

CHAPTER 26C

**ADMINISTRATIVE REQUIREMENTS FOR THE
REMEDICATION OF CONTAMINATED SITES**

Authority

N.J.S.A. 13:1K-8; 58:10B-1 through 4, 8, 11 through 13,
17.1, 20, 26, 28, 29 and 31; 58:10C-1 et seq.; and
58:23.11b, 11e2, 11f, 11g and 16.

Source and Effective Date

R.2009 d.361, effective November 4, 2009.
See: 41 N.J.R. 4467(a).

Chapter Expiration Date

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, expires on May 4, 2011.

Chapter Historical Note

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was adopted as R.1993 d.186, effective May 17, 1993. See: 24 N.J.R. 1281(b), 25 N.J.R. 2002(a).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 28 N.J.R. 5499(a), 29 N.J.R. 704(a).

Pursuant to Executive Order No. 66(1978), Chapter 26C was re-adopted as R.1997 d.499, effective October 23, 1997. As part of R.1997 d.499, Subchapter 2, Procedures for the Identification of the Appropriate Oversight Document, was renamed Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5, Administrative Consent Orders; Subchapter 6, Hazardous Discharge Site Remediation Fund; Subchapter 7, Remediation Funding Source; Subchapter 8, Site Access; Subchapter 9, Oversight Costs; and Subchapter 10, Civil Administrative Penalties and Requests for Adjudicatory Hearings, were adopted as new rules; Appendix A, Standard Memorandum of Agreement; Appendix E, Standard Letter of Credit; Appendix F, Standard Standby Trust Agreement; Appendix G, Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard Publicly Conducted Administrative Consent Order was recodified as Appendix B, effective November 17, 1997. See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was readopted as R.2003 d.198, effective April 21, 2003. See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was extended by gubernatorial directive from April 21, 2008 to April 21, 2010. See: 40 N.J.R. 2474(b).

Subchapter 2, Oversight Documents and No Further Action Letters, was renamed Oversight Documents, No Further Action Letters, and Remediation of Unregulated Heating Oil Tank Systems by R.2008 d.322, effective November 3, 2008. See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Public Notice. See: 41 N.J.R. 4324(a).

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was repealed and Chapter 26C, Administrative Requirements for the Remediation of Contaminated Sites, was adopted as special new rules by R.2009 d.361, effective November 4, 2009. See: 41 N.J.R. 4467(a).

Law Review and Journal Commentaries

Historic Pesticide Contamination Task Force Issues Report. Bruce S. Katcher, 155 N.J.L.J. 1155 (1999).

ISRA: What You Need to Know. Richard J. Conway, Jr., 160 N.J.Law. 16 (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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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope of subchapter

(a) This subchapter establishes the administrative procedures and requirements for the remediation of a contaminated site, including:

1. General requirements, in N.J.A.C. 7:26C-1.2;
2. Definitions, in N.J.A.C. 7:26C-1.3;
3. Exemptions, N.J.A.C. 7:26C-1.4;
4. Certifications, N.J.A.C. 7:26C-1.5;
5. Forms and submissions, N.J.A.C. 7:26C-1.6;
6. Liberal construction, N.J.A.C. 7:26C-1.7; and
7. Severability, N.J.A.C. 7:26C-1.8.

7:26C-1.2 General requirements

(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with all applicable statutes, rules, and guidance, including, but not limited to, the Remediation Standards rules, N.J.A.C. 7:26D, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, this chapter and the Department's guidance at www.nj.gov/dep/srp/srra/guidance.

(b) Any person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4.

7:26C-1.3 Definitions

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

“Applicant” means any person that has applied to the Department for a loan or grant.

landfill shall not include any waste facility approved for disposal of hazardous waste regulated pursuant to N.J.A.C. 7:26G. A facility is a sanitary landfill regardless of when solid waste was deposited or whether the facility was properly registered, permitted, approved or otherwise authorized to conduct such activity, by the Department or other State agency.

“Site investigation” means those actions defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

“Small business” means a business entity that does not acquire property for development or redevelopment, and that, during the prior three tax years, employed not more than 50 full-time employees or the equivalent thereof, and qualifies as a small business concern within the meaning of the Federal “Small Business Act,” 15 U.S.C. §§631 et seq.

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

“Timely filing” means an application filed within the review time goals as set forth in the Permit Activity Report published on the Department’s website at <http://www.nj.gov/dep/opppc/reports.html> or in the specific rule concerning an application for a grant or loan.

