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ENVIRONMENTAL PROTECTION

SITE REMEDIATION AND WASTE MANAGEMENT

Discharges of Petroleum and Other Hazardous Substances

Heating Oil Tank System Remediation Rules

Administrative Requirements for the Remediation of Contaminated Sites

Technical Requirements for Site Remediation

Proposed Amendments: N.J.A.C. 7:1E-5.7; 7:14A-1.2, 7.5, 8.4 and 8.5; 7:14B-1.6, 5.5, 7.2, 9.5, 12.1, 16.2, 16.3, 16.4, and 16.11; 7:26B-3.4 and 5.9; 7:26C-1.3, 1.4, 1.5, 1.7, 2.3, 3.2, 3.3, 3.4, 3.5, 4.2, 4.3, 4.4, 4.6, 4.7, 5.2, 5.4, 5.8, 5.11, 6.2, 6.4, 7.2, 7.3, 7.5 through 7.8, 7.11, 7.12, 7.13, 9.1, 9.5, 9.9, 11.2, 11.3, 11.4, 12.1, 12.2, 12.3, 14.2, and 14.4 and 7:26C Appendix B, and Appendix D; and 7:26E-1.3, 1.6, 1.7, 1.8, 1.11, 1.14, 1.16, 2.1, 4.1, 4.10, 5.1, 5.2, 5.3, 5.5, 5.6, and 5.8 and 7:26E Appendix A

Proposed Repeals and New Rules: N.J.A.C. 7:26C-9.10 and 12.4

Proposed New Rules: N.J.A.C. 7:26C-9.12; and 7:26F

Proposed Repeals: N.J.A.C. 7:26C-6.3 and 13

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 58:10-23.11 et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10A-37.1 et seq., 58:10B-1 et seq., and 58:10C-1 et seq.

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

DEP Docket Number: 10-17-06

Proposal Number: PRN 2017-134.

A **public hearing** concerning this notice of proposal will be held on:

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Date: Thursday, August 31, 2017

Time: 10:00 A.M.

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, NJ 08625

Submit comments by September 15, 2017, electronically at www.nj.gov/dep/rules/comments. 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 of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket Number 10-17-06

Office of Legal Affairs

Mail Code 401-07

Department of Environmental Protection

401 East State Street

PO Box 402

Trenton, New Jersey 08625-0402

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

This rule proposal may be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

The agency proposal follows:

Summary

As the Department 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.

The Department administers the Site Remediation Program through five sets of rules: the Underground Storage Tanks rules (UST rules), N.J.A.C. 7:14B, the Industrial Site Recovery Act rules (ISRA rules), N.J.A.C. 7:26B, the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, the Remediation Standards, N.J.A.C. 7:26D, and the Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E. On May 7, 2012, the Department published amendments to four of these sets of rules, and repealed and replaced the Technical Requirements, all in connection with the implementation of the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and associated amendments to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11a through 23.24, and the Brownfield and Contaminated Site Remediation Act (Brownfield Act), N.J.S.A. 58:10B-1 through 31. Under SRRA, as of May 7, 2012, all persons responsible for

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conducting remediation must hire a licensed site remediation professional (LSRP) and conduct remediation without Department oversight, unless otherwise directed by the Department.

The Department proposes to amend ARRCs, the Technical Requirements, DPHS rules, New Jersey Pollutant Discharge Elimination System (NJPDES) rules, UST rules, and ISRA rules,. Since the adoption of the above amendments to the Department's rules, a variety of stakeholders and staff of the Department's Site Remediation Program have identified amendments that will further streamline and simplify the implementation of the licensed site remediation professional (LSRP) program or provide additional clarity to those rules.

The Department proposes a new chapter, N.J.A.C. 7:26F, Heating Oil Tank System Remediation Rules, to address the closure of heating oil tank systems, and remediation of discharges from those systems. For purposes of this rulemaking, "heating oil tank systems" are residential above ground heating oil tank systems; small, non-residential above ground heating oil tank systems; and "unregulated" heating oil tank systems, which are underground storage tank systems. The last category is referred to as "unregulated" because, unlike other types of underground storage tank systems, the Department does not oversee their installation and operation (although it does certify individuals who perform work on the underground systems). In fact, the Department does not regulate the installation and operation of any of these three types of heating oil tank systems, either above or below ground. The Department does, however, regulate the remediation of discharges from heating oil tank systems, although the rules are contained in several chapters. The majority of heating oil tank systems are owned by homeowners. The Department proposes to amend and consolidate the remediation requirements to make them easier for the homeowner to understand. The Department assembled a rule

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development team that included stakeholders from the Fuel Merchants Association, the New Jersey Association of Realtors, the insurance industry, the New Jersey Department of Community Affairs, and several environmental consulting firms that employ certified subsurface evaluators and LSRPs. The Department took into account the views of the development team members in preparing the proposed rules.

Proposed New N.J.A.C. 7:26F, Heating Oil Tank System Remediation Rules

The Department proposes to establish in one new chapter, N.J.A.C. 7:26F, rules governing the remediation of discharges from heating oil tank systems, which include “unregulated heating oil tank systems,” “residential aboveground heating oil tank systems,” and “small above ground non-residential heating oil tank systems,” as defined at proposed N.J.A.C. 7:26F-1.5. These tanks and their associated piping are referred to as “heating oil tank systems.” “Residential building,” “non-residential building,” and “heating oil tank system,” are also proposed to be defined at N.J.A.C. 7:26F-1.5. Although the Department does not regulate the installation and operation of the heating oil tank systems themselves, the Spill Act, N.J.S.A. 58:10-23.11 et seq., and the Brownfield Act at N.J.S.A. 58:10B-12, authorize the Department to regulate the remediation of discharges of hazardous substances, and it is through that authority that the Department regulates the remediation of discharges from heating oil tank systems. Additionally, the Water Pollution Control Act at N.J.S.A. 58:10A-24.1 through 24.9 authorizes the Department to certify qualified individuals to provide services on both regulated and unregulated tanks.

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The proposed new rules are prescriptive in nature. The Department believes, and the stakeholders concur, that if all of the requirements for remediation of discharges from heating oil tank systems are set forth with specificity in the Department's rules, tank owners can be more confident in the necessity of the tasks that environmental professionals implement to remediate such discharges. As established by the proposed new chapter, the remediation of a discharge from a heating oil tank system begins with the discovery of the discharge and immediate notification to the Department, and the retention of an environmental professional to oversee the remediation. Thereafter, the rules address closure and removal of the heating oil tank system, removal of any free product, investigation of the extent of the contamination, and remediation of the ground water and soil to an appropriate standard. At the end of the remediation, the rules require the environmental professional to submit to the Department a remedial action report that shows that the remediation activities meet the rule requirements. The final document indicating that the remediation is complete is the "heating oil tank system no further action letter" that the Department issues. The proposed rules also identify the requirements for an owner of a heating oil tank system to apply for financial assistance to help offset the cost of remediating a discharge from a heating oil tank system. The proposed chapter includes fees for submitting documents, as well as penalties for non-compliance with the rules. The proposed new chapter applies not only to new heating oil tank system remediations, but also to those that are already in progress and moving forward as of the effective date of the new chapter, as the new chapter outlines the procedures and requirements that owners are already following to remediate heating oil tank systems. The Department will work with owners who are already in the process of remediating heating oil tank systems when the new chapter becomes effective, in order to reduce confusion.

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Heating oil tank systems are of two types: residential heating oil tanks, both above and below ground, and their associated piping; and small (2,000 gallons or less) non-residential heating oil tanks and their associated piping, both above and below ground. Key is the concept that the heating oil is stored only for on-site consumption and not for resale. Heating oil includes No. 2, No. 4, and No. 6 heating oil, and kerosene, when those fuels are used for heating purposes (as opposed to industrial purposes). Heating oil is a hazardous substance, and the Spill Act prohibits discharges of hazardous substances. See N.J.S.A. 58:10-23.11b. If a discharge of heating oil from a heating oil tank system does occur, the Brownfield Act mandates remediation of that discharge. See N.J.S.A. 58:10B-1.3a.

Residential homeowners own the vast majority of heating oil tank systems in New Jersey. Generally, the remediation of a discharge from a heating oil tank system is relatively straightforward. In the Department's experience, the contamination from a discharge from a heating oil tank system is usually limited to the soil surrounding the tank and, if the contamination reaches ground water, the plume of contaminated ground water usually does not extend beyond the boundaries of the property on which the heating oil tank system is located. Although the remediation process is relatively straightforward, navigation through the existing rules applicable to remediation is complicated. Under the existing framework, the rules governing remediation of discharges from heating oil tank systems are in the UST rules, ARRCs, and the Technical Requirements. The Department intends, through the proposed new chapter, N.J.A.C. 7:26F, to establish the rules for such tanks, and make these remediation requirements clearer.

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There are instances when a discharge from a heating oil tank system occurs at a site on which there is contamination from other sources. When that happens, there may be other active remediations of existing areas of concern on-site, separate from the heating oil tank system remediation. Proposed N.J.A.C. 7:26F-1.2(d) gives the owner the option of combining the remediation of the heating oil tank system with the remediation of the other areas of concern at the property. If the owner chooses this option, the proposed new heating oil tank system remediation rules will not apply; rather, the owner will be required to follow ARRCs and the Technical Requirements, including the requirement to hire an LSRP. Because the remediation will include more than the discharge from the heating oil tank system, the LSRP will issue a response action outcome for the site or contaminated areas of concern, including the heating oil tank system.

The proposed new chapter will not apply if the heating oil tank system is located on a property to which the Industrial Site Recovery Act (ISRA) Rules at N.J.A.C. 7:26B apply. The ISRA rules apply to industrial establishments and impose strict liability on the owners and operators of the establishments to investigate and remediate contamination at the facility prior to transferring ownership or closing operations. Although such facilities may have heating oil tank systems on the property, remediation of discharges from those systems must be addressed through ARRCs and the Technical Requirements, with oversight of an LSRP, who will issue an entire site response action outcome. The Department will not issue a heating oil tank system no further action letter for the heating oil tank system remediation. See proposed N.J.A.C. 7:26F-1.2(d)3.

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Establishment of remediation requirements

Proposed new N.J.A.C. 7:26F establishes the requirements for remediating discharges from heating oil tank systems (except as discussed above) and requirements for owners of unregulated heating oil tank systems to apply for financial assistance to help offset the cost of remediating discharges. Similar existing requirements are codified in the UST rules at N.J.A.C. 7:14B, ARRCs, and the Technical Requirements. The Department proposes to amend or delete portions of its existing rules that apply to remediation of discharges from heating oil tank systems.

Because the proposed new chapter will entirely replace the existing requirements for remediating unregulated heating oil tank systems in ARRCs at N.J.A.C. 7:26C-13, the Department proposes to repeal and reserve N.J.A.C. 7:26C-13. The Department proposes to indicate in ARRCs at N.J.A.C. 7:26C-1.4(c)4 and 1.7(j) that the ARRCs provisions do not apply to the remediation of a heating oil tank system that is being remediated under proposed new N.J.A.C. 7:26F, except when it is part of a remediation of all areas of concern at a site (N.J.A.C. 7:26F-1.2(d)), or if the owner is implementing a limited restricted or restricted use soil remedial action (N.J.A.C. 7:26F-3.7(b)). The Department does not believe it is necessary for the owner of a property undergoing remediation of only a heating oil tank system to undertake the notification requirements in ARRCs at N.J.A.C. 7:26C-1.7 because the remediation of a heating oil tank system discharge is usually accomplished in a short period of time. The notification provisions of N.J.A.C. 7:26C-1.7 are directed at long-term remediation projects.

The Technical Requirements, N.J.A.C. 7:26E, also contain heating oil tank system requirements that must be either amended or deleted for consistency. The Department proposes

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to limit the scope of the Technical Requirements by amending N.J.A.C. 7:26E-1.3 to state that the Technical Requirements do not apply to the remediation of a discharge from a heating oil tank system in accordance with N.J.A.C. 7:26F, except as provided in N.J.A.C. 7:26F-1.2(d) (other areas of concern in addition to the heating oil tank system), and 3.7(b) (implementing a limited restricted use or restricted use remedial action pursuant to ARRCS and the Technical Requirements).

To the extent that terms relevant to the proposed rules are defined in ARRCS or the Technical Requirements, the definitions at proposed new N.J.A.C. 7:26F-1.5 refer to the definitions in the existing rules. These terms are “area of concern,” “clean fill,” “closure,” “contamination” or “contaminant,” “discharge,” “environmentally sensitive natural resource,” “free product,” “licensed site remediation professional,” “limited restricted use remedial action,” “person,” “receptor,” “remedial action,” “remediation” or “remediate,” “response action outcome,” “restricted use remedial action,” “target compound list plus 30” or “TCL + 30,” “tentatively identified compound” or “TIC,” and “unrestricted use remedial action.” The definition of “remediation standards” is defined the same as in the Remediation Standards at N.J.A.C. 7:26D-1.5. “Department” means the New Jersey Department of Environmental Protection, as it is throughout the Department’s rules.

The Department proposes to amend the definition of “unregulated heating oil tank system” found in the UST rules at N.J.A.C. 7:14B-1.6, and to add the definition of “heating oil tank system” to ARRCS at N.J.A.C. 7:26C-1.3, the Technical Requirements at N.J.A.C. 7:26E-1.8, and the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A-1.2, and refer to the proposed definition of the term at N.J.A.C. 7:26F-1.5. The proposed

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definition will have a material effect on the NJPDES rules. The existing NJPDES rules apply to remediations from heating oil tank systems insofar as the remediations result in discharges to ground water and surface water. Existing N.J.A.C. 7:14A-7.5(b)3 authorizes by a permit-by-rule, the discharge to ground water to remediate contamination from a discharge of heating oil at a residential building of four units or less. The proposed recodified rule, as amended, N.J.A.C. 7:14A-7.5(c)5, authorizes a discharge to ground water associated with remediating a discharge from a “heating oil tank system.” As amended, and as a direct result of the proposed definition of “heating oil tank systems,” the rule applies to heating oil discharges from both residential and non-residential heating oil tanks, within the definition of “heating oil tank systems,” an expansion of the use of permits-by-rule. The Water Pollution Control Act, one of the statutes on which the NJPDES rules are based, does not qualify the definition of a residential building to a building with four units or fewer in the context of permitting requirements. The only statute that qualifies “residential building” is the Brownfield Act, in the context of exempting persons responsible for conducting the remediation of a heating oil tank from conducting an ecological evaluation (N.J.S.A. 58:10B-12.a) and from complying with public notification requirements (N.J.S.A. 58:10B-12.n). Expanding the universe of persons who may use the permit-by-rule will increase the efficiency of these remediations because no one who is conducting remediation of a discharge from a heating oil tank system will be required to come to the Department for an individual NJPDES permit. Ordinarily, a discharge to ground water that exceeds 180 days is subject to public notice under existing N.J.A.C. 7:26E-5.6(c) prior to issuance of a permit. The public notice requirements do not apply to discharges authorized under the permit-by-rule provisions of proposed N.J.A.C. 7:14A-7.5(c)5. Inasmuch as the public notice requirements of

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N.J.A.C. 7:26E-5.6(c) are associated with an application for a discharge to ground water permit, and there is no such application associated with a permit-by-rule, it is appropriate that the permit-by-rule provision not be subject to public notice.

Further, the Department is proposing to amend the definition of “unregulated heating oil tank system” in the existing UST rules at N.J.A.C. 7:14B-1.6 to refer to the definition of the term at proposed new N.J.A.C. 7:26F-1.5. The proposed new definition clarifies that the system must be at least 10 percent or more below ground. Similarly, the Department is amending the definitions of “heating oil” in the NJPDES rules at N.J.A.C. 7:14A-1.2, to refer to the new definition of “heating oil” at proposed N.J.A.C. 7:26F-1.5.

The existing NJPDES rules definition of “heating oil” includes any grade of petroleum product, including Nos. 1, 2, 4, 5, and fuel oils, diesel, and kerosene. The definition of the term in proposed new N.J.A.C. 7:26F includes only Nos. 2, 4, and 6 fuel oil, and kerosene. No. 1 heating oil and kerosene are chemically identical; moreover, No. 1 fuel oil is not sold as such in today’s market. Similarly, No. 5 fuel oil is not marketed as such because No. 5 (light) is sold as No. 4 fuel oil, and No. 5 (heavy) is sold as No. 6 fuel oil. Diesel and No. 2 fuel oil are identical, except that red dye is added to No. 2 fuel oil to distinguish it from diesel, which is taxable as a transportation fuel. The red-dyed fuel is not taxed for highway use. The Department has narrowed the definition of heating oil to distinguish that diesel fuel is not a heating oil; rather, it is considered a motor fuel. Accordingly, the proposed new definition of heating oil in N.J.A.C. 7:26F is substantively the same as the existing definition of fuel oil in the NJPDES rules.

General requirements

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As stated at proposed new N.J.A.C. 7:26F-1.1, proposed new N.J.A.C. 7:26F constitutes the minimum administrative and technical requirements for the remediation of a discharge of heating oil from a heating oil tank system. If a remediation is of a discharge other than of heating oil from a heating oil tank system, then the proposed new chapter does not apply. Proposed new N.J.A.C. 7:26F-1 contains general information applicable to all discharges from heating oil tank systems to which the chapter applies, as identified in proposed N.J.A.C. 7:26F-1.2, Applicability and exceptions. This section identifies the specific discharges to which the proposed new chapter applies, exceptions, and circumstances in which additional remediation may be required.

To assist the regulated community in navigating the rules, proposed N.J.A.C. 7:26F-1.1(b) identifies by heading and citation the seven subchapters in the chapter. Within each subchapter is a section identifying the scope and each section in the subchapter. Although such a detailed scope is not usual in the Department's rules, the Department has included it as a navigation tool because the proposed rules' target audience is homeowners, rather than environmental professionals accustomed to reading the Department's rules.

Throughout proposed new N.J.A.C. 7:26F, the rules require the "owner" to take various actions. In many instances, an environmental professional will actually perform the activity on the owner's behalf; however, because the owner is ultimately responsible to ensure that the rules' requirements are met, the rules direct the owner to take the action. An "owner," proposed to be defined at N.J.A.C. 7:26F-1.5, is any person who owns a heating oil tank system or, in the absence of any such person, a person who has a legal or equitable title to real property at which a heating oil tank system is located. The term "owner" includes both the heating oil tank system

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owner and the property owner because there are instances in which the owner of the tank system is not the owner of the property upon which the heating oil tank system is located. In those situations, both the owner of the heating oil tank system and the property owner are subject to liability under the Spill Act in the event of any discharge from the heating oil tank system.

Consequently, both parties are also responsible for the remediation of that discharge.

Upon discovery of a discharge from a heating oil tank system, the owner must immediately notify the Department by calling the Department Hotline. The Spill Act at N.J.S.A. 58:10-23.11e requires “any person who may be subject to liability for a discharge” of a hazardous substance to immediately notify the Department. The Department interprets the Spill Act as requiring notice to the Department when a discharge takes place, or is discovered. Accordingly, proposed N.J.A.C. 7:26F-1.6 requires the owner to notify the Department when a discharge is discovered, whether the owner discovers the discharge, or a person that the owner hires to service the heating oil tank system discovers it; and requires the owner to comply with the notification requirements of ARRCs at N.J.A.C. 7:26C-1.7(j). N.J.A.C. 7:26C-1.7(j) requires notice to the Department if contamination has migrated to another property, or if the owner discovers new contamination or an immediate environmental concern. See also proposed N.J.A.C. 7:26F-5.1, which requires the owner to notify the Department and take action under ARRCs and the Technical Requirements if, in the process of investigating a discharge from a heating oil tank system, the owner discovers that there is a discharge from another source. If a discharge from a heating oil tank system impacts any environmentally sensitive natural resource, the owner must take immediate action, as outlined in N.J.A.C. 7:26F-6.4, which is discussed in the summary below at Receptor Evaluation.

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The owner's next steps after discovering and reporting a discharge from a heating oil tank system depend on the type of tank system from which the discharge occurred and the extent of the discharge. Proposed N.J.A.C. 7:26F does not apply to regulated underground heating oil tank systems. Therefore, discharges from such systems are not included in this discussion. If the discharge of heating oil from a heating oil tank system is less than 100 gallons and does not reach surface water or ground water (referred to in the rule as "the waters of the State"), proposed N.J.A.C. 7:26F-1.2(b) allows the owner to remediate the discharge under the oversight of local authorities, rather than by meeting the requirements of the proposed new rules; however, the Department will not issue a heating oil tank system no further action letter (discussed below) unless the owner remediates the discharge in accordance with proposed new N.J.A.C. 7:26F. If the discharge is from a residential above ground heating oil tank system, a small non-residential above ground heating oil tank system, or an unregulated heating oil tank system (the three types of systems that are included in the definition of "heating oil tank system"), the owner must remediate in accordance with proposed N.J.A.C. 7:26F-3 and 4, which contain the technical requirements for remediating the soil and ground water after a discharge from a heating oil tank system, as well as the timeframes within which certain critical steps must be accomplished.

In accordance with proposed new N.J.A.C. 7:26F-1.11(a), the owner of a heating oil tank system is required to hire either a certified subsurface evaluator or a licensed site remediation professional (LSRP) to remediate a discharge from a heating oil tank system. Within the first 48 hours after discovery of the discharge, pursuant to proposed N.J.A.C. 7:26F-2.1, the owner must hire an "environmental professional" to remediate the discharge. An environmental professional is defined at N.J.A.C. 7:26F-1.5 as either a certified subsurface evaluator, or an LSRP. Within

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that same 48-hour period, the owner must initiate closure or removal of the heating oil tank system. If the heating oil tank system is a residential above ground heating oil tank system or a small non-residential above ground heating oil system, the owner must initiate the removal of the system within the 48-hour period. It is not necessary for the owner to retain a certified individual or firm to remove these two types of systems. If the discharge is from an unregulated heating oil tank system (which is defined at N.J.A.C. 7:26F-1.5 as being at least 10 percent below ground), the owner must retain a “certified closure contractor,” also defined at N.J.A.C. 7:26F-1.5. Only an individual or business firm that is certified under N.J.A.C. 7:14B-16 of the UST rules may provide services on unregulated heating oil tank systems, unless the system is located on a farm. See N.J.A.C. 7:14B-16.1. The certified closure contractor may also be a certified subsurface evaluator; both are classifications of certification under the UST rules at N.J.A.C. 7:14B-16.3. In some instances, the discharge may have been initially discovered as part of the closure or removal of a heating oil tank system. In such a case, the “initiation” of the closure or removal has already taken place.

If the heating oil tank system is located on a farm, the owner is exempt from hiring a certified closure contractor for the purposes of closing a heating oil tank system, as the Water Pollution Control Act at N.J.S.A. 58:10A-24.1b specifically exempts the owner from this requirement. The owner must still retain an environmental professional for purposes of remediating the discharge, however. The proposed definition of “farm” at N.J.A.C. 7:26F-1.5 is the same as the definition of the term in the Water Pollution Control Act at N.J.S.A. 58:10A-24.1.

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The next step is an investigation to determine whether there has been contamination from the discharge. The contamination could include free product, contamination to ground water, contamination to soil, or some combination of the three. Proposed N.J.A.C. 7:26F-3 contains the general requirements for investigation and remediation of contamination to soil. Proposed N.J.A.C. 7:26F-3.2, Free product remediation, is included in the subchapter and addresses soil contamination; homeowner heating oil tank remediation usually starts with an excavation, at which time free product, if any, is most likely to be discovered. Proposed N.J.A.C. 7:26F-4 contains the general requirements for investigation and remediation of contamination to ground water. All sampling must comply with proposed N.J.A.C. 7:26F-2.2, Sample analysis, which requires sample analysis to comply with the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18, and the Quality Assurance for Sampling and Laboratory Analysis in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2. Proposed Table 2-1 at N.J.A.C. 7:26F-2.2 identifies the substances for which each sample must be analyzed, based upon the type of heating oil, and whether the sample is of soil or water. Proposed N.J.A.C. 7:26F-2.2 is discussed further below.

On occasion, a discharge from a heating oil tank system migrates to a neighboring property. In that case, it may be necessary for an owner to access the neighboring property in order to implement necessary remediation. The Brownfield Act at N.J.S.A. 58:10B-16 requires that any person undertaking remediation, who must access property that he or she does not own in order to conduct such remediation, must seek access by entering into a written agreement with the property owner for that access. The Brownfield Act goes on to require that if the person undertaking the remediation cannot come to an agreement with the property owner after making

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a good faith effort to do so, then the person is required to seek an order from the Superior Court directing the property owner to grant reasonable access. These requirements are codified at proposed N.J.A.C. 7:26F-1.7. Remediation must continue on any property to which the person undertaking the remediation does have access.

During the course of remediating the heating oil discharge, the owner may discover contamination, either on or off the owner's property, from a source other than the heating oil tank system. If that happens, proposed N.J.A.C. 7:26F-5.1 applies, which directs that if such contamination is discovered, the owner must notify the Department and report the observation of the contamination.

