, 7:26E and this chapter;
2. Whether all the information and documents required to be submitted to the Department have been submitted; and
3. Whether the information submitted is sufficient, complete or accurate.

(b) The Department shall inform the owner or operator, in writing, of the results of the Department's review of the submission, including any deficiencies in the submittal or required additional remediation. The owner or operator shall then complete all required additional remediation and address any deficiencies prior to the Department's issuance of a no further action letter or authorization letter.

7:26B-1.8 No further action letter and ISRA authorization

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

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

of, a final remediation document in the following circumstances:

1. The owner's or operator's submission of a remediation certification pursuant to N.J.A.C. 7:26B-4.3;
2. The Department's approval of a regulated underground storage tank waiver application pursuant to N.J.A.C. 7:26B-5.3(e);
3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d);
4. The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e);
5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d); and
6. The Department's approval of a de minimus quantity exemption pursuant to N.J.A.C. 7:26B-5.9.

(c) The issuance of an authorization letter pursuant to (c) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial establishment pursuant to ISRA, this chapter and any other applicable law.

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

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

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-1.9 Right of entry and inspection

(a) The owner or operator shall expressly consent in writing pursuant to ISRA and this chapter to entry of the industrial establishment by the Department and its authorized representatives, upon the presentation of credentials, to inspect the site, buildings and records related to environmental issues and to take samples from the site, in which case the owner or operator shall be provided with split samples upon his or her request, photograph the site and the buildings, and to make copies of the records.

(b) The buyer or transferee of the industrial establishment that has been sold subsequent to obtaining an approved remedial action workplan or remediation agreement from the Department, or the owner or operator of the industrial establishment that has submitted a remediation certification, shall:

1. Allow the Department and/or its authorized representatives, upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records related to environmental issues, and to take samples from the site, photograph the site and the buildings and to make copies of the records; where the Department takes samples from the site, the buyer, transferee or owner or operator shall be provided with split samples upon his or her request; and

2. Allow access to the transferred premises by the duly authorized representatives of the seller or transferor to implement a duly approved remedial action workplan, or comply with the conditions of a remediation agreement or remediation certification.

(c) The owner or operator or other person subject to ISRA or who is a party to a remediation agreement shall as necessary:

1. Have appropriate technical, scientific, and engineering representatives, as necessary, accompany the Department and its authorized representative during the inspection; and

2. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection.

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

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

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-1.10 Liability for ISRA compliance

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

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

1. The Department has issued a no further action letter, or a licensed site remediation professional has issued a response action outcome, for the industrial establishment pursuant to N.J.A.C. 7:26C-6;

2. The Department has approved or a licensed site remediation professional has certified a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);

3. The owner or operator has executed prior to November 4, 2009 a remediation agreement or remediation agree-

ment amendment, or, on or after November 4, 2009, has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3; or

4. The Department has issued an authorization letter to the owner or operator pursuant to N.J.A.C. 7:26B-1.8(c).

(c) An owner or operator that is closing operations shall be required to amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(a) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to (b)1 or 2 above.

(d) Any person, other than the owner or operator of the industrial establishment, that has obtained title to the industrial establishment by deed of foreclosure, by other deed or transfer, or by court order or other process, shall not be deemed an owner or operator of that industrial establishment where the operator had closed operations prior to the transfer of title and where no new industrial establishment has operated under the person's ownership. Nothing contained herein shall be construed as a waiver or release of liability by the Department of an owner or operator subject to the requirements of this chapter for the industrial establishment.

(e) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of this chapter, the landlord or the tenant may petition the Department to seek ISRA compliance from that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of this chapter. The petitioning party shall submit the following to the Department at the address provided at N.J.A.C. 7:26C-1.5:

1. A written request to the Department to seek ISRA compliance first from that party that has agreed to be responsible pursuant to the provisions of a lease. The written request shall be in the form of a Landlord/Tenant Petition as specified in chapter Appendix B, incorporated herein by reference. The petitioning party shall send a copy of the petition to the other party(s) to the lease, by certified mail, return receipt requested, at the time of the mailing of the petition to the Department; and

2. A copy of the signed lease between the landlord and tenant.

(f) Based on the information submitted pursuant to (e)1 and 2 above, the Department may determine that the lease clearly defines the responsibilities of either person to comply with the provisions of this chapter. The Department shall seek ISRA compliance from the person deemed responsible pursuant to the lease. The Department's determination shall not be construed as a waiver or release of liability by the Department of any other person who may be subject to the requirements of this chapter for the industrial establishment.

