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ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROFESSIONAL LICENSING BOARD

Regulations of the New Jersey Site Remediation Professional Licensing Board

Proposed New Rules: **N.J.A.C. 7:26I**

Authorized By: New Jersey Site Remediation Professional Licensing Board,
Mark Pedersen, Chairman.

Authority: N.J.S.A. 58:10C-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

DEP Docket Number: 10-14-12.

Proposal Number: PRN 2015-003.

A **public hearing** on the proposed new rules will be held on the following date at the following location:

Tuesday, February 17, 2015

4:00 P.M.

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, New Jersey

Directions to the hearing room may be found at the Department of Environmental Protection (Department) website, <http://www.state.nj.us/dep/where.htm>.

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Submit written comments by March 6, 2015, electronically to

lsrcboardrulecomments@dep.state.nj.us. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Dana Haymes, Esq.

New Jersey Site Remediation Professional Licensing Board

c/o New Jersey Department of Environmental Protection

Site Remediation Program

Office of the Assistant Commissioner

PO Box 420

Mail Code 401-06

401 East State Street

Trenton, NJ 08625-0420

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone submitting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

This notice of proposal may be viewed or downloaded from the Department website at www.nj.gov/dep/rules and the Site Remediation Professional Licensing Board (Board) website at www.nj.gov/lsrcboard.

The Board proposal follows:

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Summary

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

SRRA Overview

The Board is proposing new rules N.J.A.C. 7:26I, Regulations of the New Jersey Site Remediation Professional Licensing Board, to implement the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq.

On May 7, 2009, the Governor signed P.L. 2009, c. 60 (the Act). The Act includes the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and related amendments to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act (Spill Act), N.J.S.A. 58:10-23.11 et seq., the Underground Storage of Hazardous Substances Act (UST Act), N.J.S.A. 58:10A-21 et seq., and the Brownfield and Contaminated Site Remediation Act (Brownfield Act), N.J.S.A. 58:10B-1 et seq. Through the Act, the Legislature made sweeping changes to the way in which contaminated sites are remediated in New Jersey.

Under the traditional process, site remediation was conducted by persons whose credentials and experience were not approved by the Department. While many persons conducting site remediation were highly trained and experienced, the qualifications of persons conducting site remediation varied widely. The role of the Department was to directly oversee and approve each phase of the remediation. This often lengthy process required repeated rounds of submittals, comments, revisions, and discussions between the Department and persons conducting remediation. The increasing number of contaminated sites in New Jersey further encumbered the process. An insufficient number of staff to conduct Department oversight in an

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expeditious manner resulted in delays in completing site remediation, increased the length of time that citizens were exposed to environmental hazards, and impeded the return of contaminated sites to more productive and economically beneficial use.

SRRA established a new process for remediating contaminated sites, to be overseen by a newly created licensed professional, the Licensed Site Remediation Professional (LSRP). The person responsible for conducting the remediation of a contaminated site shall hire an LSRP to perform or approve the remediation. (See N.J.S.A. 58:10B-1.3.b). The LSRP shall employ specified remediation requirements in providing professional services for the remediation of contaminated sites. (N.J.S.A. 58:10C-14.c). Upon implementation of the remedial action, the LSRP issues a response action outcome (RAO) that certifies a contaminated site has been remediated, so that it is in compliance with all applicable statutes, rules and regulations protective of public health and safety and the environment. (N.J.S.A. 58:10C-14.d). The LSRP's highest priority in the performance of professional services is the protection of public health and safety and the environment. (N.J.S.A. 58:10C-16.a).

Site Remediation Professional Licensing Board

The SRRA established the Board in, but not of, the Department to implement licensing requirements for site remediation professionals and to oversee the licensing and performance of licensed site remediation professionals. (N.J.S.A. 58:10C-3.a). The Board is authorized to evaluate the qualifications of applicants, administer examinations, issue licenses, establish standards and requirements for continuing education of LSRPs, approve or offer continuing education courses, adopt and administer standards for professional conduct of LSRPs, investigate complaints against LSRPs, and impose discipline against persons found to have violated the

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SRRA. (N.J.S.A. 58:10C-5). The Board is also required to audit annually the submissions and conduct of at least 10 percent of the total number of that year's LSRPs. (N.J.S.A. 58:10C-24).

The Board proposes the new rules to carry out these mandates.

Proposed New Rules

General Provisions

Proposed new N.J.A.C. 7:26I-1, General Provisions, sets forth the general provisions of the proposed new rules including the purpose and scope of the chapter, definitions, liberal construction, and severability. The Board is proposing to define words and terms that are defined in the SRRA by using the same definitions in the proposed new rule. Similarly, the Board is proposing to define words and terms that the Department has previously defined, in either the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, or the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, by using the same definitions in the proposed new rule. The Board made this decision in order to ensure consistency between those existing statutory and regulatory definitions and the Board's proposed new rules. In addition, there are several terms that do not refer to any legislative or regulatory precedents that are defined in the proposed new rules. These terms are as follows: alternative verifiable learning format, continuing education, continuing education credit, Licensed Site Remediation Professional, person, promptly, and relevant professional experience.

Licensing Process

Proposed new N.J.A.C. 7:26I-2, Licensure, establishes the licensing program for site remediation professionals. An individual may not act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP unless he or she holds an active license.

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In order to obtain an LSRP license an individual shall submit an application that demonstrates that he or she meets the eligibility requirements set forth in N.J.A.C. 7:26I-2.4. The Board will review and make a decision on whether the applicant meets the eligibility requirements based on the application submitted pursuant to N.J.A.C. 7:26I-2.5. Any applicant that the Board determines has met the eligibility requirements may sit for the LSRP examination. A passing score on the LSRP examination is required for the applicant to be issued a license.

Eligibility Requirements

Eligibility requirements consist of sufficient and relevant education and professional experience specific to the scientific, technical, and regulatory elements of site remediation in New Jersey. To be deemed eligible, an applicant shall demonstrate education equivalent to at least a bachelor's degree in science or engineering, and experience amounting to at least eight years of full-time professional experience, at least five years of which shall have occurred in New Jersey and at least three years of which shall have occurred in New Jersey immediately prior to the submission of the application. Furthermore, an applicant shall demonstrate that his or her experience includes a minimum of 5,000 hours of relevant professional experience within New Jersey over the five years immediately prior to submission of the application that is of a professional grade and character that indicates the applicant is competent to issue an RAO.

In addition, an applicant is required to submit proof that he or she has attended and completed a Board-approved course on the Department's rules and technical guidance concerning remediation no more than three years prior to the submission of the application, and has completed the training required by 29 CFR 1910.120 within one year prior to the submission of the application.

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As indication of the applicant's qualifications and character, each applicant shall request three persons to submit letters of reference on the applicant's behalf, one of which shall be from an LSRP, and one of which shall be from a current or past employer of the applicant. Any applicant that has been convicted of, or plead guilty to, an environmental crime, any similar or related criminal offense under Federal or state law, or any crime involving fraud, theft by deception, forgery, or any similar or related offense under Federal or state law, or has had another professional license or certification revoked, will be denied a license.

Board Review of Applications

Proposed new N.J.A.C. 7:26I-2.6 and 2.7 require the Board to approve or deny each application. If the Board finds that an applicant submitted a complete application pursuant to N.J.A.C. 7:26I-2.5 and met each eligibility requirement set forth in N.J.A.C. 7:26I-2.4, the Board will approve the application to sit for the examination. If the Board finds that an applicant did not submit a complete application or did not meet one or more eligibility requirement, the Board will deny the applicant an opportunity to sit for the examination. The Board will provide notice to the applicant of the finding and reason for denial.

Examination

Proposed new N.J.A.C. 7:26I-2.8 requires the Board to provide each candidate registering for the examination with an LSRP Licensing Examination Candidate Agreement. In order to sit for the examination, a candidate shall certify that he or she has read and agrees to abide by the terms of the LSRP Licensing Examination Candidate Agreement. Violation of the LSRP Licensing Examination Candidate Agreement at any time is grounds for the Board to commence disciplinary action against the violator.

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The Board will communicate the results of the examination to each individual, and publish a list of successful candidates on the Board's website. The Board will issue a non-transferable license to each candidate who successfully completes the examination and pays the annual license fee. The Board will publish the name and contact information of each LSRP on the Board's website. A candidate who fails the examination shall submit a new application in order to qualify to take the examination again.

License Renewal

Each license has an effective date and expiration date. Proposed new N.J.A.C. 7:26I-2.11 require an LSRP to apply to renew his or her license prior to the expiration date. To renew his or her license an LSRP shall submit a renewal application to the Board that demonstrates he or she has complied with the continuing education requirements, has paid all annual fees, and has not been convicted of or pled guilty to an environmental crime, crime involving fraud, theft by deception, forgery, or any similar or related offense, or, within the last 10 years, had any other professional license or certification revoked. In addition, an applicant for license renewal must submit proof that he or she has completed the training required by 29 CFR 1910.120 within one year prior to the submission of the application.

The Board will renew the license if the LSRP meets the above requirements, and deny the license renewal if the applicant fails to meet any one or more of the above requirements. The Board shall provide notice to the applicant of the findings and reason for denial. The proposed new rules at N.J.A.C. 7:26I-2.11(i) provide for an opportunity to request an appeal of the denial of the license renewal application.

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A license shall expire on the license expiration date if it is not renewed by that date or if the LSRP fails to pay the annual license fee within 90 days of receipt of the Board's annual license fee invoice. An individual with an expired license may apply for license renewal within one year of the expiration date of his or her license, but if more than one year has passed since the expiration date without license renewal, the former LSRP shall apply for a new license and pass the examination again.

License Suspension and Revocation

Proposed new N.J.A.C. 7:26I-2.13 and 2.14 provide that the Board may suspend (temporarily remove) or revoke (permanently remove) a license when it finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department. An individual whose license has been suspended or revoked may not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being, an LSRP. The Board will maintain a list of all site remediation professionals whose licenses have been suspended or revoked on the Board website. An LSRP whose license has been suspended or revoked has the right to notice of the suspension or revocation and an opportunity for a hearing.

License Inactivation

Proposed new N.J.A.C. 7:26I-2.15 provides that an LSRP may summarily inactivate his or her license, if the LSRP does not intend to practice as an LSRP for a period of time. The purpose of this section is to relieve an LSRP from the requirement to pay the annual license fee, should the LSRP be in a position that payment of the fee would be a hardship due to inability to

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work because of pursuit of full-time education, medical or maternity leave, service in the armed forces, or similar exceptional circumstances.

Fees

The SRRA at N.J.S.A. 58:10C-5.g empowers the Board to establish and collect fees for examination, licenses, renewals, or any other services required for the licensing of site remediation professionals. Accordingly, proposed new N.J.A.C. 7:26I-3, Fees, establishes fees to support the Board's activities to administer services required for the licensing and oversight of site remediation professionals. The fees include the application fee, license renewal fee, and annual license fee.

The Board shall calculate the application fee based on the Board's average costs to conduct the review of licensure applications. The Board has been assessing and collecting the application fee at the rate of \$400.00 since the first applications for permanent licenses were received in 2012.

The license renewal fee is a fee that an LSRP shall include as part of his or her application for license renewal. The Board shall calculate the license renewal fee based on the Board's average costs to conduct the review of license renewal applications.

The annual license fee is an annual fee that each LSRP shall pay in order to maintain his or her license. The Board shall calculate the annual license fee based on the Board's cost to accomplish all tasks associated with overseeing licensed site remediation professionals, including, but not limited to, administration, legal support, development and maintenance of data systems and the Board website, and development and administration of the LSRP examinations, divided by the total number of LSRPs, with allowance for collection amounts anticipated from

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other fees and any shortfalls or surpluses from previous calendar years. Since July 2012, the Board has assessed and collected the annual license fee of \$900.00 from every LSRP.

Continuing Education

Proposed new N.J.A.C. 7:26I-4, Continuing Education, provides the continuing education requirements each LSRP shall meet in order to ensure that he or she is informed of advances in scientific and technical aspects of site remediation, is current with State regulations, and understands his or her ethical responsibilities. Proposed new N.J.A.C. 7:26I-4.3 requires each LSRP to earn 36 Continuing Education Credits (CECs) during the term of his or her license. The Board has allocated these CECs between scientific and technical education, regulatory education, and ethical education and requires each LSRP to earn a specified number of CECs in each category during the three-year license term.

In order to obtain approval of continuing education for a specified number and type of CECs, providers or attendees of continuing education shall submit an application for CEC approval to the Board, pursuant to proposed new N.J.A.C. 7:26I-4.4. The application shall include information about the continuing education program for which credit is sought, including the content and credentials of instructors. The Board will review the application and determine the number and types of CECs to be awarded to each continuing education program upon making the following findings;

1. The continuing education has significant intellectual, educational, or practical content;
2. The continuing education has as its primary purpose to increase each participant's professional competence as a site remediation professional;

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3. The continuing education is developed and conducted by a person or persons the Board deems qualified based on practical and academic experience; and

4. The continuing education constitutes an organized program of learning that includes subject matter related to the regulation of site remediation, scientific and technical principles of site remediation, and/or the ethical obligations of site remediation professionals.

In addition, the Board will review the content of the continuing education to ensure that it meets the following requirements:

1. Continuing education approved for ethics credit shall have educational content that is designed to advance the site remediation professional's understanding of the tenets of ethical conduct with respect to the provision of professional services as an LSRP in New Jersey;

2. Continuing education approved for regulatory credit shall have educational content designed to advance the ability of site remediation professionals to competently perform, supervise, and coordinate site remediation in New Jersey in compliance with applicable statutory and regulatory requirements; and

3. Continuing education approved for scientific and technical credit shall have educational content designed to advance the ability of site remediation professionals to competently perform, supervise, and coordinate the scientific and technical components of site remediation in New Jersey.