Free product remediation

The owner is required to identify whether free product is coming from the heating oil tank system and, if it is, remediate the free product in accordance with proposed new N.J.A.C. 7:26F-3.2. The owner may discover the free product at the time the discharge is discovered, or when an above ground system is removed, but it is more likely that the free product will be discovered in an excavation when an underground heating oil tank system is removed, or when ground water is sampled. If free product is discovered, the rules require the owner to begin to remediate it almost immediately. Timely remediation of free product is essential to prevent the degradation of free product into contaminants that can adsorb (stick) to soil particles, dissolve in ground water, and thereby further complicate the task of remediation. Therefore, within 60 days after identifying the presence of free product coming from the heating oil tank system the owner must initiate removal of that free product and excavate all free product saturated soil. As

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explained in proposed N.J.A.C. 7:26F-3.2, the owner is required to delineate the extent of the free product discharged from the heating oil tank system, and complete the remediation of the free product within one year after its discovery. Once free product has been removed, the owner must remediate any contaminated ground water pursuant to proposed N.J.A.C. 7:26F-4. The owner must also sample ground water to evaluate the presence of dissolved phase ground water contamination and analyze the samples pursuant to N.J.A.C. 7:26F-2.2, Table 2-1. Soil contamination that is not associated with free product is remediated as set forth in the remainder of N.J.A.C. 7:26F-3, discussed further below.

Ground water remediation

Proposed new N.J.A.C. 7:26F-4 governs remediation of ground water that has been affected by a discharge from a heating oil tank system. Proposed N.J.A.C. 7:26F-4.2 outlines the requirements of ground water investigations. An owner is required to investigate ground water to determine whether contamination is present that is associated with a discharge from a heating oil tank system when: (1) any portion of the heating oil tank system is located within the seasonal high ground water table or within two feet of either ground water or bedrock; (2) soil sampling indicates the presence of a heating oil-related contaminant above the site-specific impact to ground water soil remediation standard; or (3) excavation of contaminated soil is continued down to bedrock or ground water.

The location of ground water sampling points will differ, depending on the extent of the excavation and whether sampling is done prior to or after soil remediation. The proposed rule identifies the various location requirements. Similarly, the installation of each ground water

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sampling point will vary, depending upon whether the sampling point will be located in unconsolidated or consolidated formations. As defined at proposed N.J.A.C. 7:26F-1.5, an “unconsolidated formation” is a geologic formation with loosely arranged sands, gravels, clays, or other similar materials; a “consolidated formation” is a geologic formation where the sands, gravels, clays or other similar materials have been lithified (turned into stone). The proposed rules prescribe the specifications for the wells for each type of formation, with specific instructions depending on whether or how deep groundwater is encountered. The proposed rule also provides sampling instructions. As with all sampling performed as part of the remediation of a discharge, the ground water samples must be analyzed in accordance with proposed N.J.A.C. 7:26F-2.2.

If the analysis indicates contamination to the ground water, the owner must conduct a remedial action for ground water, in accordance with proposed N.J.A.C. 7:26F-4.3, Ground water remedial action requirements, which includes remediating free product (see proposed N.J.A.C. 7:26F-3.2, discussed above), and remediating the ground water contamination. Prior to starting a ground water remedial action, the owner is required to obtain Department permit approvals when the remedial action includes a discharge to surface water or ground water. If the remedial action includes a discharge to surface water, then the owner must request an on-scene coordinator discharge authorization from the Department. This authorization is required under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan regulations at 40 CFR Part 30. The fee for submitting a workplan requesting an on-scene coordinator discharge authorization is \$400.00, as set forth at proposed N.J.A.C. 7:26F-1.8. Similarly, if the remedial action includes a discharge to

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ground water, the owner must submit a discharge to ground water work plan pursuant to the Technical Requirements at N.J.A.C. 7:26E-5.6(b) and (c) and obtain a permit pursuant to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-7.5(b). These requirements are the same as in existing N.J.A.C. 7:26C-13.5, proposed for repeal. The fee for submitting a discharge to ground water proposal is \$350.00, as set forth in proposed N.J.A.C. 7:26F-1.8.

The majority of remediations of discharges from heating oil tank systems do not require remediation of ground water or, where there is ground water contamination, the ground water remediation can be completed prior to the submission of the remedial action report, discussed further below. However, some ground water remediation efforts take a long time to complete. If the ground water remedial action is such that the ground water will not meet the applicable remediation standard at N.J.A.C. 7:26D-2.2 prior to the time that the environmental professional submits the remedial action report to the Department, proposed N.J.A.C. 7:26C-4.3(f) provides that the owner must apply for a ground water remedial action permit under ARRCS at N.J.A.C. 7:26C-7, as well as a ground water classification exception area pursuant to N.J.A.C. 7:26C-7.3, which is included in the remedial action permit application. Once the ground water is remediated to the applicable ground water remediation standard, the owner may request that the Department remove the ground water classification exception area and terminate the ground water remedial action permit under N.J.A.C. 7:26C-7.13.

Receptor evaluation

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If a site contains free product and/or ground water contamination from a heating oil tank system, then the owner is required to perform a receptor evaluation, which includes ground water, vapor intrusion, and ecological evaluation as described in proposed new N.J.A.C. 7:26F-6. As defined in the Technical Requirements at N.J.A.C. 7:26E-1.8, a receptor is a human or a natural resource. The owner is required to evaluate the impact of the contamination on receptors in order to protect the public health and safety and the environment. The requirements in N.J.A.C. 7:26F-6 are similar to the receptor evaluation requirements found in the Technical Requirements at N.J.A.C. 7:26E-1.16, but the proposed rules also include instructions that are necessary for addressing heating oil tank system contaminants, such as extractable petroleum hydrocarbons (EPH) and other petroleum products. Any environmental professional can perform a ground water, vapor intrusion, and ecological receptor evaluation, except that only an LSRP can prepare an ecological risk assessment. An ecological risk assessment is a highly specialized task that is not part of the certification process for a subsurface evaluator, but is part of the expertise of an LSRP.

If ground water contamination exists above the ground water remediation standards at N.J.A.C. 7:26D-2.2(a), then the owner must determine if any potable wells (or irrigation wells used for potable purposes) are located within 100 feet of the known extent of the ground water contamination. If such wells are present, then the owner must sample the wells, analyze the samples, and prepare laboratory data deliverables pursuant to the Technical Requirements at N.J.A.C. 7:26E-2.1(a), and determine whether any contaminant is in excess of any Class II-A ground water quality standard, N.J.A.C. 7:9C. As described in N.J.A.C. 7:26F-6.2(a)2iv, if the owner identifies a contaminant, then the owner must take the actions required for immediate

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environmental concerns, as required by Technical Requirements at N.J.A.C. 7:26E-1.11.

However, if the owner finds no contaminant, then the owner must provide the Department, the local health department, and neighboring property owners/occupants with well data and explanatory information. The proposed rule sets forth timeframes for completing each requirement.

If within 180 days after discovering the discharge, the owner does not remediate free product and ground water contaminant concentrations below the vapor intrusion ground water screening levels, proposed new N.J.A.C. 7:26F-6.3 requires that the owner must identify all buildings within 30 feet, conduct a vapor intrusion investigation, and follow the Technical Requirements at N.J.A.C. 7:26E-1.15, to ensure that any existing vapors from such contaminants are not harming the public health and safety and the environment. The proposed rule sets forth timeframes for each activity, which timeframes are the same as in the Technical Requirements.

As provided in proposed new N.J.A.C. 7:26F-6.4, if a discharge from a heating oil tank system impacts any environmentally sensitive natural resource, the owner must take immediate action in order to protect that environmentally sensitive natural resource to the extent possible. The owner is obligated to conduct an ecological receptor evaluation to determine: (1) the presence of an environmentally sensitive natural resource; and (2) if contaminant concentrations exceed ecological screening criteria or aquatic surface water quality standards. If both (1) and (2) are present, then an LSRP is required to prepare an ecological risk assessment pursuant to the Technical Requirements at N.J.A.C. 7:26E-4.8(c)2, even if a certified subsurface evaluator is the environmental professional otherwise overseeing the remediation. The environmental

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professional will submit the LSRP's ecological risk assessment to the Department with the remedial action report.

Soil remediation

Soil contamination is the most frequent type of contamination associated with a discharge from a heating oil tank system. If a discharge is discovered, an owner is required to determine whether there is soil contamination associated with the discharge. As generally described in proposed new N.J.A.C. 7:26F-3.3, there are two ways that an owner may remediate soil contamination. The soil may be excavated and the horizontal and vertical extent of the contamination determined during the excavation, followed by post-excavation sampling. In the alternative, the horizontal and vertical extent of soil contamination may be delineated first, by soil borings, followed by the remedial action. When there is a discharge, there will most likely be some degree of soil contamination, but delineation will assist in determining the best method of remediation. In some cases, it is better to delineate before excavating because some contamination can be treated in place or left in place, making excavation unnecessary. Proposed new N.J.A.C. 7:26F-3.3(d), (e), (f), and (g) describe how excavated soils should be managed and disposed, how to backfill an excavation, and how to obtain any necessary permits as part of the excavation process. The options for leaving soil contamination in place are set forth at proposed N.J.A.C. 7:26F-3.7, discussed further below.

As outlined in N.J.A.C. 7:26F-3.4, an owner's first option is to perform a remedial action starting with excavation, by delineating contamination while excavating soil. The practical implications of this approach – conducting a remedial action while determining the horizontal

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and vertical extent of contamination – are that the contaminated soil can be removed, the residual soil sampled and, if necessary based on sample results, additional contaminated remediated soil can be removed, all while the equipment used to remove the heating oil tank still remains on the site. The proposed rule provides distinct sets of instructions for sampling and analysis, the use of which depends on whether the soil is contaminated by a discharge from an underground heating oil tank, or from an above ground heating oil tank or a surface discharge. Unless the owner intends to leave contamination behind in accordance with N.J.A.C. 7:26F-3.7, discussed further below, the owner must excavate contaminated soil until the soil is cleaned to Department standards for an unrestricted use remedial action, set forth in proposed N.J.A.C. 7:26F-3.6. Proposed new N.J.A.C. 7:26F-3.4 also provides the required timing of sampling and the location of sampling points, as well as how the owner must evaluate the samples to determine whether additional remediation is required. Unless proposed N.J.A.C. 7:26F-3.7 applies, additional excavation and soil sampling must continue until the samples collected meet the standards for an unrestricted use remedial action.

An owner's second option is to delineate soil contamination prior to implementing a remedial action. This option is set forth at proposed new N.J.A.C. 7:26F-3.5. If the owner conducts a remedial action by any means other than excavation as part of delineation pursuant to N.J.A.C. 7:26F-3.4, then the owner must delineate the horizontal and vertical limits of the contamination by installing at least four soil borings in equidistant directions (such as north, south, east, and west), conducting field screening until no further contamination is observed or bedrock is encountered, and then collecting sufficient samples to confirm delineation both horizontally and vertically. If contamination extends to bedrock, then the owner must collect a

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ground water sample pursuant to N.J.A.C. 7:26F-4.2. The proposed rule describes the required sampling specifications, and explains how the owner must evaluate the samples to determine whether additional remediation is required. Similar to N.J.A.C. 7:26F-3.4, the soil remediation is complete if the analytical results for the soil samples indicate that the soil meets the requirements for unrestricted use at proposed N.J.A.C. 7:26F-3.6, unless the owner is leaving residual contamination in place, as allowed under proposed N.J.A.C. 7:26F-3.7.

The Brownfield Act at N.J.S.A. 58:10B-12.g(2) provides that soil may be remediated to a level that does not meet residential remediation standards, as long as engineering and institutional controls are implemented (the Technical Requirements at N.J.A.C. 7:26E-5 set forth how to implement engineering and institutional controls). Therefore, proposed new N.J.A.C. 7:26F-3.7 provides the owner three options for leaving residual contamination in place: (1) traditional deed notice; (2) heating oil tank system (HOTS) deed notice; and (3) small quantity exception. “Residual contamination” is defined at proposed N.J.A.C. 7:26F-1.5 as contamination remaining in soil at a site, after implementation of a remedial action, at a concentration that exceeds the applicable soil remediation standard. These three options are available when the owner, with the written agreement of the person who has legal or equitable title to the property (referred to as the “property owner” in the proposed rule), chooses to not remove or treat contaminated soil to the applicable remediation standards or criteria, when ground water is not contaminated above applicable standards, and when the residual contamination does not and will not pose a threat to public health and safety or the environment. As explained at N.J.A.C. 7:26F-3.7(d), if the Department approves any of these three options, the

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Department will issue a heating oil tank system no further action letter that notes the presence of the residual contamination.

Through proposed new N.J.A.C. 7:26F, the Department aims to ease the burden on residential owners who have to remediate discharges from heating oil tank systems. The second and third options (HOTS deed notice and small quantity exception) are applicable only to residential properties. In order to relieve residential owners from implementing costly remedial actions that could compromise the structural integrity of their residential buildings, the Department is allowing some residual contamination to remain on residential properties in specific circumstances, pursuant to proposed N.J.A.C. 7:26F-3.7.

The first option for leaving residual contamination in place is the traditional deed notice (as described in N.J.A.C. 7:26F-3.7(b)1), which applies to a residential or a non-residential property. This option allows an owner, with the agreement of the property owner, to implement a limited restricted use or restricted use remedial action, as applicable, pursuant to the Technical Requirements, N.J.A.C. 7:26E. For example, instead of removing the contaminated soil, the owner may choose to place an asphalt cap on the property. The owner must retain an LSRP and restrict the use of the property by recording a deed notice pursuant to ARRCS at N.J.A.C. 7:26C-2.3 and 7.2, respectively. A certified subsurface evaluator cannot implement this option. (Either an LSRP or a certified subsurface evaluator may implement the second and third options.) The owner must also apply for and obtain a soil remedial action permit pursuant to ARRCS at N.J.A.C. 7:26C-7 and pay all applicable fees. An owner can terminate this type of deed notice and the soil remedial action permit issued pursuant to N.J.A.C. 7:26F-3.7(b)1 in accordance with ARRCS, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E; however, in order to

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terminate the deed notice, the soil must be remediated to the standards for an unrestricted use remedial action.

There are both benefits and downsides for an owner who chooses this first option. An owner may ultimately save time and money by implementing a limited restricted use or restricted use remedial action because the physical remediation can be limited, leaving contamination on the property under a cap. However, the owner would then be subject to biennial inspections by an LSRP, who must certify that the cap remains protective. The owner would also have to obtain a remedial action soil permit, which requires payment of Department permit fees. Moreover, the owner would be required to file a deed notice on the property, memorializing the existence of the contamination. This could affect the value of the property.

Both the second and third options, the HOTS deed notice (N.J.A.C. 7:26F-3.7(b)2) and the small quantity exception (N.J.A.C. 7:26F-3.7(b)3), are unique to the proposed new Heating Oil Tank System Rules, N.J.A.C. 7:26F; ARRCs does not contain comparable provisions. Both apply only to residential properties on which contamination is the result of an on-site discharge from a heating oil tank system. A “residential building” is defined at N.J.A.C. 7:26F-1.5 as a single or multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure used primarily as a dwelling. These two options are available to an owner only when: (a) the discharge has not migrated off-site; (b) excavation or treatment of contaminated soil is impeded or is otherwise impracticable; (c) impacts to receptors are mitigated; (d) the ground water is not contaminated above applicable standards; and (e) the residual contamination does not and will not pose a threat to the public health and safety and the environment. In addition, both of these options require that the owner provide the Department

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with, as part of the remedial action report, a narrative description and map of the location of the residual contamination, and a description of all steps taken to remove or remediate soil contamination prior to making the determination that further remediation is impeded or is otherwise impracticable. The owner must also demonstrate to the Department that the owner has mitigated impacts to receptors, and has appropriately addressed any contamination to ground water.

The HOTS deed notice option, N.J.A.C. 7:26F-3.7(b)2, applies to contaminated soil on the residential property where the discharge from a heating oil tank system occurred, if remediation of that contamination is impeded because it is located under a building, a paved area, or a capped easement, and the small quantity exception at N.J.A.C. 7:26F-3.7(b)3 does not apply. Further, in choosing the HOTS deed notice option, the owner must, with the agreement of the property owner, prepare a deed notice, worded exactly as the proposed model deed notice found in N.J.A.C. 7:26F Appendix A, and submit a copy of that draft deed notice to the Department with the remedial action report prepared pursuant to N.J.A.C. 7:26F-7.2, for Department approval. The proposed model deed notice that is required for this option is a shortened version of the model deed notice that applies under the first option, and to remediations other than under N.J.A.C. 7:26F. Thereafter, the owner must also provide a copy of the recorded deed notice to the Department, who will then issue the heating oil tank system no further action letter pursuant to proposed new N.J.A.C. 7:26F-7.3.

An application for a soil remedial action permit is not required when an owner chooses the HOTS deed notice option. Since the remediation of a discharge from a heating oil tank system is fairly straightforward, and since the primary purpose of proposed new N.J.A.C. 7:26F

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is to provide a simplified approach by which discharges from heating oil tank systems may be remediated efficiently and effectively, the Department has determined that permit processes and procedures for heating oil tank systems should be minimized by not requiring a permit with the deed notice. Even so, because a deed notice is involved, the Department will track the site conditions.

There are both benefits and downsides for an owner who chooses the HOTS deed notice option. Although the owner does not have to obtain a remedial action soil permit, pay related Department fees, or submit biennial certifications, the owner is still required to file a deed notice on the residential property, memorializing the existence of the contamination. As with the first option, this second option could affect the value of the property, as well as the availability and cost of insurance.

The third option for dealing with residual contamination, proposed new N.J.A.C. 7:26F-3.7(b)3, is the small quantity exception, which is available only for residual contamination under a residential building. The Department reviewed its residential heating oil tank system remediations in northern New Jersey. There, the average distance between residential buildings is generally smaller than in other areas of the State. Based on the locations of the heating oil tank systems on the properties, approximately half of the contaminated soil could be removed, while the other half (on average approximately 15 cubic yards) was located under the residence. The small quantity exception allows an owner, with the agreement of the property owner, to leave less than 15 cubic yards of residual contamination under a residential building on the residential property where the discharge occurred, with neither a deed notice, nor a soil remedial action permit, under specific circumstances.

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The Department believes that small quantities of petroleum-contaminated soil located in inaccessible areas at residential properties pose a minimal risk, such that a deed notice and permit are not necessary. This small quantity exception option, N.J.A.C. 7:26F-3.7(b)3, for quantities of less than 15 yards of contaminated soil, should offer a dramatic reduction in the cost of remediation for residential properties. For example, an owner may be able to avoid the necessity of costly structural support during remediation because removal of this relatively small quantity of soil under the home is not required. Given the impracticability or impediment to soil removal, the low volume of residual contamination, and the location of the contaminated soil, the exposure pathway is effectively cut off. In these situations, the building slab or basement floor acts as a protective cap. Consequently, the Department has determined that this small quantity exception is a practical and protective alternative for owners dealing with small quantities (less than 15 cubic yards) of residual contamination.

Ultimately, the owner must remediate until the affected soil and ground water meet the analytical requirements, remediation standards, and criteria for heating oil tank system discharges as provided in N.J.A.C. 7:26F-2.2 and 3.6, unless residual contamination can remain pursuant to proposed new N.J.A.C. 7:26F-3.7. The choice of remedial action belongs exclusively to the owner, based on the owner's evaluation of the benefits and downsides to each type of action. The environmental professional cannot insist that the owner leave contamination on site, or that the owner remediate the soil to the unrestricted use remedial use standard. See proposed N.J.A.C. 7:26F-1.9.

Sample analysis

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As discussed above, when performing a heating oil tank system remediation pursuant to this chapter, an owner must sample soil and ground water and have those samples analyzed to determine compliance with the applicable remediation standards or criteria. Proposed new N.J.A.C. 7:26F-2.2 establishes the analytical requirements for No. 2, No. 4, and No. 6 heating oils, and kerosene, which include soil analysis for extractable petroleum hydrocarbons. Extractable petroleum hydrocarbons (EPH) is defined at proposed N.J.A.C. 7:26F-1.5 as extractable aliphatic and aromatic petroleum hydrocarbons determined using the Department's "Extractable Petroleum Hydrocarbons Methodology," which is available at www.nj.gov/dep/srp/guidance/srra/eph_method.pdf. EPH includes, but is not limited to, No. 2 fuel oil, diesel fuel, and heavier petroleum products, but excludes the lighter petroleum products, including gasoline and mineral spirits. An owner is required to have all soil and ground water samples analyzed in accordance with the quality assurance requirements in the Technical Requirements at N.J.A.C. 7:26E-2.

With one exception, proposed N.J.A.C. 7:26F-2.2 contains the same analytical requirements for No. 2, No. 4, and No. 6 fuel oil, and kerosene as the existing Technical Requirements. Proposed new N.J.A.C. 7:26F-2.2 departs from the existing Technical Requirements, which require the tentative identification of non-targeted compounds (known as TICs) using computerized library search techniques as part of the analysis of both volatile organic compounds (VOs) and semi-volatile organic compounds (SVOs) in ground water contaminated with No. 2 fuel oil. TICs are organic compounds that are not specifically targeted for analysis, but they are found in samples of contaminated material. In the Heating Oil Tank System Remediation Rules the Department is proposing that ground water be sampled for only

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targeted VOs and SVOs. Based on the Department's experience in overseeing the remediation of tens of thousands of heating oil tank systems, most of the compounds on the list of TICs that are associated with No. 2 fuel oil discharges are of low risk to public health and safety and the environment, and they readily degrade. The Department has determined that requiring the remediation of all TICs has resulted in the expenditure of unnecessary time and money, with only minor benefits to human health and the environment. Instead, where contamination has resulted from a discharge of No. 2 fuel oil, limiting sampling of ground water to targeted VOs and SVOs will focus the remediation on the contaminants of greatest concern, in the most cost effective manner. For consistency, the Department is proposing similar amendments to the Technical Requirements at N.J.A.C. 7:26E-2 Table 2-1 for No. 2 fuel oil. The existing requirement to evaluate TICs in water samples analyzed for VOs and SVOs will remain for discharges of diesel fuel.

Variance from technical requirements

There may be occasions when the owner is not able to comply with one or more of the technical requirements of N.J.A.C. 7:26F-2 through 7, perhaps due to circumstances unique to the owner's site. For example, it may not be possible to place a required monitoring well on a small-sized property. Proposed new N.J.A.C. 7:26F-1.10 provides that an owner may vary from the requirements of this chapter, as long as the owner identifies the rule provision and requirement objective, how the work actually performed deviated from the rule requirement, and the reason that it was necessary to vary from the rule requirement. As stated in proposed N.J.A.C. 7:26F-1.10(a), this information must be provided with the remedial action report upon

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completion of the remediation. However, to ensure the protection of the public health and safety and the environment, there are some requirements for which variance is not allowed. Under no circumstance may the owner vary from the general remediation and sample analysis requirements, the applicable remediation standards, the requirement to remediate free product, permit requirements, the requirement to submit reports to the Department, or payment of any fee. Whether the owner may vary from the provision of any other chapter applicable to remediation of a discharge from a heating oil tank system to which the new chapter refers, such as ARRCs or the Technical Requirements, depends on whether the other chapter allows a variance.

Post-compliance activities

Site restoration and remedial action report

Once the owner has remediated the soil and ground water to the appropriate standards under N.J.A.C. 7:26F, the owner must complete three post-compliance activities: restore the site, submit the remedial action report, and obtain a heating oil tank no further action letter from the Department. First, the owner is required to restore to pre-remediation conditions the topography and hydrology of the site on which the heating oil tank system had been located. See proposed new N.J.A.C. 7:26F-3.8, Site restoration. The second post-compliance item is the remedial action report, which the owner must submit to the Department. The remedial action report must contain the information outlined in proposed new N.J.A.C. 7:26F-7.2. The remedial action report describes the site, the remedial actions taken at the site, and any variances from the requirements of the chapter (as discussed above); provides a detailed map of the site; and documents the contaminated material removed from the site and clean fill material placed on the

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site. The Department will review the remedial action report and accompanying data to determine that the remediation is complete and properly performed.

Fees

The Brownfield Act requires a person who initiates a remediation to pay all applicable fees and oversight costs as required by the Department (N.J.S.A. 58:10B-1.3.b(5)). Along with the heating oil tank remedial action report, the owner must submit the non-refundable fee for reviewing a heating oil tank remedial action report. This required fee is proposed to be deleted from N.J.A.C. 7:26C-4.4(a)1 and codified in Heating Oil Tank System Remediation Rules at proposed N.J.A.C. 7:26F-1.8(a)1. In addition to the \$400.00 fee for reviewing a heating oil tank remedial action report, the Department is proposing fees for issuance of a corrected heating oil tank system no further action letter, as well as discharge to ground water proposals, and on-scene coordinator discharge authorizations, at N.J.A.C. 7:26F-1.8(a)2, 3, and 4. These fees are the same as those fees the Department charges for its review of comparable reports or submissions under ARRCs, and they are intended to offset the Department's costs to review the documents.

The fees proposed at N.J.A.C. 7:26F-1.8(a)1, 2, and 4 are currently contained in ARRCs at N.J.A.C. 7:26C-4.4(a)1 and 2, and (d), respectively. As these fees are associated only with unregulated heating oil tank systems, and they are proposed for inclusion in the heating oil tank system remediation rules, they are no longer needed in ARRCs. As such, the Department proposes to delete N.J.A.C. 7:26C-4.4(a)1 and 2, and 4.4(d).