(g) The Department may compel compliance by both parties if the Department determines that the lease does not

clearly define the responsibilities of the owner or operator of the industrial establishment, or upon the failure by the person responsible pursuant to the lease to comply with the provisions of this chapter.

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

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

Rewrote (f)1.

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

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

In (a), substituted "(d)" for "(e)" and "(e), (f) and (g)" for "(f), (g) and (h)"; deleted former (b); recodified former (c) through (h) as (b) through (g); in (b)1, inserted ", or a licensed site remediation professional has issued a remedial action outcome" and substituted "7:26C-6" for "7:26B-1.8(a)"; in (b)2, inserted "or a licensed site remediation professional has certified"; in (b)3, inserted "prior to November 4, 2009" and substituted ", or on or after November 4, 2009 has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3;" for "issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b);"; in (c), substituted "(b)1" for "(c)1"; and in (f), substituted "(e)1" for "(f)1".

Administrative correction.

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-1.11 Civil penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of not more than \$25,000 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

(b) The Department may assess a civil administrative penalty, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-9, against any person who violates the requirements of this chapter to remediate contamination.

(c) Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provision of ISRA or this chapter shall be personally liable for any penalties provided by ISRA or this chapter.

(d) In its discretion, the Department may compromise and settle any claim for a penalty pursuant to ISRA or this chapter.

Amended by R.2f003 d.198, effective May 19, 2003.

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

Rewrote (b).

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

In (b), deleted ".4 and 10.5" following "N.J.A.C. 7:26C-10".

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

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

In (b), substituted "Administrative Requirements for the Remediation of Contaminated Sites" for "Oversight" and updated the N.J.A.C. reference.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

SUBCHAPTER 2. APPLICABILITY

7:26B-2.1 Operations and transactions not subject to ISRA

(a) The following transactions shall not be considered closing operations or transferring of operations or ownership:

1. Corporate reorganization not substantially affecting the ownership or control of the industrial establishment in accordance with N.J.A.C. 7:26B-2.2(c);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The following operations are not industrial establishments:

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

- i. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;
- ii. The Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq.; or
- iii. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.;

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

3. Undeveloped or vacant land provided that:

- i. No industrial establishment has operated on such vacant land since December 31, 1983; and
- ii. The contiguous land is not an industrial establishment under the same control or ownership as the vacant land in question.

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).
See: 36 N.J.R. 2931(a).
Rewrote the section.
Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.
See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).
Provisions of R.2004 d.206 adopted without change.

7:26B-2.2 (Reserved)

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).
See: 36 N.J.R. 2931(a).
In (a)1, substituted "NAICS" for "SIC"
Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.
See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).
Provisions of R.2004 d.206 adopted without change.
Special repeal, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Section was "Applicability determinations".
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

7:26B-2.3 (Reserved)

Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).
See: 36 N.J.R. 2931(a).
In (d), substituted "NAICS numbers of 424210, 446110, 446120 or 446191 as qualified by the limitations noted in Appendix C" for "SIC number of 5122".

Adopted concurrent amendment, R.2004 d.343, effective August 15, 2004.
See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).
Provisions of R.2004 d.206 adopted without change.
Special repeal, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Section was "De minimis quantity exemption".
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

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

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

Special New Rule, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).
See: 36 N.J.R. 2931(a).
Adopted concurrent new rule, R.2004 d.343, effective August 15, 2004.
See: 36 N.J.R. 2931(a), 36 N.J.R. 4298(c).

SUBCHAPTER 3. GENERAL INFORMATION NOTICE

7:26B-3.1 (Reserved)

Special repeal, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Section was "Prenotice filing conference".
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

7:26B-3.2 Notification requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. The following events in any bankruptcy proceeding:

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

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

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

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

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

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

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

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

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

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

Administrative correction.