In order to ensure that records of continuing education credits earned are maintained and available to LSRPs and the Board, proposed new N.J.A.C. 7:26I-4.4(c) requires that providers of continuing education maintain records of attendance and provide certificates of attendance to all attendees. In order to ensure that providers of continuing education monitor the quality of the

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programs they offer, proposed new N.J.A.C. 7:26I-4.4(c) requires that providers conduct and maintain an evaluation of the continuing education content and instructors. Proposed new N.J.A.C. 7:26I-4.5 also allows an LSRP to apply for continuing education credit for continuing education activities, including instructing Board-approved continuing education programs, giving presentations, and authoring papers published in professional publications or peer reviewed proceedings of conferences.

Audits

Proposed new N.J.A.C. 7:26I-5, Audit Procedures, sets forth the requirement for the Board to randomly audit the submissions and conduct of an LSRP as a means to oversee the quality and integrity of the work and performance of the LSRP. The Board shall calculate the number of LSRPs to be audited each year, which shall be equal to at least 10 percent of the total number of LSRPs in that year. The Board shall randomly select the names of LSRPs to be audited. The Board shall convenes an Audit Review Team, made up of Board members, to conduct the month's audits. Each LSRP being audited is required to complete the audit questionnaire and return it to the Audit Review Team. The Audit Review Team is charged with the review of the submissions and conduct of the LSRP to ensure that the LSRP's conduct in the performance of professional services has met the following standards, set forth at proposed new N.J.A.C. 7:26I-5.4(i):

1. The LSRP has complied with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto; and
2. The LSRP has not knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

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Proposed new N.J.A.C. 7:26I-5.5 provides that upon a Board finding that the LSRP's submissions and conduct have met the standards, the audit will be concluded and the LSRP notified. The Board will post on its website the name of the audited LSRP and the outcome. Upon a finding that the LSRP's submissions and conduct have not, or may have not, met the standards, the Board shall further investigate the LSRP.

Rules of Professional Conduct

Proposed new N.J.A.C. 7:26I-6, Rules of Professional Conduct, articulate the standards of conduct the Legislature established for LSRPs. The purpose of this subchapter is to specify the professional priorities, duties, and standards of care of an LSRP, which exist separate from and above his or her contractual obligations to his or her clients. The guiding principle is that at all times, in the performance of professional services, an LSRP's highest priority shall be the protection of public health and safety and the environment.

Subchapter 6 consolidates the priorities, duties, and standards of care of LSRPs set forth in the SRRA at N.J.S.A. 58:10C-16, 58:10C-14, 58:10C-20, 58:10C-21.d, 58:10C-21.e, and 58:10C-24. The majority of Subchapter 6 is a reiteration of the SRRA, but certain sections were modified for clarity and to elucidate the obligations of LSRPs in specific situations. Following is a summary of the sections of Subchapter 6 that were modified from the language set forth in the SRRA.

N.J.A.C. 7:26I-6.5 is based on N.J.S.A. 58:10C-16.d, which requires that an LSRP notify the Department within 15 days after being retained or released from responsibility for a remediation. N.J.A.C. 7:26I-6.5 includes the requirement that an LSRP who decides to terminate his or her position as the LSRP responsible for the remediation of a contaminated site shall notify

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the Department and person responsible for conducting the remediation within 15 days of terminating. The purpose of this inclusion is to take into account the situation where the person responsible for conducting the remediation does not release the LSRP, but rather the LSRP initiates the termination.

N.J.A.C. 7:26I-6.7(b) is based on N.J.S.A. 58:10C-16.g, which requires that an LSRP who has taken over the responsibility for the remediation of a contaminated site from another LSRP shall correct all deficiencies the Department identifies in a document submitted by the previous LSRP. N.J.A.C. 7:26I-6.7(b) modifies the statutory language to read “including, but not limited to, those the Department identified”. This language is proposed to clarify that an LSRP is required to correct all deficiencies in a document, even those not identified by the Department. In addition, the term “site remediation professional, licensed or not” replaces the term “licensed site remediation professional,” in order to clarify that LSRPs are obligated to correct deficiencies in documents submitted not just by another LSRP, but by any site remediation professional.

N.J.A.C. 7:26I-6.8(b) and (c) are based on N.J.S.A. 58:10C-16.i, and add to the requirements that the LSRP notify the person responsible for conducting the remediation when in his or her professional judgment the person responsible for conducting the remediation is unlikely to meet any applicable regulatory timeframe and the requirement that the LSRP notify the person responsible for conducting the remediation and the Department when in his or her professional judgment the person responsible for conducting the remediation is unlikely to meet any mandatory or expedited site-specific timeframe. N.J.A.C. 7:26I-6.8(d) is also based on N.J.S.A. 58:10C-16.i, and adds “the Department” as a source of relevant and material facts, data,

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reports, and other information evidencing conditions at a contaminated site that the LSRP shall identify and obtain.

N.J.A.C. 7:26I-6.10(b) explains the term “for which he or she is responsible” in subsection (a) in order to clarify the circumstances under which an LSRP is responsible for reporting a discharge that has occurred on a contaminated site for which he or she is responsible. Proposed new N.J.A.C. 7:26I-6.10(b) links the responsibility of the LSRP to the responsibility of the person who has hired him or her, so that the LSRP is considered to be responsible for a contaminated site if he or she has been hired by a person responsible for conducting the remediation at the site. The default position is that if a person has hired an LSRP to work on a contaminated site, the person hiring the LSRP is presumed to be a person responsible for conducting the remediation at the contaminated site, and the LSRP is presumed to be responsible for the contaminated site. The one exception, as stated in N.J.A.C. 7:26I-6.10(c), is derived from N.J.S.A. 58:10B-1.3.d(2), which sets forth the exemption from complying with the Brownfield and Contaminated Site Remediation Act to persons who do not own the contaminated site, are conducting all appropriate inquiry into the previous ownership and uses of property as provided in N.J.S.A. 58:10-23.11g, and are not responsible for a discharge of a hazardous substance at the site. Notwithstanding this exception, all LSRPs are required, pursuant to N.J.A.C. 7:26I-6.9, to report previously unreported conditions that are an immediate environmental concern, regardless of his or her status as “responsible” for the site.

N.J.A.C. 7:26I-6.19 articulates the standards that an LSRP shall follow with respect to public communications when the person responsible for conducting the remediation designates the LSRP as the point of contact for the public.

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N.J.A.C. 7:26I-6.25 is based on N.J.S.A. 58:10C-14.d, and adds to the statutory provisions the requirements that an LSRP shall not issue an RAO until the person responsible for conducting the remediation has paid to the Department all fees and oversight costs, and an LSRP shall file the RAO with the Department within 30 days of issuing it to the person responsible for conducting the remediation.

N.J.A.C. 7:26I-6.27 includes the minimal period of time that an LSRP shall maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on, which is set at 10 years following the date that the LSRP submits a notification of dismissal or last RAO for the site, whichever is later. N.J.A.C. 7:26I-6.27 also incorporates a prohibition against an LSRP's employer or client from restricting the LSRP from personally maintaining and preserving all data, documents, records, and information in the format and location that the LSRP chooses.

Disciplinary Proceedings

N.J.A.C. 7:26I-7, Disciplinary Proceedings, establishes the procedures for the Board's disciplinary proceedings, including the filing of complaints, investigation of complaints, actions the Board may take relative to complaints and violations, and hearing requirements.

Proposed new N.J.A.C. 7:26I-7.3 provides that any person may file a complaint with the Board alleging that a person has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

Proposed new N.J.A.C. 7:26I-7.5(e) describes the Board's authority to investigate the complaint by requesting, ordering, or subpoenaing the subject of the complaint, the complainant, and any

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other persons that may have information regarding the facts of the complaint to submit to questioning or interviews, to produce data, documents, records, and information, to respond to inquiries, and to make sites, remedial systems, monitoring devices, or other equipment available for inspection, by entering any known or suspected site, vessel, or other location, or by seizing any records, equipment, property, or other evidence. Upon the decision to dismiss the complaint, or upon the finding of a violation, the Board will publish a summary of the complaint and its disposition on the its website.

Proposed new N.J.A.C. 7:26I-7.7 provides that upon the finding that a person has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may take any one or more of the following actions:

1. Suspend or revoke the license of an LSRP or impose another sanction on the LSRP;
2. Institute a civil action in Superior Court;
3. Issue an administrative order;
4. Bring an action in Superior Court for a civil penalty;
5. Assess a civil administrative penalty; and
6. Petition the Attorney General to bring a criminal action.

Upon the Board's determination to suspend or revoke a license or impose another sanction, or issue an administrative order, or assess a civil administrative penalty, the Board will provide the violator with notice that specifies the acts or omissions constituting the violation,

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specifies the statutory or regulatory basis of the violation, affirms the opportunity to request a hearing and the procedures for requesting a hearing, and include a copy of the Board Administrative Hearing Request Checklist.

Adjudicatory Proceedings

Proposed new N.J.A.C. 7:26I-8, Adjudicatory Proceedings, in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.), provides for adjudicatory hearing requests in response to the Board's determination to deny an individual's application for an LSRP license renewal, suspend, or revoke a license or impose another sanction, issue an administrative order, or assess a civil administrative penalty.

Prohibition Against Retaliatory Action

Proposed new N.J.A.C. 7:26I-9, Prohibition Against Retaliatory Action, prohibits retaliatory action against an LSRP for certain actions that he or she may take in order to fulfill his or her duties and responsibilities. In the event an LSRP shall take action that is adverse to a client, an employer or another person in order to protect public health and safety and the environment, or otherwise carry out his or her professional services in compliance with the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, retaliatory action against the LSRP by any person is prohibited. Likewise, an LSRP may not take retaliatory action against any person that brings a complaint about the LSRP to the Board or who cooperates with the Board during the conduct of an audit or an investigation of the LSRP.

In sum, the proposed new rules implement and complement the SRRA with respect to the licensing and regulation of site remediation professionals. By creating a procedure by which persons seeking licensure are required to establish their qualifications and experience and pass a

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rigorous examination, the Board will ensure that only persons with proven ability and experience in site remediation will obtain an LSRP license. The proposed new rules will regulate the practices of LSRPs in the State of New Jersey, and ensure that any RAO issued by a site remediation professional shall be consistent with all applicable laws, rules, and regulations concerning the remediation of contaminated sites and shall protect public health and safety and the environment. By establishing a program of continuing education, the Board will ensure that LSRPs are kept up to date on technical and scientific progress in the field of site remediation, are kept current in State administrative requirements, and are educated in ethical issues that may arise in fulfilling their professional obligations. And by establishing a procedure for auditing and investigating LSRPs, as well as taking disciplinary actions, the Board will ensure that LSRPs meet the standards of professional conduct and are subject to the scrutiny of the Board and the public throughout their careers.

Social Impact

New Jersey industries, while producing the commercial goods and products upon which much of the State's economy is based, have also produced a significant volume of byproducts and wastes, many of which are hazardous. Both the New Jersey Legislature and the New Jersey Supreme Court have noted that this industrial history has left the State with a legacy of contaminated sites that threatens the State's public health as well as its ecology.

Contamination due to discharges of hazardous substances affects virtually everyone in the State. Persons living close to contaminated sites face health risks due to exposure to contaminants in the ground, dust arising from the ground, and hazardous vapors that may be

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present in buildings built on or near contaminated sites. Potable water sources, whether ground or surface waters, may be contaminated by discharges of hazardous substances, possibly causing health impacts and creating the need for extensive treatment of contaminated water to restore it to potable quality. And every taxpayer is ultimately charged with the costs of the government to oversee, or in some instances conduct, the remediation of contaminated sites. Contamination can also lower property values, impede real estate transactions, and render land unfit for development and use.

The Department has been refining the procedures for the remediation of contaminated sites for nearly four decades. The Department's focus over time has been on protecting public health and safety and the environment by identifying and cleaning up discharged hazardous substances, hazardous wastes and pollutants, eliminating the direct contact exposure pathway to human beings, and ensuring that the State's critical supplies of potable water are protected.

Until the passage of the SRRA, the Department oversaw all remediation by approving each step of the remediation of a contaminated site. As attention to contamination in New Jersey grew, the number of Department staff necessary for overseeing remediation under the traditional process did not keep pace with the growing number of contaminated sites being identified in New Jersey. This shortfall in staffing often resulted in delays in moving remediation projects forward, potentially causing prolonged exposure of citizens to contamination, allowing contamination to spread and impact more of the public and the environment, and delaying the return of contaminated sites to productive and economically beneficial use. The system of Department oversight of remediation also had an economic impact, as contaminated sites in the process of remediation could not be developed and placed back on the tax rolls or converted to

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open spaces, remaining as blighted, unused lots and compromising the economic vitality of the State.

The Legislature responded to comments received from constituents that the traditional process for remediating contaminated sites in New Jersey was not adequately protective of public health and safety and the environment, and was time consuming and costly, with the passage of the SRRA, which made sweeping changes to the way in which contaminated sites are remediated. The SRRA establishes a process to remediate contaminated sites in New Jersey more efficiently while maintaining the cleanup standards the Department has historically applied by creating a new paradigm in which contaminated sites are remediated by LSRPs. By utilizing LSRPs to independently conduct much of the remediation that previously required Department oversight, it is expected that remediation will be conducted in a more efficient manner, minimizing time and cost to the Department, and ultimately the taxpayers of New Jersey. This new remediation paradigm will have a positive social impact because contaminated sites that are remediated more quickly will minimize human exposure to contaminants and expeditiously return contaminated sites to more productive use.