The Department will not issue a heating oil tank system no further action letter until the owner has paid all the required fees. Although proposed N.J.A.C. 7:26F-1.8(c) requires payment by check or money order, the Department will accept electronic payment once it develops the

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necessary infrastructure. The Department will publish a notice on its website to notify the regulated community when electronic payment is possible. It may be that the infrastructure to accept e-checks is not operational at the same time as the infrastructure to accept credit cards. In that case, the notice will state which payment method is available. The Department will publish a subsequent notice of the availability of the remaining electronic payment method, if required.

Certifications

It is essential that all of the information in the remedial action report is correct since, as stated at proposed N.J.A.C. 7:26F-7.3(e), the scope of the remediation limits the scope of the covenant not to sue that accompanies the heating oil tank system no further action letter, discussed below. The covenant not to sue releases the person who undertook the remediation from all civil liability to the State to perform any additional remediation, to pay compensation for damage to, or loss of, natural resources, for the restoration of natural resources in connection with the discharge on the property or for any cleanup and removal costs. The covenant not to sue must be consistent with the conditions and limitations contained in the heating oil tank system no further action letter. Moreover, the covenant not to sue remains effective only for as long as the real property for which the covenant was issued continues to meet the conditions of the heating oil tank system no further action letter.

Each document that the owner submits to the Department must be properly certified by both the owner and the environmental professional. Proposed N.J.A.C. 7:26C-1.9, Certification of a submission to the Department, provides the four certifications that are applicable to the remediation of heating oil tank systems. There is one each for the owner of the heating oil tank system, the certified subsurface evaluator, the LSRP, and the property owner. The Department

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proposes different certifications for the certified subsurface evaluator and the LSRP (the two types of environmental professional) because the Water Pollution Control Act requires a certified subsurface evaluator to certify that he or she provided direct on-site supervision of the remediation (see N.J.S.A. 58:10A-24.2), while SRRA notes that the LSRP need not provide direct on-site supervision (see N.J.S.A. 58:10C-14). The proposed certifications for the environmental professionals make that distinction. The owner certification (proposed N.J.A.C. 7:26F-1.9(a)) and either the certified subsurface evaluator certification (proposed N.J.A.C. 7:26F-1.9(b)) or the LSRP certification (proposed N.J.A.C. 7:26F-1.9(c)) must accompany each document submitted to the Department. The property owner's certification at proposed N.J.A.C. 7:26F-1.9(d) applies only when a property owner chooses a remedial action that includes leaving residual contamination at the property, under proposed N.J.A.C. 7:26F-3.7, discussed above. This certification requires the owner to state that he or she understands that contamination will remain on the property.

Ultimately, the Department intends that the owner will electronically submit all forms, applications, and documents required under proposed N.J.A.C. 7:26F; however, the online portal is not yet available. Once the portal is established, the Department will publish a notice in the New Jersey Register. Ninety days thereafter, all submissions must be through the portal. Until the portal is operational, submissions are to the Department at the address in proposed N.J.A.C. 7:26F-7.3.

Heating oil tank system no further action letter

The third and final post-remediation item is the heating oil tank system no further action letter, which the Department issues based upon the remedial action report, as explained in

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proposed new N.J.A.C. 7:26F-7.3. A heating oil tank system no further action letter is defined at N.J.A.C. 7:26F-1.5 as a written determination by the Department that the owner has remediated all discharges specifically from a heating oil tank system pursuant to N.J.A.C. 7:26F. The Department will issue a heating oil tank system no further action letter when no further remediation is required under N.J.A.C. 7:26F (except as set forth at proposed N.J.A.C. 7:26F-4.3(f), regarding remediation subject to a ground water classification area). This heating oil tank system no further action letter is a different document than remedial action outcomes that are issued by LSRPs pursuant to ARRCS at N.J.A.C. 7:26C-6, no further action letters issued by the Department for unregulated heating oil tank systems pursuant to ARRCS at N.J.A.C. 7:26C-13 (proposed for repeal), and no further action letters that the Department previously issued under the repealed Oversight Rules at former N.J.A.C. 7:26C-2, prior to SRRA and the promulgation of ARRCS.

The existing provisions in ARRCS at N.J.A.C. 7:26C-13 allow a discharge from a heating oil tank system to be remediated under the oversight of either an LSRP or a certified subsurface evaluator. At the end of remediation, under the existing rules, the homeowner obtains a final remediation document, which is either a no further action letter issued by the Department (if a certified subsurface evaluator supervised the remediation), or a response action outcome from an LSRP (if an LSRP supervised the remediation). Some heating oil tank system owners or purchasers of real property might believe that a no further action letter from the Department is preferable to a response action outcome; others may believe that the LSRP's response action outcome is preferable. In fact, the two documents mean the same thing: the discharge from a heating oil tank system has been remediated appropriately. The Brownfield

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Act allows the Department to issue no further action letters for heating oil tank systems; accordingly, under the proposed rules, the Department will issue heating oil tank system no further action letters, whether an LSRP or a certified subsurface evaluator conducted the remediation. See N.J.S.A. 58:10B-13.1. Existing N.J.A.C. 7:26C-6.3 discusses Department-issued no further action letters for remediation of unregulated heating oil tanks under ARRCs. Because an owner is required to obtain a heating oil tank system no further action letter from the Department pursuant to new N.J.A.C. 7:26F-7.3, the Department proposes to repeal N.J.A.C. 7:26C-6.3, as it is no longer necessary.

If the owner determines that the Department issued a heating oil tank system no further action letter based on incorrect site information, proposed new N.J.A.C. 7:26F-7.3(d) requires the owner to request that the Department issue a corrected letter. In order to do so, the owner submits to the Department a revised Unregulated Heating Oil Tank Form with the corrected documentation attached, and the fee of \$100.00, as established at proposed N.J.A.C. 7:26F-1.8.

Funding a heating oil tank system remediation

Proposed new N.J.A.C. 7:26F-9 sets forth the requirements for applicants to obtain financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund (the Fund), to fund a project eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23. Proposed new N.J.A.C. 7:26F-9.1 sets forth the scope of the subchapter, and proposed new N.J.A.C. 7:26F-9.2 addresses the application for financial assistance. As defined at proposed N.J.A.C. 7:26F-1.5, an applicant is a person who files an application for financial assistance from the Fund for payment of eligible project costs of

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a remediation due to a discharge of petroleum from a petroleum underground storage tank, for payment of eligible project costs of a replacement or closure of a petroleum underground storage tank that is not regulated pursuant to N.J.S.A. 58:10A-21 through 35 or 42 U.S.C. §§ 6991 through 6991m, or for payment of eligible project costs of an upgrade or closure of a regulated tank.

The Fund is an account to which the owner of an unregulated heating oil tank system may apply for financial assistance to help offset the cost of remediation of a discharge from an unregulated heating oil tank system. Unregulated heating oil tank system owners are a subset of owners of heating oil tank systems otherwise regulated under proposed new N.J.A.C. 7:26F; owners of residential and small, non-residential aboveground heating oil tank systems are not eligible for reimbursement from the Fund.

As set forth in proposed new N.J.A.C. 7:26F-9.3, applicants may also apply for financial assistance for the reimbursement of remediation costs that occurred prior to application, provided that the remediation costs were incurred after August 30, 1997 (the effective date of the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23, under which the Fund is established). Because proposed new N.J.A.C. 7:26F-9 addresses the requirements for financial assistance from the Fund, the Department proposes to amend ARRCs at N.J.A.C. 7:26C-12.1 to exclude such applications for financial assistance.

Violations and liability

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The Department proposes to incorporate at new N.J.A.C. 7:26F-8.2 the enforcement provision of the UST rules at N.J.A.C. 7:14B-16.11, which addresses the Department's denial, suspension, revocation, and refusal to renew a certification for an individual or business firm.

The Department will also apply the enforcement provisions of ARRCS at N.J.A.C. 7:26C-9 to any violation of proposed new N.J.A.C. 7:26F (see proposed N.J.A.C. 7:26F-8.1); accordingly, the Department proposes to add N.J.A.C. 7:26F to the list of authorities at N.J.A.C. 7:26C-9.1(a) under which the Department may undertake an administrative enforcement action. Likewise, in the table of violations in ARRCS at N.J.A.C. 7:26C-9.5(b), the Department proposes to add penalties for violations of the proposed new chapter, and to set base penalty amounts at levels that are in keeping with the penalty amounts proposed for violations of other rules governing site remediation already codified in the table of violations.

The Department is classifying the proposed violations as "minor" or "non-minor" for purposes of determining whether the violations are subject to a grace period under the Grace Period Law, N.J.A.C. 13:1D-125 through 133. A minor violation is subject to a grace period to correct the violation before the Department will assess a penalty. Of particular importance in determining whether a violation of proposed new N.J.A.C. 7:26F is minor or non-minor is the statutory criterion that a violation be assessed to determine if it "... materially and substantially undermine or impair the goals of the regulatory program ...". The Department has determined that violations of N.J.A.C. 7:26F-1 through 6 (general requirements, free product remediation, soil remediation, ground water remediation, and receptor evaluation) materially undermine or impair the goals of the regulatory system, and are therefore non-minor. The only exception to

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this is failure to certify documents in accordance with N.J.A.C. 7:26F-1.9, which is a minor violation for which the Department proposes a grace period of 30 days.

The Department also proposes to amend ARRCs at N.J.A.C. 7:26C-1.4 to state more clearly when liability attaches to a holder of a security interest in a site, an underground storage tank system, or a heating oil tank system in the event of foreclosure. With this amendment, the Department is identifying regulated systems by using the term “underground storage tank system” found in N.J.A.C. 7:14B-1.6. Likewise, for unregulated systems, the Department is using the term “heating oil tank system” as proposed in new N.J.A.C. 7:26F-1.5. For example, proposed N.J.A.C. 7:26C-1.4(c)4 provides that ARRCs do not apply to a person remediating a discharge from a heating oil tank system when that is the only area of concern at the site. Only an owner whose heating oil tank system is located at a site where there are other areas of concern may follow ARRCs, 7:26C.

Like other site remediation-related rules, N.J.A.C. 7:26F is to be liberally construed in accordance with proposed new N.J.A.C. 7:26F-1.3. Pursuant to proposed new N.J.A.C. 7:26F-1.4, if a court finds any section, subsection, provision, clause, or portion of the chapter to be invalid or unconstitutional, the remaining rules will remain in effect.

Description of amendments to correct or streamline provisions of other rules

Over time, as the Department and the regulated community have applied ARRCs and the Technical Requirements, as well as other site remediation related rules, the Department and stakeholders have noted areas in which the rules could be improved. Accordingly, the Department proposes to amend the rules, so that the Department’s Site Remediation Program

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operates more effectively. In addition, the Department proposes to amend the rules to make them easier to understand, correct typographic and grammatical errors, update cross-references, and update Department contact information.

Discharges of Petroleum and Other Hazardous Substances (DPHS) Rules, N.J.A.C. 7:1E

The Discharges of Petroleum and Other Hazardous Substances (DPHS) Rules, N.J.A.C. 7:1E, are one set of rules through which the Department implements the Spill Act, N.J.S.A. 58:10-23.11a through 23.24. The DPHS Rules set stringent standards for discharge prevention and emergency response requirements for facilities storing or handling hazardous substances, and they set forth procedures to be followed in the event of a discharge of a hazardous substance. The DPHS Rules at N.J.A.C. 7:1E-5.7 govern how a major facility, as defined at N.J.A.C. 7:1E-1.6, must respond to a discharge. On May 7, 2012, the Department published an amendment to N.J.A.C. 7:1E-5.7(a)2 that requires any person responsible for a discharge at a major facility to respond to the discharge pursuant to both the facility's discharge cleanup and removal (DCR) plan and to ARRCs and the Technical Requirements. The result of the 2012 amendment is that the facility is required to hire an LSRP to respond to each and every discharge, even if the discharge response is also covered under the facility's discharge cleanup and removal plan.

At the time the Department adopted the 2012 amendment, the Department determined it reasonable to require compliance with not only the rules for discharge cleanup and removal plans, but also ARRCs and the Technical Requirements, because each of these sets of rules has different objectives and requirements, and each is necessary to protect the public health and safety and the environment from the consequences of a discharge. In the Response to Comments

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86 and 87 (see 44 N.J.R. 1339(a) at 1353-54), the Department stated that the objectives of ARRCs, promulgated in part pursuant to the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and the 2009 amendments to the Brownfield Act, N.J.S.A. 58:10B-1.3.b, include: (1) the use of an LSRP to ensure that all work is actually approved by an independently licensed professional; (2) the delineation of all contamination, both on and off site, to ensure the protection of the public health and safety and the environment; and (3) that all remediation is performed consistent with the statutory and regulatory hierarchy of SRRA at N.J.S.A. 58:10C-14.c. At that time, the Department anticipated that the use of an LSRP would improve the quality of the remediation, and the amendment would relieve the Department from incurring the expense of reviewing documents and approving reports submitted pursuant to discharge cleanup and removal plans. However, on adoption of the 2012 amendment, the Department committed itself to internal coordination among the Site Remediation Program and the Division of Environmental Safety and Health, and their respective stakeholders, to ensure that the amendments to the DPHS Rules minimized, to the extent possible, any negative operational or financial burdens on the facilities subject to those rules.

Subsequently, during the course of implementing this provision, stakeholders subject to the 2012 amendment reported to both the Site Remediation Program and to the Division of Environmental Safety and Health that implementation of the 2012 amendment reached an unnecessary result. Prior to the 2012 amendment, small spills were cleaned up quickly and efficiently under the discharge cleanup and removal plan. Since the 2012 amendment, facilities have been required to hire LSRPs to sign off on responses under the facilities' respective

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discharge cleanup and removal plans, after the fact, adding little or no value to response or cleanup, while adding extra and unnecessary costs.

The Department proposes to amend the DPHS Rules at N.J.A.C. 7:1E-5.7(a)2 to restore the option of responding to the discharge according to either the discharge cleanup and removal plan or according to ARRCS and the Technical Requirements. The Department notes that the DPHS Rules at N.J.A.C. 7:1E-5.7(c) authorize the Department to require a facility to remediate pursuant to ARRCS and the Technical Requirements. Accordingly, in the event that response under a discharge cleanup and removal plan is not sufficient to remediate the discharge, the Department has the authority to order the facility to hire an LSRP to conduct the remediation, as required by SRRRA, N.J.S.A. 58:10C-1 et seq. Additionally, the Department proposes to amend N.J.A.C. 7:1E-5.7(c)2ii to correct the name of the Technical Requirements.

New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A

The New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A-7 govern discharges to ground water. A person may not discharge pollutants to ground water unless the person obtains an individual permit, is authorized to discharge under a general permit, is exempt from the NJPDES rules, or is deemed to have a permit-by-rule.

The NJPDES rules at N.J.A.C. 7:14A-7.5 identify various activities that may result in a discharge to ground water, and list the types of discharges to ground water deemed to have a ground water permit-by-rule. When discharges to ground water result from site remediation activities, the NJPDES rules allow such discharges to qualify for permits-by-rule, instead of requiring individual permits. Existing N.J.A.C. 7:14A-7.5 refers to the Department's approval of

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a “discharge,” rather than the more appropriate term “discharge proposal.” The Department corrects this error at proposed N.J.A.C. 7:14A-7.5(b)2 and 3. The proposed amended rule also addresses soil sampling associated with the installation of monitoring wells, and includes cross-references to the Technical Requirements and the proposed new Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, because they govern discharges that may be eligible for permits-by-rule.

Existing N.J.A.C. 7:14A-7.5(a)4 includes an incorrect citation to the Technical Requirements at N.J.A.C. 7:26E-3.5. Instead of referring to ground water site investigations, the rule should cite to the general remediation requirements to apply technical guidance, found at N.J.A.C. 7:26E-1.5(b). The proposed amendment corrects this citation.

The Department proposes to amend N.J.A.C. 7:14A-7.5(b), which addresses permits-by-rule related to site remediation activities. The Department proposes to divide existing N.J.A.C. 7:14A-7.5(b) into N.J.A.C. 7:14A-7.5(b) and (c), and recodify the remaining subsection. Proposed subsection (b) discusses the conditions for obtaining a permit-by-rule, which directs that the person responsible for the discharge must submit to the Department either a discharge to ground water proposal, or a modification of a Department-approved discharge proposal consistent with the Technical Requirements, N.J.A.C. 7:26E. The person responsible for the discharge must also obtain the Department’s written approval before the discharge occurs. Proposed new N.J.A.C. 7:14A-7.5(c) lists the types of discharges to ground water that are eligible for such permits-by-rule. The proposed references to modifications of an approved discharge proposal are new. The existing rule neglected to mention them, although the Technical Requirements do allow for the modifications.

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Proposed amended N.J.A.C. 7:14A-7.5(d) lists the conditions requiring the Department's invalidation of any permit-by-rule under this section but, unlike the existing rule, does not apply to invalidation of permits-by-rule associated with site remediation activities. Proposed new N.J.A.C. 7:14A-7.5(e) provides the reasons that the Department will invalidate its approval of a discharge to ground water proposal associated with site remediation activities. Proposed new N.J.A.C. 7:14A-7.5(e)1 and 2 are the same reasons as in N.J.A.C. 7:14A-7.5(d)1 and 2; however, the proposed new subsection includes a third reason, which is the permittee's failure to implement the discharge to ground water proposal as the Department approved it.

Proposed new N.J.A.C. 7:14A-7.5(f) also applies to discharge to ground water proposals that are associated with site remediation activities. The rule requires persons responsible for such discharges to ground water to stop unforeseen negative impacts that may occur, as well as remediate such impacts in accordance with ARRCs, the Technical Requirements, or the new Heating Oil Tank System Remediation Rules.

Subchapter 8 of the NJPDES rules establishes a system of controls to ensure that underground injection practices do not endanger underground sources of drinking water. Any underground injection is prohibited, except pursuant to a permit-by-rule under N.J.A.C. 7:14A-8.5, or pursuant to an underground injection control permit under N.J.A.C. 7:14A-8.8. Existing N.J.A.C. 7:14A-8.4(c) lists actions that must be taken if it is determined that a Class V underground injection well may cause a violation of the State Drinking Water Act rules, N.J.A.C. 7:10, or any Ground Water Quality Standards, N.J.A.C. 7:9C. The Department is proposing to amend N.J.A.C. 7:14A-8.4(c) to exclude Class V underground injection wells described at N.J.A.C. 7:14A-8.5(b)11, which are underground injection wells used during the

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remediation of a contaminated site where the person conducting the remediation meets the conditions set forth at N.J.A.C. 7:14A-7.5(b). These underground injection wells will be regulated under proposed new N.J.A.C. 7:14A-8.4(f).

Proposed new N.J.A.C. 7:14A-8.4(f) provides that when the Department learns that a Class V well, as described at N.J.A.C. 7:14A-8.5(b)11, may cause a violation of the Safe Drinking Water Act rules, N.J.A.C. 7:10, or the Ground Water Quality Standards, N.J.A.C. 7:9C, the owner or operator of the well must take appropriate actions to prevent the violation, which may include well closure and obtaining either a UIC permit or a general permit.

Existing N.J.A.C. 7:14A-8.5(c) requires an owner or operator of a Class V injection well to submit inventory information to the Department within 90 days of installation of a Class V injection well. However, where an injection well is used in the remediation of a contaminated site, N.J.A.C. 7:14A-8.5(b) provides that the owner or operator of a Class V injection well is deemed to have a permit-by-rule if that person meets the conditions of N.J.A.C. 7:14A-7.5(b), which require the submittal of this same information with the request for Department approval (that is, the discharge to ground water proposal submitted pursuant to N.J.A.C. 7:26E-5.6). Since it should not be necessary for the owner or operator of a Class V injection well to submit this same information twice, the Department proposes to amend N.J.A.C. 7:14A-8.5(c) to except owners or operators of Class V injection wells described at N.J.A.C. 7:14A-8.5(b)11 from the inventory information submittal requirement.

As a companion to proposed new N.J.A.C. 7:14A-8.4(f), the Department proposes to amend N.J.A.C. 7:14A-8.5(d), which requires the Department to notify any owner or operator of a Class V injection well of the necessity to apply for and obtain an individual or general UIC

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permit. The Department proposes to exclude the requirements of N.J.A.C. 7:14A-8.5(d) for wells described at N.J.A.C. 7:14A-8.5(b)11. The requirements for underground injection wells described at N.J.A.C. 7:14A-8.5(b)11 are contained in proposed new N.J.A.C. 7:14A-8.4(f).

When the Department amended ARRCs and the Technical Requirements in May 2012 (44 N.J.R. 1339(b)), it neglected to update cross-references in the NJPDES rules. Accordingly, the Department proposes to update cross-references to ARRCs and the Technical Requirements throughout N.J.A.C. 7:14A, such as in N.J.A.C. 7:14A-7.5(a)4. Proposed amendments also correct the titles of statutes cited in the chapter.

Underground Storage Tanks (UST) rules, N.J.A.C. 7:14B

The Underground Storage Tanks (UST) rules, N.J.A.C. 7:14B, regulate registration, construction, operation, maintenance, and closure of underground storage tanks and the remediation of leaking underground storage tanks. Remediation being conducted pursuant to the UST rules must proceed pursuant to ARRCs and the Technical Requirements. The UST rules also govern the certification of individuals and business firms servicing unregulated heating oil tank systems, whose remediation requirements are contained in proposed new N.J.A.C. 7:26F, and certification of individuals and business firms servicing regulated underground storage tank systems.

The UST rules at N.J.A.C. 7:14B-5.5 require the owner or operator of an underground storage tank to prepare a release response plan, and at N.J.A.C. 7:14B-5.5(a) to list the components of that plan. The Department proposes to replace the requirement at N.J.A.C. 7:14B-5.5(a)3 to include the name and telephone number of a “retained” LSRP in the response

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plan, with the requirement to include the name and telephone number of any contractor identified by the owner or operator as being needed to implement a response to a release. Additionally, the Department proposes to list three types of contractors who must be identified for inclusion on this list. These are an LSRP, individuals certified pursuant to N.J.A.C. 7:14B-13 or 16 to address system closure and equipment failure, and a contractor with hazardous material emergency response capability.

Underground storage tank system owners and operators have pointed out that ARRCs require that when an LSRP is “retained,” the person responsible for conducting the remediation must submit an LSRP retention form. However, retention of an LSRP within the meaning of ARRCs is neither necessary nor feasible for purposes of underground storage tank release response planning. Moreover, not all LSRPs have the expertise in areas such as system closure and equipment failure or hazardous material emergency response capability. Accordingly, requiring the name of only an LSRP may be insufficient for response planning purposes.

Federal regulations at 40 CFR 280.50 require underground storage tank owners or operators to report suspected releases to the “implementing agency,” which is the Department. Therefore, the Department is proposing to amend N.J.A.C. 7:14B-7.2(b) to require the owner or operator to notify the Department, via the Department hotline, of an investigation of a suspected release.

N.J.A.C. 7:14B-9.5 sets forth reporting and recordkeeping requirements, which include at N.J.A.C. 7:14B-9.5(a) that the underground storage tank owner or operator prepare a site investigation report in accordance with ARRCs and the Technical Requirements. ARRCs also requires that an LSRP prepare and submit a response action outcome (RAO). However,

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questions have arisen as to whether the requirement to issue an RAO applies to a “clean pull,” which is an underground storage tank closure and removal when the site investigation reveals that no further remediation is required. Since SRRA at N.J.S.A. 58:10C-14.d requires the LSRP to issue an RAO “upon completion of the remediation,” the Department believes that it would be helpful to alert owners and operators through the UST rules that an RAO is required, even if there is a clean pull. Accordingly, the Department proposes to require, in new N.J.A.C. 7:14B-9.5(c), that the owner or operator submit an RAO, prepared pursuant to ARRCS at N.J.A.C. 7:26C-6, to the Department along with the site investigation report, if the owner or operator concludes in the site investigation report that no further remediation is required. However, if the owner or operator concludes in the site investigation report that further remediation is necessary, proposed new N.J.A.C. 7:14B-9.5(d) requires the owner or operator to conduct the remediation pursuant to ARRCS and the Technical Requirements.

Existing N.J.A.C. 7:14B-12.1 contains the penalties that the Department may assess for violations of the UST rules. Existing N.J.A.C. 7:14B-12.1(c) states that the Department may take actions against any individual or business that fails to comply with the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or the UST rules at N.J.A.C. 7:14B-1, 3, or 7 through 11. The Department proposes to amend existing N.J.A.C. 7:14B-12.1(c) to also include failure to comply with the provisions of N.J.A.C. 7:26F. Additionally, N.J.A.C. 7:14B-12.1(c)3 fails to include a citation to N.J.A.C. 7:14B-12.4, which contains the civil administrative penalties for violations of the rules governing the certification of individuals and business firms. The proposed amendment corrects this omission.