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

Case Notes

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

7:26B-3.3 General information notice

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

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

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

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

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

5. Identification and description of the transaction triggering ISRA;

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

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

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

9. The proposed date for closing or transferring operations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

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

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

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

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Rewrote (a).
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

SUBCHAPTER 4. REMEDIATION AGREEMENT AND REMEDIATION CERTIFICATION

7:26B-4.1 Remediation agreement

An owner or operator who entered into a remediation agreement with the Department prior to November 4, 2009 shall remediate the industrial establishment in accordance with that agreement and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

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, added "pursuant to the remediation funding source requirements of N.J.A.C. 7:26C-7" at the end.
Special repeal and new rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Section was "Remediation agreement".
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

7:26B-4.2 Remediation agreement amendment

An owner or operator of an industrial establishment who, prior to November 4, 2009, entered into an amendment to the remediation agreement shall proceed to remediate the industrial establishment pursuant to the terms of the remediation agreement and the remediation agreement amendment, and

the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Rewrote the section.
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

7:26B-4.3 Remediation certification

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

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;
2. A certification by the owner or operator of the industrial establishment describing:
 - i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;
 - ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;
 - iii. The requirement of the owner or operator to perform the remediation the Department requires;
 - iv. The requirement of the owner or operator to allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A. 13:1K-10;
 - v. The requirement of the owner or operator to comply with the provisions of the Site Remediation Reform Act, N.J.S.A. 58:10C, and this chapter; and
 - vi. The requirement of the owner or operator to prepare and submit any document the Department requires for the remediation of the industrial establishment;
3. Evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with N.J.A.C. 7:26B-6.4; and
4. Evidence of the payment of all applicable fees in accordance with N.J.A.C. 7:26B-8.

Special new rule, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).
Administrative correction.
See: 42 N.J.R. 1862(a).
Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

SUBCHAPTER 5. ALTERNATE COMPLIANCE
OPTIONS

7:26B-5.1 Expedited review

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.

(b) The Department's approval of an expedited review application authorizes the owner or operator of an industrial establishment that was previously remediated to close operations or transfer ownership or operations of the industrial establishment without further remediation when there has been no discharge subsequent to the last remediation or a subsequent discharge occurred and the subsequent discharge has been remediated and approved by the Department.

(c) To apply for an expedited review, the owner or operator shall submit a completed expedited review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A certification by the owner or operator that:

i. A remedial action workplan or equivalent plan, has previously been implemented and the Department has issued a no further action letter or equivalent approval for the industrial establishment;

ii. The Department has approved a negative declaration for the industrial establishment; or

iii. The Department or the United States Environmental Protection Agency has approved an equivalent remediation of the industrial establishment pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable State or Federal law;

3. A certification by the owner or operator that:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, to identify areas of concern that are new or have continued in use since the issuance of a no

further action letter, negative declaration approval, or equivalent remediation approval; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment, subsequent to the issuance of the no further action letter or the equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, a discharge of a hazardous substance or hazardous waste at the industrial establishment has occurred subsequent to the issuance of the no further action letter, or the equivalent approval. The owner or operator shall identify the discharge(s), describe the action taken to remediate the discharge(s) and demonstrate that the remediation was approved by the Department;

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank system which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent no further action letter, or other equivalent approval, as applicable, for the entire industrial establishment and/or a copy of the document evidencing the Department's approval as referenced in (a)3i(2) above;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6;

7. Any additional information required by the Department from a specific owner or operator; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the expedited review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall approve the expedited review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a) or disapprove the expedited review application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

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

In (a), substituted "In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the" for "An".

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
See: 43 N.J.R. 1077(a).

7:26B-5.2 Area of concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an area of concern review in accordance with (c) below, for any area(s) of concern at the industrial establishment for which a remediation has previously been conducted and approved by the Department.

(b) The Department's approval of an area of concern review application relieves the owner or operator from remediating each area of concern at the industrial establishment that was previously remediated and where there has not been any subsequent discharges at that area of concern.

(c) To apply for an area of concern review, the owner or operator shall submit a completed area of concern review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A site map which identifies the area(s) of concern which is/are the subject of this area of concern review;

3. A certification by the owner or operator that the Department or the United States Environmental Protection Agency has approved an equivalent remediation at an area of concern pursuant to ISRA, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or any other applicable State or Federal law;

4. A copy of the no further action letter or equivalent approval for that area of concern;

5. A certification by the owner or operator that:
 - i. The owner or operator has completed a preliminary assessment report and site investigation report in accordance with N.J.A.C. 7:26E, as applicable, at each area of concern identified at (c)1 above; and

- (1) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, there has been no discharge of a hazardous substance or hazardous waste at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; or

- (2) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, a discharge of a hazardous substance or hazardous waste occurred at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; and

6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the area of concern review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The Department shall either approve the application by the issuance of a no further action letter for each area of concern identified at (c)1 above pursuant to N.J.A.C. 7:26B-1.8, or disapprove the application and require the owner or operator to remediate all areas of concern identified in (c)1 above, in accordance with ISRA and this chapter and N.J.A.C. 7:26E.