Three distinct communities will be affected by the proposed new rules: the LSRPs who perform the remediation on behalf of their clients; the clients of the LSRPs, who are the individuals and business entities that are legally responsible for the remediation of contamination discharged at these sites; and finally the citizens of New Jersey who live, work, and play around the corner from the approximately 14,000 contaminated sites yet to be remediated.

LSRPs

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The proposed new rules governing LSRPs will have a positive social impact on site remediation professionals by creating a new professional license. Persons working as site remediation professionals will be able, through education and experience, to apply for a license that will identify them as skilled professionals whose knowledge and experience qualify them to remediate sites in accordance with State requirements. By codifying the qualifications required for the license, the proposed new rules will serve as a guide for persons working in entry level jobs in site remediation to seek out the education and experience that will allow them to rise from entry level to qualify for a license. In addition, the continuing education requirements, requirements for license renewal, and rules of professional conduct will establish the standards that will guide LSRPs throughout their careers.

The Department issued temporary licenses to LSRPs beginning in November 2009, all of which expired or were terminated on or before February 28, 2013. Temporary LSRPs were given the opportunity to become permanent LSRPs by taking and passing a Board-administered examination. The Board administered the first examination on May 14, 2012. As of September 2014, the Board has held five examinations, and has granted 579 persons the permanent LSRP license.

Recognizing the effect that the proposed new rules will have on the profession of site remediation and the livelihood of site remediation professionals, the Board has conducted extensive stakeholder outreach by holding bimonthly Board meetings open to the public, conducting open forums, and posting requests for public input on the Board's website, including posting draft rules and requests for comments to draft rules prior to publication in the New Jersey Register. Many LSRPs are members of the private Licensed Site Remediation Professional

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Association (LSRPA). Exhibiting strong support for New Jersey's new site remediation paradigm, the LSRPA, which is comprised of LSRPs, other environmental consultants who are not LSRPs, and environmental attorneys, has commented on the proposed new rules throughout their development. The Board has also received comments from individual LSRPs, as well as environmental consulting firms employing LSRPs, and environmental attorneys.

Persons Responsible for Conducting the Remediation

The proposed new rules governing LSRPs will have a positive social impact on persons responsible for conducting the remediation. The uncertainty that previously surrounded who was qualified to conduct site remediation will be removed, as the LSRP license signifies proven knowledge, ability, and experience to conduct site remediation in New Jersey. Working within the parameters of the Department rules, a person responsible for conducting the remediation will be able to hire an LSRP to conduct or approve the remediation of a contaminated site within a budget and time frame the LSRP and client establish. This will allow greater flexibility than was possible under Department oversight and is anticipated to expedite the remediation process.

The individuals and business entities legally responsible for contaminated sites have also generally supported the new site remediation paradigm in New Jersey. The Board has conducted outreach to representatives of these groups, and has kept them aware of development of the LSRP program through the Board's meetings and website, as well as information disseminated by the Department.

Public

The proposed new rules governing LSRPs will have a positive social impact on the public by facilitating the remediation of more contaminated sites in less time. The positive social

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impact of the proposed new rules are based upon the premise that LSRPs will be able to move remediation projects along more quickly under the new paradigm, since persons responsible for conducting the remediation will no longer have to wait for the Department's approval of each phase of the remediation before continuing with the next phase. A simpler and more efficient administrative process has many positive effects. Remediation is begun and completed more quickly, contaminated sites impact the public for a shorter period of time, and the quality of the environment is improved sooner for the use and enjoyment of the citizens of the State. The proposed new rules overseeing the licensing of site remediation professionals will help accomplish this goal by ensuring that LSRPs are qualified to do the job, continually educated on scientific, technical, regulatory, and ethical aspects of site remediation, and are answerable to the public for their professional conduct. In this way, the proposed new rules will have a positive social impact on the citizens of New Jersey.

Economic Impact

The direct economic impact of the proposed new rules is expected to be positive and minimal. There are three groups that are expected to be affected by the proposed new rules: persons responsible for conducting the remediation, LSRPs and/or their associated firms, and the Department.

Persons Responsible for Conducting the Remediation

The economic impact on persons responsible for conducting the remediation, who shall hire LSRPs, will be minimal. As the LSRPs will have some increased costs associated with their license, including paying the application fee, annual fee, and license renewal fee, as well as

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paying for required continuing education, these fees may be passed along to their clients.

However, compared to the typical costs for site remediation services, and considering the typical number of clients each LSRP has, the impact from increase in fees attributable to licensure costs is expected to be minimal.

LSRPs

Individuals who obtain a license as an LSRP will have increased costs to pay the fees associated with the LSRP program, including the application fee, the annual license fee, and the license renewal fee. The application fee is a one-time fee, while the annual license fee will be assessed yearly, and the license renewal fee will be due every three years. The fees are subject to change annually, but are not anticipated to be more than \$1,000 each.

An additional LSRP cost will be for continuing education to fulfill the license renewal requirements. The amount charged for continuing education varies by provider, but is anticipated to be \$50.00 to \$100.00 per continuing education credit, for a total cost of \$1,800 to \$3,600 for each LSRP during the three-year term of his or her license.

While the fees and costs of continuing education will be an added expense for LSRPs, it is anticipated that the impact will be minor compared to the competitive advantage that LSRPs will have in the market. Persons responsible for conducting the remediation will be required to hire an LSRP, who shall have significant experience in the State of New Jersey. Therefore, LSRPs will not have to compete with environmental consultants or engineers without experience in New Jersey for business. Furthermore, the stringent requirements for obtaining the LSRP license will necessarily limit the pool of LSRPs. Overall, environmental professionals that

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obtain licensing under the LSRP program will receive significant economic benefit as a result of the licensing program compared to unlicensed practitioners.

The Department of Environmental Protection

The Department provides staffing resources to the Board in the areas of information technology, fiscal analysis, review of license applications, and secretarial assistance. In addition, the Department provides a full-time staff person to serve as the Secretary to the Board and Board-Department liaison. The Department also provides office facilities for the above personnel and an hourly Board assistant, as well as meeting facilities and Board website hosting. However, the Board will reimburse the salary and overhead costs the Department incurs. Therefore, the proposed new rules will have negligible impact on the Department's budget.

Environmental Impact

The proposed new rules are projected to have a positive impact on the environment. The purpose of creating the licensed site remediation professional program is to enable remediation of contaminated sites to proceed more quickly, efficiently, and effectively than under the traditional process. The entire program the Legislature established to oversee LSRPs is intended to ensure that LSRPs operate with integrity and with protection of the environment and public health and safety as their highest priority. It is expected that the proposed new rules will ensure that contaminated sites remediated by LSRPs are remediated in compliance with all applicable standards. The proposed new rules are anticipated to result in fewer contaminated sites and substantial improvement to the quality of the environment in New Jersey.

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Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65) require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

Proposed new N.J.A.C. 7:26I is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. The establishment of a licensing program for site remediation professionals comes solely from New Jersey statutory authority and has no Federal counterpart. Accordingly, no further analysis is required. The proposed new rules do refer to 29 CFR 1910.120, which are the Federal Occupational Safety and Health Standards covering employee exposure to safety or health hazards, and require that an applicant for a license or license renewal submit proof that he or she has completed the training required by 29 CFR 1910.120 within one year prior to the submission of the application.

Jobs Impact

Proposed new N.J.A.C. 7:26I is expected to have a positive impact on jobs in New Jersey by creating a new professional license. A person working in the field of site remediation, or interested in entering this field, will have the opportunity to work toward obtaining the LSRP license by earning a bachelor's degree or higher in natural, chemical, or physical science, or an engineering degree in a discipline related to site remediation, gaining and documenting experience remediating contaminated sites, obtaining continuing education, and learning and

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following the rules of professional conduct for LSRPs. Holding the LSRP license will distinguish a person working in the field of site remediation as a professional with proven knowledge and capability in the field.

The LSRP license is also expected to create a favorable competitive environment for persons working in the field of site remediation in New Jersey. Because an individual shall demonstrate a minimum of five years of professional experience in New Jersey to obtain the license, the LSRP license will only be available to persons with an established working history in New Jersey. Foreign environmental consulting companies will not be able to provide site remediation services in New Jersey, unless they employ a New Jersey LSRP to perform or oversee the remediation. Therefore, the LSRP license will curtail competition from foreign firms providing site remediation services, unless they employ New Jersey LSRPs, thus increasing opportunities for New Jersey site remediation professionals.

While the proposed new rules will create a competitive advantage for New Jersey LSRPs over foreign site remediation professionals, there is not expected to be an overall increase or decrease in the number of jobs available in the field of site remediation due to the proposed new rules.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Board has determined that the proposed new rules impact State agriculture to the extent that they impact the environment and public in general, by increasing the speed and efficiency by which contaminated sites are remediated. In that agricultural land is subject to the same impacts from

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discharges of contaminants as any other land, it will be beneficial to remediate agricultural sites as expeditiously as possible in order to protect public health and safety and the environment and return the agricultural land to productive use. Therefore, the proposed new rules are expected to have a positive impact on the agriculture industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and employ fewer than 100 full-time employees. Proposed new N.J.A.C. 7:26I applies to consulting firms that employ LSRPs, many of which would qualify as small businesses.

The record retention provisions of the proposed new rules at N.J.A.C. 7:26I-6.27 apply to all LSRPs, which currently number 579, but the employer of the LSRP may bear the cost of this obligation. These provisions require an LSRP to maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site on which the LSRP has worked, such as technical records and contractual documents, and raw sampling and monitoring data.

In addition, the proposed new rules require the LSRP to submit one electronic copy of all records required to be maintained to the Department at the time of the issuance of a final remediation document indicating that the contaminated site has been remediated in compliance with applicable environmental rules and statutes.

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LSRPs may also be required to submit records retained in accordance with proposed new N.J.A.C. 7:26I-6.27 to the Board or the Department in cooperation with a review of the performance of a remediation by the Department pursuant to proposed new N.J.A.C. 7:26I-6.28, in cooperation with an audit pursuant to proposed new N.J.A.C. 7:26I-5.6, or in cooperation with an investigation pursuant to proposed new N.J.A.C. 7:26I-7.5. In addition, an LSRP, or individual applying for the LSRP license, may need to refer to or produce these records to support their claim of experience remediating contaminated sites in New Jersey as part of their license application.

It is not anticipated that these reporting and recordkeeping requirements would impose the need for professional services to comply with the proposed new rules. A well-organized consulting firm of any size should already have a system of electronic and paper file retention in place. There should be no initial capital costs for compliance, and the only annual compliance cost may be the need to pay for storage of documents, if the consulting firm chooses to store hard copies of documents and there is not sufficient storage area at the site of business. Any adverse economic impact on small businesses that the proposed new rules may impose will be a necessary outcome of the Legislature's mandate in the SRRA that LSRPs maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on. The ultimate effect of this requirement is expected to have a positive impact as businesses will be able to refer to their records should there arise in the future any contract issues or issues with respect to how a remediation was conducted.

The proposed new rules do not establish differing compliance or reporting requirements or timetables for small businesses, as the need for record retention does not differ by the size of

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the business. The proposed new rules use performance standards by requiring the same performance of all LSRPs. The proposed new rules do not exempt small businesses from all or part of its recordkeeping requirements, as the Board and the Department have a need for these records to oversee LSRPs, which will ultimately have a bearing on the performance of LSRPs in fulfilling their obligation to protect public health and safety and the environment.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Board has evaluated this rulemaking to determine the impact, if any, on the affordability of housing.

The Board has determined that the proposed new rules will have an insignificant impact because there is an extreme unlikelihood that the proposed new rules will evoke a change in the average costs associated with housing. The proposed new rules are designed to ensure that only qualified professionals may be licensed as LSRPs in New Jersey.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Board has evaluated this rulemaking to determine the impact, if any, on the availability of affordable housing and on new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Board has determined that the proposed new rules will impose an insignificant impact. The proposed new rules do not regulate the production of housing. Rather, they are designed to ensure that only qualified

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professionals may be licensed as LSRPs in New Jersey. It is therefore extremely unlikely that the proposed new rules would evoke a change in the housing production within these areas.

Full text of the proposed new rules follows:

CHAPTER 26I

REGULATIONS OF THE NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

SUBCHAPTER 1. GENERAL PROVISIONS

7:26I-1.1 Purpose of chapter

The purpose of this chapter is to establish the rules of the Site Remediation Professional Licensing Board governing the licensing and performance of Licensed Site Remediation Professionals.