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Proposed new N.J.A.C. 7:14B-12.1(d) and (e) establish the system of assigning penalty points to individuals and business firms certified pursuant to N.J.A.C. 7:14B-16 who fail to properly perform underground tank services pursuant to the new rules, N.J.A.C. 7:26F, based on the Department's review of submitted forms and reports or based on observations made by Department inspectors during a field inspection. The penalties and the number of penalty points for each are set forth in proposed new Table 12-1. These penalties are the equivalent of those that exist for regulated underground storage tanks, which are in ARRCS at N.J.A.C. 7:26C-9.5. Proposed N.J.A.C. 7:14B-12.1(e) directs that when the Department assigns a penalty point, the Department must send the individual and business firm written documentation of the instances of noncompliance, the applicable citation of the rule that was violated, and the associated penalty points. The Department will post on its unregulated heating oil tank system website identifying information of the individual and business firm, a description of the noncompliance, and the number of penalty points assigned to the individual or business firm during a three-calendar-year period.

The Department also proposes to amend N.J.A.C. 7:14B-16.2, 16.3, 16.4, and 16.11 to include cross-references to the proposed new Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F. Throughout N.J.A.C. 7:14B-16.11, the Department is correcting the references to N.J.A.C. 7:26C to reflect the "Administrative Requirements for the Remediation of Contaminated Sites" as the correct chapter title.

Industrial Site Recovery Act (ISRA) Rules, N.J.A.C. 7:26B

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The Industrial Site Recovery Act (ISRA) Rules, N.J.A.C. 7:26B, implement the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., which is intended to protect the public health and safety and the environment by encouraging efficient and timely remediation of contaminated industrial establishments. ISRA requires that the owners and operators of these industrial establishments remediate the contamination to the Department's satisfaction prior to transferring or closing the industrial establishment. The ISRA Rules prohibit the owner or operator of an industrial establishment from transferring ownership or operations until an LSRP certifies and submits a remedial action workplan to the Department.

The ISRA Rules at N.J.A.C. 7:26B-3.4(a)1 contain an inconsistent timeframe by which the person responsible for conducting the remediation at a site subject to ISRA must establish a remediation funding source, which ensures that funds exist to complete an ongoing remediation. The provision correctly ties the submittal of the remediation funding source to the submission of the remedial action workplan, but it requires that the remediation funding source be established and maintained within 30 days of the Department's approval or an LSRP's certification of a remedial action workplan. ISRA at N.J.S.A. 13:1K-9.c requires establishment of a remediation funding source, as required pursuant to the Brownfield Act at N.J.S.A. 58:10B-3. The Brownfield Act at N.J.S.A. 58:10B-3.b requires establishment of a remediation funding source no more than 14 days after the approval by the Department or the certification by the LSRP of a remedial action workplan, upon approval of a remediation agreement pursuant to ISRA, or upon submission of a remediation certification pursuant to ISRA, unless the Department approves an extension.

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Notwithstanding the above provision in the Brownfield Act, which continues to refer to Department approvals, elsewhere in the Brownfield Act at N.J.S.A. 58:10B-1.3.b(3) a person responsible for conducting the remediation is required to conduct the remediation without the prior approval of the Department, unless directed otherwise by the Department. Based on the Brownfield Act at N.J.S.A. 58:10B-1.3.b(3), in 2011 and 2012 when the Department amended the ISRA Rules, it stated that it was repealing all of the provisions concerning Department pre-approvals; accordingly, the Department should have removed the reference to Department pre-approvals from N.J.A.C. 7:26B-3.4(a)1. (See 43 N.J.R. 1935(a); 44 N.J.R. 1339(b).) The Department proposes to amend the ISRA Rules at N.J.A.C. 7:26B-3.4(a)1 to require that proof of a remediation funding source be submitted within 14 days after the Department's receipt of the remedial action workplan, and to delete the reference to prior Department approvals.

The Department also proposes to amend N.J.A.C. 7:26B-3.4(a)2 to correct a cross-reference. The paragraph refers to the submittal of a remediation certification, which is addressed at N.J.A.C. 7:26B-3.3(c). N.J.A.C. 7:26B-3.2(c) describes how an owner or operator may withdraw an ISRA notification submitted to the Department.

The existing ISRA Rules at N.J.A.C. 7:26B-5.9 establish a de minimis quantity exception to the ISRA requirements. In *Des Champs Laboratories, Inc. v. NJDEP*, 427 N.J. Super. 84 (App. Div. 2012), a property owner challenged the Department's denial of a de minimis quantity exemption. The Department issued the denial because the property was known to be contaminated. The Appellate Division held that ISRA and SRRRA, N.J.S.A. 58:10C-1 et seq., do not authorize the Department to require de minimis quantity exemption applicants to certify to the best of their knowledge that their properties are free from contamination. Consequently, the

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court concluded that the requirement in the ISRA Rules at N.J.A.C. 7:26B-5.9(b)4 that the industrial establishment not be contaminated above any standard in order to qualify for the exception is beyond the powers of the Department. However, the Court did not restrict the Department's authority to seek remediation of an industrial establishment under other environmental statutes including the Spill Act, N.J.S.A. 58:10-23.11a through 23.24, even if the industrial establishment qualifies for ISRA's de minimis quantity exemption.

In response to the *Des Champs* decision, the Department proposes to delete N.J.A.C. 7:26B-5.9(b)4. The Department also proposes to delete this same criterion from the certification at N.J.A.C. 7:26B-5.9(e)1. ISRA at N.J.S.A. 13:1K-9 requires owners or operators of an industrial establishment who do not qualify for a de minimis quantity exemption and are closing, selling, or transferring operations to "remediate the industrial establishment . . . in accordance with criteria, procedures, and time schedules established by the department." However, owners and operators who do qualify for the exemption may, upon submission of a written notice to the Department, transfer ownership or operations or close operations without complying with the provisions of ISRA at N.J.S.A. 13:1K-9.

Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C.

7:26C

The Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, contain the administrative procedures and requirements for the remediation of contaminated sites in New Jersey. ARRCS works in tandem with the Technical Requirements, N.J.A.C. 7:26E, which prescribe how to conduct the remediation to ensure that it is protective of

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public health and safety and of the environment. All remediation, including remediation triggered by the ISRA Rules, N.J.A.C. 7:26B, or remediation of an underground storage tank under the UST rules, N.J.A.C. 7:14B, must proceed pursuant to both ARRCs and the Technical Requirements. The Department proposes to amend the rules to streamline the remediation process, and to correct errors and close loopholes that the Department has identified in the course of administering ARRCs. In addition, the Department is correcting and updating cross-references throughout the rules. For example, the Department proposes to correct the erroneous reference to “Appendix D” in the definition of “deed notice” at N.J.A.C. 7:26C-1.3. The model deed notice is in Appendix B.

General information

The Department proposes to amend N.J.A.C. 7:26C-1.4, Applicability and exemptions, at subsection (a) to more accurately reflect the provisions of the Spill Act at N.J.S.A. 58:10-23.11.g6 concerning when the holder of a security interest becomes subject to ARRCs. The proposed amended rule adds the holder of a security interest in an underground storage tank or heating oil tank system to the list of persons who may be responsible for the discharge of hazardous substances at a site. In addition, the Department is removing language in both N.J.A.C. 7:26C-1.4(a)4iii and iv regarding whether a site was the subject of a remedial action that included an engineering and/or institutional control, as such is immaterial to a security interest holder’s liability under the Spill Act.

The Department proposes to delete N.J.A.C. 7:26C-1.4(a)4v, which identifies a “statutory permittee” as a person responsible for the discharge of a hazardous substance under the Spill Act.

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Proposed new N.J.A.C. 7:26C-1.4(a)6 identifies a statutory permittee as one to which ARRCs applies, notwithstanding whether the statutory permittee is a responsible party. Related proposed amendments update cross-references at N.J.A.C. 7:26C-3.2(a) and 3.3(b), and amend the definition of “statutory permittee” at N.J.A.C. 7:26C-1.3. The proposed amended definition of “statutory permittee” includes each person who becomes the owner, operator, or tenant of the property subsequent to the placement of an institutional control or engineering control on the property.

The Department proposes to amend N.J.A.C. 7:26C-7.11 to clarify that the transfer of a remedial action permit is limited to a statutory permittee. These changes more accurately describe when the statutory permittee can be added to or removed from a remedial action permit. Proposed amended N.J.A.C. 7:26C-7.11(a) specifies that a statutory permittee, whose status as a statutory permittee has changed, must notify the Department that its status has changed and pay the remedial action permit transfer fee. The proposed heading of the section reflects the amendments.

The instructions for how to apply for a permit transfer are in proposed N.J.A.C. 7:26C-7.11(c). Existing N.J.A.C. 7:26C-7.11(b) requires the statutory permittee to request a remedial action permit transfer before the statutory permittee actually owns the property. However, the Department cannot transfer the remedial action permit until the change in property ownership occurs. Because of this, a second notification is necessary when the sale of the property occurs. To eliminate the need for a second notification, the proposed amended rule requires that the statutory permittee submit the necessary information no later than 60 calendar days after the sale or transfer of the property, transfer of the operation of the property, or termination of a lease.

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As stated in existing N.J.A.C. 7:26C-1.4(c), the requirements of AR RCS do not apply to any person who is remediating a landfill, unless all or a portion of the landfill is slated for redevelopment that includes structures intended for human occupancy. The Department proposes to amend N.J.A.C. 7:26C-1.4(c)2 to replace the phrase “structures intended for human occupancy” with the word “building,” and define “building” at N.J.A.C. 7:26C-1.3 as it is defined in the existing Technical Requirements at N.J.A.C. 7:26E-1.8. The defined term provides more clarity than “structures intended for human occupancy,” which is not defined.

The Department has observed that buildings are being constructed on landfills throughout the State, without the Department’s having issued a final remediation document or a solid waste approval for the landfill. Such construction is in circumvention of AR RCS. In order to ensure the protection of the public health and safety and the environment, and to close this administrative loophole, the Department is amending N.J.A.C. 7:26C-1.4(c)2i to require persons remediating landfills to comply with AR RCS, if the redevelopment of the landfill includes a building.

The Department proposes to delete existing N.J.A.C. 7:26C-1.4(d), as it applies to unregulated heating oil tanks, which are now addressed by proposed new N.J.A.C. 7:26F. Recodified N.J.A.C. 7:26C-1.4(e) is amended to exempt persons who are remediating small spills of mineral oil from transformers from the requirement to use the services of an LSRP or to submit documents to the Department. Hurricane Irene in 2011 and Superstorm Sandy in 2012 resulted in large numbers of small-scale cleanups related to mineral oil spills from downed pole-mounted transformers. These spills can be remediated quickly and easily and, as long as they do

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not reach the waters of the State, pose little harm to public health and safety and the environment. The cleanup of these spills remains subject to all applicable rules and regulations.

The Department is adding to the definition of “person” at N.J.A.C. 7:26C-1.3 the sentence, “[p]erson’ shall, for the purpose of enforcement, also include a responsible corporate official, which includes a managing member of a limited liability company or a general partner of a partnership.” The Department is making this amendment to clarify the responsibility of certain business officials who have the actual responsibility for the condition or act resulting in a violation but neither prevents nor corrects the violation. This amendment will help ensure that these business officials understand the potential consequences if they fail either to prevent a violation or to correct a violation when it occurs. The Department also proposes to amend the definition’s reference to political subdivisions. As amended, “person” includes the State of New Jersey or any of its political subdivisions. As a result, the description “of or found within the State of New Jersey” is no longer necessary.

The Department proposes to amend the heading of N.J.A.C. 7:26C-1.5 to “signatures and certifications,” rather than the existing heading, “certifications.” The proposed amended rule provides not only the text of the required certifications, but also identifies the individual that may sign documents on behalf of a person responsible. The Department proposes to add to N.J.A.C. 7:26C-1.5(a) a requirement that the person responsible for conducting the remediation must sign, date, and certify all submissions that person makes to the Department pursuant to this chapter. The Department proposes to replace existing N.J.A.C. 7:26C-1.5(b) through (d) with a proposed new (b), consistent with the proposed change to the definition of “person,” discussed above, to better explain who is required to certify submissions to the Department. Proposed new N.J.A.C.

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7:26C-1.5(b) serves as additional regulatory guidance concerning who is required to sign and certify submissions to the Department when the person responsible for conducting the remediation is a business or government agency. Also, at proposed new N.J.A.C. 7:26C-1.5(c), the Department proposes to amend the language of the certification that the person responsible for conducting the remediation must include in submissions to the Department.

Child care centers

The Department of Children and Families Manual of Requirements for Child Care Centers at N.J.A.C. 10:122-5.2(i) requires a person who is proposing to open, renew, or relocate a licensed child care center or educational facility to obtain a letter from the Department of Environmental Protection. This Department letter, demonstrating that the site has been remediated to Department standards, must be obtained prior to issuance of a certificate of occupancy and a license to operate. To implement this requirement, the Department proposes to amend the applicability section of ARRCs by adding new N.J.A.C. 7:26C-1.4(a)7, which provides that persons evaluating a site for use as a licensed child care center must also comply with ARRCs.

Annual remediation fees are based on the number of areas of concern present at a site; the annual remediation fee for Category 1 is considered the base fee. Under the existing rules, child care centers are required to pay an individual document review fee for renewal certifications, pursuant to N.J.A.C. 7:26C-4.4(a)4. However, renewal certifications are not within the purview of the Department, and, therefore, this fee is not applicable. All documents pertaining to remediation are required to be submitted to the Department. Based on the Department's

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experience gained over the past several years in inspecting documents and sites in connection with child care center applications and renewals, the Department has determined that the Category 1 annual remediation fee is appropriate. Therefore, the Department proposes to add persons conducting child care center remediations to the list at new N.J.A.C. 7:26C-4.2(b)4i(4), to which the Category 1 annual remediation fee applies.

Notice requirements

ARRCS at N.J.A.C. 7:26C-1.7 contains the requirements for notification and public outreach. The Department proposes to amend N.J.A.C. 7:26C-1.7(b) to require that the person responsible for the conducting the remediation notify the Department when known contamination has migrated onto the site from another site. The Department is moving this requirement from existing N.J.A.C. 7:26C-1.7(c) into 1.7(b) because proposed amended N.J.A.C. 7:26C-1.7(b) directs when the person responsible for conducting the remediation must notify the Department, while amended subsection (c) addresses historic fill. When conducting remedial activities, LSRPs and certified subsurface evaluators may encounter contamination suspected to be unrelated to the subject site. If that occurs, the LSRP or certified subsurface evaluator must complete an investigation in accordance with N.J.A.C. 7:26E-3.9 or 3.10 to demonstrate that the contaminants are the result of migration onto the property from an off-site source and the subject site is not a contributor to that contamination.

Additionally, the Department proposes to amend the hotline notification requirement at N.J.A.C. 7:26C-1.7(c), so that a person responsible for conducting the remediation does not have to call the Department's hotline if the only discharge at the site is historic fill. This is in keeping

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with the existing requirement at N.J.A.C. 7:26C-1.7(b)1 that a person responsible for conducting the remediation need not call in a discharge that is “already known to the Department.” Historic fill is ubiquitous in the State, and the Department recognizes that it is pervasive. Calls to the hotline regarding only historic fill overtax the hotline staff and do not add to the protection of public health and safety and the environment. This is not to say that historic fill is not a discharge that must be remediated under the Brownfield Act, but only that the Department acknowledges the omnipresent nature of historic fill.

Existing N.J.A.C. 7:26C-1.7(d) requires the person responsible for conducting the remediation to notify the Department of certain listed discharges. The purpose of this requirement is to ensure that the Department is notified of confirmed discharges. However, existing N.J.A.C. 7:26C-1.7(d)2 requires a regulated underground storage tank owner or operator who is investigating either a known or a “suspected” release to notify the Department. The Department is only concerned with confirmed discharges, not suspected discharges. Accordingly, the Department proposes to amend N.J.A.C. 7:26C-1.7(d)2, so that notification is required only if there is a confirmed discharge. The Department already receives notifications of intent to close regulated underground storage tanks through other means.

Existing N.J.A.C. 7:26C-1.7(f) sets forth the minimum information that the person responsible for conducting the remediation has to include in the initial notification to surrounding property owners and in any prepared fact sheets. The Department proposes to replace the phrase LSRP “of record” with “hired pursuant to N.J.A.C. 7:26C-2.3(a)1,” as the term “of record” is not defined. Also, since the Department’s program interest number is the primary reference number by which data pertaining to a particular site can be extracted from the

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Department's databases, the Department proposes to amend N.J.A.C. 7:26C-1.7(f) to require that the program interest number be included in the notifications mentioned in this provision.

The requirements for a person responsible for conducting the remediation to document compliance with ARRCs notification and public outreach requirements are in existing N.J.A.C. 7:26C-1.7(g). The existing rule requires the person responsible for conducting the remediation to submit to the Department compliance documentation with the next remedial phase report. However, the Department has found over the course of implementing this provision that the next remedial phase report may be the final document that the person responsible for conducting the remediation submits to the Department, and identifying non-compliance at that point may be too late. The underlying purpose of conducting public notification and outreach before remedial activities begin is to ensure that the public is aware of what is going on at the site, and has the opportunity to ask questions and gain reassurance prior to the start of those activities. It is pointless if the Department discovers a failure to comply with these requirements after remediation is complete, only to require the person responsible for conducting the remediation to conduct public notification and outreach after the fact. Accordingly, to emphasize the importance of conducting public notification and outreach before remedial activities begin, the Department proposes to amend N.J.A.C. 7:26C-1.7(g) to require the person responsible for conducting the remediation to provide the Department with proof of public notice and outreach within 14 days after providing such to the public. As in the existing rule, the proposed amended rule requires the proof to be provided on a form available on the Department's website. The Department proposes to relocate the requirement to use the form from N.J.A.C. 7:26C-1.7(g)4 to

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1.7(g). The information in existing N.J.A.C. 7:26C-1.7(g)1 through 3 is to be submitted on the form, a requirement that is clarified in the amended rule.

The Department proposes to amend N.J.A.C. 7:26C-1.7(h)2 to require the person responsible for conducting the remediation to notify neighbors (by posting a sign or sending letters) during the remediation investigation phase, instead of at the remedial action phase, as in the existing rule. The statutory source of the requirement to notify neighbors located within 200 feet of the contaminated site is the 2006 amendment to the Brownfield Act at N.J.S.A. 58:10B-24.3.b, which requires the Department, through rulemaking, to establish procedures, including timing, of notice to the public. When the Department first proposed rules to implement this provision, the Department specified the remedial investigation phase as time at which it would be most appropriate to initiate public notification because:

[I]t is not until after the completion of the site investigation that there is sufficient information about the type and location of contamination to provide the public with meaningful notification. At the initiation of the remedial investigation, the person responsible for conducting the remediation will have sufficient information to inform the public about the type of contamination and the media affected at the site. It is at this point in the remediation that potential impacts may arise as community issues, which makes it an ideal time to establish a dialogue between the community and the remediating party ... By providing public notification prior to commencing field activities, the community will also have the facts, thereby avoiding speculation and undue concern that may arise when remediation work begins at a site...

39 N.J.R. at 2687 (Aug. 6, 2007).

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In recodifying the public notification requirements from the Technical Requirements at N.J.A.C. 7:26E-1.4 to ARRCs at N.J.A.C. 7:26C-1.7, the Department changed the timing of public notice from initiation of the remedial investigation, to initiation of the remedial action. The proposed amendment restores the original timing of the public notification to the initiation of the remedial investigation, as that is the first instance at which heavy machinery is usually introduced to the site, and it is helpful for neighbors to be aware that such activities will be occurring before the remedial investigation begins.

The Department proposes an additional amendment to N.J.A.C. 7:26C-1.7(h)2 that requires the person responsible for conducting the remediation to continue remediation, while notifying the public of the intent to commence field activities associated with the remedial investigation. The Brownfield Act at N.J.S.A. 58:10B-1.3.b(3) requires the person responsible for conducting the remediation to continuously remediate, unless otherwise directed by the Department. The Department has noticed that stakeholders misinterpret the 14-day notice requirement as a stop-work order for the 14-day period. However, the rule provides that public notice be given within 14 days prior to commencing field activities, and it does not require that remediation stop during that period. The Department anticipates that this proposed amendment will clarify this rule provision.

The Department is amending existing N.J.A.C. 7:26C-1.7(k)1 to require that if the person responsible for conducting the remediation proposes to bring on to the site alternative fill that does not meet the requirements of the Technical Requirements at N.J.A.C. 7:26E-5.2(b), the person is required to obtain prior written approval from the Department. This change will ensure that alternative fill brought onto a contaminated site is consistent with the goals of the

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Brownfield Act. In addition, the proposed amended rule requires that the person use a form available for download from the Department's website when seeking Department preapproval. This amendment makes the paragraph consistent with other provisions in the rule that require Department preapproval by submission of a form.

The Department proposes to amend N.J.A.C. 7:26C-1.7(k)3, recodified as (k)2, to require that when the person responsible for conducting the remediation proposes to bring alternative fill on to the site that does not meet the requirements of the Technical Requirements at N.J.A.C. 7:26E-5.2(b), the person must also include the volume of alternative fill being brought to the site in the notice being sent to people in the vicinity of the site and to the local and county officials. Further discussion of the amendments proposed for N.J.A.C. 7:26E-5.2 is below in the summary of the Technical Requirements under the heading, "remedial actions."

Several persons responsible for conducting the remediation have asked the Department whether there is a deadline by which they must hire a replacement LSRP after dismissing a previously hired LSRP, or after an LSRP resigns during the course of ongoing remediation, or when an LSRP is no longer capable of serving (for example, loses his or her license, becomes too ill to work, or dies). Existing ARRCs does not establish a deadline for hiring a replacement LSRP; the only requirement is that the person responsible for conducting the remediation must notify the Department within 45 days after hiring the replacement LSRP. See N.J.A.C. 7:26C-2.3(a)2iv. In order for the person responsible for conducting the remediation to continuously remediate, and in order for the Department to be kept informed of the status of remediation, the Department proposes to amend N.J.A.C. 7:26C-2.3(a)1 to require that the person responsible for conducting the remediation also maintain an LSRP during the course of ongoing remediation.

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Further, the Department proposes to amend N.J.A.C. 7:26C-2.3(a)2 to state more clearly the deadlines for submission of LSRP and remediation information to the Department.

Conducting the remediation under the supervision of an LSRP is mandated by SRRA, N.J.S.A. 58:10C-1 et seq., and is at the core of the LSRP Program. Accordingly, the Department proposes new N.J.A.C. 7:26C-2.3(c), which requires the person responsible for conducting the remediation to notify the Department within 48 hours after the dismissal, resignation, or incapacity of an LSRP in cases where there is an immediate environmental concern. In cases where there is not an immediate environmental concern, the person responsible for conducting the remediation must notify the Department within 45 days after the dismissal, resignation, or incapacity of an LSRP. In addition, the Department proposes to add new N.J.A.C. 7:26C-2.3(d) so that the person responsible for conducting the remediation must provide the Department with the identity of the replacement LSRP within 48 hours (in immediate environmental concern cases) or 45 days (in non-immediate environmental concern cases) after the previously hired LSRP's services were terminated due to dismissal, resignation, or incapacity.

Timeframes

ARRCS at N.J.A.C. 7:26C-3.2 through 3.5 outlines the procedures to obtain extensions to regulatory, mandatory, and expedited site-specific timeframes. A person responsible for conducting the remediation may want to request an extension of one of these timeframes because of difficulty in obtaining site access. Procedures regarding how to go about obtaining site access are located in ARRCS at N.J.A.C. 7:26C-8.2. ARRCS at N.J.A.C. 7:26C-8.2(e) states that if an extension is requested pursuant to ARRCS Subchapter 3, one must "... provide the Department

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all appropriate information as detailed in this section ...” Proposed new N.J.A.C. 7:26C-3.2(b)1iii(1) cross-references these requirements.

The Department proposes to amend N.J.A.C. 7:26C-3.3 to include statutory timeframes pursuant to N.J.S.A. 58:10C-27.a(3). The proposed amended heading of the section reflects the addition to the rule. Proposed new N.J.A.C. 7:26C-3.3(a) identifies the timeframes applicable to all sites that are subject to N.J.S.A. 58:10C-27.a(3), which are ineligible for an extension of the remedial investigation timeframe set forth in N.J.A.C. 7:26C-3.3(a), as stated in proposed new N.J.A.C. 7:26C-3.3(e). The Department proposes to recodify existing N.J.A.C. 7:26C-3.3(a) as (b), and to amend the subsection, so that it identifies the timeframes applicable to all sites that are not subject to N.J.S.A. 58:10C-27.a(3). These sites are eligible for an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5, as stated in proposed amended N.J.A.C. 7:26C-3.3(f).

Proposed amended N.J.A.C. 7:26C-3.3(d) and 3.4(d) state more clearly that the focus of the subsections is the site, area of concern, or condition, and not the person responsible for conducting the remediation. When a mandatory remediation timeframe is not met, it is the site, area of concern, or condition that is subject to direct oversight by the Department. In addition, the Department proposes to amend N.J.A.C. 7:26C-3.5(d)1 to add a cross-reference to N.J.A.C. 7:26C-8.2(e), which requires the person responsible for conducting the remediation to provide the Department with detailed information when applying for an extension of a timeframe due to a delay in gaining access to property.