7:26B-5.3 Regulated underground storage tank waiver

(a) The owner or operator may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a regulated underground storage tank waiver in accordance with (c) below.

(b) The Department's approval of a regulated underground storage tank waiver application authorizes the owner or operator to close operations or transfer ownership or operations of an industrial establishment prior to obtaining approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B.

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed regulated underground storage tank waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department, at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A preliminary assessment report that demonstrates that the only area of concern at the industrial establishment is an underground storage tank or tanks as defined pursuant to N.J.S.A. 58:10A-22 and N.J.A.C. 7:14B or a preliminary assessment and site investigation report which demonstrates that the only discharged hazardous substances or hazardous wastes at the industrial establishment or that has migrated offsite, above the applicable remediation stan-

dards, are from a discharge from that underground storage tank or tanks;

3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance, pursuant to N.J.A.C. 7:26B-5.3(d), with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B for all underground storage tanks at the industrial establishment that are covered by that act;

4. A copy of proof of financial responsibility pursuant to N.J.A.C. 7:14B-15; and

5. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The owner or operator shall be deemed in compliance with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B as it relates to the subject discharge of a hazardous substance or hazardous waste from an underground storage tank, if the owner or operator has been issued an order by, or has entered into an agreement with the Department to remediate that discharge and the owner or operator is in compliance with that order or agreement.

(e) The Department shall review the regulated underground storage tank waiver application in accordance with N.J.A.C. 7:26B-1.7, and shall either approve the application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

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

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

In (c)3, deleted "and" from the end; added new (c)4; and recodified former (c)4 as (c)5.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-5.4 Remediation in progress waiver

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remediation in progress waiver in accordance with (c) below.

(b) The Department's approval of a remediation in progress waiver application authorizes the owner or operator to close operations or transfer ownership or operations of the industrial establishment prior to obtaining approval from the Department of a remedial action workplan, a negative declaration and without the approval of a remediation agreement.

(c) To apply for a remediation in progress waiver, the owner or operator shall submit a completed remediation in progress waiver application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. Evidence that establishes that the industrial establishment is already in the process of a remediation pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or other applicable state laws and regulations, or the industrial establishment is currently in the process of an equivalent remediation pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable Federal law;

3. A certification by the owner or operator which includes the following:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, to identify areas of concern in accordance with N.J.A.C. 7:26E and based on the preliminary assessment report and site investigation report:

(1) There has been no discharge of any hazardous substance or hazardous waste during the owner's or operator's period of ownership or operation;

(2) A discharge of a hazardous substance or hazardous waste occurred during the owner's or operator's period of ownership or operation and the Department approved the remediation;

4. A certification by the owner or operator that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation;

5. A certification by the owner or operator that:

i. A remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-7; or

ii. A financial assurance was established prior to June 16, 1993 and the amount of the financial assurance is consistent with the current cost estimate developed in accordance with N.J.A.C. 7:26E, for the remediation or the implementation of the remedial action workplan at the industrial establishment; and

6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports

in writing. The Department shall either approve the remediation in progress waiver application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

7:26B-5.5 Limited site review

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a limited site review in accordance with (c) below.

(b) The Department's approval of a limited site review application authorizes the owner or operator to remediate only those area(s) of concern at an industrial establishment where a discharge, subsequent to a prior remediation, has occurred.

(c) To apply for a limited site review, the owner or operator shall submit a completed limited site review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A certification by the owner or operator that:

i. A remedial action has been previously implemented and the Department has issued a no further action letter;

ii. The Department has approved a negative declaration; or

iii. The Department or the United States Environmental Protection Agency has previously approved an equivalent remediation of the industrial establishment pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable law;

3. A certification by the owner or operator of the industrial establishment that the owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, and that no other discharge of a hazardous substance or hazardous waste, that was not identified in (c)3i or ii below, has occurred at the industrial establishment; and

i. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval, and was not remediated in accordance with the procedures established by the Department; or

ii. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval and that any remediation performed by the owner or operator has not been approved by the Department; and

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent negative declaration, no further action letter, or other approval, as applicable, issued by the Department or federal agency for the industrial establishment;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6, if applicable; and

7. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the limited site review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing.