7:26I-1.2 Scope of chapter

(a) This chapter establishes:

1. A licensing program for site remediation professionals, including:
 - i. Eligibility requirements for a license, pursuant to N.J.A.C. 7:26I-2.4;
 - ii. Application for a license, pursuant to N.J.A.C. 7:26I-2.5;
 - iii. Process for review and approval or denial of license applications, pursuant to N.J.A.C. 7:26I-2.6 and 2.7;
 - iv. Process for examination of approved applicants, pursuant to N.J.A.C. 7:26I-2.8 and 2.9;

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- v. Issuance of a license, pursuant to N.J.A.C. 7:26I-2.10;
 - vi. Renewal of a license, pursuant to N.J.A.C. 7:26I-2.11;
 - vii. Expiration of a license, pursuant to N.J.A.C. 7:26I-2.12;
 - viii. Suspension of a license, pursuant to N.J.A.C. 7:26I-2.13;
 - ix. Revocation of a license, pursuant to N.J.A.C. 7:26I-2.14; and
 - x. Inactivation of a license, pursuant to N.J.A.C. 7:26I- 2.15;
2. The fees necessary to support all tasks associated with the Board's duties, including application fee, renewal fee, and annual license fee, pursuant to N.J.A.C. 7:26I-3;
 3. The continuing education requirements that an LSRP shall fulfill each three-year license term, and the standards and procedures for Board accreditation of educational programs and activities, pursuant to N.J.A.C. 7:26I-4;
 4. The Board's procedures for auditing the submissions and conduct of an LSRP, including the process by which the Board selects an LSRP for audit, the Board's audit review process, the outcome of an audit, and the consequences for failure to cooperate with an audit, pursuant to N.J.A.C. 7:26I-5;
 5. The standards for professional conduct of an LSRP, pursuant to N.J.A.C. 7:26I-6;
 6. The procedures for disciplinary proceedings, including the filing of a complaint, the Board's investigation of a complaint, the Board's actions in response to a complaint, and the Board's actions in response to a finding of violation, pursuant to N.J.A.C. 7:26I-7;
 7. The procedures for adjudicatory hearings to appeal certain Board determinations, pursuant to N.J.A.C. 7:26I-8; and

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8. The prohibition of retaliatory action against an LSRP for certain actions that he or she may take in order to fulfill his or her duties and responsibilities, and the prohibition of retaliatory action by an LSRP against a person who files a complaint with the Board or provides information to the Board in the investigation of a complaint or an audit, pursuant to N.J.A.C. 7:26I-9.

7:26I-1.3 Definitions

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

“Alternative verifiable learning format” means any format of continuing education alternative to in-person attendance including, but not limited to, videotape, audiotape, remote place viewing, on-line internet computer presentation, satellite simulcast, teleconferencing, videoconferencing, internet computer self-study, or other alternative format the Board authorizes.

“Area of concern” means any location defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Board" means the New Jersey Site Remediation Professional Licensing Board established pursuant to N.J.S.A. 58:10C-3.

“Contaminated site” means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Continuing education” means educational programs or activities concerning regulation of site remediation, scientific and technical principles of site remediation, and/or ethical obligations

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of an LSRP that are designed principally to advance the professional competence, skill and knowledge of an LSRP, and/or to expand an appreciation and understanding of the ethical and professional responsibilities of an LSRP.

“Continuing education credit” or “CEC” means a Board-approved unit of continuing education. Generally, one CEC is approved for each hour of instruction.

“Day” means a calendar day.

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

“Discharge” means any action or omission defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Full-time professional experience” means experience in which an applicant is required to apply scientific or engineering principles to contaminated site remediation where the resulting conclusions form the basis for reports, studies, or other documents connected with the remediation of a contaminated site. The Board may consider the applicant's work activities, field of practice, duration of employment, and work products prepared in determining the credit to be allowed for professional experience. The Board may allow applicants with relevant advanced degrees up to two years of credit for professional experience, of which one year of credit may be awarded for applicants who have earned a master's degree in a relevant field of study and up to two years of credit may be awarded for applicants who have earned a doctorate degree in a relevant field of study.

"Immediate environmental concern" or "IEC" means any such concern as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“License” means an approval that the Board issues to an individual pursuant to the SRRA

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and this chapter that authorizes the individual to act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP in the State of New Jersey.

“Licensed Site Remediation Professional” or “LSRP” means an individual who the Board has licensed as a site remediation professional pursuant to the SRRA and this chapter.

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

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

“Promptly” means by the date by which the Board or the Department requests a response or, if no such date is given, as soon as possible, not to exceed seven days.

“Relevant professional experience” means experience working on New Jersey remediation cases. To prove relevant professional experience, the applicant shall demonstrate that he or she has:

1. Knowledge of and experience with implementing the technical, scientific, and regulatory aspects of site remediation, including experience investigating, designing, implementing, and/or managing within each phase of the site remediation process:

- i. Preliminary Assessment;

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- ii. Site Investigation;
- iii. Remedial Investigation; and
- iv. Remedial Action;

2. Produced, or participated in producing, workplans and/or reports for each phase of the site remediation process; and

3. Knowledge of and experience with meeting the Department's administrative requirements including, but not limited to, requirements pertaining to submittal of forms, regulatory and mandatory timeframes, applicable fees, presumptive remedies, remedial action permits, and public notification.

"Remediation" or "remediate" means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Response action outcome" or "RAO" means a written determination by an LSRP as defined pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

"SRRA" means the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

7:26I-1.4 Construction

The rules in this chapter shall be liberally construed to permit the Board to carry out its statutory functions.

7:26I-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter is

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adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. LICENSURE

7:26I-2.1 Purpose

(a) The purpose of the licensing program for site remediation professionals established in this subchapter is to require that an individual applying for licensure as a site remediation professional:

1. Demonstrate that he or she meets the standards and requirements for education, training, experience, and professional conduct required for licensure; and
2. Is examined to ensure that he or she possesses sufficient knowledge of the State and Federal statutes, rules, regulations, guidance, standards, and requirements applicable to site remediation to be qualified to obtain a license.

7:26I-2.2 Scope

(a) This subchapter contains provisions that govern the:

1. Eligibility requirements for a license in N.J.A.C. 7:26I-2.4;
2. Application for a license in N.J.A.C. 7:26I-2.5;
3. Process for review and approval or denial of license applications in N.J.A.C. 7:26I-2.6 and 2.7;
4. Process for examination of approved applicants in N.J.A.C. 7:26I-2.8 and 2.9;
5. Issuance of a license in N.J.A.C. 7:26I-2.10;

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6. Renewal of a license in N.J.A.C. 7:26I-2.11;
7. Expiration of a license in N.J.A.C. 7:26I-2.12;
8. Suspension of a license in N.J.A.C. 7:26I-2.13;
9. Revocation of a license in N.J.A.C. 7:26I-2.14; and
10. Inactivation of a license in N.J.A.C. 7:26I-2.15.

7:26I-2.3 Proscription

No person shall be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP unless the Board has issued a license to that person pursuant to the SRRA and this chapter and the license is current and not expired, suspended, revoked, or inactivated.

7:26I-2.4 Eligibility requirements

(a) In order to be eligible to sit for the licensing examination the Board administers, an individual shall submit an application pursuant to N.J.A.C. 7:26I-2.5 that demonstrates that he or she meets the following qualifications:

1. Holds a bachelor's degree or higher in natural, chemical, or physical science or an engineering degree in a discipline related to site remediation from an accredited institution of higher education;
2. Has experience amounting to at least eight years of full-time professional experience in the field of site remediation, of which at least five years shall have occurred in New Jersey and at least three years shall have occurred in New Jersey immediately prior to submission of

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the application;

3. Has a minimum of 5,000 hours of relevant professional experience within New Jersey over the five years immediately prior to submission of the application that is of a professional grade and character that indicates the applicant is competent to issue an RAO;

4. Has attended and completed the minimum environmental health and safety education and training pursuant to 29 CFR 1910.120, no more than one year prior to submission of the application;

5. Has completed a Board-approved course on the State's rules and regulations concerning the technical requirements for site remediation no more than three years prior to submission of the application;

6. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related criminal offense under Federal or state law, or any crime involving fraud, theft by deception, forgery, or any similar or related offense under Federal or state law; and

7. Has not had a professional license or certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years.

7:26I-2.5 Application

(a) An applicant for the site remediation professional license shall submit or cause to be submitted directly to the Board the following items:

1. A completed application form available on the Board website at www.nj.gov/lrspboard;
2. The application fee as set forth in N.J.A.C. 7:26I-3;

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3. A signed and notarized affidavit attached to the application that attests that all information provided in connection with the application is true to the best of the applicant's knowledge and belief, and that any omission, inaccuracy, or failure to make full disclosure may be deemed sufficient to deny licensure or to deny renewal of or suspend or revoke a license;

4. Three separate letters of reference submitted directly to the Board by the writer of the reference on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lsrcpboard, from each of the following persons with personal knowledge of the applicant's training, experience, and professional conduct who are not related to the applicant:

- i. An LSRP;
- ii. A current or past employer of the applicant from any state; and
- iii. A person of the applicant's choosing. This person may be an LSRP or current or past employer of the applicant who is different from the LSRP or employer who submitted a letter of reference pursuant to (a)4i or ii above; and

5. An original transcript or equivalent documentation delivered directly to the Board from each of the following institutions:

- i. The educational institution(s) from which the applicant earned the degree needed to demonstrate the minimum education requirement for licensure; and
- ii. The educational institution(s) from which the applicant earned relevant advanced degrees for which the applicant seeks credit for professional experience.

(b) At any time during its review of an application the Board may require the applicant to

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supplement the application with one or more of the following:

1. The applicant's appearance before the Board for a personal interview;
2. The submission of additional information the Board specifies; or
3. The provision of additional information from the Department, current and former employers or supervisors, educational institutions, or any other person that may have information relevant to the Board's review of the application.

(c) An application is not complete until the Board receives each item specified in (a) and (b) above.

7:26I-2.6 Application approval

(a) The Board shall approve an application if the applicant:

1. Submitted a complete application pursuant to N.J.A.C. 7:26I-2.5; and
2. Demonstrated in the application that he or she meets all of the eligibility requirements set forth in N.J.A.C. 7:26I-2.4.

(b) When the Board approves an application, the Board shall notify the applicant that he or she is a candidate for the LSRP examination and shall include in the notification registration information for the next scheduled LSRP examination.

7:26I-2.7 Application denial

(a) The Board shall deny an application if the applicant:

1. Did not submit a complete application pursuant to N.J.A.C. 7:26I-2.5; or
2. Did not meet any one or more of the eligibility requirements set forth in N.J.A.C.

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7:26I-2.4.

(b) When the Board denies an application, the Board shall notify the applicant of the Board's findings and reasons for denial of the application and the period of time during which an applicant cannot reapply, up to three years.

7:26I-2.8 LSRP examination

(a) With Board approval of an application, the applicant may sit for an LSRP examination according to the instructions received from the Board pursuant to N.J.A.C. 7:26I-2.6(b) and this section.

(b) The Board shall provide each candidate who registers for the LSRP examination an LSRP Licensing Examination Candidate Agreement. The LSRP Licensing Examination Candidate Agreement shall contain the standards of conduct for candidates before, during, and after the examination including, but not limited to, prohibitions against:

1. Bringing into the examination room and accessing or utilizing during the examination anything that the exam administrator designates as unauthorized material including, but not limited to, books, reference material, study aides, notes, photographic or image-capturing or copying devices, communication devices, or electronic devices;
2. Taking the examination for someone else or having someone else take the examination for the candidate;
3. Removing notes, reproductions of the examination or any part of the examination, or the actual examination or any part of the examination, from the examination room;
4. Seeking or offering help during the examination;

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5. Copying or attempting to copy examination responses of other candidates;
6. Allowing another candidate to copy his or her examination responses;
7. Disrupting the examination in any way; and
8. Disclosing or discussing the contents of the examination with anyone at any time in any form including, but not limited to, verbally, in writing, or electronic format.

(c) In order to take the LSRP examination, each candidate shall:

1. Read the LSRP Licensing Examination Candidate Agreement; and
2. Sign a statement certifying that he or she has read the LSRP Licensing Examination Candidate Agreement and agrees to abide by its terms.

(d) A candidate's violation of the LSRP Licensing Examination Candidate Agreement at any time before, during, or after the LSRP examination constitutes grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.

7:26I-2.9 Results of the LSRP examination

(a) The Board shall communicate the results of the LSRP examination to each candidate.

The Board shall not return the LSRP examination to the candidate.

(b) A candidate who does not pass the examination who wishes to retake the examination shall submit an application pursuant to N.J.A.C. 7:26I-2.4 through 2.8.

7:26I-2.10 Issuance of a license

(a) The Board shall issue a non-transferable license with a three-year term to each candidate who:

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1. Obtains a passing score on the LSRP examination; and
2. Pays the annual license fee as set forth in N.J.A.C. 7:26I-3.

(b) A license shall be effective on the date specified on the license, and shall expire pursuant to N.J.A.C. 7:26I-2.12.

(c) Upon issuance of a license, the Board will list the LSRP's name and contact information on the list of active LSRPs maintained on the Board website at www.nj.gov/lsrpboard.

(d) An LSRP shall notify the Board of any change in contact information within 15 days of the change, so that the Board may maintain current and accurate contact information for each LSRP on the Board website at www.nj.gov/lsrpboard.

7:26I-2.11 Renewal of a license

(a) In order to continue to be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP, without interruption, an LSRP shall renew his or her license prior to the expiration date of the license.

(b) In order to be eligible to renew his or her license, an LSRP shall submit an application pursuant to (c) below that demonstrates that he or she meets the following qualifications:

1. Has attended and completed the minimum environmental health and safety education and training pursuant to 29 CFR 1910.120 no more than one year prior to submission of the application for license renewal;
2. Has fulfilled the continuing education requirements set forth at N.J.A.C. 7:26I-4;
3. Has not been convicted of, or pled guilty to, an environmental crime, any similar or related criminal offense under Federal or state law, or any crime involving fraud, theft by

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deception, forgery, or any similar or related offense under Federal or state law;

4. Has not had a professional license or certification revoked by any state licensing board or any other professional licensing agency within the previous 10 years; and

5. Has no outstanding annual license fees due to the Board.

(c) An applicant for renewal of the site remediation professional license shall submit or cause to be submitted directly to the Board at least 90 days and no more than 120 days prior to the expiration of his or her license the following items:

1. A completed application form available on the Board website at

www.nj.gov/lrspboard; and

2. The renewal fee as set forth in N.J.A.C. 7:26I-3.

(d) At any time during its review of an application for license renewal, the Board may require the applicant to supplement the application with one or more of the following:

1. The applicant's appearance before the Board for a personal interview;

2. The submission of additional information the Board specifies; or

3. The provision of additional information from the Department, current and former employers or supervisors, continuing education providers, or any other person that may have information relevant to the Board's review of the application for license renewal.

