

CHAPTER 26B
INDUSTRIAL SITE RECOVERY ACT RULES

Authority

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

Source and Effective Date

R.2003 d.133, effective February 24, 2003.
See: 34 N.J.R. 2407(a), 35 N.J.R. 1415(a).

Chapter Expiration Date

Chapter 26B, Industrial Site Recovery Act Rules, expires on February 24, 2008.

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Chapter 26B, Environmental Cleanup Responsibility Act Rules, was repealed and a new Chapter 26B, Industrial Site Recovery Act Rules, was adopted as R.1997 d.498, effective November 17, 1997.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: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Overturning 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).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL INFORMATION

- 7:26B-1.1 Scope and authority
- 7:26B-1.2 Construction
- 7:26B-1.3 Severability
- 7:26B-1.4 Definitions
- 7:26B-1.5 Forms and submissions
- 7:26B-1.6 Certifications and signatories
- 7:26B-1.7 Department review
- 7:26B-1.8 No further action letter and authorization letter
- 7:26B-1.9 Right of entry and inspection
- 7:26B-1.10 Liability for ISRA compliance
- 7:26B-1.11 Civil penalties

SUBCHAPTER 2. APPLICABILITY

- 7:26B-2.1 Operations and transactions not subject to ISRA
- 7:26B-2.2 Applicability determinations

- 7:26B-2.3 De minimis quantity exemption
- 7:26B-2.4 Revisions to North American Industry Classification System Codes for purposes of definition of "industrial establishment"

SUBCHAPTER 3. GENERAL INFORMATION NOTICE

- 7:26B-3.1 Prenotice filing conference
- 7:26B-3.2 Notification requirements
- 7:26B-3.3 General information notice
- 7:26B-3.4 Revisions to general information notice or withdrawal of required notice by an owner or operator

SUBCHAPTER 4. REMEDIATION AGREEMENT

- 7:26B-4.1 Remediation agreement
- 7:26B-4.2 Remediation agreement amendment

SUBCHAPTER 5. EXPEDITED COMPLIANCE OPTIONS

- 7:26B-5.1 Expedited review
- 7:26B-5.2 Area of concern review
- 7:26B-5.3 Regulated underground storage tank waiver
- 7:26B-5.4 Remediation in progress waiver
- 7:26B-5.5 Limited site review
- 7:26B-5.6 Minimal environmental concern review
- 7:26B-5.7 Limited conveyance
- 7:26B-5.8 Remedial action workplan deferral

SUBCHAPTER 6. REMEDIATION PROCEDURES

- 7:26B-6.1 Preliminary assessment, site investigation and remedial investigation
- 7:26B-6.2 Soil remedial action and remedial action workplan
- 7:26B-6.3 Groundwater or surface water remedial action workplan
- 7:26B-6.4 Remediation funding source requirement
- 7:26B-6.5 Compliance with remediation schedules
- 7:26B-6.6 Completion of remediation
- 7:26B-6.7 Submission and review of a negative declaration

SUBCHAPTER 7. PROTECTION OF CONFIDENTIAL INFORMATION

- 7:26B-7.1 Confidentiality claims
- 7:26B-7.2 Access to information; nondisclosure
- 7:26B-7.3 Confidentiality determinations
- 7:26B-7.4 Disclosure of confidential information to other public agencies
- 7:26B-7.5 Disclosure of confidential information to contractors
- 7:26B-7.6 Imminent and substantial danger
- 7:26B-7.7 Security procedures

SUBCHAPTER 8. FEE SCHEDULE AND DIRECT BILLING FEES

- 7:26B-8.1 Fee schedule
- 7:26B-8.2 Oversight costs
- 7:26B-8.3 Oversight cost review
- 7:26B-8.4 Payment of fees

APPENDIX A STANDARD ISRA REMEDIATION AGREEMENT

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)

Overturing 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, foresters, 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 person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);
5. The sale or transfer of the sole general partner's entire interest in a limited partnership where the limited partnership is one of the following:
 - i. The limited partnership is the direct owner or operator of the industrial establishment; or
 - ii. The limited partnership has 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 person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

(f) All signatures required by this section shall be notarized.

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.