Remedial action permits

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The Department proposes new N.J.A.C. 7:26C-7.5(e) to address the situation where a site subject to a remedial action permit is subdivided. Within 30 days after subdivision approval, the permittee shall apply for termination of the remedial action permit pursuant to proposed new N.J.A.C. 7:26C-7:13(c) and require the person responsible for conducting the remediation to apply for a remedial action permit (including paying the applicable remedial action permit application fee) for each site created by the subdivision upon which an engineering or institutional control exists.

The Department proposes to amend N.J.A.C. 7:26C-7.6 to add language regarding remedial action permit application schedules. In *Vi-Concrete v. NJDEP*, 115 N.J. 1 (1989), the owner of a closed landfill challenged the Department's issuance of a permit requiring the owner to install monitoring devices on its property in accordance with the Water Pollution Control Act (WPCA). The New Jersey Supreme Court held that the Department did not have authority under the WPCA to issue a permit requiring the property owner to install monitoring devices, in the absence of administrative rules. The Department proposes to define the scope of its authority to issue remedial action permits and clarify the conditions under which it will exercise that authority.

Proposed new N.J.A.C. 7:26C-7.6(c) states that the Department will issue a remedial action permit to any person responsible for conducting the remediation who does not apply for a remedial action permit according to the applicable timeframe in N.J.A.C. 7:26C-7.6(a) or (b). Proposed new N.J.A.C. 7:26C-7.6(d) allows the Department to issue a modified remedial action permit if the person responsible for conducting the remediation does not timely apply for a remedial action permit modification. Further, proposed new N.J.A.C. 7:26C-7.6(e) directs that

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the permittee issued a remedial action permit or modification is responsible for paying applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.6. The Department's issuance of that remedial action permit does not excuse the person responsible for conducting the remediation from any enforcement consequences of not having applied for a remedial action permit.

The general conditions applicable to all remedial applications are set forth at N.J.A.C. 7:26C-7.7. In most provisions of N.J.A.C. 7:26C-7.7(a)1, the rule refers to the "site"; however, at N.J.A.C. 7:26C-7.7(a)1vi, the rule refers to the "property." For consistency, the Department proposes to replace "property" with "site." Also at N.J.A.C. 7:26C-7.7(a)1 the Department proposes to correct the codification of the subparagraphs to eliminate the duplication of subparagraph vii. Proposed new N.J.A.C. 7:26C-7.7(a)5 and 6 require the permittee to inform the Department when the municipality revises the lot and block designations of a site, and when the address of the permittee changes, so that the Department can maintain correct site and contact information for sites that are the subject of remedial action permits.

The Department proposes to amend N.J.A.C. 7:26C-7.8(d)2 in order to clarify that, if a permittee cannot certify to the Department that a deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained and that the soil remedial action continues to be protective of the public health and safety and the environment, then a permittee must take all necessary actions to safeguard that the remedial action is protective of public health and safety and the environment before the due date of the next required biennial certification.

Proposed amendments to N.J.A.C. 7:26C-7.12(b) explain more clearly the events that trigger modification of a remedial action permit. The Department proposes to delete the "within

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30 days” limitation in N.J.A.C. 7:26C-7.12(b) because the permittee must apply for a remedial action permit modification before the LSRP can issue the response action outcome. The Department also proposes to amend N.J.A.C. 7:26C-7.12(b)1 to require that a remedial action permit be modified if there is a change in the remedial action pursuant to N.J.A.C. 7:26C-6.4. The Department proposes to delete N.J.A.C. 7:26C-7.12(b)2 and recodify N.J.A.C. 7:26C-7.12(b)3 with amendments to clarify that it applies to actual modifications of engineering or institutional controls, not just proposals to change such controls. The proposed amended rule addresses the subject contained in existing N.J.A.C. 7:26C-7.12(b)2, making the paragraph unnecessary.

The Department proposes to delete N.J.A.C. 7:26C-7.12(b)4 and 5, two of the occurrences that require a permittee to have the Department modify a remedial action permit. N.J.A.C. 7:26C-7.12(b)4, the modification of the remedial action, is contained at proposed amended N.J.A.C. 7:26C-7.12(b). N.J.A.C. 7:26C-7.12(b)5, a determination that a municipality has revised the lot and block designations of the property, is unnecessary. Permits need not be modified pursuant to this section for administrative changes, such as changes to the property lot and block numbers (other than those due to municipal subdivision). In addition, the Department proposes to amend N.J.A.C. 7:26C-7.12(c) to reflect that the Department requires the same information for remedial action permit modification as is required in an application for a remedial action permit.

The model termination of deed notice is located in N.J.A.C. 7:26C Appendix C; amendments to N.J.A.C. 7:26C-7.13(b)5 correct the reference to the Appendix. Proposed new N.J.A.C. 7:26C-7.13(c) requires permittees to apply to the Department for termination of a

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remedial action permit within 30 days after municipal subdivision approval of the site, and to apply for a new remedial action permit pursuant to proposed new N.J.A.C. 7:26C-7.5(e).

Existing N.J.A.C. 7:26C-7.13(c) is recodified as N.J.A.C. 7:26C-7.13(d), and the term “property” is being changed to “site” for consistency.

N.J.A.C. 7:26C-9 governs the administrative enforcement actions the Department may take against a person who is in violation of an administrative order or administrative consent order, State environmental statutes and regulations, or a remedial action permit. The Department proposes to add the Technical Requirements and the proposed new Heating Oil Tank System Remediation Rules to the list of authorities under which the Department may undertake an administrative enforcement action at N.J.A.C. 7:26C-9.1(a). The Department proposes to delete existing N.J.A.C. 7:26C-9.1(a)7, which identifies a remedial action permit as the basis for Department enforcement action. A remedial action permit is issued pursuant to this chapter; therefore, an enforcement action under a remedial action permit is also under existing N.J.A.C. 7:26C-9.5(a)4, which identifies SRRA and ARRCs as the basis for enforcement. In addition, proposed new N.J.A.C. 7:26C-9.1(b)6 adds that the chapter also governs the procedures that the Department will follow when it assesses “State costs” in an enforcement action pursuant to this section.

Deed notices and classification exception areas

N.J.A.C. 7:26C-7 sets forth the requirements regarding deed notices, classification exception areas, and soil and ground water remedial action permits. The Department proposes new N.J.A.C. 7:26C-7.2(c) and (d) to address remedial action permit terminations that result from subsequent municipal subdivision approvals. Proposed new N.J.A.C. 7:26C-7.2(c) outlines

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the requirements for the person responsible for conducting the remediation who is not the property owner of the contaminated site. In such cases, the person responsible for conducting the remediation is required to secure the property owner's written agreement to either record a deed notice or provide notice in lieu of a deed notice. Proposed new N.J.A.C. 7:26C-7.2(d) directs that within 30 days after municipal subdivision approval of a site that triggers a remedial action permit termination application pursuant to N.J.A.C. 7:26C-7.13(c), both the person responsible for conducting the remediation and the statutory permittee must terminate the existing deed notice on the site (see discussion above in the Summary of proposed amendments to N.J.A.C. 7:26C-7.5(e) and 7.13(c)), file a new deed notice for each subdivided parcel of the site (using N.J.A.C. 7:26C Appendices C and B, respectively, as the formats for the deed notices), and apply for a new remedial action permit pursuant to N.J.A.C. 7:26C-7.5.

Existing N.J.A.C. 7:26C-7.3(d) lists the persons that the person responsible for conducting the remediation is to notify of the intent to establish a ground water classification exception area. The Department proposes to delete N.J.A.C. 7:26C-7.3(d)6, which lists the Department Bureau of Safe Drinking Water and Bureau of Water Systems and Well Permitting of Water Allocation from that list of entities, as this notification occurs internally within the Department. In addition, the Department proposes to amend N.J.A.C. 7:26C-7.3(h), to include that the ground water classification exception area established to address ground water contamination from historically applied pesticides shall remain effective indefinitely, but that establishment of a ground water remedial action permit is not required.

As a companion amendment, the Department proposes to add the definition of "historically applied pesticides" to the definitions at N.J.A.C. 7:26C-1.3. Historically applied

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pesticides include organic and inorganic chemicals that have been and are no longer used for pest control at a site, but specifically do not include the manufacture, mixing, or other handling of these chemicals that resulted in a discharge of these chemicals to the environment. Similar to historic fill, historically applied pesticides were applied throughout the State, and they have been found to have long-lived residues and lasting health and environmental impacts. Many historically applied pesticides have long half-lives in the environment, thus resulting in residual concentrations that may continue to exceed various Remediation Standards for extended periods of time. Again similar to historic fill, the conventional use of historically applied pesticides may result in widespread, low level ground water contamination above applicable standards that cannot be attributed to an individual source area of concern or agricultural property.

Existing N.J.A.C. 7:26C Appendix B provides the Model Deed Notice to be used when the person responsible for conducting the remediation implements a limited restricted use or restricted use remedial action. When a person responsible for conducting the remediation implements a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards, existing N.J.A.C. 7:26E-5.2(a)4 requires the person responsible for conducting the remediation to file a deed notice. ARRCs at N.J.A.C. 7:26C-7.2(a)1 requires that such a deed notice must be worded exactly as the model document at N.J.A.C. 7:26C Appendix B.

For consistency and clarification, the Department proposes to add language to the Model Deed Notice at Appendix B. Throughout the Model Deed Notice, the Department proposes to correct the unintended omission of the word “lessor” where subsequent owners, lessees, and operators of the property are already included, so that subsequent lessors of the property are also

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incorporated. Additionally, at the top of the Model Deed Notice, the Department proposes to add a blank line on the left side, where the recording office can enter the assigned instrument number when the deed notice is recorded.

Model Deed Notice paragraph 3 addresses soil contamination. The Department proposes to amend the language in paragraph 3 to require that a further description of information about existing soil contamination and engineering controls on the site must be included in Exhibit B, which is an attachment to the Model Deed Notice.

The Model Deed Notice in Appendix B provides at paragraph 5Bii that the Brownfield Act prohibits the conversion of a landfill, with gas venting systems and/or leachate collection systems, to a single family residence or child care facility without the Department's prior written approval. In fact, the Brownfield Act expressly prohibits the conversion of a landfill with gas venting systems or leachate collections systems to a single family residence or child care center under any circumstance. Accordingly, the Department proposes to delete from the paragraph the possibility of such use with Department approval.

Paragraph 7A of the Model Deed Notice concerns alterations, improvements, and disturbances to engineering controls. As worded in the existing Model Deed Notice, the person responsible for conducting the remediation is required to notify the Department of any activity that involves such a disturbance and to obtain a soil remedial action permit modification, no matter whether the disturbance is temporary or permanent. The Department has determined that it would be more efficient to not require notification or permit modifications when the disturbance will be temporary and when the engineering control will be restored to its pre-disturbance condition. An example of this situation involving a temporary disturbance would be

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where the person responsible for conducting the remediation has capped the contaminated soil with a parking lot, the parking lot is illuminated with lights, and maintenance on a light fixture requires digging up the parking lot around the light fixture. This part of the parking lot can be quickly restored to its pre-disturbance condition after the maintenance is complete.

To accommodate temporary disturbances of an engineering control, the Department proposes several amendments to paragraph 7A of the Model Deed Notice. In paragraph 7Aii, the Department proposes replacing the requirement to obtain a soil remedial action permit modification pursuant to N.J.A.C. 7:26C-7 with the requirement to retain an LSRP. Although notice is not required for a temporary disturbance, proposed amended 7Aiii requires that submittals be made to the Department within 30 days after a permanent alteration, improvement, or disturbance. At paragraph 7Aiii(A), the Department proposes to replace the requirement to notify the Department of the activity with the requirement to submit a remedial action workplan or linear construction project notification and final report form, as applicable. Further, the Department proposes to add new paragraphs 7Aiii(B) and (C), which require a remedial action report and termination of deed notice form, and a revised recorded deed notice and exhibits, a remedial action permit modification or remedial action permit termination form and a remedial action report to be among the submittals to the Department in the case of a permanent alteration, improvement, or disturbance.

Where the disturbance is temporary, however, the Department proposes at new paragraph 7Aiv in the Model Deed Notice that a soil remedial action permit modification is not required, provided that the site will be restored to the condition described in the original exhibits to the deed notice and the property owner, lessee, or operator complies with the conditions formerly

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codified as paragraph 7Aiii(B) through (E), and recodified as paragraph 7Aiv(A) through (D).

The Department also proposes to add the word “temporary” to recodified paragraph 7Aiv(D) to ensure that a temporary disturbance is described in the next biennial certification.

Model Deed Notice paragraph 7B addresses emergencies. The Department proposes that instead of requiring that the Department be notified within 60 days after the restoration of an engineering control that was disturbed in the case of an emergency, the person responsible for conducting the remediation submit a remedial action report within 60 days after completion of the restoration of the engineering control.

Model Deed Notice paragraph 8 addresses termination of deed notices. The Department proposes to replace “filing” with “recording” in paragraphs 8i and 8ii, because a person records a deed notice with the applicable county official.

Paragraph 12B in the Model Deed Notice at N.J.A.C. 7:26C Appendix B provides instructions for describing the areas on a site that are to be restricted through operation of the deed notice; that description is to be included in Exhibit B of the Model Deed Notice. Subparagraph 12Bi(C) requires that all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard be designated on the map. The Department proposes to remove the phrase “or sediment standard” from this paragraph because the Department has no remediation standards for sediment. Soil remediation standards are not appropriate for environmentally sensitive natural resources, such as open water bodies or wetlands where sediment is found. Soil remediation standards are based on human health and assume human exposure in a residential or nonresidential setting. Human exposure to contaminated sediment in an open water body, for example, would not be expected at the same

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exposure level as in a residential or nonresidential setting. Therefore, deed notices and engineering controls for human health purposes are not applicable or relevant in environmentally sensitive natural resources that consist of open water bodies or wetlands. However, the Department is proposing to add “all upland” before “sediment sample locations” in order to clarify that upland sediments are considered to be equivalent to soil, and are, therefore, also regulated by soil remediation standards.

Model Deed Notice paragraph 12Ci(A) requires that Exhibit C of the Model Deed Notice include a description of the estimated size of the restricted areas to which the institutional controls apply. The Department proposes amending this provision to require that the person responsible for conducting the remediation include the units of measure used to estimate the size of the restricted areas.

The Department proposes a new paragraph 14 in the Model Deed Notice to add a template signature for an owner who is a partnership. Consequently, existing paragraph 14 (concerning signatures of owners who are corporations) is recodified as paragraph 15, with no change in text.

Final remediation documents

N.J.A.C. 7:26C-6 sets forth requirements for final remediation documents. Existing N.J.A.C. 7:26C-6.2(a) states that the LSRP shall issue a response action outcome to the person who has conducted the remediation. However, the rule does not require the LSRP to be retained by the person responsible for conducting the remediation. It is conceivable under the existing rule that an LSRP unrelated to the remediation could issue a response action outcome; under the existing rule, there is no way for the Department to know whether that LSRP has acted on behalf

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of the person responsible for conducting the remediation. The Department wants to ensure that the LSRP is acting on the responsible person's behalf, which is one of the reasons why the person responsible for conducting the remediation formally retains the LSRP pursuant to N.J.A.C. 7:26C-2.3(a)1, and then notifies the Department of the retention pursuant to N.J.A.C. 7:26C-2.3(a)2. The Department proposes to amend N.J.A.C. 7:26C-6.2(a) and add new N.J.A.C. 7:26C-6.2(h), to specify that only the licensed site remediation professional retained by the person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a)1 can issue a response action outcome for a remediation.

Under existing N.J.A.C. 7:26C-6.2(a)2, an LSRP cannot issue a response action outcome until the Department has issued all remedial action permits required by the remedial action. The Department proposes to amend the provision to clarify that an LSRP cannot issue a response action outcome until the Department issues modified remedial action permits that are required due to a change in remedial action pursuant to N.J.A.C. 7:26C-6.4. In addition, the Department is adding a new N.J.A.C. 7:26C-6.2(a)4, which requires that an LSRP not issue a response action outcome until after all wells no longer used for remediation have been properly decommissioned or otherwise accounted for pursuant to N.J.A.C. 7:9D. As discussed below, the Model Response Action Outcome is also amended to address this issue. The Department is making these changes to ensure that all wells that will no longer be used as part of a remediation are properly accounted for and will not act as potential conduits for any remaining or future discharges.

Existing N.J.A.C. 7:26C-6.4 sets forth the circumstances under which a remedy is not protective of the public health and safety and the environment, requires the LSRP to either amend or withdraw the response action outcome (a final remediation document), and requires the

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Department to rescind a no further action letter when the remedial action is not protective.

Stakeholders have correctly pointed out that not all of the circumstances listed at N.J.A.C.

7:26C-6.4 render a remedy not protective, and even if one of those circumstances did occur, the remedy may still remain protective. For example, one of the circumstances listed in the rule is where the Department amends a remediation standard after the issuance of a final remediation document and that standard differs from the remediation standard to which the site was remediated by an order of magnitude or more. In some cases, that may result in a remedial action not being protective; however, where a person responsible for conducting the remediation has implemented a remedy that involves a cap and that cap effectively seals off all receptor pathways, the remedy may still be protective, notwithstanding the change in the remediation standard. Accordingly, the Department proposes to amend N.J.A.C. 7:26C-6.4(a) to state that a remedial action may not be protective of the public health and safety and the environment if one of the enumerated circumstances occurs. The LSRP's actions on learning that a remedial action may not be protective are discussed further below.

Another of the enumerated reasons that a remedial action may not be protective of public health and safety is if a pre-existing discharge is discovered after the issuance of the final remediation document. The existing rule does not specify where that pre-existing discharge must have occurred in order for it to affect a remedial action; therefore, the Department proposes to amend N.J.A.C. 7:26C-6.4(a)1 to state that for a pre-existing discharge to render the remedial action not protective, the discharge must have occurred at the contaminated site or area of concern. The proposed amended rule does not restrict the pre-existing discharge to one that should have been addressed as part of the prior remediation.

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As stated above, a reason that a remediation is no longer protective is if the Department amends a relevant remediation standard by an order of magnitude or more, and the person responsible for the remediation does not complete further remediation. See existing N.J.A.C. 7:26C-6.4(a)2, proposed to be deleted, and proposed new N.J.A.C. 7:26C-6.4(a)10. The existing rule is not clear that the “level of magnitude” difference is based on the residual level or concentration of a contaminant. The existing rule could be misinterpreted as being based on the prior remediation standard and the new standard. The proposed amended rule is intended to clarify that the measure of the difference is between the residual level or concentration of a contaminant at the contaminated site or area of concern and the new remediation standard. Therefore, if the residual concentration of a contaminant is lower than the remediation standard at the time of the remediation (the area of concern is cleaner than the remediation standard required), even if the remediation standard changes by a level of magnitude from the prior standard, further remediation may not be necessary.

If a contaminant exposure pathway is identified after the issuance of the final remediation document, a remediation may no longer be protective. Under existing N.J.A.C. 7:26C-6.4(a)3, the exposure pathway must be one that was not addressed in the remediation. The proposed amended rule does not include such a limitation. Subsequent to the issuance of the final remediation document, the Department may promulgate rules to address an exposure pathway that the rules did not address at the time of the initial remediation. In such a case, further remediation may be required.

Existing N.J.A.C. 7:26C-6.4(a)4 and (a)5 identify failure to comply with the conditions of the final remediation document and failure to comply with a remedial action permit as

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additional bases that a remediation is no longer protective. The Department proposes to delete these specific provisions, and add new N.J.A.C. 7:26C-6.4(a)11, which is a general category. Proposed amended N.J.A.C. 7:26C-6.4(a)1 through 9 pertain to situations that occurred prior to the issuance of the response action outcome (that the LSRP should have properly addressed), and proposed new N.J.A.C. 7:26C-6.4(a)10 and 11 pertain to events that occur after the LSRP issues the response action outcome. If the permittee cannot certify that the remediation remains protective, then the remediation is no longer protective. Further, the Department is amending additional language throughout existing N.J.A.C. 7:26C-6.4(a) for grammar.

Under existing N.J.A.C. 7:26C-6.4(b), proposed for deletion, if an LSRP determines that a remediation is no longer protective, or that the remedial action renders the property unsuitable for future development or recreational use, then the LSRP must rescind the response action outcome. Proposed new N.J.A.C. 7:26C-6.4(b) allows for a review of the circumstances and possible amendment or withdrawal of a response action outcome. The proposed rule outlines what the LSRP who has issued a response action outcome for a contaminated site or area of concern is required to do upon learning that the remedial action may not be protective of the public health and safety and the environment. The only situations that apply to the LSRP are N.J.A.C. 7:26C-6.4(a)1 through 9, as these are related to the actions conducted by the LSRP prior to issuance of the response action outcome. The LSRP must immediately notify the person to whom the LSRP issued the response action outcome, and provide a copy of the notice to the Department. If that LSRP is still retained by the person, then within 30 days that LSRP is required to confirm the protectiveness of the remedial action, notify the Department, and amend the response action outcome, if necessary. However, if that LSRP is no longer retained by the

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person or cannot confirm the protectiveness of the remedial action, then that LSRP must withdraw the response action outcome and send a copy of the withdrawal to both the person and the Department. In the event that the LSRP is unable to withdraw the response action outcome (for example, if the LSRP is deceased), then the Department will invalidate the response action outcome pursuant to proposed new N.J.A.C. 7:26C-6.4(c)3ii(1), as described below.

Proposed new N.J.A.C. 7:26C-6.4(c) addresses what the person responsible for conducting the remediation is required to do upon learning that the remedial action may not be protective of the public health and safety and the environment. Within two days after discovering that the remedial action may not be protective of the public health and safety and the environment, the person must inform the Department. Within seven days, the person must retain an LSRP, if the person has not already done so. Proposed N.J.A.C. 7:26C-6.4(c)3i requires that, if the retained LSRP is the one who issued the existing response action outcome, then within 30 days after discovering that the remedial action may not be protective of the public health and safety and the environment, the person responsible for conducting the remediation must confirm the protectiveness of the remedial action, notify the Department, and have the LSRP amend the response action outcome, if necessary. If the person responsible for conducting the remediation cannot confirm the protectiveness of the remedial action, then that person must have the retained LSRP withdraw the response action outcome and send a copy of the withdrawal to the Department.

Proposed N.J.A.C. 7:26C-6.4(c)3ii explains that if the LSRP retained in accordance with proposed N.J.A.C. 7:26C-6.4(c)2 is not the LSRP who issued the existing response action outcome, then the retained LSRP must confirm the protectiveness of the remedial action, notify

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the Department and, if necessary, request that the Department invalidate the existing response action outcome (because an LSRP cannot withdraw a response action outcome issued by another LSRP). In the event that the existing response action outcome is withdrawn or invalidated, proposed new N.J.A.C. 7:26C-6.4(c)4 gives the person responsible for conducting the remediation one year to conduct a remediation to implement a remedial action that is protective of the public health and safety and the environment, and obtain a new response action outcome.

The Department's obligations are set forth in proposed amended N.J.A.C. 7:26C-6.4(d). Under the existing rule, the Department must invalidate a response action outcome or rescind a no further action letter in specific circumstances. As amended, the rule requires the Department to rescind a no further action letter when it determines that the remedial action is not protective of the public health and safety and the environment, or if the person responsible for conducting the remediation implemented a remedial action that renders the property unusable for future redevelopment or recreational use. The proposed amended heading of N.J.A.C. 7:26C-6.4 describes the contents of the proposed amended section more adequately by referring to correction and withdrawal of a final remediation document, and removing the reference to modification of the document.

The Appendices to N.J.A.C. 7:26C contain form documents relevant to the chapter, including a Model Response Action Outcome Document at Appendix D, which the LSRP prepares at the end of a remedial action. The Model Response Action Outcome Document, under the heading "Notices," requires the LSRP to insert all of the notices (recited in the model) that pertain to a particular remediation. The Department has found that LSRPs occasionally insert all of the notices listed in the model, notwithstanding that a notice may be inapplicable.

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Accordingly, the Department proposes to amend the instructions to make it clear that the preparer should insert only those notices that are applicable.

The existing Model Response Action Outcome Document at the Well Decommissioning notice paragraph instructs the preparer to state that the well driller's well decommissioning report has been submitted to the Department. This often results in the Department unnecessarily receiving a paper copy of the well decommissioning report. The well driller submits the well decommissioning report electronically, and receives an electronic confirmation that the report was received. The well driller can print the confirmation and provide it to the LSRP.

Accordingly, the Department proposes to amend the Model Response Action Outcome Document to require the LSRP to verify that the decommissioning report was submitted to the Bureau. The Department proposes to add language clarifying that, pursuant to N.J.A.C. 7:9D-3.1(c), a well driller of the proper class is required to decommission a well, and that, as the licensed person overseeing all aspects of the remediation, the LSRP is responsible for verifying that any abandoned, lost, or damaged wells are properly decommissioned. Also, the Department proposes to update the e-mail address for the Bureau of Water Allocation and Well Permitting.