(e) An application for license renewal is not complete until the Board receives each item specified in (c) and (d) above.

(f) The Board shall approve an application for license renewal if the applicant:

1. Submitted a complete application for license renewal pursuant to (e) above; and

2. Demonstrated in the application that he or she meets all of the eligibility requirements

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set forth in (b) above.

(g) When the Board approves an application for license renewal, the Board shall notify the applicant and provide the applicant with a renewed license.

(h) The Board shall deny an application for license renewal, if the applicant did not:

1. Submit a complete application for license renewal pursuant to (e) above; or
2. Meet any one or more of the eligibility requirements set forth in (b) above.

(i) When the Board denies an application for license renewal, the Board shall notify the applicant of the following:

1. The Board's findings and reasons for denial of the application and the period of time during which an applicant cannot reapply, up to three years;
2. The procedures for an applicant to request a hearing on the license renewal denial and a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/l srpboard.

(j) A pending hearing on the denial of a license renewal shall not extend the original expiration date of the license.

7:26I-2.12 Expiration of a license

(a) An LSRP's license shall immediately expire on the later of:

1. The expiration date stated on the license, if not renewed pursuant to N.J.A.C. 7:26I-2.11; or
2. Ninety days after the LSRP's receipt of the Board's annual license fee invoice, if the LSRP fails to pay the annual license fee within that 90-day period.

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(b) An individual with an expired license shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP until the license has been renewed pursuant to N.J.A.C. 7:26I-2.11 or the individual obtains a new license.

(c) No later than 15 days after the date of the expiration of the license, if not renewed, the individual whose license has expired shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that he or she is no longer an LSRP;

2. Submit an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which he or she had submitted a Notification of Retention; and

3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on.

(d) The Board shall remove all individuals with expired licenses from the list of active LSRPs on the Board website at www.nj.gov/lrspboard.

(e) An individual whose license has expired may apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date.

1. If more than 12 months have passed since the license expiration date, the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

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7:26I-2.13 Suspension of a license

(a) Whenever, on the basis of available information, the Board finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may suspend the license of the LSRP.

(b) Suspension is the temporary removal of a license. When the Board has suspended an individual's license, that individual shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP until the end of the period of suspension.

(c) An individual may resume practicing as an LSRP immediately following the last day of the suspension period, if his or her license expiration date has not yet been reached.

(d) An individual whose license has expired while suspended may apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date. If more than 12 months have passed since the license expiration date the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

(e) When issuing the suspension, the Board may impose conditions on the reinstatement of the license including, but not limited to, a requirement for earning additional continuing education credits beyond the requirements of N.J.A.C. 7:26I-4.

(f) No later than 15 days after the date of the final order of suspension, the individual whose license has been suspended shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in

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writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that for the duration of the suspension he or she will not be an LSRP;

2. Submit an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which he or she had submitted a Notification of Retention; and

3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on.

(g) The Board shall maintain a list of all LSRPs whose licenses are suspended on the Board website at www.nj.gov/lsrpboard.

7:26I-2.14 Revocation of a license

(a) Whenever, on the basis of available information, the Board finds that an LSRP has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may revoke the license of the LSRP.

(b) Revocation is the termination of a license. When the Board has revoked an individual's license, that individual shall not be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP.

(c) An individual whose license has been revoked one time may apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10 after three years, unless a shorter period is specified

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by the Board.

(d) Upon the second revocation of a license, an individual is permanently prohibited from applying for a license.

(e) If the Board determines that the conduct of the LSRP is so egregious as to pose an imminent threat to public health and safety and the environment if the LSRP is allowed to remediate contaminated sites pending a hearing on a revocation of the license, the Board may summarily suspend the license prior to the outcome of the hearing.

(f) No later than 15 days after the date of the final order of revocation, the individual whose license has been revoked shall:

1. Notify each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), that as of the date of the final order of revocation he or she is no longer an LSRP;

2. Submit an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which he or she had submitted a Notification of Retention; and

3. Provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site he or she has worked on.

(g) The Board shall maintain a list of all LSRPs whose licenses are revoked on the Board website at www.nj.gov/l srpboard.

7:26I-2.15 Inactivation of a license

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(a) An LSRP may inactivate his or her license by submitting to the Board a written certification of inactivation on the appropriate form the Board prescribes, available on the Board website at www.nj.gov/lsrpboard, which demonstrates that:

1. He or she has ceased to be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP for a specific period of time not to exceed the expiration date of his or her license;

2. His or her employment in New Jersey, if any, is not in any way related to the work typically performed by site remediation professionals, licensed or not, including, but not limited to:

i. The investigation or remediation of contaminated sites;

ii. The investigation or remediation of discharges from, or the removal of, underground storage tanks, regulated or not;

iii. The assessment of sites for environmental conditions; or

iv. The preliminary assessment or site investigation of contaminated sites for the purpose of conducting all appropriate inquiry into the previous ownership and uses of the property as provided in N.J.S.A. 58:10-23.11g;

3. He or she does not render assistance or advice to persons engaged in site remediation, including, but not limited to, site remediation professionals, licensed or not, or persons responsible for conducting the remediation;

4. He or she has notified each of his or her clients by whom he or she has been retained as an LSRP in writing, with a copy to the Board at the address in N.J.A.C. 7:26I-3.7(b), of his or her intent to become an inactive LSRP;

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5. He or she has submitted an LSRP Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms for each contaminated site for which the LSRP had submitted a Notification of Retention; and

6. He or she has provided for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on.

(b) Upon the receipt of a certification of inactivation pursuant to (a) above, the Board shall summarily inactivate the license for the requested duration by removing the LSRP's name and license number from the list of active LSRPs on the Board website at www.nj.gov/lrspboard.

(c) The inactivation of a license shall not extend the expiration of the license beyond the expiration date the Board has indicated on the license.

(d) An individual with an inactive license may apply to have the Board reactivate his or her license for the original term of the license if the license has not expired. The Board shall summarily reactivate the license, and reactivation shall occur on the date the Board relists the LSRP's name and license number on the list of active LSRPs on the Board website at www.nj.gov/lrspboard.

(e) An individual with an inactive license whose license has expired while inactive may reactivate his or her license by applying for renewal of the license pursuant to N.J.A.C. 7:26I-2.11 no later than 12 months after the license expiration date. If more than 12 months have passed since the license expiration date the individual may not apply for renewal of the license pursuant to N.J.A.C. 7:26I-2.11, but shall apply for a new license pursuant to N.J.A.C. 7:26I-2.4 through 2.10.

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(f) An individual with an inactive license shall pay the annual fee for any calendar year in which he or she is active for one or more days in the calendar year.

(g) If the Board selects an individual with an inactive license for an audit, the Board may determine whether to defer the audit until the license becomes active again. The Board shall not defer an audit or complaint investigation that is pending at the time the LSRP becomes inactive, and the inactive LSRP shall meet all obligations as set forth in N.J.A.C. 7:26I-5 and 7.

SUBCHAPTER 3. FEES

7:26I-3.1 Purpose

This subchapter identifies and describes the fees and the methodology for the calculation of fees to support all tasks associated with the Board's duties.

7:26I-3.2 Scope

(a) This subchapter contains:

1. The fees and the factors the Board uses to calculate each fee, including the:
 - i. Application fee at N.J.A.C. 7:26I-3.3;
 - ii. Renewal fee at N.J.A.C. 7:26I-3.4; and
 - iii. Annual license fee at N.J.A.C. 7:26I-3.5;
2. The requirements for the Site Remediation Professional Licensing Board Fee Calculation Report at N.J.A.C. 7:26I-3.6; and
3. The method for the payment of fees at N.J.A.C. 7:26I-3.7.

7:26I-3.3 Application fee

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(a) The Board shall annually recalculate the application fee, if the Board determines that the current fee does not cover the Board's costs to process and review license applications.

1. The Board shall calculate the application fee by multiplying the average number of hours to process and review a license application by the projected hourly salary and overhead costs of Board staff processing and reviewing the license application.

2. Beginning calendar year 2015, the application fee shall be \$400.00.

3. The Board shall provide notice in the New Jersey Register of any change to the application fee in subsequent years.

(b) The Board shall not return the application fee to an applicant, regardless of the outcome of the license application.

7:26I-3.4 Renewal fee

(a) The Board shall annually recalculate the license renewal fee, if the Board determines that the current fee does not cover the Board's costs to process and review license renewal applications.

1. The Board shall calculate the renewal fee by multiplying the average number of hours to process and review a license renewal application by the projected hourly salary and overhead costs of Board staff processing and reviewing the license renewal application.

2. Beginning calendar year 2015, the renewal fee shall be \$100.00.

3. The Board shall provide notice in the New Jersey Register of any change to the renewal fee in subsequent years.

(b) The Board shall not return the renewal fee to an applicant, regardless of the outcome of

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the license renewal application.

7:26I-3.5 Annual license fee

(a) The Board shall annually recalculate the annual license fee, if the Board determines that the current fee does not cover the Board's costs as set forth in the annual budget.

1. The Board shall set its budget by estimating the dollar amount needed to accomplish all tasks associated with the Board's duties. Such tasks include, but are not limited to:

- i. The Board's administrative functions;
- ii. Legal support of the Board;
- iii. Development and maintenance of data systems;
- iv. Development and maintenance of the Board website;
- v. Development and administration of LSRP examinations; and
- vi. Any additional tasks the Board identifies that are necessary to carry out its duties

and responsibilities as articulated in the SRRA and this chapter.

2. The Board shall project the collection amounts anticipated in the upcoming calendar year from application fees and renewal fees;

3. The Board shall subtract the projected collection amounts as described in (a)2 above from the budget estimated in (a)1 above, and divide the result by the number of LSRPs holding licenses in the current calendar year, rounding up to the nearest 10.00 dollars; or if the number of LSRPs holding licenses in the current calendar year is projected to significantly change in the upcoming calendar year, the Board shall subtract the projected collection amounts as described in (a)2 above from the budget estimated in (a)1 above, and

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divide the result by the number of LSRPs projected to be holding licenses in the upcoming calendar year, rounding up to the nearest 10.00 dollars;

4. The Board shall adjust the final annual license fee as necessary to account for any shortfall or surplus in funds from the previous calendar year.

(b) Beginning calendar year 2015, the annual license fee shall be \$900.00.

(c) The Board shall provide notice in the New Jersey Register of any change to the annual license fee in subsequent years.

(d) The Board shall invoice each LSRP for the annual license fee on or about November 1 of each year.

(e) Each LSRP shall pay to the Board the annual license fee no later than 60 days after his or her receipt of the Board's annual license fee invoice.

(f) An LSRP's license shall immediately expire 90 days after the LSRP's receipt of the Board's annual license fee invoice if the LSRP fails to pay the annual license fee within that 90-day period.

7:26I-3.6 Fee report

(a) Each calendar year, the Board shall prepare an Annual Site Remediation Professional Licensing Board Fee Calculation Report, which shall:

1. Be based on the Board's proposed budget produced pursuant to N.J.A.C. 7:26I-3.5; and
2. Include:
 - i. The factors used to calculate each fee included in this subchapter; and

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- ii. Each of the fees that shall be due and payable for the following calendar year.
- (b) Beginning October 2015, and each October thereafter, the Board shall:
1. Publish in the New Jersey Register a notice that includes:
 - i. A summary of the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board’s budget; and
 - ii. A notice that the full report is available on the Board website at www.nj.gov/lrspboard; and
 2. Post on the Board website at www.nj.gov/lrspboard the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board’s budget.
- (c) Until the first day of the calendar year following the Board’s approval and publication of the Annual Site Remediation Professional Licensing Board Fee Calculation Report and the Board’s budget, the fees shall be as follows:
1. An application fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.3;
 2. A renewal fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.4; and
 3. An annual license fee as established or recalculated pursuant to N.J.A.C. 7:26I-3.5.

7:26I-3.7 Payment of fees

- (a) Any person required to pay a fee pursuant to the SRRA or this chapter shall make payment of fees by:
1. A certified check, attorney check, personal check, or money order, made payable to “Treasurer, State of New Jersey”; or

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2. An e-check or credit card after the Board posts a notice of availability of this method of payment on the Board website at www.nj.gov/lsrpboard.

(b) Payments shall be mailed to the following address, unless otherwise indicated on the billing invoice:

New Jersey Site Remediation Professional Licensing Board
c/o New Jersey Department of Environmental Protection
Site Remediation Program
Office of the Assistant Commissioner
PO Box 420
Mail Code 401-06
401 East State Street
Trenton, NJ 08625-0420

SUBCHAPTER 4. CONTINUING EDUCATION

7:26I-4.1 Purpose

(a) This subchapter establishes:

1. The mandatory continuing education requirements to be met by each LSRP during each three-year license term in order to renew his or her license; and
2. The Board's procedure to approve continuing education credit for educational programs and activities.