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 authorization letter

(a) 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) The Department's issuance of a no further action letter pursuant to ISRA and this chapter may include an authorization for the owner or operator to close operations or transfer ownership or operations of the industrial establishment as designated in the General Information Notice pursuant to N.J.A.C. 7:26B-3.2.

(c) The Department may authorize an owner or operator 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, through the issuance of an authorization letter without, or prior to the issuance of, a no further action letter in the following circumstances:

1. The Department's issuance of a remediation agreement or remediation agreement amendment pursuant to N.J.A.C. 7:26B-4;
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); and

5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d).

(d) 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.

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 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 or transferee 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.

(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.

7:26B-1.10 Liability for ISRA compliance

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

(b) At the Department's discretion, any other person, including, without limitation, a purchaser, transferee, or mortgagee, may sign a remediation agreement; however, such persons shall become responsible for the remediation of the industrial establishment for compliance with ISRA.

(c) 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 for the industrial establishment pursuant to N.J.A.C. 7:26B-1.8(a);

2. The Department has approved 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 a remediation agreement or remediation agreement amendment issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b); 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).

(d) 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 (c)1 or 2 above.

(e) 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.

(f) 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.

(g) Based on the information submitted pursuant to (f)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.

(h) 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.

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 Oversight rules, at N.J.A.C. 7:26C-10.4 and 10.5, 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.2003 d.198, effective May 19, 2003.

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

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 Applicability determinations

(a) In order to obtain a determination from the Department concerning the applicability of this chapter to a specific place of business or transaction, a person shall:

1. Submit a completed 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. In summary, the information required in the application includes: the name of the business conducted on site, the NAICS number of the business, the location of the business, or description of the proposed transaction, a description of operations conducted on site, the name of the person owning the real property, and information regarding the presence of hazardous substances used in the operations on site;

2. Grant written permission for the Department to enter and inspect the site and operations for which the applicability determination is requested;

3. Submit the applicable fee in accordance with N.J.A.C. 7:26B-8.1 required for applicability determinations; and

4. Demonstrate to the Department that ISRA or this chapter is not applicable by providing, in writing, the relevant basis for the applicant's position. As part of such demonstration, all applicable requirements of (b), (c) and (d) below shall be satisfied.

(b) For applicability determinations requested for a transfer of ownership or operations involving an evaluation of whether the indirect owner's assets would have been available for remediation, the Department shall evaluate, without limitation, the applicant's responses to (b)1 through 6 below, to determine whether the indirect owner has exercised control over the industrial establishment or the direct owner or operator thereof. An affirmative finding that the indirect owner has exercised control over the industrial establishment or the direct owner or operator thereof, would result in a determination that the indirect owner's assets would have been available for remediation. If the applicant determines that any of the criteria outlined below is not applicable to this evaluation, then the applicant shall affirmatively state the basis for this determination. The applicant shall:

1. Identify each direct owner and each indirect owner of the industrial establishment;

2. Identify whether the indirect owner has exerted fiscal control over the direct owner or industrial establishment including, but not limited to, imposing any restriction upon the financing, borrowing, budgeting, dividends and cash management of the direct owner or industrial establishment;

3. List all persons that are officers and directors for both the direct owner and the indirect owner of the industrial establishment to establish whether the officers, directors and employees of the indirect owner constitute a majority of the directors of the direct owner or the industrial establishment or such smaller number of directors as is sufficient to effectively direct the management and policies of the direct owner or the industrial establishment;

4. Identify whether the officers, directors and employees of the indirect owner are involved in the day-to-day operations of the direct owner or the industrial establishment and whether the day-to-day operations of the direct owner or the industrial establishment are relevant to the generation, manufacture, handling, storage or disposal of hazardous substances or hazardous wastes;

7:26B-7.6 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure;
2. The date on which disclosure was made;
3. The name of the person to which disclosure was made; and
4. A description of the information disclosed.

7:26B-7.7 Security procedures

(a) Submissions to the Department pursuant to this chapter will be opened only by persons authorized by the Department engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:26B-1.5.

(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. FEE SCHEDULE AND DIRECT BILLING FEES

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 N.J.A.C. 7:26B-8.4, upon submittal to the Department of

each and every request, application or submission listed below.