“Underground storage tank” means an underground storage tank defined as such pursuant to the Underground Storage Tank rules, at N.J.A.C. 7:14B-1.6.

“Unregulated heating oil tank” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

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

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

7:26C-1.4 Exemptions

(a) The requirements of this chapter do not apply to any person who is:

1. Conducting due diligence in accordance with N.J.S.A. 58:10C-30d(2);
2. Remediating a landfill, unless:

i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;

ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, A Brownfield Redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or

iii. The person conducting the remediation wants a final remediation document;

3. Responding to a discharge pursuant to a discharge prevention, containment, and countermeasures plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility;

4. Remediating a discharge pursuant to a New Jersey Pollutant Discharge Elimination System Underground Injection Control permit issued pursuant to N.J.A.C. 7:14A; or

5. Remediating a discharge from an unregulated heating oil tank, except that the requirements of N.J.A.C. 7:26C-4 and 13 shall apply to a person responsible for remediating a discharge from an unregulated heating oil tank.

(b) Unless notified in writing by the Department that additional remediation is necessary, a person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirement at N.J.A.C. 7:26C-2.4 to use the services of a licensed site remediation professional or to submit documents to the Department:

1. A petroleum surface spill of less than 100 gallons that does not reach the waters of the State of New Jersey;

2. A discharge that results from a passenger motor vehicle accident; or

3. A discharge that the Department refers to its Bureau of Emergency Response, to the New Jersey Office of Emergency Management, or to a County Environmental Health Agency.

7:26C-1.5 Certifications

(a) The person responsible for conducting the remediation of a site pursuant to N.J.A.C. 7:26C-2.3(b) and 2.4 shall:

1. Certify all submissions in accordance with certification instructions on the applicable form; and

2. Ensure that each form submitted to the Department by the person or by a licensed site remediation professional

on behalf of the person is certified by a licensed site remediation professional in accordance with the applicable form.

(b) The person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a) shall certify all submissions as follows:

1. For all documents that are required to be certified pursuant to the applicable provisions of the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, the person responsible for conducting the remediation shall include the following certification with the document.

“I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties.”

2. In addition to the certification requirement in (b)1 above, the person responsible for conducting the remediation of a site who is required to establish a remediation funding source pursuant to N.J.A.C. 7:26C-5 shall include the following certification with the remediation funding source instrument:

“I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties.”

(c) The certifications required in (a) and (b) above shall be signed and dated original certifications, not photocopies.

(d) The person submitting a certification required by either (a) or (b) above shall ensure that the certification is signed as follows:

1. For a corporation or a limited liability company, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
3. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(e) A duly authorized representative of the person described in (d)1 through 3 above may sign the certification required in (a) or (b) above. A person is deemed to be a duly authorized representative only if:

1. The authorization is made in writing by a person described in (d) above;
2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
3. The written authorization is submitted to the Department along with the certification; and
4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

7:26C-1.6 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.

7:26C-1.7 Liberal construction

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

7:26C-1.8 Severability

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

SUBCHAPTER 2. OBLIGATIONS OF THE PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION OF A CONTAMINATED SITE

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

1. Criteria for determining when a person has initiated remediation in N.J.A.C. 7:26C-2.2;
2. Requirements for a person who initiated remediation prior to November 4, 2009, in N.J.A.C. 7:26C-2.3;
3. Requirements for a person who initiated remediation on or after November 4, 2009, in N.J.A.C. 7:26C-2.4; and
4. Requirements for a person to retain records, in N.J.A.C. 7:26C-2.5.

7:26C-2.2 Criteria for determining when a person has initiated remediation

(a) A person has initiated remediation prior to November 4, 2009 only when the criteria in both (a)1 and 2 below have occurred prior to November 4, 2009.

1. A person has notified the Department of a discharge or an obligation to remediate prior to November 4, 2009, pursuant to:
 - i. The Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E-5;
 - ii. The Underground Storage Tanks rules, N.J.A.C. 7:14B-7.3; or
 - iii. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2; and
2. The person has continuously conducted the remediation since the person notified the Department pursuant to one of the rules cited in (a)1 above.