7:26I-4.2 Scope

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(a) This subchapter contains provisions that govern the:

1. LSRP continuing education requirements at N.J.A.C. 7:26I-4.3;
2. Board approval of continuing education credit for educational programs at N.J.A.C. 7:26I-4.4; and
3. Board approval of continuing education credit for educational activities at N.J.A.C. 7:26I-4.5.

7:26I-4.3 LSRP continuing education requirements

(a) Each LSRP shall complete 36 continuing education credits during each three-year license term, as follows:

1. Three continuing education credits in ethics education;
2. Ten continuing education credits in regulatory education;
3. Fourteen continuing education credits in scientific and technical education; and
4. Nine additional continuing education credits in any of the above areas of education.

(b) Each LSRP shall earn the required 36 continuing education credits by:

1. Attending Board-approved continuing education programs; or
2. Participating in Board-approved continuing education activities, as described in N.J.A.C. 7:26I-4.5.

(c) No more than 18 continuing education credits per three-year license term may be earned from Board approved alternative verifiable learning format programs.

(d) No more than 18 continuing education credits per three year license term may be earned from Board-approved continuing education activities.

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(e) An LSRP may not earn continuing education credits by attending or instructing the same continuing education program more than once during each three-year license term.

(f) No LSRP may apply continuing education credits earned during one license term toward another license term.

(g) It is the responsibility of the LSRP to:

1. Track fulfillment of the continuing education requirements described in this subchapter; and
2. Demonstrate fulfillment of continuing education requirements when applying for license renewal.

7:26I-4.4 Board approval of continuing education programs

(a) In order for the Board to approve a continuing education program for continuing education credits, the Board shall find that the program:

1. Has significant intellectual, educational, or practical content;
2. Has as the primary purpose to increase each participant's professional competence as an LSRP;
3. Is developed and conducted by a person or persons the Board deems qualified, based on practical and academic experience; and
4. Constitutes an organized program of learning that includes subject matter related to the:
 - i. Regulation of site remediation;
 - ii. Scientific and technical principles of site remediation; and/or

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iii. Ethical obligations of LSRPs.

(b) In addition to the requirements in (a) above:

1. Continuing education approved for ethics credit shall have educational content that is designed to advance the LSRP's understanding of the tenets of ethical conduct with respect to the provision of professional services as an LSRP in New Jersey. Approvable ethics credit shall include education regarding the differences between ethical and unethical behavior and shall incorporate the rules of professional conduct of LSRPs found in the SRRA and this chapter with direct examples of situations that an LSRP may face during performance of his or her duties at contaminated sites in New Jersey;

2. Continuing education approved for regulatory credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate site remediation in New Jersey in compliance with applicable statutes and rules. Approvable regulatory credit shall include education regarding understanding and complying with the broad range of statutory and regulatory requirements applicable to site remediation in New Jersey; and

3. Continuing education approved for scientific and technical credit shall have educational content that is designed to advance the ability of an LSRP to competently perform, supervise, and coordinate the scientific and technical components of site remediation. Approvable scientific and technical credit shall include education regarding site remediation, although it may include more general scientific and technical principles if they are clearly relevant to the scientific and technical components of site remediation.

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(c) The provider of a continuing education program or an LSRP may request Board approval of a continuing education program by submitting the application found on the Board website at www.nj.gov/lsrpboard. The applicant shall submit a completed application, including, but not limited to:

1. A full description of the program, including the title, name of the provider, and date(s), time(s), and location(s) that the program will be or was offered;
2. The number and type of continuing education credits requested;
3. A written outline or syllabus of the continuing education content;
4. A written statement describing the continuing education and establishing its relevance to the regulation of site remediation, scientific and technical principles of site remediation, and/or ethical obligations of LSRPs in New Jersey;
5. The credentials of the instructor(s);
6. A statement that the provider will or did:
 - i. Utilize sign-in and sign-out sheets to verify attendance;
 - ii. Maintain the sign-in and sign-out sheets for a minimum of seven years; and
 - iii. Provide the sign-in and sign-out sheets to the Board for inspection at the Board's request;
7. A statement that the provider will or did provide certificates of attendance to each attendee no later than 30 days after successful completion of the continuing education program;
8. A statement that the provider will or did, at the completion of the continuing education program, conduct and retain for the Board's inspection for a period of three years a

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confidential evaluation of the continuing education and the continuing education instructor(s);

9. A statement that the provider will or did allow the Board or its authorized representatives, without charge or need for advance registration or notice, to monitor the program without earning any continuing education credits;

10. For an in-person attendance format program, a statement describing the provider's policy on partial credit when an attendee misses a portion of the continuing education program; and

11. For an alternative verifiable learning format program, an examination or other mechanism that the Board shall approve on an individual basis that an LSRP taking the program shall successfully complete in order to verify attendance and thereby earn continuing education credits.

(d) At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

(e) The Board shall determine the number and type(s) of continuing education credits to approve for each continuing education program on an individual basis.

(f) The Board shall post on the Board website at www.nj.gov/lsrpboard, a table of each Board-approved continuing education program and the number and type(s) of continuing education credits approved for each program.

7:26I-4.5 Board approval of continuing education activities

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(a) An LSRP may request approval of continuing education credits for instructing a continuing education program that the Board has approved pursuant to N.J.A.C. 7:26I-4.4 according to the following requirements:

1. The LSRP shall make the request no later than 90 days after the date of the program, and shall include the information on the continuing education application for instructors, which is found on the Board website at www.nj.gov/lsrpboard. Such information shall include, but is not limited to:

- i. A full description of the program, including the title, name of the provider, and date(s), time(s), and location(s) of the program;
- ii. The number and type of continuing education credits requested;
- iii. A written outline or syllabus of the continuing education content; and
- iv. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for instructing each continuing education program on an individual basis.

(b) An LSRP may request approval of continuing education credits for preparing and giving a presentation according to the following requirements:

1. The LSRP shall make the request no later than 90 days after the date of the presentation, and shall include the information on the continuing education application for presenters, which is found on the Board website at www.nj.gov/lsrpboard. Such information shall include, but is not limited to:

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i. A full description of the presentation, including the title, name of the provider, and date(s), time(s), and location(s) of the presentation;

ii. The number and type of continuing education credits requested;

iii. A copy of the presentation; and

iv. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

3. The Board shall determine the number and type(s) of continuing education credits to approve for preparing and giving each presentation on an individual basis.

(c) An LSRP may request approval of continuing education credits for authoring a paper published in a professional publication or peer reviewed proceedings of a conference.

1. The LSRP shall make the request no later than 90 days after the date of publication and shall include the information on the continuing education application for publications, which is found on the Board website at www.nj.gov/lsrpboard. Such information shall include, but is not limited to:

i. A full description of the journal or proceedings;

ii. The number and type of continuing education credits requested;

iii. A copy of the paper;

iv. The date of publication; and

v. The credentials of the LSRP.

2. At any time during its review of an application, the Board may require the applicant to supplement the application with additional information as the Board may specify.

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3. The Board shall determine the number and type(s) of continuing education credits to approve for authoring each paper published in a professional publication or peer reviewed proceedings of a conference on an individual basis.

SUBCHAPTER 5. AUDIT PROCEDURES

7:26I-5.1 Purpose

(a) This subchapter:

1. Describes the Board's process to audit the performance of an LSRP to determine compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto; and

2. Establishes the audit compliance requirements for an LSRP.

(b) The Board's auditing of the submissions and conduct of LSRPs is separate and distinct from the Department's inspection and review of documents and information submitted by an LSRP and review of the performance of a remediation pursuant to N.J.S.A. 58:10C-21.

7:26I-5.2 Scope

(a) This subchapter establishes:

1. The Board's process for selecting LSRPs for audit at N.J.A.C. 7:26I-5.3;

2. The Board's audit review process at N.J.A.C. 7:26I-5.4;

3. The outcome of an audit at N.J.A.C. 7:26I-5.5; and

4. The consequences to an LSRP who fails to cooperate with an audit at N.J.A.C. 7:26I-5.6.

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7:26I-5.3 Selection of LSRPs to be audited

(a) The Board shall calculate the number of LSRPs to be audited at or prior to the beginning of each calendar year.

(b) The Board shall audit at least 10 percent of the total number of LSRPs in each calendar year.

(c) The Board shall not divulge to anyone outside of the Audit Review Team the name of an LSRP being audited, until the audit is complete.

(d) An LSRP under Board investigation pursuant to N.J.A.C. 7:26I-7 shall be exempt from an audit until such time as the investigation is complete.

(e) The Board shall not audit an LSRP within 24 months of the date of completion of his or her previous audit.

7:26I-5.4 Audit review process

(a) Except as provided in (b) below, each month the Audit Committee shall assemble an Audit Review Team consisting of two or more Board members, including at least one Board member who is not an LSRP and at least one Board member who is an LSRP, to conduct the audits for the month.

(b) For audits of LSRPs who are Board members, the Audit Review Team shall consist of four Board members, including:

1. The Chairperson of the Board or the State Geologist;
2. A Board member who represents the environmental community;

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3. The Board member who represents the business community or the Board member that represents the academic community; and

4. A Board member who is an LSRP.

(c) Should any Board member designated by (b) above be unable to serve on the Audit Review Team, the Audit Committee may select any other Board member as a replacement for that Board member, provided that the Audit Review Team includes at least one Board member who is not an LSRP and at least one Board member who is an LSRP.

(d) Prior to serving on an Audit Review Team, each member shall certify that he or she is:

1. Free of conflict with each LSRP to be audited; and

2. Can fairly and objectively conduct the audits.

(e) If any Board member has a conflict with the LSRP to be audited or cannot fairly and objectively conduct the audit, the Audit Committee may select any other Board member as a replacement for that Board member, provided that the Audit Review Team includes at least one Board member who is not an LSRP and at least one Board member who is an LSRP.

(f) Following selection of an LSRP to be audited, the Board staff shall notify the LSRP of the commencement of the audit. The notification shall include an audit questionnaire, which is found on the Board website at www.nj.gov/lsrpboard, that the LSRP shall complete and return to the Board within 30 days of receipt.

(g) At any time during its review, the Audit Review Team may require the LSRP being audited to supplement the questionnaire with additional information as the Board may specify.

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(h) At any time during its review, the Audit Review Team may request information from the Department, current and former employers or supervisors of the LSRP being audited, continuing education providers, or any other person that may have information relevant to the audit.

(i) The Audit Review Team shall review the submissions and the conduct of the LSRP to:

1. Evaluate the LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto; and

2. Determine that the LSRP has not knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

7:26I-5.5 Outcome of an audit

(a) Upon conclusion of its review, the Audit Review Team shall determine whether the LSRP's submissions and conduct have met the standards in N.J.A.C. 7:26I-5.4(i).

(b) Upon determining that the LSRP has met the standards in N.J.A.C. 7:26I-5.4(i), the Audit Review Team shall report to the Audit Committee:

1. The name of the LSRP audited;
2. The Audit Review Team's findings; and
3. A recommendation that the audit review is complete.

(c) Upon receiving a recommendation that an audit review is complete, the Audit Committee shall determine to:

1. Conclude the audit; or
2. Refer the audit back to the Audit Review Team for further review.

(d) Upon the Audit Committee's determination that the audit is concluded:

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1. The Audit Committee shall report to the Board the name of the LSRP;
2. The Board shall notify the LSRP of the outcome of the audit; and
3. The Board shall post the LSRP's name and audit outcome on the Board website at www.nj.gov/lrspboard.

(e) Upon determining that the LSRP has not met the standards in N.J.A.C. 7:26I-5.4(i), the Audit Review Team shall submit a report to the Audit Committee stating:

1. The name of the LSRP audited;
2. The Audit Review Team's findings; and
3. A recommendation that the LSRP be further investigated.

(f) Upon receiving a recommendation that the LSRP be further investigated, the Audit Committee shall refer the audit to the Professional Conduct Committee, which shall convene a Complaint Review Team to commence an investigation pursuant to N.J.A.C. 7:26I-7.5.

7:26I-5.6 Failure to cooperate with an audit

(a) The LSRP, the person responsible for conducting the remediation, and any other person having information regarding an LSRP's submissions and conduct shall cooperate with the Board in the conduct of an audit and shall provide any information the Board requests.

(b) Failure to cooperate with the Board in the conduct of an audit shall be grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.

SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT

7:26I-6.1 Purpose

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This subchapter sets forth the rules of professional conduct that an individual shall implement in the performance of professional services as an LSRP.

7:26I-6.2 Highest priority

An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

7:26I-6.3 Professional competency

(a) An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate technical guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:

1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12;
2. The Remediation Standards rules at N.J.A.C. 7:26D;
3. The indoor air standards adopted by the Department of Health pursuant to N.J.S.A. 52:27D-130.4;
4. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
5. The Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C;
6. The mandatory remediation timeframes and expedited site-specific timeframes adopted by the Department pursuant to N.J.S.A. 58:10C-28;
7. The presumptive remedies adopted by the Department pursuant to N.J.S.A. 58:10B-12; and
8. Any other applicable standards, rules, or regulations adopted pursuant to law.

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(b) An LSRP shall apply any available and appropriate technical guidance concerning site remediation as issued by the Department.

(c) When there is no specific technical guidance issued by the Department, or in the judgment of the LSRP the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, and justifies the use of the guidance or methods that were utilized:

1. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and
2. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of public health and safety and the environment.

(d) An LSRP shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.

(e) An LSRP shall not provide professional services outside his or her areas of professional competence, unless the LSRP has relied upon the technical assistance of another professional whom the LSRP has reasonably determined to be qualified by education, training, and experience.