(e) The Department shall either approve or disapprove a limited site review application by the following actions:

1. Approve the limited site review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a);

2. Approve the limited site review application and require the owner or operator of the industrial establishment to remediate each area of concern identified in (c)3 above, in accordance with ISRA and this chapter; or

3. Disapprove the limited site review application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

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

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

In (a), substituted "In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general infor-

mation notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the" for "The".
 Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.
 See: 43 N.J.R. 1077(a).

7:26B-5.6 Minimal environmental concern review

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a determination that a discharge at an industrial establishment is a minimal environmental concern in accordance with (c) below.

(b) The Department's approval of a minimal environmental concern application authorizes the owner or operator to close operations or transfer ownership or operations at an industrial establishment prior to obtaining approval of a remedial action workplan or without the approval of a remediation agreement by the Department. This section shall not be construed to allow an owner or operator to implement a remedial action involving the remediation of groundwater or surface water prior to the Department's approval of a remedial action workplan for the site.

(c) To apply for a minimal environmental concern determination, the owner or operator shall submit a completed minimal environmental concern application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A preliminary assessment report, site investigation report and remedial investigation report for the industrial establishment;

3. A certification by the owner or operator that based on the remediation completed, there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards and the remedial action at those areas of concern can be completed pursuant to N.J.A.C. 7:26E and the applicable remediation standards within six months after the owner's or operator's receipt of the approval of the application by the Department;

4. Documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose an immediate threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge;

5. A certification by the owner or operator that a remedial action workplan shall be prepared pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E and the remediation shall meet either the

restricted use or unrestricted use soil remediation standards and the applicable surface water and groundwater remediation standards;

6. A certification, by the owner or operator that the remedial action workplan will be prepared, implemented and completed pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E within six months after the owner's or operator's receipt of the approval of the application by the Department;

7. Evidence that a remediation funding source has been established in accordance with N.J.A.C. 7:26C-7; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the minimal environmental concern application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment, if necessary.

(e) Within 30 calendar days after the receipt of a complete application the Department shall either approve the minimal environmental concern application by the issuance of an authorization letter or disapprove the application and require the owner or operator to remediate the industrial establishment pursuant to ISRA and this chapter.

(f) Within six months after receipt of the Department's approval of the minimal environmental concern application, the owner or operator shall implement the remedial action at the industrial establishment and submit the remedial action report to the Department.

(g) The owner or operator shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5 prior to the expiration of the schedule established in (f) above, that the owner or operator can not implement the remedial action at the industrial establishment and submit the remedial action report to the Department. The owner or operator shall have no more than 120 calendar days in addition to the schedule established in (f) above, to implement the requirements of the remedial action and submit the remedial action report required by (f) above.

(h) The Department shall review the remedial action report above in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment or at any area offsite.

(i) The Department shall either approve or disapprove the remediation of the industrial establishment and notify the owner or operator of its determination within 45 calendar days after receipt of the remedial action report. The Department shall approve the remediation by the issuance of a no further action letter in accordance with N.J.A.C. 7:26B-1.8(a), or may disapprove the remediation and require the owner or operator remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.

(b) The owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

3. The total quantity of hydraulic or lubricating oil, in the aggregate, does not exceed 220 gallons at any one time during the owner's or operator's period of ownership or operation; and

4. The industrial establishment is not contaminated above any standard set forth in the Remediation Standards, N.J.A.C. 7:26D.

(c) The total quantity of hazardous substances or hazardous wastes at an industrial establishment may be a combination of both (b)1 and 2 above; however, in the aggregate, the total quantity shall not exceed 500 pounds or 55 gallons.

(d) The total quantity of hazardous substances at an industrial establishment having the NAICS number of 424210, 446110, 446120, or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above shall submit:

1. A completed de minimis quantity exemption application form, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5; and

2. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's

written approval of the de minimis quantity exemption application.