The existing Model Response Action Outcome contains notices that inform the public of the environmental condition of the site at the time that the LSRP issues the response action outcome. Examples of these notices include building interiors not addressed, the presence of natural background contamination, and notices specific to child care centers. Through implementation of the program, including input received from various stakeholders, the Department has become aware of the need for, and has developed, eight additional notices to the Model Response Action Outcome Document: (1) In-Service Railroad Line, Spurs and Sidings

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Not Remediated; (2) Known On-site Contamination Source Not Remediated - Historic Fill (Area of Concern RAO); (3) Soil Contamination From an Off-Site Source Not Remediated- General; (4) Soil Contamination From an Off-Site Source Not Remediated - Diffuse Anthropogenic Pollution; (5) Naturally Occurring Levels of Constituents in Ground Water; (6) Historically Applied Pesticides Not Addressed; (7) Ground Water Contamination due to Regional Historic Fill (Ground Water Confirmation Sampling has not been Conducted); and (8) Sediment Contamination from an Off-Site Source Not Remediated – General. The Department is formalizing the use of these notices by including them in the Model Response Action Outcome Document.

Penalties and violations

ARRCS at existing N.J.A.C. 7:26C-9.5 provides for civil administrative penalties for each of the rules concerning site remediation, and includes criteria to determine whether a violation is minor or non-minor, and if minor, to set the appropriate grace period during which the violator may resolve the violation without incurring a penalty. Under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., any person responsible for a minor violation is afforded a period of time (a grace period) during which to correct the violation. If the minor violation is corrected as required, then no penalty is assessed. If a violation is not corrected within the grace period, the Department may assess a penalty. To determine whether a particular violation or category of violations is minor or non-minor, the Department applied the criteria set forth in the Grace Period Law at N.J.S.A. 13:1D-129.b. The Grace Period Law requires the Department to establish the length of the grace period, which may be no fewer than 30 days and no more than

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90 days (unless extended by the Department), based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance.

In applying the criteria in the Grace Period Law, the Department designated as minor, those violations that pose minimal risk to public health and safety and the environment, that do not undermine or impair the goals of the program, and that can be corrected within a designated grace period. A designation as minor in the rules is not absolute. The additional statutory criteria regarding the intent of the violator, the duration of the violation, and whether the violation is a repeat offense, are fact-specific for each violation, and the Department must consider each on a case-by-case basis. Thus, each violation listed in the Table at N.J.A.C. 7:26C-9.5 that is identified as minor will be eligible for a grace period only if it meets these additional criteria.

In the violations Table at N.J.A.C. 7:26C-9.5(b), the Department proposes to amend the penalties for violations of the Underground Storage Tanks rules, N.J.A.C. 7:14B-13, Certification of Individuals and Business Firms, to reflect the statutory cap on violations of the UST certification requirements in the Water Pollution Control Act at N.J.S.A. 58:10A-1 et seq., which places a limit on the first offense at \$5,000. When it first promulgated ARRCS as specially adopted interim new rules, the Department correctly set the penalties for violations of N.J.A.C. 7:14B-13 and 16 at \$5,000 (see 41 N.J.R. 4467(a)). However, as a part of the most recent amendments to ARRCS, the Department attempted to simplify the penalty table to codify only broad remediation goals and to increase the base penalties from a range of \$4,000 to \$20,000 to a range \$10,000 to \$20,000 (see 43 N.J.R. 1935(a); 44 N.J.R. 1339(a)). The Department failed to take into account the Water Pollution Control Act's statutory cap on

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penalties for violations of the certification requirements. Accordingly, the Department now proposes to amend the penalties to indicate \$5,000 for the first offense, \$10,000 for the second offense, and \$20,000 for the third and each subsequent offense.

The Department proposes to amend the penalty for a person responsible for conducting the remediation's violation of the mandatory remediation timeframes provisions of N.J.A.C. 7:26C-3.3(a), to indicate that the penalty applies only to a person who failed to complete the remedial investigation within the statutory timeframe, and, therefore, the site is subject to the direct oversight requirements of N.J.S.A. 58:10C-27.a(3). The proposed new penalty for a violation of N.J.A.C. 7:26C-3.3(b) applies to a person who is remediating a site that is not subject to the statutory timeframe and, instead, fails to meet a mandatory timeframe, making the site subject to direct oversight. The proposed violation is non-minor, and the proposed penalty is \$20,000, the same as for a violation of N.J.A.C. 7:26C-3.3(a).

The Department proposes to add civil administrative penalties for violations of proposed new N.J.A.C. 7:26C-6.4(c), failure to confirm the protectiveness of the remedy, failure to hire an LSRP to conduct the remediation and submit the required form, and a failure to conduct additional remediation after a response action outcome has been invalidated or withdrawn, or after the Department rescinds a no further action letter. These violations are designated as non-minor, and they are assigned a penalty of \$20,000, \$15,000, and \$20,000, respectively. These penalties are comparable to the penalties for violations of similar provisions of ARRCS and the Technical Requirements. Using the criteria of the Grace Period Law, the Department has determined that a violation of N.J.A.C. 7:26C-6.4(c) is non-minor because a failure to comply with the provision would materially and substantially undermine or impair the goals of the

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regulatory program. Proposed N.J.A.C. 7:26C-6.4(c) is intended to ensure that the remedial remedy remains protective when one of the several bases at N.J.A.C. 7:26C-6.4(a) for invalidating a remedial action outcome occurs, while allowing the person responsible for conducting the remediation the flexibility to evaluate the protectiveness of that remedy. In order for the proposed rule to satisfy the Department's intent, it is imperative that the person responsible for conducting the remediation undertakes the requisite evaluations, and conducts additional remediation as necessary.

The procedures for assessment and payment of civil administrative penalties are in N.J.A.C. 7:26C-9.9. The Department proposes to amend N.J.A.C. 7:26C-9.9(c), which describes the consequences of a violator's failure to contest or pay a civil administrative penalty, to be consistent with N.J.A.C. 7:14B-12.4, the civil administrative penalties for violations of the Underground Storage Tanks rules at N.J.A.C. 7:14B-13 and 16, the certification provisions applicable to individuals and business firms that perform services on regulated and unregulated underground storage tank systems. The proposed amendments include calculation of interest on the penalty, making existing N.J.A.C. 7:26C-9.9(d) unnecessary. The Department proposes to delete N.J.A.C. 7:26C-9.9(d) and recodify the remaining subsections.

Adjudicatory hearings

The existing procedures for requesting and conducting adjudicatory hearings are set forth at N.J.A.C. 7:26C-9.10. The Department proposes to repeal the section and replace it with new N.J.A.C. 7:26C-9.10, Adjudicatory hearings. The proposed new section describes in greater detail when and how to request an adjudicatory hearing and how the Department will grant or deny such a request.

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Proposed new N.J.A.C. 7:26C-9.10(a) lists the types of documents that a person can receive from the Department for which an adjudicatory hearing can be requested. The existing rule identified only a civil administrative penalty assessment or an administrative order. The proposed rule is much broader, identifying revocation of a no further action letter, invalidation of a response action outcome, and the issuance or denial of other documents identified in the chapter, as well as the civil administrative penalty assessment and administrative order identified in the existing rule.

Proposed new N.J.A.C. 7:26C-9.10(b) requires the party requesting a hearing to respond to the Department's findings of fact by completing an Administrative Hearing Request Checklist and including specific information as outlined in the rule. The rule includes not only information identifying the requestor and the document for which a hearing is sought, but also is more specific than the existing rule regarding the manner in which the person requesting the hearing must respond to the Department's allegations. The Department intends to make it clear in the rule that any general denial of the Department's findings will have the effect of an admission of each finding. The Department has found that more detailed responses to the findings result in a more complete factual record for use during the hearing process. As in the existing rule, the Department will deny the request for a hearing if it is untimely or incomplete.

Direct oversight

The Department proposes to define "direct oversight" at N.J.A.C. 7:26C-1.3. Existing N.J.A.C. 7:26C-14.2, Compulsory direct oversight, requires the Department to undertake direct oversight under certain enumerated conditions, in accordance with SRRA. The existing rule at N.J.A.C. 7:26C-14.2(b) instructs the person responsible for conducting the remediation to retain

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an LSRP when one of the enumerated conditions occurs; however, the rule does not specify how soon the LSRP must be retained. As proposed for amendment, the rule provides 14 days to hire the LSRP.

The existing rule requires an initial remediation cost review and proposed public participation plan to be submitted and a remediation trust fund to be established within a number of days after one of the enumerated conditions occurs (existing N.J.A.C. 7:26C-14.2(b)4, 5, and 9). The Department proposes to delete these specific provisions and identify at proposed new N.J.A.C. 7:26C-14.2(b)2 a list of items that must be submitted to the Department within 90 days after the condition occurs. These are the remediation cost review, proof of the establishment of a remediation trust fund, a proposed public participation plan, and a receptor evaluation. As to the remediation cost review, the proposed rule allows 90 days for submittal, an increase of 30 days from the 60 days that the existing rule provides. The remediation cost review is not a one-time submittal, as under the existing rule. The proposed rule requires noncompliant persons responsible for conducting the remediation to annually submit cost reviews to ensure that there are sufficient funds to complete the remediation. As to the proposed public participation plan, the proposed rule provides an additional 60 days for submittal; the existing rule requires the proposed plan to be submitted within 30 days of the commencement of direct oversight. Requiring that all deliverables are due on the same day will provide a consistent timeframe for submission and tracking of the deliverables.

The proposed rule also requires the person responsible for conducting the remediation to submit a direct oversight remediation summary report, consisting of a summary of all data and information concerning remediation that has been conducted at the site, and a schedule of all

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tasks that remain to be addressed, along with a schedule of when each task will be completed.

The direct oversight remediation summary report is a new requirement. These deliverables will provide the Department with the information it needs to determine the status of the remediation and what tasks remain outstanding as of the date that the site became subject to direct Department oversight.

Existing N.J.A.C. 7:26C-4.7(a) specifies when a person responsible for conducting the remediation is required to pay Department oversight costs. The Department proposes to add to the rule the requirement that persons who incurred oversight costs prior to the enactment of SRRRA must pay oversight costs. As drafted, the existing rule could give the mistaken impression that such persons do not have to pay Department oversight costs simply because they are not specifically identified at N.J.A.C. 7:26C-4.7(a).

The Department also proposes to clarify N.J.A.C. 7:26C-14.4, which offers relief from the direct oversight requirements set forth in N.J.A.C. 7:26C-14.2. As amended, the rule is clear that before the Department will provide the relief, the person responsible for conducting the remediation must comply with the direct oversight requirements in N.J.A.C. 7:26C-14.2. The existing rule provides that the Department will notify the person that certain direct oversight requirements are no longer necessary, but does not specify the means of the notification. As amended, the rule provides for written notification.

Cost recovery

The Spill Act at N.J.S.A. 58:10-23.11u.c(4) authorizes the Department to assess and recover the costs of any investigation, cleanup, or removal, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty, at the same time that it assesses and

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recovers a civil administrative penalty. To implement this statutory authority, the Department is proposing new N.J.A.C. 7:26C-9.12, Procedures for assessment, payment, and settlement of assessment of cleanup and removal costs in notices of administrative assessment of State costs. This new section describes how the Department can pursue its costs in the Office of Administrative Law, as an alternative to the option of pursuing costs in Superior Court. A responsible party may request a hearing to challenge the assessed State costs through the adjudicatory hearing process at proposed amended N.J.A.C. 7:26C-9.10, discussed above. The Department proposes to define “cleanup and removal costs,” “responsible party,” and “State costs” at N.J.A.C. 7:26C-1.3, and amend the definition of “remediation costs” to include Department fees and oversight costs. This addition provides consistency with the existing remediation funding source requirements at N.J.A.C. 7:26C-5.3 and 5.10, which require such costs in the Department’s initial and annual cost estimates. Further, the inclusion of Department fees and oversight costs clarifies and supports the Department’s authority to pay such fees and costs from remediation funding sources.

Fees

ARRCS at N.J.A.C. 7:26C-4 addresses fees and oversight costs. The person responsible for conducting a remediation pays an annual remediation fee calculated in accordance with N.J.A.C. 7:26C-4.2 until such time as a final remediation document is issued. The annual remediation fee has two components: the contaminated area of concern (CAOC) fee, and the contaminated media fee. The CAOC fee is based on the category to which a remediation is assigned, which differs depending on the number of contaminated areas of concern, and whether the remediation includes a discharge from a regulated underground storage tank. Under the

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existing rule, Category 1 comprises no or one CAOC and no regulated underground storage tanks, or only historic fill.

At existing N.J.A.C. 7:26C-4.2(b)4ii(2), which addresses the annual remediation fee formula, the Department proposes to delete the phrase “except a single regulated heating oil tank system,” thus making a single regulated heating oil tank system a Category 2 fee category. The Department is now amending the rule to indicate that all regulated tanks are included in the Category 2 fee category because all regulated tanks should be considered within the same fee category.

Existing N.J.A.C. 7:26C-4.3, Annual remediation fee, governs payment of the annual remediation fee, and existing N.J.A.C. 7:26C-4.6 governs payment of remedial action permit fees. The Department proposes to amend N.J.A.C. 7:26C-4.3(a)2 and 4.6 to instruct the person responsible for conducting the remediation to pay the applicable annual remediation fee and applicable remedial action permit fees indicated in the most recent Annual Site Remediation Reform Act Program Fee Calculation Report. Neither existing N.J.A.C. 7:26C-4.3, Annual remediation fee, nor 4.6, Remedial action permit fees, indicates what fee amount is due after the first day of the State fiscal year following the Department’s publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report. The proposed amendments to N.J.A.C. 7:26C-4.3(a)2 and 4.6 correct this omission. Existing N.J.A.C. 7:26C-4.3(a)5i requires payment annually on the anniversary date of the first year that the annual remediation fee was submitted; however, the date that annual remediation fee was submitted may not be the same as the date that the fee was required to be submitted and, in some cases, the fee may never have

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been submitted. The Department intends that the submission of the fee be based on the required date, and proposes to amend the rule accordingly.

Existing N.J.A.C. 7:26C-4.3(a)6 governs how the Department will calculate the applicable fee if the person responsible for conducting a remediation does not timely submit the initial annual remediation fee (thereby providing a baseline for the Department to calculate subsequent annual remediation fees), and does not provide the Department with information necessary for the Department to calculate the appropriate annual remediation fee. The existing rule refers to information required to be submitted under N.J.A.C. 7:26E-4.2(b)3 and 5; however, N.J.A.C. 7:26E-4.2 is in the Technical Requirements, and governs the remedial investigation of soil. Moreover, there is no N.J.A.C. 7:26E-4.2(b)5 in the existing rules. The Department proposes to amend N.J.A.C. 7:26C-4.3(a)6 to remove the incorrect references. The proposed amended rule directs the person responsible for conducting the remediation to pay a non-refundable annual remediation fee and a contaminated media fee, as appropriate, pursuant to N.J.A.C. 7:26C-4.3(a)1.

At N.J.A.C. 7:26C-4.3(c), the Department proposes to delete reference to the term “public entity,” and replace it with “governmental entity.” This change is consistent with other sections of ARRCS (existing N.J.A.C. 7:26C-1.4(f) and 4.3(a)7) and the Spill Act at N.J.S.A. 58:10-23.11g.d(4).

The Department also proposes to amend N.J.A.C. 7:26C-4.3(i), which lists exceptions, such as child care centers, to the need to pay the annual remediation fee, by deleting N.J.A.C. 7:26C-4.3(i)2 and 3 and consolidating the remaining paragraph. Existing N.J.A.C. 7:26C-4.3(i)3 excepts remediation of an unregulated heating oil tank system from the annual fee. Fees for

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remediating discharges from such systems are addressed at proposed new N.J.A.C. 7:26F, discussed above.

Existing N.J.A.C. 7:26C-4.3(i)2 exempts child care centers from paying annual remediation fees. This exemption was adopted because an individual document review fee was anticipated for child care center submissions. Existing N.J.A.C. 7:26C-4.4(a)4 provides that a person responsible for conducting the remediation is required to pay an individual document review fee for a child care center renewal certification, which was in error since the Department neither receives nor reviews these renewal certifications. Consequently, the Department was not receiving review fees for child care center submissions, as was originally intended. To correct this, and to align child care center remediation with all other cases handled by LSRPs, the Department proposes to delete the incorrect requirement to pay a child care renewal certification fee. Instead, N.J.A.C. 7:26C-4.2(b)4i is being amended to include child care centers within the minimum annual remediation fee, Category 1. Child care centers will now be subject to an annual remediation fee because the LSRP, and not the Department, issues a final remediation document in these situations.

At new N.J.A.C. 7:26C-4.3(j), the Department proposes to exempt from the requirement to pay the contaminated media fee, any person responsible for conducting the remediation who can confirm that, by conducting a preliminary assessment and a site investigation pursuant to the Technical Requirements at N.J.A.C. 7:26E-3, the sole source of contamination is from historic fill. Since the rules already provide that a ground water remedial action permit is not required for a ground water classification exception area (CEA) that is established because of contamination from historic fill, it is reasonable to provide an exemption for this type of

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contamination from the contaminated media fee (in this case, the contaminated medium would also be ground water).

Remediation funding sources and financial assurance

Existing N.J.A.C. 7:26C-5 sets forth the requirements for establishing and maintaining remediation funding sources and financial assurance. Throughout the subchapter are references to both remediation funding sources and financial assurance. See, for example, the heading of N.J.A.C. 7:26C-5.2, Establishing a remediation funding source and financial assurance. At N.J.A.C. 7:26C-5.2(i), the Department proposes to make it clear that the rule allows a person to establish financial assurance for another person, and is not limited to establishing a remediation funding source. In addition, at N.J.A.C. 7:26C-5.2(l)1ii, the Department proposes to correct the cross-reference. The rule refers to N.J.A.C. 7:26B-4, which is a reserved subchapter; the correct cross-reference is N.J.A.C. 7:26B-3.3(c).

Existing N.J.A.C. 7:26C-5.4 contains the requirements for establishing a remediation trust fund. The Department proposes to amend N.J.A.C. 7:26C-5.4(a)1 to make it clear that the trustee of a remediation trust fund cannot also be the person responsible for conducting the remediation. This proposed amendment prevents the conflict of interest that would occur if the trustee and the person responsible were the same.

If a person intends to self-guarantee a remediation funding source, the person must comply with N.J.A.C. 7:26C-5.8. Existing N.J.A.C. 7:26C-5.8 provides a selection of two standards that an auditor of financial statements must follow for the statements to be acceptable under the section. The Department proposes to amend N.J.A.C. 7:26C-5.8(a)4 to include the

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International Standards on Auditing, a third recognized standard, commonly used by foreign-based non-public companies.

The criteria for changing a remediation funding source or financial assurance, and the return of a remediation funding source or financial assurance are in N.J.A.C. 7:26C-5.11.

Proposed new N.J.A.C. 7:26C-5.11(e)2iii provides an additional instance for when the Department will return financial assurance: when the Department has modified the remedial action permit to reflect the determination by the LSRP that the remedy is protective of public health and safety and the environment without the use of an engineering control. In addition, proposed amendments remove a redundant word and recodify N.J.A.C. 7:26C-5.11(e)2iii as (e)2iv.

The Department proposes to amend the subchapters in ARRCS that are related to the Hazardous Discharge Site Remediation Fund, N.J.A.C. 7:26C-11, and the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, N.J.A.C. 7:26C-12 (collectively “Funds”). Proposed amendments to the heading of N.J.A.C. 7:26C-12 and the scope of the subchapter (N.J.A.C. 7:26C-12.1) reflect that the subchapter applies only to regulated underground storage tanks, which are subject to the UST rules, N.J.A.C. 7:14B. As discussed above, the proposed new Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F-7 apply to applications for loans and grants for remediation costs associated with unregulated heating oil tanks. N.J.A.C. 7:26C-11.2 and 12.2 describe how to apply for loans and grants from the Funds. The existing rules state that “a person or public entity” may apply. As amended, the rules at N.J.A.C. 7:26C-11.2 refer to the relevant regulatory definition of “applicant,” and at N.J.A.C. 7:26C-12.2 to the relevant statutory definition of “applicant.” The

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Department proposes to delete the definition of “public entity” at N.J.A.C. 7:26C-1.3 as no longer necessary.

Existing N.J.A.C. 7:26C-11.3 and 12.3 detail how to apply for grants from the Funds for reimbursement of prior remediation costs. Under existing N.J.A.C. 7:26C-11.3(a)2, a person responsible for conducting a remediation of a discharge from an unregulated heating oil tank (the term defined at N.J.A.C. 7:26C-1.3) may apply for reimbursement of remediation costs incurred prior to the application only if the Department approved the remediation associated with the cost to be reimbursed. As discussed above in the Summary of proposed rules related to remediation of discharges from a heating oil tank system (the defined term at proposed N.J.A.C. 7:26F-1.5), either a certified subsurface evaluator or an LSRP may oversee the remediation, unless the remediation of the discharge is part of a larger site-wide remediation. Therefore, the Department proposes to distinguish between a remediation conducted by an LSRP and a remediation conducted other than by an LSRP. If the remediation is conducted other than by an LSRP, then reimbursement is available only if the Department approved the remediation, as under the existing rule. “Approval” in this instance is in the form of the Department-issued heating oil tank system no further action letter. If an LSRP conducts the remediation, there must be a final remediation document, which remains in effect. For example, an RAO is not in effect if it has been withdrawn in accordance with proposed amended N.J.A.C. 7:26C-6.4 because the remedial action is no longer protective, as discussed above, unless there is a new RAO in place. As discussed above with regard to remediation of discharges from heating oil tank systems, the final remediation document will be either a Department-issued heating oil tank no further action letter,

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or an LSRP-issued RAO (if the remediation of the heating oil tank system is conducted as part of a larger site remediation).

Existing N.J.A.C. 7:26C-12.3(a)2 allows an applicant to apply for a grant or loan to cover remediation costs incurred prior to the application for funds, provided that the remediation was conducted with Department oversight. Under ARRCs, not all remediation is conducted with Department oversight; therefore, the Department is deleting this requirement. Under the proposed new regulation, an applicant may apply for grant funding to cover costs incurred prior to the application for funding, provided the cost is associated with performing a preliminary assessment or site investigation. These costs are specifically included in the definition of “eligible project costs” at N.J.S.A. 58:10A-37.2.

N.J.A.C. 7:26C-11.4 and 12.4 govern disbursements of loans and grants from the Funds. The existing rules direct a person responsible for conducting a remediation to comply with N.J.A.C. 7:26C-5.12, which governs disbursement from a remediation funding source. As proposed to be amended, the rules apply N.J.A.C. 7:26C-5.12(b) only to those remediations that are subject to direct oversight. For all other remediations, the person responsible will complete and submit a form available on the Department’s website. With this amended language, the Department is distinguishing among: (1) using a loan or grant as part of a remedial funding source; (2) using a loan or grant not as a funding source, but the remediation is in direct oversight; and (3) using a loan or grant in all other situations (such as when a remediation is performed where a funding source is not required to be posted). This amendment is necessary because the Department process is to disburse the funding mechanism differently for each of these situations.

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Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E

General information

The Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E, prescribe how to conduct the remediation of a contaminated site to ensure that it is protective of public health and safety and of the environment. It applies to all remediation, except as otherwise provided under the proposed new Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, discussed above. As part of this rulemaking, the Department proposes to amend existing provisions throughout the Technical Requirements that require the Department's approval to include the word "written," so that it is clear to the regulated community that, in order to comply with those provisions of the Technical Requirements, approval from the Department must be in writing. See proposed amended N.J.A.C. 7:26E-1.7(b)6, 4.1(d), 5.1(f), 5.2(b), and 5.3(c)1.

Members of the laboratory community have asked the Department to clarify the general reporting requirements in N.J.A.C. 7:26E-1.6. The Department proposes to amend N.J.A.C. 7:26E-1.6(b)6ii to require that the summary table of sampling results identify, for each sample, each contaminant for which there is a reporting limit that exceeds a remediation standard. The existing rule requires the summary table to identify each sample that has a method detection limit (MDL) or a practical quantitation level (PQL) that exceeds a remediation standard. The intent of this provision is to identify those samples that have reported quantitation levels for a given contaminant that are greater than the contaminant remediation standard. MDLs are a qualitative indicator and not a quantitative indicator. As such, the Department proposes to delete the

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reference to MDLs from N.J.A.C. 7:26E-1.6(b)6ii. In addition, the Department is proposing to replace the term “practical quantitation level” with the term “reporting limit.” A PQL contains a level of subjectivity, which the reporting limit does not. The Department proposes to delete “practical quantitation level” or “PQL” from the definitions at N.J.A.C. 7:25E-1.8, and amend the definition of “reporting limit” to acknowledge the existence of reporting limits for organic compounds, as well as inorganic compounds. Proposed amended N.J.A.C. 7:26C-1.6(b)6iii requires tissue sample results to be provided on a wet weight basis. The existing rule addresses reporting of samples of soil, solids, water, and air, but does not address tissue samples. The proposed amendment to N.J.A.C. 7:26E-1.6(b)8iii adds the phrase “or water bearing zone” to indicate that ground water elevation contour maps are required for water bearing zones, such as perched water, in addition to aquifers. The proposed amendment is consistent with ground water remedial investigation requirements at existing N.J.A.C. 7:26E-4.3(a)1, which requires the determination of the direction of ground water flow in each contaminated aquifer or water bearing zone.