(b) A person initiates remediation on or after November 4, 2009 when a person initiates or resumes remediation in response to any of the following which occur on or after November 4, 2009:

1. The person takes over the remediation from any other person or from the Department;
2. The person submits a document to the Department concerning a site for which the Department has rescinded a no further action letter or has invalidated a response action outcome, prior to the submission of the document;
3. The person discovers or becomes liable in any way for a discharge;
4. The owner or operator of a regulated tank system:
 - i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B; or
 - ii. Is required to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.21;
5. The person is liable for compliance with the Industrial Site Recovery Act rules pursuant to N.J.A.C. 7:26B-1.10; or
6. When additional remediation or other activities would result in the need to file a new deed notice or replace a declaration of environmental restrictions, associated with the real property.

7:26C-2.3 Requirements for a person who initiated remediation prior to November 4, 2009

(a) The person responsible for conducting the remediation who initiated remediation prior to November 4, 2009 shall conduct the remediation pursuant to a memorandum of agree-

ment, memorandum of understanding, administrative consent order, remediation agreement, or administrative order, as applicable, and in accordance with all applicable statutes, rules, and guidance, including this chapter, and shall:

1. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;
2. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;
3. Provide the Department access to the contaminated site;
4. Submit to the Department all applicable documents and forms concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, applicable guidance, or upon request of the Department, and proceed with remediation only upon the Department's approval;
5. Meet the timeframes in this chapter, the Underground Storage Tank rules, N.J.A.C. 7:14B, Industrial Site Recovery Act rules, N.J.A.C. 7:26B, Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or Administrative Order, except that the mandatory remediation timeframes and the expedited site specific remediation time frames established pursuant to N.J.A.C. 7:26C-3 and the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, supersede any other conflicting remediation timeframes; and
6. Obtain and comply with all permits necessary for the remediation.

(b) Any person who initiated remediation prior to November 4, 2009 may elect to perform the remediation pursuant to N.J.A.C. 7:26C-2.4:

1. By submitting a request to the Department, on a Request to Proceed Without Department Pre-Approvals form available from the Department on its website at www.nj.gov.dep/srp/srra/forms, and the Department determines that all outstanding fees and costs not contested have been paid and approves that request;
2. Upon receiving approval from the Department pursuant to (b)1 above, performs the remediation pursuant to N.J.A.C. 7:26C-2.4; and
3. By maintaining any remediation funding source previously required to have been maintained under the applicable administrative consent order, remediation agreement administrative order, court order or directive, and by paying the remediation funding source surcharge, if required.

7:26C-2.4 Requirements for a person who initiated remediation on or after November 4, 2009

(a) Any person who initiates remediation on or after November 4, 2009 shall:

1. Hire a licensed site remediation professional;
2. Notify the Department, on a Licensed Site Remediation Professional Notification of Retention or Dismissal form available from the Department on its website at www.nj.gov.dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation. The person shall submit this notification within 45 days after the date:
 - i. Of the occurrence of the earliest of the events listed at N.J.A.C. 7:26C-2.2(b);
 - ii. The person receives written approval from the Department of that person's request to continue remediation without the Department's pre-approval pursuant to N.J.A.C. 7:26C-2.3(b); or
 - iii. The person receives written notification from the Department that the Department is taking direct oversight of the remediation of the site, area of concern, or site condition pursuant to N.J.S.A. 58:10C-27;
3. Conduct the remediation of the discharge:
 - i. Without prior Department approval, except if the Department has undertaken direct oversight of a site, area of concern or site condition pursuant to N.J.S.A. 58:10C-27;
 - ii. In accordance with all applicable statutes, rules and guidance; and
 - iii. Address all deficiencies identified by the Department in any submittals made by the person or by a licensed site remediation professional on behalf of the person;
4. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;
5. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;
6. Provide the Department access to the contaminated site pursuant to N.J.A.C. 7:26C-8;
7. Provide the Department copies of all applicable documents concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and guidance, or upon request of the Department;
8. Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E; and

9. Obtain and comply with all permits necessary for the remediation.

7:26C-2.5 Record retention

(a) The person responsible for conducting the remediation shall maintain and preserve all data, documents and information concerning remediation of a contaminated site, including, but not limited to, technical records and contractual documents, and raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or that person's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site.

(b) Upon the receipt of a written request from the Department, the person responsible for conducting the remediation shall submit to the Department all data and information, including technical records and contractual documents concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information were developed as part of the remediation. The person responsible for conducting the remediation may reserve its right to assert a privilege regarding such documents, except that no claim of confidentiality or privilege may be asserted with respect to any data related to site conditions, sampling or monitoring.

(c) The person responsible for conducting the remediation shall submit three electronic copies of all records referenced in (a) above, to the Department at the time of the issuance of a final remediation document.