1. Applicability determination application	\$ 200.00
2. Area of concern waiver application†	200.00
3. Confidentiality claim	250.00
4. De minimis quantity exemption application	200.00
5. Expedited review application†	250.00
6. General Information Notice	100.00
7. Limited site review application†	450.00
8. Limited conveyance application†	500.00
9. Negative declaration review	100.00
10. Preliminary assessment report	250.00
11. Regulated underground storage tank waiver application†	500.00
12. Remedial action workplan deferral application†	750.00
13. Remediation agreement application	1,000.00
14. Remediation agreement amendment application	500.00
15. Remediation in progress waiver application†	250.00
16. Site investigation report	500.00

† This fee includes the costs of the Department's review of the General Information Notice required pursuant to N.J.A.C. 7:26B-3.2(a). Any person submitting this fee shall not be required to submit a separate General Information Notice fee.

(b) The applicable fees required by (a) above are nonrefundable.

(c) 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.

(d) 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.

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 rules for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.3 and submit payment pursuant to N.J.A.C. 7:26C-9.5.

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.

7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the rules for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.3, the contestor shall follow the procedures found in N.J.A.C. 7:26C-9.4.

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.

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

STANDARD ISRA REMEDIATION AGREEMENT

The standard ISRA remediation agreement contains references to [Person], [amount], and other blank brackets []. Upon the Department's issuance or entry of remediation agreement, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document. Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF :
THE [Name of the site] SITE : REMEDIATION
AND [Name of operator] : AGREEMENT
AND [Name of Owner] :
ISRA Case #[] :

This Remediation Agreement is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "NJDEP") by N.J.S.A. 13:1D-1 et. seq., the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14, and duly delegated to the Assistant Director for the Industrial Site Evaluation Element within the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Remediation Agreement is operated by [full name of the direct owner] and owned by [full name of current property owner], and is located at [address] and is designated as Block [], Lot [] on the tax maps of the [Township, Borough, City, etc.] of [], [] County, New Jersey (hereinafter the "[]" or "Site"). The North American Industry Classification System ("NAICS") numbers which best describe the operations at the [] industrial establishment are []. [Paragraph 1 will be repeated as 1.A, 1.B, etc. for each industrial establishment subject to this Remediation Agreement]

2. On [date], [Corporation/entity/individual] submitted to NJDEP an application for a Remediation Agreement pursuant to N.J.A.C. 7:26B-4.1. This Remediation Agreement application is incorporated herein by reference and includes the following information:

A. Transaction

Seller: []

Buyer: []

Description: []

B. Person(s) executing this Remediation Agreement and responsible for conducting the remediation of the [] industrial establishment. (hereinafter referred to as "Responsible Person(s)").

Lead Responsible Person:

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

Responsible Person: [Any other Person(s)]

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

3. NJDEP and the [Responsible Person(s)] expressly agree that the terms and conditions of this Remediation Agreement shall apply separately to each of the industrial establishments listed in Paragraph 1 above. Furthermore, NJDEP and the [Responsible Person(s)] agree to administer and complete all applicable ISRA program requirements, including the remediation funding source requirements and any other remedial measures undertaken pursuant to this Remediation Agreement and ISRA, for the industrial establishment.

4. The transaction described in Paragraph 2.A above is the transfer of ownership or operations of an industrial establishment as defined by ISRA. NJDEP and [Responsible Person(s)] expressly agree that the transaction described in Paragraph 2.A above is subject to ISRA. [Responsible Person(s)] has requested that NJDEP prepare a Remediation Agreement which, when effective, will allow the transaction described in Paragraph 2.A above to be consummated prior to the completion of all administrative and remediation requirements pursuant to ISRA.

5. By entering into this Remediation Agreement, [Responsible Person(s)] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable] nor waives any rights or defenses with regard to the site except as specifically provided in this Remediation Agreement.

6. [OPTIONAL—[Responsible Person(s)] shall submit to NJDEP a certified check made payable to the "Treasurer, State of New Jersey" for \$[]00, no later than [Responsible Person(s)] execution and submittal to NJDEP of the Remediation Agreement. NJDEP's acceptance of the penalty shall not be construed as a waiver of NJDEP's right to compel [Responsible Person(s)] to specifically perform their obligations under this Remediation Agreement.]

7. [Additional provisions may be added at the NJDEP's discretion with the agreement of [Responsible Person(s)].