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

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

SUBCHAPTER 6. REMEDIATION PROCEDURES

7:26B-6.1 Preliminary assessment, site investigation and remedial investigation

(a) Unless otherwise established pursuant to N.J.A.C. 7:26B-6.5, the owner or operator shall complete the remediation required by ISRA and this chapter and submit the reports certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, within the time schedules listed in (b) through (e) below, N.J.A.C. 7:26B-6.2 and 6.3.

(b) The owner or operator shall complete the preliminary assessment in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3 and submit a preliminary assessment report and a negative declaration, if applicable, within the timeframe indicated at N.J.A.C. 7:26E-3.1(e).

(c) The owner or operator shall complete a site investigation, if applicable, in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3 and submit a site investigation report and a negative declaration, if applicable, within the timeframe indicated at N.J.A.C. 7:26E-3.3(e).

(d) The owner or operator shall complete a remedial investigation workplan, if applicable, in accordance with N.J.A.C. 7:26E-4.2 within 270 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(e) The owner or operator shall complete the remedial investigation report in accordance with N.J.A.C. 7:26E-4.8 and submit a negative declaration, if applicable, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

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

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

Rewrote (b) and (c); in (d), substituted "270" for "180"; and in (e), substituted "420" for "300" and deleted "or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan, whichever occurs last" from the end.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-6.2 Soil remedial action and remedial action workplan

(a) Except as provided in (h) below, the owner or operator required to conduct a soil remedial action at the industrial establishment or at any area of concern shall not implement a remedial action prior to the Department's approval of a remedial action workplan for the site unless:

1. The owner or operator is remediating the industrial establishment pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4; or

2. The soil remedial action satisfies the criteria established in (b) below.

(b) The owner or operator may implement a soil remedial action at an industrial establishment without prior Department approval of a remedial action workplan if the following criteria are satisfied:

1. The soil remedial action is reasonably expected to be completed, in compliance with N.J.A.C. 7:26E, within the time schedules established by the Department. Such remedial action shall not exceed the five years from the commencement of the implementation of the remedial action; and

2. The owner or operator is implementing a soil remedial action which achieves the established minimum unrestricted or restricted use soil remediation standards without the use of engineering controls, as applicable.

(c) The owner or operator planning to implement a soil remedial action in accordance with (b) above shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) that includes the following information:

1. A certification that based on the remediation completed, there are no areas of concern at the industrial establishment or at any location where hazardous substances or hazardous wastes have migrated or are migrating from the industrial establishment involving the remediation of groundwater or surface water; and

2. A detailed schedule of implementation for the remedial action which includes a summary of the remediation performed to date, the status of the remediation of each area of concern, the proposed remedial actions to be conducted at each area of concern and the time schedules for the completion of proposed activities. This information may include both narrative and/or graphic descriptions and shall only be used for the purposes of establishing a time schedule pursuant to this subsection.

(d) The notification required by (c) above shall be certified in accordance with N.J.A.C. 7:26B-1.6.

(e) The notification required by (c) above shall satisfy the requirement of N.J.A.C. 7:26E-1.4 to notify the Department. The owner or operator shall notify any other person as required pursuant to N.J.A.C. 7:26E-1.4.

(f) The Department may require an owner or operator planning to implement a soil remedial action in accordance with (b) above to submit progress reports on a quarterly, semi-annual or annual basis. The owner or operator is not required to submit the progress reports unless the Department requests the submission of the reports in writing.

(g) The owner or operator required to conduct a soil remedial action that does not satisfy the criteria established in (b) above shall submit a remedial action workplan to the Department for review and approval within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

(h) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

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

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

Rewrote (a); and added (h).

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-6.3 Groundwater or surface water remedial action workplan

(a) Except as provided in (b) below, the owner or operator shall submit the remedial action workplan for any remedial action involving the remediation of groundwater or surface water for review and approval by the Department within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

(b) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

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

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

Added designation (a); in (a), substituted "Except as provided in (b) below, the" for "The"; and added (b).

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-6.4 Remediation funding source requirement

The owner or operator shall submit a remediation funding source in accordance with N.J.A.C. 7:26C-5 upon the Department's approval or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment.

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

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

Updated the N.J.A.C. reference and inserted "or a licensed site remediation professional's certification".