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. Complying with, and requesting an extension from, regulatory timeframes pursuant to N.J.A.C. 7:26C-3.2;
2. Complying with mandatory remediation timeframes pursuant to N.J.A.C. 7:26C-3.3;
3. Complying with expedited site specific remediation timeframes pursuant to N.J.A.C. 7:26C-3.4; and
4. Requesting an extension of mandatory or site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.2 Regulatory timeframes

(a) The person responsible for conducting the remediation shall comply with the regulatory timeframes established by

all applicable statutes, rules and guidance, including, but not limited to, the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter.

(b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:

1. Complete a Remediation Timeframe Extension Request form, available from the Department at www.nj.gov/dep/srp/srra/forms, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:

- i. The end date of the regulatory timeframe;
- ii. The amount of time beyond the end date of the regulatory timeframe needed to complete the required work, but not in an amount that would exceed any mandatory remediation timeframe in N.J.A.C. 7:26C-3.3 or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4;
- iii. A description of the cause or causes of the need for the extra time needed to complete the work; and
- iv. The steps taken to minimize the extra time needed to complete the work; and

2. Submit any additional information the Department requests.

(c) The request for an extension of a regulatory timeframe submitted in accordance with (b) above shall be deemed to be approved by the Department unless the Department notifies the person in writing that the extension request is denied.

(d) If the person responsible for conducting the remediation expects to or has missed a regulatory timeframe that may result in the person exceeding a mandatory remediation timeframe as established in N.J.A.C. 7:26C-3.3, or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4, the regulatory timeframe extension request shall not be deemed to be approved pursuant to (c) above.

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation shall:

1. Submit the preliminary assessment, site investigation report, as applicable, and the initial receptor evaluation within one year from the later of the following dates:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b) occurs;

2. Complete the delineation of the immediate environmental concern contaminant source, initiate immediate environmental concern contaminant source control and submit to the Department an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14, no later than one year from the later of the following dates:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii. The date the person was required to report the immediate environmental concern to the Department pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14; and

3. Complete the installation of a light non-aqueous phase liquid (LNAPL) recovery system, initiate operational monitoring and submit an interim remedial action report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), no later than one year from:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii. The date the person identified the presence of LNAPL free product.

(b) The timeframes set forth in (a) above shall not be extended based on the fact that a person other than the person who initiated the remediation assumes responsibility for the remediation pursuant to N.J.A.C. 7:26C-2.2(b)1.

(c) When the Department determines that a person responsible for conducting the remediation has failed to meet a mandatory remediation timeframe, that person shall become subject to direct oversight of the Department pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the mandatory remediation timeframe applies.

(d) A person responsible for conducting the remediation may request an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.4 Expedited site specific remediation timeframes

(a) The Department may establish an expedited site specific remediation timeframe that shall apply to a particular site, based upon the following criteria:

1. The risk to the public health and safety, or to the environment; and
2. The compliance history of the person responsible for conducting the remediation.

(b) The Department shall notify in writing the person responsible for conducting the remediation when the Depart-

ment has established an expedited site specific remediation timeframe for a site for which the person is responsible for conducting the remediation.

(c) The person responsible for conducting the remediation shall comply with every expedited site specific remediation timeframe.

(d) When the Department determines that a person responsible for conducting the remediation has failed to meet an expedited site specific remediation timeframe, that person shall be subject to the direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the expedited site specific remediation timeframe applies.

(e) A person responsible for conducting the remediation may request an extension of an expedited site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

(a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:

1. The person shall provide a written rationale for the request in a completed Remediation Timeframe Extension Request Form available from the Department at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:
 - i. The end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe;
 - ii. The amount of time beyond the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe needed to complete the required work;
 - iii. A description of the cause or causes for the extra time needed to complete the work; and
 - iv. The steps taken to minimize the extra time needed to complete the work; and
2. The person shall provide any other information the Department requests.

(b) The person responsible for conducting the remediation shall continue any remediation during the time that the Department reviews the extension request submitted pursuant to (b) above, unless the Department directs otherwise.

(c) An extension request submitted pursuant to (a) above shall be deemed to be granted in the following circumstances with limitations as indicated:

6. The owner or operator of a small business who is responsible for performing a remediation at his or her business property.

(c) The remediation funding source surcharge payable in accordance with N.J.A.C. 7:26C-5.9 is not applicable to the financial assurance posted pursuant to this subsection.