AGREEMENT

I. Remediation

1. [Responsible Person(s)] agrees to remediate the [] industrial establishment and to submit the following documents as established below:

A. Within [()] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or such additional time as authorized by NJDEP, [Responsible Person(s)] shall submit a preliminary assessment report, site investigation report, and remedial investigation workplan, as applicable, prepared in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [] industrial establishment.

B. Within [()] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or within [()] calendar days from receipt of NJDEP's written approval of the Remedial Investigation Workplan or longer as authorized by NJDEP, [Responsible Person(s)] shall submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [] industrial establishment.

C. Within [()] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or within [()] calendar days from receipt of NJDEP's written approval of the Remedial Investigation Report or longer as authorized by NJDEP, [Responsible Person(s)] shall submit a Negative Declaration for the [] industrial establishment, or [Responsible Person(s)] shall submit a Remedial Action Work plan as applicable, prepared in accordance with N.J.A.C. 7:26E.

D. The NJDEP will review all documents in accordance with N.J.A.C. 7:26B and N.J.A.C. 7:26E.

2. If NJDEP determines any submittal made under this section is inadequate or incomplete, the NJDEP shall provide [Responsible Person(s)] with written notification of each deficiency, and [Responsible Person(s)] shall revise and resubmit the required information within thirty (30) calendar days or longer as authorized by NJDEP from receipt of such notification. The determination as to whether or not the submittal, as modified, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

3. If the NJDEP determines that no further action is required at the [] industrial establishment, [Responsible Person(s)] shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6.6, within thirty (30) calendar days or longer as authorized by NJDEP from receipt of the NJDEP's request for the submission of the negative declaration.

4. Nothing in this Remediation Agreement shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the [] industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.

5. If at any time that this Remediation Agreement is in effect the NJDEP determines that the requirements of N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment from contamination at the Site, [Responsible Person(s)] shall conduct such additional remediation as the NJDEP directs.

6. The NJDEP will consider a request for an extension of time to perform any requirement under this Remediation Agreement, provided that any extension request is submitted to the NJDEP fourteen (14) calendar days prior to any applicable deadline to which the extension request refers.

II. Remediation Funding Source and Remediation Funding Source Surcharge

7. [Person] agrees to establish and maintain during the life of this Remediation Agreement a remediation funding source in an amount equal to the Department approved estimate of the remediation costs related to compliance with this Remediation Agreement, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the site, pursuant to N.J.A.C. 7:26C-7. [Person] agrees that the initial amount is \$[].

8. [Person] agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

III. Project Cost Review

9. Beginning three hundred sixty-five (365) calendar days after the effective date of this Remediation Agreement, and annually thereafter on the same calendar day, [Person] agrees to submit to the Department a detailed review of all remediation costs expended by [Person] to comply with this Remediation Agreement, including:

(a) A detailed summary of all monies spent to date pursuant to this Remediation Agreement;

(b) The detailed estimated remediation costs required to comply with this Remediation Agreement, including all operation, maintenance and monitoring costs; and

(c) The reason for any changes from the previously submitted cost review.

10. At any time after [Person] submits the first cost review pursuant to the preceding paragraph [Person] may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Remediation Agreement. If the Department grants written approval to such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

11. If the estimated costs of meeting [Person's] obligations in this Remediation Agreement at any time increase to an amount greater than the remediation funding source, [Person] agrees to, within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

12. If [Person] remediates the Site to a restricted use remediation standard and [Person] implements institutional and engineering controls, [Person] shall maintain the remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount necessary to pay for the maintenance of the engineering and institutional controls.

IV. Project Coordination

13. Within seven (7) calendar days after the effective date of this Remediation Agreement, [Responsible Person(s)] shall submit to the NJDEP the name, title, address and telephone number of the individual who shall be [Responsible Person]'s technical contact for the NJDEP for all matters concerning this Remediation Agreement and [Responsible Person(s)] shall designate an agent for the purpose of service for all matters concerning this Remediation Agreement and shall provide the NJDEP with the agent's name and address.

14. Unless otherwise directed by NJDEP, any submission to be made to NJDEP in accordance with this Remediation Agreement and ISRA shall be directed to:

New Jersey Department of Environmental Protection
Division of Remediation Support
401 East State Street
PO Box 028
Trenton, NJ 08625-0028

V. Oversight Cost Reimbursement

15. All submissions required pursuant to this Remediation Agreement shall be accompanied by all appropriate fees pursuant to N.J.A.C. 7:26B-8.