7:26I-6.4 Engineering services

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An LSRP shall not perform services that constitute the practice of professional engineering, unless the LSRP is a professional engineer licensed in the State of New Jersey.

7:26I-6.5 Notification of retention and release

(a) An LSRP retained by a person responsible for conducting the remediation shall submit an LSRP Notification of Retention or Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms no later than 15 days after:

1. The person responsible for conducting the remediation retains the LSRP; and
2. The person responsible for conducting the remediation releases the LSRP from responsibility for remediation, if the release occurs prior to issuance of the RAO.

(b) When an LSRP decides to terminate his or her position as the LSRP responsible for the remediation of a contaminated site prior to issuing an RAO, the LSRP shall, within 15 days after terminating his or her position:

1. Communicate this directly in writing to the person responsible for conducting the remediation; and
2. Submit a Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms.

7:26I-6.6 Correcting deficiencies

An LSRP shall, in accordance with timeframes the Department establishes, correct any deficiency the Department identifies and resubmit the document to the Department.

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7:26I-6.7 Responsibility of successor LSRP

(a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, licensed or not, provided that the LSRP:

1. Reviews all available documentation on which he or she relies;
2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and
3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

(b) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, shall correct all deficiencies in a document submitted by the previous site remediation professional including, but not limited to, those the Department identifies, in accordance with timeframes the Department establishes.

(c) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, before the issuance of a final remediation document, and who learns of material facts, data, or other information concerning any phase of the remediation for which a report was submitted to the Department and the material facts, data, or other information were not disclosed in the report, shall promptly notify the LSRP's client and the Department in writing of those material facts, data, or other information and circumstances.

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7:26I-6.8 Exercise of independent professional judgment

(a) An LSRP shall exercise independent professional judgment and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, and order adopted or issued pursuant thereto.

(b) An LSRP shall notify the person responsible for conducting the remediation in writing when in his or her professional judgment based on site history any one or more applicable regulatory timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.

(c) An LSRP shall notify the person responsible for conducting the remediation and the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.

(d) An LSRP shall make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports, and other information evidencing conditions at a contaminated site for which he or she is responsible that are in the possession of the owner of the property, the Department, or that are otherwise available, and identify and obtain whatever additional data and other information as the LSRP deems necessary.

(e) An LSRP shall disclose and explain in any document submitted to the Department any facts, data, information, qualifications, or limitations the LSRP knows that do not support the conclusions reached in the document.

7:26I-6.9 Responsibility to report an immediate environmental concern

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(a) If an LSRP identifies a previously unreported condition at a contaminated site that in his or her independent professional judgment is an immediate environmental concern, the LSRP shall:

1. Immediately verbally advise the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition; and
2. Immediately notify the Department of the condition by calling the Department's telephone hotline at 1-877-WARNDEP.

7:26I-6.10 Responsibility to report a discharge

(a) If an LSRP obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred on a contaminated site for which he or she is responsible, the LSRP shall:

1. Immediately notify the person responsible for conducting the remediation of the discharge and of that person's duty to notify the Department of the discharge;
2. Immediately notify the Department of the discharge by calling the Department's telephone hotline at 1-877-WARNDEP; and
3. Immediately notify any other LSRP that is working on the contaminated site of the discharge.

(b) An LSRP is considered to be responsible for a contaminated site if he or she has been hired by a person responsible for conducting the remediation at that site.

(c) The provisions of this section shall not apply to an LSRP who has been hired by any person who:

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1. Does not own the contaminated site;
2. Conducts a preliminary assessment or site investigation of the contaminated site for the purpose of conducting all appropriate inquiry into the previous ownership and uses of the property as provided in N.J.S.A. 58:10-23.11g; and
3. Has not discharged a hazardous substance at the site or is not in any way responsible for a hazardous substance discharged at the site pursuant to N.J.S.A. 58:10-23.11g.

7:26I-6.11 Deviation from workplan by client

If an LSRP learns of a client's action or decision that results in a deviation from the remedial action workplan or other report concerning the remediation, the LSRP shall promptly notify the client and the Department, in writing, of the deviation.

7:26I-6.12 Client confidentiality

An LSRP shall not reveal information obtained in a professional capacity, except as may be authorized or required by law, without the prior consent of the client, if the client has notified the LSRP, in writing, that the information is confidential. The provisions of this section shall not apply to information that is in the public domain.

7:26I-6.13 New information after submitting report

An LSRP who learns of material facts, data, or other information subsequent to the completion of a report concerning any phase of remediation, which would result in a report with

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material differences from the report submitted, shall promptly notify the client and the Department in writing of those facts, data, information, and circumstances.

7:26I-6.14 Responsibility to disassociate from unscrupulous persons

An LSRP shall not allow the use of his or her name by a person, and shall not associate with a person in a business venture, if the LSRP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP.

7:26I-6.15 Responsibility in Board and Department investigations

(a) An LSRP shall cooperate in an investigation by the Board or the Department by promptly furnishing, in response to requests, orders, or subpoenas, any information the Board or the Department, or persons duly authorized by the Board or the Department, deems necessary to perform its duties.

(b) An LSRP shall, in the time and manner the Board or the Department prescribes, provide all information the Board or the Department requests including, but not limited to:

1. The LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto,
2. A description of and the status of any remediation the LSRP has participated in including, but not limited to:
 - i. Investigative and remedial activities completed to date;

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- ii. Investigative and remedial activities required or planned to be completed in the future;
- iii. The LSRP's role in the remediation;
- iv. Any other person's role in the remediation;
- v. Each natural resource or environmental media included in the investigation or remediation;
- vi. Data and information collected or available concerning the remediation;
- vii. A projection of the cost for investigative and remediation activities required or planned to be completed in the future; and
- viii. Any information that an LSRP may have that any person has violated (c) below.

(c) In response to a Board or Department investigation an LSRP shall not:

- 1. Knowingly make a false statement of material fact;
- 2. Fail to disclose a fact necessary to correct a material misunderstanding known by the LSRP to have arisen in the matter;
- 3. Knowingly and materially falsify, tamper with, alter, conceal, or destroy any data, documents, records, remedial systems, or monitoring devices that are relevant to the investigation, without obtaining the prior approval of the Department; or
- 4. Knowingly allow or tolerate any employee, agent, or contractor of the LSRP to engage in any of the foregoing activities.

7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinate LSRP

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(a) An LSRP shall be jointly responsible for a violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto committed by another LSRP whose work he or she supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another LSRP under his or her supervision;
2. The LSRP knows that the professional services constitute a violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; and
3. The LSRP fails to take reasonable steps to avoid or mitigate the violation.

7:26I-6.17 Duty to comply with Board directives regarding disciplinary matters

An LSRP shall comply with all conditions the Board imposes as a result of a license suspension, revocation, or other Board disciplinary proceeding.

7:26I-6.18 Duty regarding client communications

(a) An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by promptly providing the client or prospective client with written documentation of these assumptions, limitations, or qualifications.

(b) An LSRP shall inform a client of:

1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which the client has hired the LSRP;

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2. The dates by which each component of the remediation shall be completed in order to meet the timeframes in (b)1 above; and

3. The penalties and consequences set forth in applicable statutes and regulations, if the timeframes in (b)1 above are not met.

7:26I-6.19 Duty regarding public communications

(a) An LSRP shall respond to public inquiries for information when the person responsible for conducting the remediation designates the LSRP as the point of contact for public inquiries pursuant to N.J.A.C. 7:26C-1.7(o).

(b) Information that the LSRP shall provide, when his or her client has designated the LSRP as the point of contact for the public pursuant to (a) above, shall include:

1. Information that is required to be provided to the public pursuant to N.J.A.C. 7:26C-1.7;
2. Information that has been submitted to the Department; and
3. Any additional information that is important for the public to know in order to protect their health and safety.

(c) An LSRP shall not communicate to the public information that he or she knows is false, inaccurate, misleading, or incomplete. An LSRP shall be deemed to have provided incomplete information when he or she withholds information that is encompassed within (b) above.

(d) The client confidentiality requirements of N.J.A.C. 7:26I-6.12 apply to this section.

7:26I-6.20 LSRP shall not induce or threaten based on connection to agency or official

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An LSRP shall not state or imply, as an inducement or a threat to a client or prospective client, an ability to improperly influence a government agency or official.

7:26I-6.21 Prohibition against misrepresentation

(a) In any description of qualifications, experience, or ability to provide services, an LSRP shall not knowingly:

1. Make a material misrepresentation of fact;
2. Omit a fact when the omission results in a materially misleading description; or
3. Make a statement that, in the Board's opinion, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules, or regulations, including the SRRA and any rule, regulation, or order adopted or issued pursuant thereto.

7:26I-6.22 Duty to notify even if no longer employed by client

An LSRP shall provide any notification to the Board and the Department required pursuant to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto even if the client discharges the LSRP, or the LSRP discharges himself or herself, prior to providing the notification.

7:26I-6.23 Conflict of interest

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(a) An LSRP shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting, unless the circumstances are fully disclosed and agreed to by all persons engaging the LSRP.

(b) An LSRP shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the LSRP is providing remediation services.

(c) An LSRP shall not allow any ownership interest, compensation, or promise of continued employment, of the LSRP or any immediate family member, to affect the professional services the LSRP provides.

7:26I-6.24 Certification

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP has:

1. Managed, supervised, or performed the work that is the basis of the submission;
2. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or
3. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable, pursuant to N.J.A.C. 7:26I-6.7.

(b) For documents that the person responsible for conducting the remediation submits to the Department that require LSRP certification, the LSRP shall certify that:

1. The work was performed;
2. The LSRP has:

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- i. Managed, supervised, or performed the work that is the basis of the submission;
 - ii. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or
 - iii. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable pursuant to N.J.A.C. 7:26I-6.7; and
3. The work and the submitted documents conform to, and are consistent with, the remediation requirements in N.J.A.C. 7:26I-6.3(a).

(c) An LSRP shall certify electronic submissions he or she makes to the Department concerning the remediation of a contaminated site. The LSRP shall attest that no other person is authorized or able to use any password, encryption method, or electronic signature that the Board or the Department has provided to the LSRP.

7:26I-6.25 Response action outcome

(a) Upon completion of the remediation, the LSRP shall not issue an RAO to the person responsible for conducting the remediation until:

1. In the LSRP's opinion, the contaminated site has been remediated so that it is in compliance with all applicable statutes, rules, and regulations protective of public health and safety and the environment; and
2. The person responsible for conducting the remediation has paid to the Department all fees and oversight costs.

(b) The LSRP shall file the RAO with the Department no later than 30 days after issuing it to the person responsible for conducting the remediation.

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7:26I-6.26 Direct oversight

For any contaminated site subject to direct oversight pursuant to the SRRA and N.J.A.C.

7:26C-14, the LSRP shall provide all submissions concerning the remediation that the Department requires simultaneously to the Department and the person responsible for conducting the remediation.

7:26I-6.27 Maintenance of data, documents, records, and information

(a) An LSRP shall maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on including, but not limited to, technical records, contractual documents, raw sampling data, and monitoring data. This obligation exists whether or not the data, documents, records, and information concerning remediation activities at the contaminated site were developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors, or attorneys.

1. The period of time during which an LSRP shall maintain all data, documents, records, and information concerning remediation activities at a contaminated site shall be a minimum of 10 years following the later of the following dates:

- i. The date that the LSRP submits a notification of dismissal to the Department; or
- ii. The date that the LSRP issues his or her last area of concern specific or entire site RAO for the site.

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(b) No one, including without limitation an LSRP's employer and/or clients, shall restrict the LSRP from personally maintaining and preserving all data, documents, records, and information specified in (a) above in the format and location that the LSRP chooses.

7:26I-6.28 Cooperation with Department review of remediation

(a) An LSRP shall promptly provide any data, documents, records, and information the Department requests to conduct a review of the remediation of a contaminated site pursuant to N.J.S.A. 58:10C-21.

(b) Unless the Department directs otherwise, the LSRP may continue to remediate the contaminated site while the Department conducts any inspection or additional review of documents pursuant to N.J.S.A. 58:10C-21.

SUBCHAPTER 7. DISCIPLINARY PROCEEDINGS

7:26I-7.1 Purpose

(a) This subchapter describes the procedures the Board shall follow to:

1. Investigate complaints against any person suspected of violating the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or knowingly making any false statement, representation, or certification in any document or information submitted to the Board or the Department;

2. Take disciplinary action against any person the Board finds to have violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or to have knowingly

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made any false statement, representation, or certification in any document or information submitted to the Board or the Department; and

3. Maintain on the Board website a record of the disposition of complaints and provide the public with information upon request.

7:26I-7.2 Scope

(a) This subchapter governs the:

1. Filing of a complaint at N.J.A.C. 7:26I-7.3;
2. Board's determination to investigate a complaint at N.J.A.C. 7:26I-7.4;
3. Board's investigation of a complaint at N.J.A.C. 7:26I-7.5;
4. Board's actions in response to a complaint at N.J.A.C. 7:26I-7.6; and
5. Board's actions in response to any person's violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto at N.J.A.C. 7:26I-7.7, which include license suspension or revocation (N.J.A.C. 7:26I-7.8), issuance of an administrative order (N.J.A.C. 7:26I-7.9), and issuance of a civil administrative penalty (N.J.A.C. 7:26I-7.10).

7:26I-7.3 Filing of complaint

(a) Any person may file a complaint with the Board alleging that a person has:

1. Violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; or
2. Knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

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(b) A person shall make a complaint to the Board on the form available on the Board website at www.nj.gov/lsrpboard.