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-6.5 Compliance with remediation schedules

(a) The owner or operator required to remediate an industrial establishment or any area of concern shall comply with:

1. The schedules established at N.J.A.C. 7:26B-6.1, 6.2 and 6.3;
2. The alternative schedule of implementation submitted with the General Information Notice as provided at N.J.A.C. 7:26B-3.3(a)10; or
3. The schedule established in a remediation agreement in accordance with N.J.A.C. 7:26B-4.

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

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

Deleted (b).

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-6.6 Completion of remediation

Upon completion of the remediation, the owner or operator shall submit to the Department the workplans for and reports of the preliminary assessment, site investigation, remedial investigation and remedial action, as applicable, and any additional information required by the Department that has not been previously submitted to the Department for review and approval.

7:26B-6.7 Submission and review of a negative declaration

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator, subsequent

to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment, shall submit a negative declaration, executed and certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. The Department shall approve a negative declaration by the issuing a no further action letter.

(b) The owner or operator shall submit a negative declaration pursuant to (c) below upon the occurrence of any of the following events:

1. The submission of a preliminary assessment report, site investigation report, remedial investigation report or remedial action report, as applicable, which demonstrates the following:

- i. There are no discharged hazardous substances or hazardous wastes at the industrial establishment; or
- ii. Any discharged hazardous substances or hazardous wastes at the industrial establishment above the applicable remediation standards have been remediated in accordance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department; and any discharged hazardous substances or hazardous wastes that have migrated or are migrating from the industrial establishment above the applicable remediation standards have been remediated in compliance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department;

2. The receipt by the owner or operator of notification from the Department that based on the Department's review of the information submitted, the owner or operator shall submit a negative declaration; or

3. The owner or operator is required pursuant to N.J.A.C. 7:26B-5 to submit a negative declaration.

(c) The owner or operator required to submit a negative declaration pursuant to this chapter shall submit the negative declaration on forms available from the Department at the address provided at N.J.A.C. 7:26B-1.5. The owner or operator shall include the following information in the negative declaration:

1. Identification of the subject industrial establishment including:
 - i. The name and location of the industrial establishment, including street address, city or town, municipality, county, zip code and telephone number;
 - ii. The tax block and lot numbers of the industrial establishment;
 - iii. The applicable NAICS number of the subject industrial establishment;

iv. The current real property owner, including name, address, and telephone number; and

v. The current business operator and/or business owner, if different from (c)li above, of the industrial establishment including name, address and telephone number;

2. The preliminary assessment report, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, as applicable, and any other information required by the Department if not previously submitted, to review the proposed negative declaration; and

3. A certification by the owner or operator that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated or is migrating from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with any applicable remediation standards.

(d) The owner or operator shall certify the negative declaration in accordance with the provisions at N.J.A.C. 7:26B-1.6.

(e) The owner or operator shall pay all applicable fees required pursuant to N.J.A.C. 7:26B-8.

(f) The Department shall review a negative declaration within 45 calendar days after the completion of the Department's review of all the information submitted pursuant to this chapter and shall:

1. Approve the remediation for that industrial establishment by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a); or

2. Inform the owner or operator that additional remediation at the industrial establishment or at an offsite location is required.

(g) An owner or operator who initiates remediation on or after November 4, 2009 and conducts remediation pursuant to N.J.A.C. 7:26C-2.4 is not required to comply with this section.

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

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

In (c)liii, substituted "NAICS" for "SIC".

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

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

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

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

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

In (a), substituted "In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009," for "Unless otherwise provided by this chapter,"; and added (g).

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

SUBCHAPTER 7. PROTECTION OF CONFIDENTIAL INFORMATION

7:26B-7.1 Confidentiality claims

(a) Any person required to submit any information pursuant to this chapter which in the person's opinion constitutes trade secrets, proprietary information, specific information regarding an ISRA-subject transaction other than the fact that the ISRA-subject transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the appropriate fee pursuant to N.J.A.C. 7:26B-8.1.

(b) Any person asserting a confidentiality claim pursuant to (a) above shall submit two documents to the Department. One document shall be intact including any information which the person alleges to be entitled to confidential treatment. The second document shall be identical to the first and may be a copy of the first except that the alleged confidential material shall be redacted.

(c) The top of each page of the first submission containing the information which the person alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the person alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the person alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, redacted submission (which may or may not be enclosed in a separate envelope, at the option of the person), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, a person shall send the complete package by certified mail, return receipt requested and if necessary hand delivery, at the address specified at N.J.A.C. 7:26B-1.5. The Department will assume no responsibility for packages until they are received.