At N.J.A.C. 7:26E-1.8, the Department proposes to amend the definition of “immediate environmental concern” or “IEC” because it is inconsistent with N.J.A.C. 7:26E-1.14(b), which addresses receptor evaluation of ground water. The existing definition defines “IEC” as “contamination in a well used for potable purposes.” The proposed amended definition clarifies that irrigation wells used for potable purposes are potable wells. This proposed amendment also makes the definition consistent with the requirements at N.J.A.C. 7:26E-1.14(b), which indicate that irrigation wells used for potable purposes must be evaluated for potential IEC conditions. The Department is also proposing to amend the definition of “IEC” by deleting the phrase “any

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Class II ground water quality standard pursuant to N.J.A.C. 7:9C Appendix Table 1” and replacing it with the phrase “the minimum ground water remediation standards at N.J.A.C. 7:26D-2.2(a)1.” This amendment is proposed to accurately indicate the use of the ground water remediation standards rather than the ground water quality standards in defining an IEC. A similar amendment is proposed in the receptor evaluation of ground water provision at N.J.A.C. 7:26E-1.14(b).

The Department proposes to delete from the definition of “tentatively identified compound” or “TIC” the requirements that alkane compounds attributed to a petroleum product be summed and reported as total alkanes, and that, for purposes of TIC identification, the total alkanes are treated as one compound. Requiring alkane compounds to be summed and presented separately provides little analytical or technical benefit, and imposes an unnecessary burden on the laboratory community and an unnecessary cost on responsible entities.

The Department proposes to amend N.J.A.C. 7:26E-1.11 to direct the person responsible for conducting the remediation to provide to the Department the name and certification number of certified subsurface evaluators, if applicable, upon the identification of any immediate environmental concern. As discussed above in the Summary of proposed new N.J.A.C. 7:26E-4.2(a)iv, if the owner identifies a contaminant during a receptor evaluation, then the owner must take action necessary to address immediate environmental concerns, as required by Technical Requirements at N.J.A.C. 7:26E-1.11. Under the proposed new Heating Oil Tank System Rules, remediation may be conducted by either an LSRP or a certified subsurface evaluator; therefore, the Department requires the name and certification of both types of environmental professionals.

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Existing N.J.A.C. 7:26E-1.14 requires the person responsible for conducting a remediation to conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water quality standard. N.J.A.C. 7:26E-1.14(a)liii requires the person responsible for conducting the remediation to conduct a file search of Department, county, and local records to identify all wells that are located within one-half mile of each point of ground water contamination, and of all irrigation wells, industrial wells, and wells with water allocation permits located within one mile of each point of ground water contamination. Additionally, the person responsible for conducting the remediation is also required to identify, by conducting a door-to-door survey, each unpermitted potable or irrigation well within a set number of feet from a contamination point (depending on whether the direction of ground water flow is known), if there are any potable or irrigation wells within one-half mile of each point of ground water contamination. As a part of the file search and the door-to-door survey, the person responsible for conducting the remediation is also required to identify the type, status, and construction of each identified well.

The Department has determined that it is often impossible to identify the type, status, and construction of each well, particularly when the wells are identified through the door-to-door survey, because the well owner may not have any information on a particular well. Moreover, the purpose of conducting the well search and identifying the wells is to help the person responsible for conducting the remediation to determine which wells to sample. Accordingly, the Department is amending the rule to require that well information be collected for only those wells that are to be sampled under N.J.A.C. 7:26E-1.14(a)2ii through iv.

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Existing N.J.A.C. 7:26E-1.16 sets forth the requirements for conducting the ecological evaluation portion of a receptor evaluation. The Brownfield Act at N.J.S.A. 58:10B-12.a provides that “the Department may not require any person to perform an ecological evaluation of any area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential building.” Therefore, the Department proposes an exemption at new N.J.A.C. 7:26E-1.16(d), consistent with the Brownfield Act.

Quality assurance

Members of the laboratory community have asked the Department to clarify some of the quality assurance requirements at N.J.A.C. 7:26E-2.1. N.J.A.C. 7:26E-2.1(a)7 provides two methods of analysis of air samples: USEPA Method TO-15 or NJDEP Method LLTO-15. The Department proposes new N.J.A.C. 7:26E-2.1(a)7i, applicable to USEPA Method TO-15 analysis, to specify the timing of analysis of the laboratory control sample. The proposed amendment makes it clear that the use of a laboratory control sample is required in order to make the USEPA method consistent with the NJDEP method.

The Department also proposes to clarify at N.J.A.C. 7:26E-2.1(a)9i that the analysis of potable water samples for volatile organic contaminants use USEPA Method 524.2, and to require an analysis for TICs. The laboratory community asked for more specificity as to which USEPA method to use. USEPA Method 524.2 is a measurement of purgeable organic compounds in water by capillary column gas chromatography/mass spectrometry. For clarity, the Department proposes to require at new N.J.A.C. 7:26E-2.1(a)9ii that, for organic contaminants other than volatiles, the samples must be analyzed for the non-volatile Target

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Compound List compounds, plus TICs, using the methods that meet the data quality objectives specified in the site-specific quality assurance project plan (QAPP).

Existing N.J.A.C. 7:26E-2.1(a)15 governs laboratory data deliverables, as listed in N.J.A.C. 7:26E Appendix A, Laboratory Data Deliverables Formats. The proposed amended rule requires that the deliverables be submitted with the form available on the Department's website. Further, proposed new N.J.A.C. 7:26E-2.1(a)15ii identifies the required extractable petroleum hydrocarbon deliverables as those contained in the Department's "Extractable Petroleum Hydrocarbons Methodology," which is also available on the Department's website.

Existing N.J.A.C. 7:26E-2.1(c) establishes requirements for selection of analytical parameters for environmental media. The Department proposes new N.J.A.C. 7:26E-2.1(c)2i through v to specify the compounds/analytes for which analysis must be conducted, depending on the compound or analyte of concern. At N.J.A.C. 7:26E-2.1(c)3, the Department proposes to no longer require that vapor intrusion samples (including samples of sub-slab, indoor, and ambient air) be analyzed for 2-Methyl Naphthalene when those samples are taken due to the presence of petroleum contamination other than all gasolines or light petroleum distillates. The existing rule requires that vapor intrusion samples are to be analyzed using methods TO-15 or TO-17. There is universal agreement among laboratories that 2-Methyl Naphthalene is not amenable to analysis when subjected to either method due to its chemical properties; consequently, the analytical results are variable. However, the Department is not removing the requirement to analyze these samples for Naphthalene. The proposed amended rule corrects the citation to the compound list in NJDEP Method LLTO-15.

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Table 2-1 at existing N.J.A.C. 7:26E-2 contains analytical requirements for petroleum storage and discharge areas. The Department proposes to amend the Table to be consistent with the proposed new definition of TIC, as well as to include the need to analyze for 1-Methyl Naphthalene and 1,2,4-Trimethylbenzene when analyzing water samples for discharges of No. 2 fuel oil and diesel fuel, as discussed previously in the Sample analysis section of the Summary of the Proposed New Heating Oil Tank System Remediation Rules.

Remedial investigations

N.J.A.C. 7:26E-4 governs remedial investigations. The regulatory timeframes to conduct investigations and submit reports are set forth at existing N.J.A.C. 7:26E-4.10. The Department proposes to amend N.J.A.C. 7:26E-4.10 to clarify that the regulatory timeframes in the section do not apply to any discharge that was identified or should have been identified (for example, through a preliminary assessment or site investigation) prior to May 7, 1999. For such discharges, the timeframe for completing the remedial investigation are set forth in SRRA, N.J.S.A. 58:10C-1 et seq.

Remedial actions

Remedial actions are governed by N.J.A.C. 7:26E-5. Existing N.J.A.C. 7:26E-5.1(b)2 requires the person responsible for conducting the remediation to implement a remedial action when the concentration of any contaminant exceeds any aquatic surface water quality standard or any ecological screening criterion. However, existing N.J.A.C. 7:26E-4.8 requires the person responsible for conducting the remediation to, among other things, conduct an ecological risk assessment for each contaminant of ecological concern to determine “the ecological risk-based remediation goals,” and to not implement any remedial action without the Department’s prior

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written approval of the final remediation goal, if the final remediation goal is something other than the ecological screening criterion. Moreover, in order for a person to be required to incorporate consideration of environmentally sensitive natural resources into the remedial action, those natural resources had to have been identified during the receptor evaluation that the person conducted pursuant to N.J.A.C. 7:26E-1.16. Accordingly, the Department proposes to amend N.J.A.C. 7:26E-5.1(b)2 to require that a remedial action must also be implemented if the concentration of any contaminant exceeds an ecological risk-based remediation goal approved by the Department pursuant to N.J.A.C. 7:26E-4.8(c)3, when an environmentally sensitive natural resource is present. This proposed amendment will connect both N.J.A.C. 7:26E-1.16 and 4.8 with N.J.A.C. 7:26E-5.1(b)2.

Specific remedial action requirements are set forth in the Technical Requirements at N.J.A.C. 7:26E-5.2. Because some members of the regulated community have misinterpreted the conditions under which the person responsible for conducting the remediation may use alternative fill from an off-site source in a remedial action without prior written approval from the Department, the Department proposes to amend N.J.A.C. 7:26E-5.2(b). Also, proposed amended N.J.A.C. 7:26E-5.2(b)1 requires that each individual contaminant in the alternative fill must be present in the receiving area of concern at a concentration above its applicable soil remediation standard. Further, the Department proposes to amend N.J.A.C. 7:26E-5.2(b)3 to affirm that any alternative fill brought on-site beyond what is needed to restore the pre-remediation topography and elevation of the receiving area of concern is considered an excessive volume of alternative fill.

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Existing N.J.A.C. 7:26E-5.2(b) requires the person responsible for conducting the remediation to obtain the written approval from the Department prior to using an excess volume of alternative fill in a remedial action, but does not require that person to obtain written approval from the Department prior to obtaining a variance for the like-on-like and 75th percentile requirements at N.J.A.C. 7:26E-5.2(b)1 and 2. The Department, as part of its inspection and review process, has found instances where the person responsible for conducting the remediation has misinterpreted the requirements of N.J.A.C. 7:26E-5.2(b)1 and 2 when seeking a variance pursuant to N.J.A.C. 7:26E-1.7. The Department believes that the best way to correct this problem is: (i) not to allow variances from the requirements in N.J.A.C. 7:26E-5.2(b)1 and 2; and (ii) to instead require the person responsible for conducting the remediation to obtain written approval from the Department prior to bringing alternative fill that does not meet the requirements of N.J.A.C. 7:26E-5.2(b)1 and 2. Proposed new N.J.A.C. 7:26E-5.2(c) requires the person responsible for conducting the remediation to obtain the written approval from the Department prior to using alternative fill that does not meet any of the requirements of N.J.A.C. 7:26E-5.2(b). In addition, proposed new N.J.A.C. 7:26E-5.2(c) requires the person responsible for conducting the remediation to include the technical information contained in N.J.A.C. 7:26E-1.7(a) as part of the request for prior written approval from the Department.

To ensure that the person responsible for conducting the remediation does not vary from the requirements of N.J.A.C. 7:26E-5.2(b), the Department also proposes to add the requirements of N.J.A.C. 7:26E-5.2(b) to the list of those requirements not eligible for a variance, at N.J.A.C. 7:26E-1.7(b)7.

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As noted above, proposed new N.J.A.C. 7:26E-5.2(c) allows the person responsible for conducting the remediation to request the Department's prior written approval, which it will base on site-specific conditions, primarily focused on the variance requirements of N.J.A.C. 7:26E-1.7(a). These variance requirements oblige the person responsible for conducting the remediation to examine the site-specific conditions, so that the Department may determine whether to approve the request. These site-specific conditions include contaminant concentration distribution, magnitude of the exceedance of the applicable standard, presence and type of receptors, nature of the adverse health impact of the contaminant, and others. Because of the site-specific nature of each request for prior written approval, it is not possible to present here a detailed explanation of all of the situations in which the Department would grant a prior written approval.

Proposed amended N.J.A.C. 7:26E-5.2(d)1 clarifies that alternative fill from an on-site source used as part of a remedial action at an area of concern does not require prior written approval from the Department, provided that the individual contaminants present in the alternative fill are also present at the receiving area of concern at concentrations above the applicable remediation standards. In order to be consistent with requirements for alternative fill from off-site sources, proposed new N.J.A.C. 7:26E-5.2(d)2 requires prior written approval from the Department for use of alternative fill from on-site sources that do not meet the requirements of N.J.A.C. 7:26E-5.2(d)1. In addition, proposed N.J.A.C. 7:26E-5.2(d)2 requires the person responsible for conducting the remediation to include the technical information contained in N.J.A.C. 7:26E-1.7(a) as part of the request for prior written approval from the Department. The requirement that the contaminant concentrations in the alternative fill material be less than the

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75th percentile of the contaminant concentrations found at the receiving area of concern (see N.J.A.C. 7:26E-5.2(b)2) and the requirement that the volume of alternative fill that can be placed at the receiving area of concern cannot exceed the volume required to restore the topography and elevation to pre-remediation levels (see N.J.A.C. 7:26E-5.2(b)3) do not apply to this on-site scenario.

Existing N.J.A.C. 7:26E-5.2(e), which prohibits the importation of hazardous waste as fill material is subject to the variance process described at N.J.A.C. 7:26E-1.7. The Department believes that the requirement at N.J.A.C. 7:26E-5.2(e) should not be subject to the variance process, as there is no acceptable rationale for varying from subsection (e) that still achieves the objective of the subsection (that is, no importation of hazardous waste as fill material).

Therefore, the Department proposes new N.J.A.C. 7:26E-1.7(b)8, which does not allow the person responsible for conducting the remediation to vary from the requirements of recodified N.J.A.C. 7:26E-5.2(f). The proposed amendments at N.J.A.C. 7:26E-5.2 are also being reflected in ARRCs at proposed amended N.J.A.C. 7:26C-1.7(k), which sets forth the public notification requirements for a person responsible for conducting the remediation when alternative fill is to be used on-site.

N.J.A.C. 7:26E-5.3 contains the remedial action requirements applicable to residences, schools, and child care centers. The Department proposes to amend N.J.A.C. 7:26E-5.3(b) through (e) to make the rule consistent with SRRA at N.J.S.A. 58:10B-12.g, which states that presumptive remedies apply to new construction or change in use to a school, child care center, or residence when remediation was initiated on or after May 7, 2010. The Department also proposes to clarify N.J.A.C. 7:26E-5.3(b) to indicate that an unrestricted use remedial action and

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a presumptive remedy are distinct remedial actions, and N.J.A.C. 7:26E-5.3(d) to require Department written approval of the remedial action workplan before a remedial action can be implemented. In addition, the Department proposes to delete the requirement for the installation of a vapor barrier for new construction of a Residential Type II structure, school, or child care center at a site that is contaminated with historic fill and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3. This existing requirement exceeds the Department's authority to establish the technical requirements to remediate a contaminated site to ensure that the remediation is protective of public health and safety and of the environment. Prophylactic installation of vapor barriers in situations where there are no vapor intrusion concerns exceeds the Department's authority to regulate the remediation of contaminated sites. Nonetheless, the installation of a vapor barrier is becoming standard construction practice for new construction, and many developers are already voluntarily installing vapor barriers in situations where they are not legally required.

Requirements for remedial action workplans are codified at N.J.A.C. 7:26E-5.5. The Department proposes to delete from N.J.A.C. 7:26E-5.5(a) the 60-day pre-implementation submission of the remedial action workplan requirement, because this requirement has been misinterpreted as the equivalent of a stop-work order. The Brownfield Act requires that the person responsible for conducting the remediation continuously remediate unless directed otherwise by the Department. Accordingly, the proposed amendment requires that the person responsible for conducting the remediation submit the remedial action workplan to the Department in advance of implementation.

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Requirements for discharge to ground water proposals are codified at N.J.A.C. 7:26E-5.6. As directed in existing N.J.A.C. 7:26E-5.6(a), the person responsible for conducting the remediation must obtain all permits before engaging in regulated activities. Any discharge to ground water is subject to the NJPDES rules at N.J.A.C. 7:14A-7.5, as discussed above. The NJPDES rules provide for a permit-by-rule for discharges that meet the conditions of the rules. Although a permit application is not required under the NJPDES rules for any permit-by-rule, the Technical Requirements provide that the Department must issue a written approval of a discharge to ground water proposal after a potential permittee requests authorization to use the permit-by-rule by submitting the discharge to ground water proposal. In addition, when the services of an on-scene coordinator are required, a request for authorization to discharge to surface water must be made to the Department, but a permit application is not required. Instead, the Department issues a verbal and written authorization for such discharges. Accordingly, the Department proposes to add to N.J.A.C. 7:26E-5.6(a), the requirement that authorizations and approvals must also be requested prior to engaging in activities that require authorizations and approvals.

The Department also proposes several amendments to N.J.A.C. 7:26E-5.6(b) to improve the quality of the information submitted with discharge to ground water proposals. The discharge to ground water proposals that the Department has received to date have been largely deficient. These proposed amendments provide more detail about the information that the Department needs in a proposal in order to be able to approve it. The proposed amended rule sets forth with specificity the information that is required in order to obtain discharge to ground water (DGW) permit-by rule authorization from the Department. The proposed amendments to

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N.J.A.C. 7:26E-5.6(b) list the items in the general reporting requirements at N.J.A.C. 7:26E-1.6(b) that are applicable to discharge to ground water (DGW) proposals.

The proposed amendments to N.J.A.C. 7:26E-5.6(b) also allow the person responsible for conducting the remediation to either separately summarize the remediation conducted to date, or to submit a copy of the remedial investigation report with a copy of the most recent data. The proposed amendments to N.J.A.C. 7:26E-5.6(b) ensure that the Department will receive the details on the location of the discharge that are needed for the Department to properly evaluate the discharge to ground water proposal. In addition, the proposed amendments require the person responsible for remediation to identify the specific location on the property where the discharge to ground water will take place, identify the volume and duration of the discharge, and describe the potential effects that the discharge will or may reasonably have on ground water or any other receptor.

Proposed amended N.J.A.C. 7:26E-5.6(b)1 through 8 also specify what kind of information must be included in the detailed description of how the discharge to ground water would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Surface Water Quality Standards, N.J.A.C. 7:9B. The proposed amendments add to the information that is required regarding the chemical nature of the proposed discharge. The existing rule requires the chemical content of the fluids and substances to be identified, but the proposed amended rule requires the identification of the ground water quality criteria applicable to any constituent in the substances to be discharged or the possible break-down products of the substances. The Department proposes to add the qualifier “if applicable” at N.J.A.C. 7:26E-5.6(b)2 to clarify that the reporting of concentrations of all contaminants expected to be present in recovered ground

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water are required only when the ground water is going to be treated. Proposed amendments to N.J.A.C. 7:26E-5.6(b)6 ensure that well identification and system design information for other types of discharge to ground water proposals, besides injections wells, is also submitted.

The proposed amendments to N.J.A.C. 7:26E-5.6(b) are designed to help the person responsible for conducting the remediation determine when a classification exception area must be established for a permitted discharge to ground water that is proposed to occur during the remediation of a site, and what should be included in a proposal to establish this type of classification exception area. Since the Ground Water Quality Standards at N.J.A.C. 7:9C-1.6 and 1.9 govern the establishment of classification exception areas for temporary exceedances for situations including the remediation of contaminated sites, the proposed amendments provide that if the Department determines that a classification exception area for a temporary exceedance is necessary, the Department will approve the establishment of the classification exception area with the approval for the discharge to ground water proposal.

Existing N.J.A.C. 7:26E-5.6(b)8 requires the submittal of a monitoring plan, including the identification of monitoring wells to be sampled. The proposed amendments to N.J.A.C. 7:26E-5.6(b)8 specify that the quality assurance for monitoring the discharge to ground water must conform with the quality assurance requirements of N.J.A.C. 7:26E-2.2. In addition, the Department proposes to amend N.J.A.C. 7:26E-5.6(b), so that monitoring points, other than wells, can be included as part of the monitoring plan in some cases, and that the monitoring plan must address more than just ground water if other media and receptors could be at increased risk because of the effects or potential effects of the discharge to ground water.

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N.J.A.C. 7:26E-5.6(c) requires the person responsible for conducting the remediation to notify certain local public entities of the discharge to ground water if the duration of the discharge will exceed 180 days. The Department proposes to amend N.J.A.C. 7:26E-5.6(c)3 to reduce the newspaper publication duration from at least 45 days to at least 35 days, and amend N.J.A.C. 7:26E-5.6(c)4 for clarification. The Department seldom receives comments on these discharge to ground water proposals; by lessening the number of days, the Department can approve the discharge to ground water proposal sooner, and, therefore, the remediation can continue more expeditiously.

Regulatory timeframes for the completion of the remedial action are codified in the Technical Requirements at N.J.A.C. 7:26E-5.8. The Department proposes to amend N.J.A.C. 7:26E-5.8(b) to require the remedial action report to be submitted by specified regulatory timeframes. Proposed new N.J.A.C. 7:26E-5.8(b)1 and (b)2 provide regulatory timeframes for remediation of sites subject to the statutory requirement at N.J.S.A 58:10C-27.a(3) to complete the remedial investigation on or before May 7, 2014, as well as those sites that obtained and maintained an extension to complete the remedial investigation on or before May 7, 2016, pursuant to at N.J.S.A 58:10C-27.1. N.J.A.C. 7:26E-5.8(b)1 and 5.8(b)2 are recodified as N.J.A.C. 7:26E-5.8(b)3i and ii, respectively, with no changes in text.

Laboratory deliverables

Appendix A of the Technical Requirements describes the formats for laboratory data deliverables. In conjunction with the proposed requirement at N.J.A.C. 7:26E-2.1(a)7i to require the analysis of a laboratory control sample as part of the analysis of air samples using USEPA Method TO-15, the Department proposes to add the results of the laboratory control sample as

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part of the full laboratory data deliverable for USEPA Method TO-15 found at paragraph I(b)1vii of Appendix A. Method TO-15 is the determination of volatile organic compounds (VOCs) in air collected in specially-prepared canisters and analyzed by gas chromatography/mass spectrometry (GC/MS).

The Department also proposes to amend Appendix A of the Technical Requirements to add reporting limits to the reporting requirements for metals at Appendix A paragraphs II(b)1 and II(d)1, 2, and 3, and to the general chemistry requirements at Appendix A paragraph II(e)1. Also at Appendix A, the Department proposes that the laboratory control sample results summary be included in the list of deliverables for both gas chromatography/mass spectrometry at proposed new Appendix A paragraph II(b)10 and for gas chromatography at proposed new Appendix A paragraph II(c)8. The Department is proposing the inclusion of this results summary because the laboratory control sample is used to demonstrate that the laboratory has the capability to detect analytes of concern.

Social Impact

The Department anticipates that the proposed amendments, new rules, and repeals will have a positive social impact.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

Consolidating into one chapter all of the administrative and technical requirements concerning the remediation of a discharge of heating oil from a heating oil tank system will have a positive social impact. Homeowners and their remediation contractors will have a single set of

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rules that will guide them through the process, thereby helping to make the remediation process easier and more understandable.

The proposed new rules provide that in all cases, whether the tank owner hires an LSRP or a certified subsurface evaluator as his or her environmental professional, the Department will issue a heating oil tank system no further action letter. Although SRRA, N.J.S.A. 58:10C-1 et seq., provides that an LSRP may issue a response action outcome when remediation is complete, a certified subsurface evaluator does not have such authority; in those cases, the tank owner would have to apply to the Department for a heating oil tank system no further action letter. The Department intends that the proposed rules provide uniformity in the final remedial action outcome for heating oil tank system remediations, whether an LSRP or subsurface evaluator oversees the remediation.

Proposed Amendments to Other Rules

The remaining proposed amendments to the rules concerning site remediation will also have a positive social impact in that they will further streamline and simplify the implementation of the LSRP program and will provide additional clarity.

Economic Impact

The Department anticipates that the proposed amendments, new rules, and repeals will have an overall positive economic impact.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

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The Department's goal in promulgating the proposed amendments, repeals, and new rules relating to heating oil tank systems is to increase environmental protection while also increasing the timeliness of the lower priority/lower risk remediations in the State, namely remediation of heating oil discharges from heating oil tank systems. The proposed new rules consolidate into one chapter the requirements concerning the remediation of a discharge from a heating oil tank system. The proposed rules will ensure consistent implementation across heating oil tank system sites, while striking a balance between cost and environmental benefit.

The Department foresees a reduction in the total time necessary to complete the remediation and an overall reduction in the cost to remediate these types of discharges. This will, in turn, reduce the time for real estate transactions for heating oil tank system owners and will help prevent the remediation from becoming a bottleneck for such business transactions.

The affected groups include heating oil tank system owners, the Department, environmental professionals (certified subsurface evaluators and licensed site remediation professionals (LSRPs)), and members of the insurance industry. The impact on each group is detailed below.