7:26I-7.4 Board's determination to investigate complaint

(a) Upon receipt of a complaint, Board staff shall:

1. Acknowledge receipt of the complaint to the complainant;
2. Redact the identities of the subject of the complaint and the complainant; and
3. Forward the complaint with the identities of the subject of the complaint and the complainant redacted to the Professional Conduct Committee.

(b) The Professional Conduct Committee shall review each complaint and determine if there are grounds to investigate the complaint.

(c) If the Professional Conduct Committee finds grounds to investigate the complaint it shall assemble a Complaint Review Team consisting of two or more Board members, including at least one Board member who is not an LSRP and at least one Board member who is an LSRP, to investigate the complaint.

(d) If the Professional Conduct Committee finds there are no grounds to investigate the complaint, it shall refer the complaint to the Board with a recommendation that the complaint be dismissed.

1. If the Board decides to dismiss the complaint the Board shall:

- i. Notify the subject of the complaint and the complainant that the complaint has been dismissed; and

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ii. Publish a summary of the complaint, including the reason(s) for dismissal on the Board website at www.nj.gov/lsrpboard.

2. If the Board decides to investigate the complaint despite the Professional Conduct Committee's recommendation to dismiss the complaint, the Board shall remand the complaint to the Professional Conduct Committee for investigation pursuant to N.J.A.C. 7:26I-7.5.

7:26I-7.5 Board's investigation of complaint

(a) Upon the convening of a Complaint Review Team pursuant to N.J.A.C. 7:26I-7.4(c), the Board staff shall inform the Complaint Review Team of the identities of the subject of the complaint and the complainant.

(b) Each Complaint Review Team member shall certify that he or she is free of conflict with the subject of the complaint and the complainant, and can fairly and objectively investigate the complaint.

(c) The Board staff shall notify the subject of the complaint that a complaint has been received. The notification letter shall include:

1. The name of the complainant;
2. A copy of the complaint form; and
3. A request for information and a response to the allegations of the complaint.

(d) If the Complaint Review Team determines that the investigation of the complaint could be undermined by notifying the subject of the complaint, the Complaint Review Team may delay notification until a later date.

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(e) The Complaint Review Team shall take such actions it deems necessary to thoroughly investigate the allegations of the complaint. The Complaint Review Team may expand its investigation beyond the allegations of the complaint to investigate whether the subject of the complaint has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department.

(f) The Complaint Review Team has the authority to take any one or more of the following actions:

1. Request, order, or subpoena the subject of the complaint, the complainant, and any other person that may have information regarding the facts of the complaint to:
 - i. Submit to questioning or interviews;
 - ii. Produce data, documents, records, and information;
 - iii. Respond to inquiries from the Complaint Review Team; and
 - iv. Make sites, remedial systems, monitoring devices, or other equipment available for inspection;
2. Enter, at reasonable times and in a reasonable manner, any known or suspected site, vessel, or other location, whether public or private, for the purpose of investigating, sampling, inspecting, or copying any records, condition, equipment, practice, or property relating to activities subject to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto. In the event entry is denied or the Board does not wish to provide prior notice, the Board shall seek a warrant authorizing entry before entering the site; and

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3. Seize any records, equipment, property, or other evidence relating to activities subject to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto when the Complaint Review Team has reason to believe that any person has made fraudulent representations to the Board or the Department or has destroyed or concealed evidence.

(g) The Complaint Review Team may review information from other persons regarding an LSRP that is the subject of the complaint including, but not limited to:

1. Records from other cases that the LSRP is or was involved in;
2. Prior complaints; and
3. Prior disciplinary actions.

(h) Upon completion of its investigation, the Complaint Review Team shall prepare and submit a report to the Professional Conduct Committee with the identities of the subject of the complaint and the complainant redacted, which shall contain the following information:

1. A summary of the complaint;
2. An opinion as to the validity of the complaint;
3. A statement of the Complaint Review Team's findings of fact;
4. A statement of the Complaint Review Team's findings with respect to any violation(s); and
5. A recommendation, if applicable, as to the type of disciplinary action along with a basis for this recommendation.

(i) The Professional Conduct Committee shall review the findings and recommendations of the Complaint Review Team and present the Complaint Review Team's report and its own recommendation to the Board in executive session.

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(j) In the executive session the Professional Conduct Committee shall not disclose to the Board the identity of the complainant and the subject of the complaint.

7:26I-7.6 Board's actions in response to complaint

(a) The Board shall review the findings and recommendations of the Complaint Review Team and Professional Conduct Committee in executive session.

(b) The Board shall take one of the following actions with regard to the complaint:

1. Refer the complaint back to the Professional Conduct Committee for further investigation of specific issues;

2. Determine that no violation has been identified; or

3. Determine that the subject of the complaint has committed one or more violations of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made one or more false statements, representations, or certifications in any document or information submitted to the Board or the Department.

(c) Upon a determination pursuant to (b)3 above, the Board may exercise any of the remedies provided by the SRRA or this chapter.

(d) The identities of the subject of the complaint and complainant shall remain confidential until the Board makes a determination pursuant to (b)2 or 3 above.

(e) Upon the Board's determination pursuant to (b)2 or 3 above, a summary of the complaint and its disposition shall be made available on the Board website at www.nj.gov/lsrcpboard.

7:26I-7.7 Board's actions in response to violation

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(a) Whenever the Board determines that a person has violated the SRRA or any rule, regulation, or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any document or information submitted to the Board or the Department, the Board may:

1. Suspend or revoke the license of an LSRP or impose another sanction on the LSRP;
2. Institute a civil action in Superior Court;
3. Issue an administrative order;
4. Bring an action in Superior Court for a civil penalty;
5. Assess a civil administrative penalty; or
6. Petition the Attorney General to bring a criminal action.

(b) The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy.

7:26I-7.8 License suspension or revocation

(a) In each notice of intent to suspend or revoke the license of an LSRP or impose another sanction, the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;
3. Specify the license to be suspended or revoked, or the sanction to be imposed;
4. If suspension, specify the term of suspension and any conditions on the reinstatement of the license;

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5. Order the LSRP to provide for the maintenance and preservation of all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on;

6. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and

7. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard.

7:26I-7.9 Administrative order

(a) In each administrative order the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;

2. Specify the provision(s) of the statute, rule, regulation, or order violated;

3. Order the violator to comply with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, including, but not limited to, the provision(s) violated;

4. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and

5. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrpboard.

(b) In each administrative order, when determined to be required as part of the corrective action, the Board may:

1. Require the production or analysis of samples;

2. Require the production of data, documents, records, and information; and

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3. Impose restraints on or require action by the violator.

(c) In each administrative order, when determined to be appropriate, the Board may assess and recover the costs of:

1. Any investigation incurred by the Board and any other State agency; and
2. Preparing and successfully enforcing a civil administrative penalty pursuant to this subchapter.

(c) Issuance of an order pursuant to this section shall not preclude, and shall not be deemed an election to forego, any action to suspend or revoke a license, recover damages, or seek injunctive relief, civil, or criminal penalties, or any other remedy.

7:26I-7.10 Civil administrative penalty

(a) In each civil administrative penalty the Board shall:

1. Identify the specific act(s) or omission(s) constituting the violation;
2. Specify the provision(s) of the statute, rule, regulation, or order violated;
3. State the amount of the civil penalty to be assessed, which shall not be more than \$10,000 for a first violation and not more than \$20,000 for every subsequent violation;
4. Affirm the opportunity to request a hearing and the procedures for requesting a hearing; and
5. Include a copy of the Board Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/lsrcboard.

SUBCHAPTER 8. ADJUDICATORY PROCEEDINGS

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7:26I-8.1 Purpose

The purpose of this subchapter is to establish the procedures for requesting an adjudicatory hearing to appeal any of the Board's determinations set forth in N.J.A.C. 7:26I-8.3(a).

7:26I-8.2 Scope

(a) This subchapter contains provisions that govern the procedures for:

1. Requesting and conducting an adjudicatory hearing at N.J.A.C. 7:26I-8.3;
2. Denying a request for an adjudicatory hearing at N.J.A.C. 7:26I-8.4; and
3. Issuing final orders and other Board decisions at N.J.A.C. 7:26I-8.5.

7:26I-8.3 Procedures for requesting and conducting an adjudicatory hearing

(a) A person may request an adjudicatory hearing to appeal any of the following Board actions:

1. A denial of a person's application for an LSRP license renewal pursuant to N.J.A.C. 7:26I-2.11;
2. License suspension or revocation, or other sanction, pursuant to N.J.A.C. 7:26I-2.13, 2.14, and 7.8;
3. An issuance of an administrative order pursuant to N.J.A.C. 7:26I-7.9; and
4. An assessment of a civil administrative penalty pursuant to N.J.A.C. 7:26I-7.10.

(b) The person requesting a hearing pursuant to (a) above shall:

1. Have 35 days after receipt of notification of the Board's action within which to request a hearing;

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2. Comply with all procedures in (c) below; and
3. Deliver all items specified in (c) below to the following:

New Jersey Site Remediation Professional Licensing Board
c/o New Jersey Department of Environmental Protection
Site Remediation Program
Office of the Assistant Commissioner
P.O. Box 420
Mail Code 401-06
401 East State Street
Trenton, NJ 08625-0420

(c) A person requesting a hearing shall do so in writing on the Administrative Hearing Request Checklist, which is found on the Board website at www.nj.gov/l srpboard, and include at a minimum each item specified below:

1. The disciplinary document, disciplinary document number, and dates issued and received;
2. The name, mailing address, email address, and telephone number of the petitioner and petitioner's attorney;
3. The time required for the hearing;
4. Whether a barrier-free location is required;
5. A list of all specific issues being appealed;
6. A document in which the petitioner admits, denies, or makes a statement of insufficient knowledge for each specified paragraph in the disciplinary document;

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7. A list of all information and copies of written documents the petitioner intends to rely on to support the appeal of the disciplinary document;

8. A list of all defenses, stated in short and plain terms, to each of the findings in specified paragraphs in the disciplinary document; and

9. A statement of willingness to negotiate settlement with the program issuing the disciplinary document or with mediation through the Department's Office of Dispute Resolution.

(d) The Board shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26I-8.4 Procedures for denying a request for an adjudicatory hearing

(a) The Board shall determine whether to grant an administrative hearing based upon:

1. The petitioner's compliance with N.J.A.C. 7:26I-8.3; and

2. The standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The Board shall deny the hearing request if the petitioner does not:

1. Submit a request within 35 days after receipt of notification of the Board's action; or

2. Comply with the requirements for requesting a hearing at N.J.A.C. 7:26I-8.3.

7:26I-8.5 Final orders and other Board decisions

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(a) A notice of denial of an application for a renewed LSRP license shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(b) A notice of intent to suspend or revoke the license of an LSRP, or to impose another sanction, shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(c) An administrative order shall become a final order upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

(d) A notice of assessment of a civil administrative penalty shall become a final order and the penalty due and payable upon the occurrence of any of the following:

1. The Board's issuance of a final decision after an adjudicatory hearing;
2. The Board's denial of a hearing request pursuant to N.J.A.C. 7:26I-8.4; or
3. There is no request for a hearing pursuant to N.J.A.C. 7:26I-8.3.

SUBCHAPTER 9. PROHIBITION AGAINST RETALIATORY ACTION

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7:26I-9.1 Purpose

(a) In the performance of his or her duties and obligations under the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, an LSRP may be required to take action that is adverse to a client, an employer, or another person in order to protect public health and safety and the environment or otherwise carry out his or her professional services in compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto.

(b) This subchapter is intended to deter a person from retaliating against an LSRP in the performance of his or her professional services.

(c) This subchapter is intended to deter an LSRP from retaliating against a person who files a complaint with the Board about the LSRP, or who provides information to the Board during the conduct of an audit or investigation of the LSRP.

(d) Retaliatory actions shall include, but not be limited to, reprisal by discharge, suspension, demotion, or other adverse employment action taken against an employee in the terms and conditions of employment, or otherwise terminating a person's employment or contract to provide professional services.

7:26I-9.2 Retaliatory action prohibited

(a) No person shall take or threaten to take retaliatory action if an LSRP:

1. Discloses, or undertakes to disclose, to the Board or to the Department an activity, policy, or practice that the LSRP reasonably believes:

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- i. Is a violation of law, or a rule or regulation adopted pursuant to law, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity; or
 - ii. Is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the LSRP reasonably believes may defraud any client, customer, the Board, the Department, or any other governmental entity;
2. Provides notice to the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met;
3. Provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any violation of law, or rule or regulation adopted pursuant to law, by a client or customer with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity, or provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into the quality of remediation of a contaminated site;
4. Reports a discharge or immediate environmental concern to the Department; or
5. Objects to, or refuses to participate in, any activity, policy, or practice that the LSRP reasonably believes:
 - i. Is in violation of law, or a rule or regulation adopted pursuant to law, including any violation involving deception of, or misrepresentation to, any client, customer, the Board, the Department, or any other governmental entity;

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ii. Is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the LSRP reasonably believes may defraud any client, customer, the Board, the Department, or any other governmental entity; or

iii. Is incompatible with a clear mandate of public policy concerning the protection of public health and safety and the environment.

(b) No LSRP shall take or threaten to take retaliatory action against a person who files a complaint with the Board against an LSRP or provides information to the Board during an investigation of a complaint pursuant to the SRRA and this chapter or provides information to the Board during an audit pursuant to the SRRA and this chapter.

7:26I-9.3 Disciplinary action

Any person who violates any provision of this subchapter shall be subject to disciplinary action by the Board pursuant to N.J.A.C. 7:26I-7.