(c) The Department shall store all submissions entitled to confidential treatment as determined at N.J.A.C. 7:26B-7.3 in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

SUBCHAPTER 8. PROGRAM FEES AND OVERSIGHT COSTS

7:26B-8.1 Fee schedule

(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance with N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

1. Area of concern waiver application	\$150.00
2. Confidentiality claim	\$375.00
3. De minimis quantity exemption application	\$300.00
4. Expedited review application	\$225.00
5. General Information Notice	\$150.00
6. Limited site review application	\$525.00
7. Limited conveyance application	\$600.00
8. Negative declaration review	\$150.00
9. Preliminary assessment report	\$375.00
10. Regulated underground storage tank waiver application	\$600.00
11. Remedial action workplan deferral application	\$975.00
12. Remediation in progress waiver application	\$225.00
13. Site investigation report	\$750.00

(b) The cost for the Department review of any remediation document not listed in (a) above shall be assessed pursuant to N.J.A.C. 7:26C-4.5.

(c) The applicable fees required by (a) above are non-refundable.

(d) The fees required by (a) above are not one time fees but rather the fees required to perform the review of each specific submittal to the Department.

(e) Any fees required pursuant to (a) above that are subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

Amended by R.2007 d.274, effective August 20, 2007.
See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).

In (a)2, (a)5, (a)7, (a)8, (a)11, (a)12 and (a)15, deleted the dagger following "application"; in (a)1 through (a)16, updated the fee amounts; deleted the footnote following (a)16; added new (b); and recodified former (b) through (d) as (c) through (e).
Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).
See: 41 N.J.R. 4467(a).

Deleted former (a)1, (a)13, and (a)14; recodified former (a)2 through (a)12 as (a)1 through (a)11 and former (a)15 and (a)16 as (a)12 and (a)13; and in (b), substituted "7:26C-4 and 5" for "7:26C-9".

Administrative correction.

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

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-8.2 Oversight costs

The owner or operator conducting the remediation of an industrial establishment pursuant to ISRA and this chapter shall submit payment to the Department pursuant to the provisions found in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4.

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.

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

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

Inserted "Administrative Requirements for the Remediation of Contaminated Sites", deleted "for Department Oversight of the Remediation of Contaminated Sites" following "rules" and substituted "7:26C-4" for "9.3 and submit payment pursuant to N.J.A.C. 7:26C-9.5".

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4.7, the contestor shall follow the procedures found in N.J.A.C. 7:26C-4.8.

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.

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

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

Inserted "Administrative Requirements for the Remediation of Contaminated Sites", deleted "for Department Oversight of the Remediation of Contaminated Sites" following "rules" and updated the N.J.A.C. references.

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

7:26B-8.4 Payment of fees

All fees required by this subchapter shall be made by certified check, attorney check, money order, or by personal check shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all fees shall be mailed to New Jersey Department of Environmental Protection, Division of Responsible Party Site Remediation, 401 E. State Street, PO Box 432, Trenton, New Jersey 08625-0432. Courier and hand deliveries may be made to 401 East State Street, 5th Floor, Trenton, New Jersey.

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

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

APPENDIX A**(RESERVED)**

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

In AGREEMENT, added a second sentence in 7, added a reference to days in 9, deleted a reference to Industrial Site Evaluation Element in 14, and changed N.J.A.C. reference in 16; and in NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, substituted a reference to Site Remediation Program for a reference to Responsible Party Cleanup Element.

Amended by R.2003 d.133, effective March 17, 2003.
See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

In AGREEMENT, added the last sentence in 7.
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.
Special amendment, R.2004 d.206, effective May 6, 2004 (to expire August 15, 2004).
See: 36 N.J.R. 2931(a).

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

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

Provisions of R.2004 d.206 adopted without change.
Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote the appendix.

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

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

Appendix was "Standard ISRA Remediation Agreement".

Pursuant to N.J.S.A. 52:14B-5.1c, the expiration date of provisions of R.2009 d.361 is extended to October 31, 2011.

See: 43 N.J.R. 1077(a).

APPENDIX B**STANDARD LANDLORD/TENANT PETITION**

Landlord/Tenant Petition, Pursuant to N.J.S.A. 13:1K-11.9,
Requesting the Department of Environmental Protection to