16. Within thirty (30) calendar days after receipt from the NJDEP of a written summary, conforming to N.J.A.C. 7:26B-8.2, of the NJDEP's oversight costs, including all accrued interest incurred pursuant to the paragraph below, determined pursuant to N.J.A.C. 7:26B-8, [Responsible Person(s)] shall submit to the NJDEP a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A in accordance with N.J.A.C. 7:26B-8.4, for the full amount of the NJDEP's oversight costs. Nothing contained in the paragraph shall be construed to limit or restrict any person's ability to contest any oversight costs calculated pursuant to N.J.A.C. 7:26B-8.2 in accordance with the oversight cost review procedures at N.J.A.C. 7:26B-8.3.

17. Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

VI. Force Majeure

18. If any event specified in the following paragraph occurs which [Responsible Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Remediation Agreement, [Responsible Person] shall notify the NJDEP in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Responsible Person] shall take all necessary action to prevent or minimize any such delay.

19. The NJDEP will extend in writing the time for compliance for a period no longer than the delay resulting from such circumstances as determined by the NJDEP only if:

- (a) [Responsible Person] has complied with the notice requirements of the preceding paragraph;
- (b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Responsible Person]; and
- (c) [Responsible Person] has taken all necessary action to prevent or minimize any such delay.

20. The burden of proving that any delay is caused by circumstances beyond the control of [Responsible Person] and the length of any such delay attributable to those circumstances shall rest with [Responsible Person].

21. "Force Majeure" shall not include the following:

- (a) Delay in an interim requirement with respect to the attainment of subsequent requirements;
- (b) Increases in the cost or expenses incurred by [Responsible Person] in fulfilling the requirements of this Remediation Agreement;
- (c) Contractor's breach, unless [Responsible Person] demonstrates that such breach falls within paragraph 19 above; and
- (d) Failure to obtain access required to implement this Remediation Agreement, unless denied by a court of competent jurisdiction.

VII. Reservation of Rights

22. By entering into this Remediation Agreement, the NJDEP does not waive its right to seek, assess or collect civil or civil administrative penalties or any other legal or equitable relief against [Responsible Person(s)] for past, present and future violations by [Responsible Person(s)] of any New Jersey environmental statutes or regulations.

23. The NJDEP reserves the right to require [Responsible Person(s)] to take or arrange for the taking of any and

all additional measures if the NJDEP determines that such actions are necessary to protect human health or the environment.

24. [Responsible Person(s)] admits that it has agreed to comply with the terms of this Remediation Agreement. Neither the entry into this Remediation Agreement nor the conduct of [Responsible Person(s)] hereunder, shall be construed as any admission of fact, fault or liability by the [Responsible Person(s)] under any applicable laws or regulations.

25. Except as otherwise set forth herein, by the execution of this Remediation Agreement the NJDEP does not release any person, including without limitation, [] from any liabilities or obligations such person may have pursuant to ISRA and the ISRA regulations, or any other applicable authority, nor does the NJDEP waive any of its rights or remedies pursuant thereto.

26. This Remediation Agreement shall not be constructed to affect or waive the claims of Federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

VIII. Penalties

27. [Responsible Person] agrees to pay penalties for its violations of this Remediation Agreement, or for its violations of a deed notice or declaration of environmental restriction that is part of a remedial action implemented pursuant to this Remediation Agreement order, according to the amounts and conditions in this section.

28. [Responsible Person] agrees;

(a) That each violation of any requirement, condition or deadline in this Remediation Agreement constitutes an additional, separate, and distinct violation to which penalties apply;

(b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;

(c) To pay interest, at the rate set forth in the New Jersey Court Rules, R. 4:42-11(a)i, on any unpaid penalty pursuant to this Remediation Agreement commencing on the first day after it has agreed to pay a penalty pursuant to this Remediation Agreement; and

(d) That nothing in this Remediation Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Remediation Agreement;

(e) That its payment of a penalty pursuant to this Remediation Agreement does not alter [Person's] responsibility to complete any requirement of this Administrative Order; and

(f) To regard payments of penalties pursuant to this Remediation Agreement as payments of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

29. [Responsible Person] agrees to pay a penalty for all violations of this Remediation Agreement beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
1-7 days	\$ 500 per calendar day
8-14 days	\$1,000 per calendar day
15 days and over	\$2,500 per calendar day

30. The Department will provide [Responsible Person] with written notice of each violation, including a description of the conditions of this Remediation Agreement that [Responsible Person] has violated, the date that [Responsible Person] was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 29, above.