(d) A permittee may change the amount of the financial assurance in accordance with N.J.A.C. 7:26C-5.11.

(e) A permittee may disburse monies from the funding posted in accordance with N.J.A.C. 7:26C-5.12.

(f) If any permittee fails to comply with the actions required pursuant to a remedial action permit or this subchapter, the Department, or another party as the Department may authorize, may draw on the financial assurance to achieve compliance.

7:26C-7.8 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.2(a)2) may, prior to changing such status, request that the Department transfer the permit to a new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-4.4 and has the burden of showing that its permittee status is so limited by law.

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit by providing the following information on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department at www.nj.gov/dep/srp/srra/forms:

1. Contact information of the current permittee intending to transfer the permit;
2. Contact information of the prospective permittee, if any;
3. Site identification;
4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and
5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:
 - i. Is the new owner, operator, or tenant of or at the contaminated site;

ii. Has acknowledged in writing that it accepts its responsibility as a permittee; and

iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.8, if applicable.

(c) The Department shall not rescind a person's status as a permittee until all of the following occur:

1. The permittee requesting transfer of the permit complies with the notice requirements in (b) above;
2. The permittee requesting transfer of the permit actually terminates its status as subsequent owner, operator, or tenant; and
3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.7.

7:26C-7.9 Modification of specific requirements in a remedial action permit

(a) The Department may modify a remedial action permit as needed to protect the public health and safety and the environment.

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after any of the following, by submitting a completed Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, which includes the following:

1. A statement that the permittee has completed a protectiveness evaluation required in its permit and has determined that the remedial action is not adequately protective of the public health and safety and of the environment, and stating the reasons for coming to this conclusion;
2. The size, duration, or contaminants of a classification exception area need to be modified;
3. Any person proposes to change the engineering controls applicable to the site, as described in the deed notice filed for the property;
4. The municipality has revised the lot and block designations of the property; or
5. The permittee changes its name or address.

(c) To request modification of any remedial action permit pursuant to (b) above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit modification to the Department as follows:

1. The Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, which includes:
 - i. Identification of the contaminated site; and

- ii. Identification and contact information of the applicant;
- 2. A copy of the following as applicable:
 - i. The filed copy of a new deed notice;
 - ii. A revised ground water classification exception area application; or
 - iii. A revised remedial action workplan; and
- 3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.10 Termination of a remedial action permit

(a) The Department may terminate a remedial action permit upon request of a permittee if the Department finds that the remedial action:

- 1. Meets all applicable remediation standards without the need for the remedial action permit; and
- 2. Is protective of the public health and safety and of the environment without the presence of the remedial action permit.

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, the following:

- 1. The name, address and telephone number of the permittee requesting termination of the permit;
- 2. The name, address and telephone number of the prospective permittee;
- 3. Site identification;
- 4. A detailed written rationale on why the permittee believes that the engineering or institutional controls, the remediation systems, or the remedial action implemented for the site no longer require oversight over time in order to be protective of the public health and safety and the environment;
- 5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix B to this chapter, incorporated herein by reference; and
- 6. Confirmation that the permittee requesting termination of the remedial action permit does not have any outstanding fees pursuant to N.J.A.C. 7:26C-4.

(c) Upon written notice that the Department has terminated a remedial action permit, the permittee may cease compliance with the remedial action permit that the Department has terminated and have the owner of the property file the termination of deed notice, if applicable.

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

This subchapter identifies the minimum requirements for the person responsible for conducting the remediation of real property not owned by that person, to obtain access to that property.

7:26C-8.2 Site access

(a) The person responsible for conducting remediation shall take all appropriate actions, as outlined in (b) below, to obtain the access to property, not owned by that person, which is necessary to implement the remediation.

(b) The person responsible for conducting the remediation that requires access to the property of another shall send to each owner a written request, via certified mail, for access to the property. The person responsible for conducting remediation shall include the following information in the written request:

- 1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;
- 2. A site map indicating each area for which access is needed;
- 3. A description of the reason access is needed and the extent of access needed;
- 4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and
- 5. A request that the property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

(c) If the owner of the property does not respond, the person responsible for conducting the remediation shall send a second written request to the property owner by certified mail. The person responsible for conducting the remediation shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the property owner does not grant access, the person responsible for conducting the remediation shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The person responsible for conducting the remediation shall provide written confirmation to the Department of the filing of such action. Upon request by the Department, the person responsible for conducting the remediation shall submit a copy of the court order that indicates that the Superior Court denied access to the property.