31. [Responsible Person] agrees to pay each penalty required by this Remediation Agreement by cashier's check or certified check payable to the "Treasurer, State of New Jersey," accompanied by DEP Form 062A and a letter referencing this Remediation Agreement and the violations for which [Responsible Person] is submitting the payment within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 30, above.

32. [Responsible Person] agrees that nothing herein shall limit the Department's ability, upon [Responsible Person's] failure to pay a penalty pursuant to this Remediation Agreement, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Remediation Agreement.

33. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement][Responsible Persons] are jointly and severally liable for penalties for violations of this Remediation Agreement.

34. [Responsible Person] agrees to pay a penalty in the amount of the economic benefit (in dollars) which [Responsible Person] has realized as a result of not complying, or by delaying compliance, with the requirements of the Remediation Agreement, including the following:

- (a) The amount of savings realized from avoided capital or non-capital costs resulting from the violation;
- (b) The return earned or that may be earned on the amount of the avoided costs;

(c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

(d) All other benefits resulting from the violation.

35. [Responsible Person] agrees that the Department will consider the following factors in determining a penalty for economic benefit:

- (a) The amount of capital investments required, and whether they are one-time or recurring;
- (b) The amount of one-time non-depreciable expenditures;
- (c) The amount of annual expenses;
- (d) The useful life of capital;
- (e) Applicable tax, inflation and discount rates;
- (f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and
- (g) Any other factors relevant to economic benefit.

36. If the total economic benefit was derived from more than one violation, [Responsible Person] agrees that the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

IX. General Provisions

37. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by [Responsible Person(s)] and the NJDEP. Any amendment to this Remediation Agreement shall be executed by the NJDEP and [Responsible Person(s)]. The NJDEP reserves the right to require the resolution of any outstanding violations ISRA or this Remediation Agreement prior to executing any such amendment.

38. This Remediation Agreement shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the industrial establishment or site shall alter signatory's responsibilities under this Remediation Agreement.

39. [Responsible Person(s)] agrees not to contest the authority or jurisdiction of the NJDEP to issue this Remediation Agreement; [Responsible Person(s)] further agrees not to contest the terms or conditions of this Remediation Agreement except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the NJDEP to enforce the provisions of this Remediation Agreement.

40. [Responsible Person(s)] shall provide to the NJDEP written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least five (5) calendar days prior to such action. [Responsible Person(s)] shall also provide written notice to the NJDEP of a filing of a petition for bankruptcy no later than five business days after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations.

41. For persons executing this Remediation Agreement on behalf of a corporate entity, [Responsible Person(s)] shall submit to the NJDEP, along with the executed original Remediation Agreement, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Responsible Person(s)] to the terms of this Remediation Agreement.

42. [Responsible Person(s)] expressly agrees that in the event that [Responsible Person(s)] fails or refuses to perform any obligation(s) under this Remediation Agreement as determined by the NJDEP, the NJDEP shall have the right to exercise any option or combination of options available to the NJDEP under this Remediation Agreement, or any other statute.

43. Except as otherwise provided, the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by [Responsible Person(s)] of written notice from the NJDEP that [Responsible Person(s)] has demonstrated, to the satisfaction of the NJDEP, that [Responsible Person(s)] has completed the substantive and financial obligations imposed by this Remediation Agreement. Such written notice shall not relieve [Responsible Person(s)] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Remediation Agreement.

44. Compliance with the terms of this Remediation Agreement shall not excuse any Person(s) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ISRA through this Remediation Agreement. The execution of this Remediation Agreement shall not excuse any Person(s) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that the Person(s) obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Remediation Agreement if the terms and conditions of any such permit

are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by the Person(s) during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations, N.J.A.C. 7:14A-1 et seq., then the Person(s) shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.

45. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the NJDEP and the [Responsible Person(s)]. [Responsible Person(s)] may consummate the transaction described at Findings, Paragraph 2 A above, upon the execution of this Remediation Agreement. [Responsible Person(s)] shall return a fully executed Remediation Agreement to the NJDEP together with the signature authorization required above within five business days from the effective date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____ By: _____

Assistant Director
Site Remediation Program
[NAME OF PERSON EXECUTING AGREEMENT]

Date: _____ By: _____

[of]

Print Full Name Signed Above

Title

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.

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 First Compel the Other Responsible Person to Comply With the Industrial Site Recovery Act ("ISRA")

Based Upon the Parties' Prior Agreement Pursuant to Their Lease.

Both the owner and operator of an industrial establishment are responsible for remediation of any industrial establishment pursuant to N.J.S.A. 13:1K-6 et seq. However, pursuant to N.J.S.A. 13:1K-11.9, where owner is the Landlord and operator is the Tenant and there has been a failure to comply with ISRA, either of those parties may petition the Department of Environmental Protection to request that the Department first compel the other party to comply with ISRA pursuant to a clearly articulated Lease between the parties concerning the subject industrial establishment. This Petition follows:

PETITION

["Name of Landlord or Tenant"] is the [Landlord or Tenant] for ISRA Case No. [] pursuant to a Lease entered into on [Date] with [Name of Landlord or Tenant], [Landlord or Tenant].

[Name of Landlord or Tenant] states that it desires the Department to exercise its discretion to first require [Name of Landlord or Tenant], who is the [Landlord or Tenant], to comply with ISRA with respect to the following property [Lot(s)/Block(s) and Leasehold unit number] the ("industrial establishment").

[Name of Landlord or Tenant] desires that if the Department is satisfied that the Lease clearly reflects an agreement by the parties to the Lease that [Name of Landlord or Tenant] is to be responsible for the ISRA obligations, the Department will agree to first pursue [Landlord/Tenant] to compel compliance with ISRA.

Attached for the Department's review are the following documents in support of this Petition.

- 1. Landlord's and Tenant's full names and current addresses;
2. A true and correct copy of the fully executed and dated subject Lease, together with any and all Addenda and Riders to that Lease;
3. A copy of the General Information Notice for the ISRA case referenced above;
4. True and correct copies of any and all contracts, agreements, orders and remediation agreements which [Name of Landlord or Tenant] believes may affect the interpretation of the subject lease and the parties' respective responsibilities and remediation obligations pursuant to ISRA and that Lease;
5. A narrative, which identifies, in [Name of Landlord or Tenant's] view, the pertinent sections in the lease, and interpretation of the those sections;

6. A separate, notarized Affidavit, executed by [Name of Landlord or Tenant], that articulates all relevant facts which, in [Name of Landlord's or Tenant's] view, support and explain any non-compliance with ISRA and the Lease;

7. Copies of any pleadings and discovery documents generated in any lawsuit involving the subject industrial establishment and/or the subject Lease;

8. Copies of any writings issued by the Department of Environmental Protection, to either ISRA responsible party or to any ISRA agent, concerning the subject Lease or the subject industrial establishment and the respective responsibilities of each such party concerning this ISRA transaction; and

9. Any other documents which [Name of Landlord or Tenant] believes may assist the Department in its determination.

Within thirty (30) calendar days after the Department determines that it has received a complete Petition, the Department will advise all parties to the lease of its determination as to whether the Lease is clear in identifying [Name of Landlord or Tenant] as responsible for complying with ISRA under the Lease. [Name of Landlord or Tenant] understands that the Department may require further information, clarification or additional documentation in order to complete this Petition.

The information contained within this Petition, including any documents submitted to the Department in support of this Petition, is complete and accurate to the best of [Name of Landlord or Tenant's] knowledge, information and belief, and, by executing this Petition below, [Name of Landlord or Tenant] hereby certifies to its completeness and accuracy, and also, that [Name of Landlord or Tenant] will notify the Department immediately should new or additional information come to light which may have a bearing upon interpretations of the subject Lease, or the parties' respective ISRA responsibilities, under the lease.

Dated: _____
Name: _____
[Landlord or Tenant]
For ISRA Case No.
[]
Print Full Name Signed Above
Title

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

APPENDIX C

ISRA SUBJECT NAICS CODES

Table with 3 columns: Subsector or Industry #Code, NAICS Description, Exceptions or Limitations. Row 1: 113310, Logging, No exceptions or limitations