Heating Oil Tank System Owners

The economic benefits for heating oil tank system owners are noteworthy as the proposed amendments are projected to ultimately reduce the remediation costs for heating oil tank system owners. Allowing residual contamination of less than 15 cubic yards of soil to be left on residential property if it is impractical to remove it, and not requiring a deed notice for the remaining contamination will result in a cost savings to most heating oil tank system owners. See proposed N.J.A.C. 7:26F-2.10. The average cost of a remediation of a discharge from a

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heating oil tank system (either underground or above ground) is as follows, depending on the nature and extent of the contamination:

- Minimal soil contamination removed - \$1,500 to \$2,500;
- Soil contamination needing remediation - \$3,000 to \$6,000;
- Soil contamination and ground water investigation needed - \$6,000 to \$25,000;
- Minimal soil contamination and ground water remediation needed - \$25,000 to \$200,000; and
- Extensive soil and ground water remediation that require supporting the structure of the overlying building or home - \$200,000 to \$1,000,000.

Without the proposed amendments, the cost of removing the soil from a difficult location could be prohibitive, and insurance is increasingly unavailable to pay for remediation of discharges of heating oil. The option of leaving a small quantity of residual contamination that is impractical to remove should have a positive economic impact, insofar as it may reduce the cost of remediation. The proposed option of leaving residual contamination could save on the cost of remediation, such that remediation at the high end of the range, namely \$200,000 to \$1,000,000, will become less frequent. As stated above, however, it is up to the homeowner whether to allow the contamination to remain, since it could have an impact on the property value and the cost and availability of insurance.

The simplified deed notice process, which does not require a remedial action permit or biennial monitoring and certification, or related permit fees and costs, is a savings over the deed notice required under ARRCS at N.J.A.C. 7:26C-7. See proposed N.J.A.C. 7:26F-2.10 and N.J.A.C. 7:26F Appendix A.

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Eliminating laboratory analysis of tentatively identified compounds (TICs) as part of the analysis of ground water and surface water samples associated with discharges of No. 2 heating oil will have a modest positive economic impact. See proposed N.J.A.C. 7:26C-2.4. The cost of the sample analysis will likely be lower, although the magnitude of resulting cost savings will vary depending on site conditions. There will be no change in analytical costs associated with soil. Further, the Department expects a slight decrease in analytical costs for ground water samples associated with No. 2 heating oil discharges, and anticipates larger cost savings by the elimination of ground water investigations driven solely by TIC compounds associated with discharges of No. 2 heating oil.

Expanding the definition of “heating oil tank” in the NJPDES rules from a residential tank serving one to four families to any unregulated heating oil tank will expand the universe of persons required to use the NJPDES permit-by-rule provisions. This should have a positive economic impact because the amendment broadens the types of discharges allowed to proceed through the permit-by-rule process, which is a more efficient, less costly process than applying for an individual NJPDES discharge to ground water permit. Therefore, more frequent use of the permit-by-rule authority should reduce administrative time and monetary expenditures for both the Department and the regulated community. Further cost savings may result if, as expected, the increased efficiency of the permitting process expedites the initiation of site remediation work, since the costs and duration of the cleanup of subsurface pollution problems are often less if cleanup is initiated soon after the discharges occur.

The Department anticipates that the proposed rules will allow real estate transactions in which discharges from heating oil tank systems are at issue to proceed more expeditiously,

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thereby reducing real estate transaction costs. While remediation may be performed by both certified subsurface evaluators and LSRPs, the new rules allow heating oil tank system no further action letters to be issued only by the Department. LSRPs are prohibited from issuing response action outcomes for heating oil tank system cases, except when a heating oil tank system is part of a property containing areas of concern that are already being remediated.

Setting forth in the rules the specific requirements for remediating a discharge from a heating oil tank system should help to protect consumers from costly remediation measures that exceed the Department's requirements.

The proposed new fees for reviewing a heating oil tank remedial action report, the reissuance of heating oil tank system no further action letters, discharge to ground water proposals, and on-scene coordinator discharge authorizations will have no additional economic impact because these fees are the same as the Department would charge for the listed tasks in existing ARRCs at N.J.A.C. 7:26C-4.4(a)1 and 2, (c), and (d).

Overall, the Department expects that the direct economic impact from the proposed new Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, should be positive. The proposed rule is more prescriptive in nature, dictating sampling locations and analysis, thereby alleviating subjectivity during remediation. In addition, the option of leaving a small quantity of residual contamination will allow for reduced costs for those owners meeting those conditions. The Department anticipates these factors will lower overall remediation costs. Further, proposed N.J.A.C. 7:26F outlines what is required for a heating oil tank remedial action report, which should allow for consistent submissions and more efficient issuance of a no further action letter.

The Department

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Providing clear and consistent rules for heating oil tank system site remediation should reduce the time that the Department spends educating tank owners and their consultants concerning which of the Department's rules are applicable to heating oil tank system remediation.

Environmental Professionals

The Department anticipates that LSRPs may find these new rules to be an economic disincentive because the LSRPs cannot charge their clients for issuance of a response action outcome. However, the new rules may level the playing field between LSRPs and certified subsurface evaluators in connection with remediation of discharges from heating oil tank systems. The Department anticipates that fewer LSRPs will undertake these jobs, and when they do, they will likely charge less for their services than for other remediation activities, so that they are competitive with certified subsurface evaluators. Certified subsurface evaluators will likely see an increase in business.

Insurance Industry

The rules that allow residual contamination to remain on a property may result in a decrease in the cost of remediation. Therefore, to the extent that a remediation is covered by insurance, the insurance carriers may benefit from the reduction in the size of a covered insurance claim.

Proposed Amendments to Other Rules

The proposed amendment to the DPHS rules at N.J.A.C. 7:1E-5.7(a)2i that restores the option of responding to a discharge according to either the discharge cleanup and removal plan

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or according to ARRCs and the Technical Requirements, will have a positive economic impact on facilities subject to discharge cleanup and removal planning. As stated in the Summary above, requiring facilities to hire LSRPs to sign off on responses under the facilities' respective discharge cleanup and removal plan, after the fact, has added little or no value to response or cleanup, but has resulted in extra costs.

The proposed amendment to the UST rules at N.J.A.C. 7:14B-5.5(a)3 to no longer require that a response plan include the name and telephone number of a "retained" LSRP should have a positive economic impact on underground storage tank system owners and operators. Retention of an LSRP within the meaning of ARRCs, N.J.A.C. 7:26C, is neither necessary nor feasible for purposes of underground storage tank release response planning. Moreover, not all LSRPs have the expertise in areas such as system closure and equipment failure or hazardous material emergency response capability. Accordingly, requiring the name of only an LSRP may be insufficient for response planning purposes and will save the underground storage tank owner/operator the cost of retaining an LSRP.

Proposed new N.J.A.C. 7:26C-4.3(j) in ARRCs provides an exemption from the requirement to pay the contaminated media fee by any person responsible for conducting the remediation who can confirm, by conducting a preliminary assessment and a site investigation pursuant to the Technical Requirements at N.J.A.C. 7:26E-3, that the sole source of contamination is from historic fill. This provision will reduce fees for some individuals.

Proposed amended N.J.A.C. 7:26C-6.4 in ARRCs gives the person responsible for conducting the remediation the opportunity to evaluate the ongoing protectiveness of the remedy if, for example, the Department should change the remediation standard, should have a positive

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economic impact. If the person responsible for conducting the remediation determines, after an evaluation of the ongoing protectiveness of the remedy, that the remedy remains protective, that person need not incur any further expense.

Proposed new N.J.A.C. 7:26C-9.12 in ARRCs, which sets forth the procedures that the Department will use to assess and recover, by civil administrative order, the costs of any investigation, cleanup, or removal, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty, will have a negative economic impact only on the person against whom the Department enforces a civil administrative penalty. The Department anticipates that the proposed procedures will increase the Department's ability to recover penalties, which may further encourage compliance with the Department's rules.

The proposed amendments to the Model Deed Notice in ARRCs at Appendix B will have a positive economic impact. The Department has determined that it would be more efficient to not require notification or permit modifications where the disturbance to an engineering control will be temporary and where the engineering control will be restored to its pre-disturbance condition. Accordingly, the person responsible for conducting the remediation will not be required to expend time or money in applying for a permit modification where the disturbance will be temporary.

The amendments to the other rules concerning site remediation should also have a positive economic impact to the extent that they make the rules easier to understand and implement.

Environmental Impact

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The Department anticipates that the proposed amendments, new rules, and repeals will have a positive environmental impact. New Jersey's varied ecosystems, such as its mountains, lakes, rivers, and shoreline, and its diverse wildlife, provide not only an ecologically healthy home and workplace and a source of recreation for the citizens of the State, but also a source of revenue from environmental tourism.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

Establishing all of the rules concerning heating oil tank system remediation in one concise chapter will have a positive environmental impact because these rules will be easy to find and understand, and will provide environmental professionals with a valuable resource with which they can more quickly and consistently remediate discharges from heating oil tank systems. The longer contamination persists in the environment, the more likely it will spread to ground water, surface water, and soil. The more quickly and correctly contamination is remediated, the fewer the instances of prolonged human and ecological exposure to the contamination, thereby resulting in fewer negative consequences to New Jersey residents and workers and to the State's natural resources.

Proposed Amendments to Other Rules

The amendments to the other rules concerning site remediation should also have a positive environmental impact to the extent that they make the rules easier to understand and implement, encourage the continuous remediation of a site, and emphasize the importance of

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timely remediation. To the extent the rules provide deadlines for completing remediation, they reduce the amount of time that contamination remains in the environment.

Federal Standards Analysis

Executive Order No. 27 (1994) and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 through 21 (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.

Only the proposed amendments discussed below are related to Federal regulatory programs. The remaining proposed amendments, new rules, and repeals are not promulgated in order to comply with any Federal law or standard.

New Jersey Pollutant Discharge Elimination System (NJPDDES) rules, N.J.A.C. 7:14A

The proposed amendments to the NJPDDES rules do not exceed Federal law or standards. The Department proposes amendments related to discharges to ground water, which are governed primarily by State statutes, including the New Jersey Water Pollution Control Act, which has no Federal counterpart, except regarding underground injection wells. The EPA regulates injection wells under its rules for the Federal Underground Injection Control Program created pursuant to the Federal Safe Drinking Water Act (42 U.S.C. §§ 300(f) et seq.). The proposed amendments to the NJPDDES rules do not exceed Federal underground injection control mandates.

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Underground Storage Tank (UST) rules, N.J.A.C. 7:14B

The Department's UST rules at N.J.A.C. 7:14B implement the Federal rules governing regulated underground storage tank systems, 40 CFR Part 280; however, the Federal rules govern only those USTs with a capacity greater than 2,000, used to store hazardous substances. The Federal rules do not apply to tanks containing heating oil stored for on-site consumption.

The proposed amendments to the UST rules require the owner or operator to identify an LSRP on the spill response plan, rather than to retain an LSRP in advance. The proposed amendments also require that an LSRP must issue a response action outcome at the completion of a "clean" tank removal, clarifying that the investigation that is associated with a "clean" tank removal is considered remediation. These proposed amendments do not result in the State's rules being more stringent than the Federal rules relating to Federally regulated underground storage tanks. The remaining provisions related to USTs are not enacted under the authority of or in order to comply with a program established under Federal law.

Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C.

7:26C

The proposed amendments to ARRCS, N.J.A.C. 7:26C, do not implement, comply with, or enable the State to participate in any program established under Federal law, standards, or requirements.

Proposed amendments to ARRCS at N.J.A.C. 7:26C-3.3 include the statutory timeframes pursuant to SRRA at N.J.S.A. 58:10C-27.a(3) for completing various stages of a remediation. The mandatory timeframes are more stringent than are provided in equivalent Federal programs,

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such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Resource Conservation and Recovery Act (RCRA), which apply timeframes on case-by-case bases. Mandatory timeframes are required by SRRA at N.J.S.A. 58:10C-28. Like the Federal remediation programs, the existing Department's rules allow the remediation of contaminated sites to be conducted on site-specific schedules. The Department has found that this practice has allowed cleanups to be extended unnecessarily and has prolonged the remediation process. The Department believes that there will be an overall cost savings associated with the proposed timeframes. When contamination is allowed to persist in the environment, it is more likely to migrate to ground water, surface water, and to soil off the property being remediated, which often adds to the overall cost of remediation. If the remediation of contaminated sites is completed more expeditiously, such sites can be put to better use and often may result in higher rateables for local and State government.

Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E

The Department has determined that the proposed amendments to the Technical Requirements do not require any specific action that is more stringent than comparable Federal rules. Comparable Federal laws provide only generic procedural requirements on how to investigate and remediate contaminated sites. For example, the National Contingency Plan, 40 CFR Part 300, which contains the implementing regulations for CERCLA, provides possible options for conducting the remedial investigation, but the National Contingency Plan does not detail the minimum steps that must be taken before an area of concern can be considered to have been adequately evaluated. Accordingly, no further analysis is required.

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Jobs Impact

The Department anticipates that the proposed amendments, new rules, and repeals could have an impact on job retention and creation in the State.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

The establishment of the rules concerning the remediation of discharges from heating oil tank systems into one new chapter should not have an effect on the creation or retention of jobs. However, requiring that only the Department may issue the final remediation document, namely, the heating oil tank system no further action letter, may have both positive and negative impacts on jobs in New Jersey. Under both the existing rules and the proposed rules, a tank owner will be allowed to utilize the services of either an LSRP or a certified subsurface evaluator to oversee the remediation of a heating oil tank system discharge.

Proposed Amendments to Other Rules

The other amendments to the rules should not have an impact on the creation or loss of jobs because they do not change the underlying obligations of persons responsible for conducting the remediation to timely remediate contamination under the supervision of an LSRP or certified subsurface evaluator, as applicable.

Agriculture Industry Impact

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The Department anticipates that the proposed amendments, new rules, and repeals may impact agriculture in the State.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

The presence of leaking heating oil tank systems is a source of contamination on some farms. A discharge of a hazardous substance at a farm has the same potential to harm public health and safety and the environment as a discharge at any other type of site, and, thus, must be remediated in accordance with all environmental statutes and rules. Accordingly, these proposed amendments, repeals, and new rules may have an impact on the agricultural community in New Jersey, to the extent that a farm owner is required to remediate a discharge from a heating oil tank system or any other discharge of a hazardous substance on his or her property. However, this impact would be the same as the impact to any homeowner or small business that is a Spill Act responsible party with a similar discharge. See the Regulatory Flexibility Analysis for a discussion of the impact of the proposed amendments, repeals, and new rules on small businesses.

Where the heating oil tank system is located on a farm, the Water Pollution Control Act at N.J.S.A. 58:10A-24.1.b specifically exempts the tank owner from the requirement to hire a certified closure contractor for the purposes of closing a heating oil tank system. Accordingly, the Department has included this exemption in the proposed new rules. However, as with any other heating oil tank system owner, a farmer will be required to hire an environmental professional to oversee the remediation of any heating oil discharge from that tank.

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Proposed Amendments to Other Rules

The proposed amendments to other site remediation rules impact State agriculture only when a discharge occurs on a farm. The presence of leaking underground storage tanks and storage areas for pesticides and fertilizers are sources of contamination on some farms. A discharge of a hazardous substance at a farm has the same potential to harm public health and safety and the environment as a discharge at any other type of site, and thus must be remediated in accordance with all environmental statutes and rules. Accordingly, the amendments may have an impact on the agricultural community in New Jersey to the extent that a farmer is required to remediate the contamination from a source on his or her farm. However, this impact would be the same as the impact to any small business that is a Spill Act responsible party. See the Regulatory Flexibility Analysis for an analysis of the impact of the proposed amendments, repeals, and new rules on small businesses.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 through 21, 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. The various compliance requirements, associated costs, and other impacts to small businesses are discussed in the Summary, Economic Impact, and Federal Standards Analysis above.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

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Proposed new N.J.A.C. 7:26F applies to anyone remediating a discharge from a heating oil tank system and to environmental professionals that oversee that remediation. Similarly, the amendments to other rules that govern site remediation apply to anyone remediating a discharge from any source and to environmental professionals that oversee that remediation. Included are owners and operators of small businesses; therefore, these businesses will be affected by these proposed amendments, repeals, and new rules. Examples of small businesses to which the proposed new rules at N.J.A.C. 7:26F apply include any business that is heated by heating oil that is stored on site for consumption, a farm, and an environmental consulting firm that employs LSRPs and certified subsurface evaluators.

As discussed in the Summary above, proposed new N.J.A.C. 7:26F does impose compliance, recordkeeping, and reporting requirements, with which a small business with a heating oil tank system must comply, including the requirement to hire a professional to conduct the remediation. However, to the extent that these requirements are merely recodified from elsewhere in the rules into one, unified chapter, new N.J.A.C. 7:26F does not impose compliance, recordkeeping, and reporting requirements that are beyond what is required in the existing rules.

Proposed Amendments to Other Rules

The need to remediate a site is based on the contamination present, regardless of the type of business involved. Since a discharge of a hazardous substance endangers public health, safety, and welfare, and cannot be correlated to the size of the business, there is no differentiation in the requirements by the size of a business, and the rules concerning site

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remediation do not exempt small businesses from any of the reporting, recordkeeping, or other compliance requirements. The proposed rule changes do not impose compliance, recordkeeping, and reporting requirements beyond what is already required in the existing rules. Therefore, there are no exemptions from the proposed amendments for small businesses.

Housing Affordability Impact Analysis

Pursuant to the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated this rulemaking to determine the impact, if any, on the affordability of housing.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

The Department has determined that proposed new N.J.A.C. 7:26F and the amendments to other rules governing site remediation will have an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. The rules help owners of heating oil tank systems and other persons responsible for conducting the remediation to clearly understand their obligations to remediate discharges; however, the obligation to remediate a discharge has not changed. Accordingly, the Department has determined that the proposed new rules will not evoke a change in the average costs associated with housing or on the affordability of housing.

Proposed Amendments to Other Rules

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Because the amendments to the other rules concern the remediation of sites contaminated by a discharge of a hazardous substance, the Department has determined that these amendments will impose an insignificant impact, as there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing or on the affordability of housing.

Smart Growth Development Impact Analysis

In accordance with the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed amendments, repeals, and new rules to determine the impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Department has determined that proposed new N.J.A.C. 7:26F and the amendments to other rules governing site remediation will have an insignificant impact because it is extremely unlikely that the rules will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers. The rules do not regulate the production of housing.

Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F

Proposed new N.J.A.C. 7:26F helps owners of heating oil tank systems and other persons responsible for conducting the remediation to understand clearly their obligations to remediate discharges. The obligation to remediate a discharge has not changed.

Proposed Amendments to Other Rules

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Because the amendments to the other rules concern the remediation of sites contaminated by a discharge of a hazardous substance, the Department does not anticipate that these amendments will provide either an incentive or a disincentive to remediate sites to an unrestricted use standard beyond the incentives to remediate under the existing rules.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26C-6.3, 9.10, 12.4, and 13.

Full text of the proposed new rules and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1E

DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES

SUBCHAPTER 5. DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

7:1E-5.7 Discharge response

(a) Any person responsible for a discharge shall:

1. (No change.)
2. Take all necessary and appropriate measures to contain, mitigate, [cleanup] **clean up**, and remove the discharge by:
 - i. Following the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4; [and] **or**

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- ii. (No change.)
- 3. (No change.)
- (b) (No change.)
- (c) Upon learning that a discharge of a hazardous substance has occurred, the Department may:
 - 1. (No change.)
 - 2. Take any other action to require any person responsible for the discharge to remediate the discharge pursuant to:
 - i. (No change.)
 - ii. The Technical [Rules] **Requirements** for Site Remediation, N.J.A.C. 7:26E.
- (d) (No change.)

CHAPTER 14A

NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 1. ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

7:14A-1.2 Definitions

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

...

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[“Heating oil” means any grade of petroleum product including, but not limited to, No. 1, 2, 4 (light and heavy), 5 (light and heavy), and fuel oils, diesel and kerosene or any grade or type used to heat residential buildings.]

“Heating oil” has the meaning as defined pursuant to the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F-1.5.

“Heating oil tank system” has the meaning as defined in the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F-1.5.

...

SUBCHAPTER 7. REQUIREMENTS FOR DISCHARGES TO GROUNDWATER (DGW)

7:14A-7.5 Authorization of discharges to ground water by permit-by-rule

(a) Any person responsible for any of the following discharges to ground water is deemed to have a permit-by-rule:

1. – 3. (No change.)
4. Discharges to ground water from activities associated with the installation, development, and sampling of monitoring wells **or associated with soil sampling** in accordance with a NJPDES permit or, for activities not included in a NJPDES permit, in accordance with **either** the Technical Requirements for Site Remediation, including, but not limited to, the requirements of N.J.A.C. 7:26E-[3.5 and 1.5(h)]**1.5(b) and (h), or the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F, including, but not limited to, the requirements of N.J.A.C. 7:26F-1.10(a) and 4.4(c)2;** and
5. (No change.)

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(b) [Any] **Unless the Department issues a general permit pursuant to N.J.A.C. 7:14A-6.13 for a discharge to ground water listed in (c) below, any person responsible for [the discharges to ground water listed in (b)3i through vii below] such a discharge is deemed to have a permit-by-rule [if the discharge occurs when] after the following conditions are met:**

1. A contaminated site, as defined in N.J.A.C. 7:26E-1.8, is being remediated **or is subject to remediation** pursuant to [the rules at N.J.A.C. 7:14B implementing the Underground Storage of Hazardous Substances Act (N.J.S.A. 13:1K-6 et seq.), the requirements of the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.), the requirements of the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11), or] the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C, **the Technical Requirements for Site Remediation at N.J.A.C. 7:26E, or the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F;** [and]
2. **The person responsible for such a discharge submits to the Department a discharge to ground water proposal, or modification of an approved discharge to ground water proposal, consistent with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including the requirements of N.J.A.C. 7:26E-5.1, 5.2, and 5.6, as applicable; and**
- [2.] **3. The person is in receipt of the Department's written approval of the discharge [from the Department;] to ground water proposal, or modification of an approved discharge to ground water proposal.**

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[3. The following ground water discharges are authorized by a permit-by-rule under this subsection:]

(c) A permit-by-rule pursuant to (b) above applies only to the following types of discharges to ground water:

[i.] **1.** (No change in text.)

[ii.] **2.** Discharges to ground water related to biotreatability studies **or other in situ pilot studies** where the discharge will not exceed 180 calendar days;

[iii.] **3.** Discharges to ground water, not to exceed 30 calendar days, from wells **or into injection wells** to test [aquifers] **soils or geologic formations** for the purpose of obtaining engineering, [and] hydrogeologic, **or other remediation** design data;

[iv.] **4.** (No change in text.)

[v.] **5.** Discharges to ground water to remediate contamination from discharges [of heating oil as defined at N.J.A.C. 7:14A-1.2, at a residential building of four units or less;] **from a heating oil tank system. Such discharges are not subject to the public notice requirements of N.J.A.C. 7:26E-5.6(c);**

[vi.] **6.** (No change in text.)

[vii. Discharges to ground water, including those listed in (b)3i through vi above, that occur during the course of a site remediation when the person responsible for conducting the remediation submits a proposal in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including the requirements of N.J.A.C. 7:26E-5.7.]

7. Any other discharge to ground water that is necessary to implement remediation.

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[(c)] **(d)** [The] **Except as provided in (e) below, the** Department shall invalidate any permit-by-rule under this section and require any person responsible for the discharge for which the permit-by-rule had been approved to apply for and obtain [an individual] **a** discharge to ground water permit if:

1. The discharge is likely to contravene the [ground water quality standards] **Ground Water Quality Standards** at N.J.A.C. 7:9C; **or**
2. (No change.)

(e) For discharges to ground water subject to (b) above, the Department shall invalidate its approval of a discharge to ground water proposal if:

1. **The approved discharge contravenes the Ground Water Quality Standards at N.J.A.C. 7:9C;**
2. **The approved discharge contravenes the Surface Water Quality Standards at N.J.A.C. 7:9B; or**
3. **The permittee does not implement the discharge to ground water proposal as the Department approved.**

(f) For a discharge to ground water proposal subject to (b) above, the person responsible for the discharge to ground water proposal shall:

1. **Stop any negative impacts not anticipated in the Department-approved discharge to ground water proposal, caused by implementing that discharge to ground water proposal; and**
2. **Remediate any negative impacts not anticipated in the Department-approved discharge to ground water proposal in accordance with the requirements of the**

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Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C.

7:26C, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, or the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, as applicable.

SUBCHAPTER 8. ADDITIONAL REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL (UIC) PROGRAM

7:14A-8.4 Prohibition of movement of fluid into underground sources of drinking water

(a) – (b) (No change.)

(c) For Class V wells, if at any time the Department learns that a Class V well, **other than those described in N.J.A.C. 7:14A-8.5(b)11**, may cause a violation of the [State primary drinking water rules under] **State Drinking Water Act Rules**, N.J.A.C. 7:10, or [any Groundwater] **the Ground Water** Quality Standards, [under] N.J.A.C. 7:9C, the Department shall:

1. – 2. (No change.)

(d) – (e) (No change.)

(f) If at any time the Department learns that a Class V well as described in N.J.A.C. 7:14A-8.5(b)11 may cause a violation of the Safe Drinking Water Act Rules, N.J.A.C. 7:10, or the Ground Water Quality Standards, N.J.A.C. 7:9C, then the Department shall require the owner or operator to implement one or more of the following:

1. Obtain a UIC permit pursuant to N.J.A.C. 7:14A-8.8;

2. Obtain a general permit pursuant to N.J.A.C. 7:14A-6.13; or

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3. Take any appropriate actions to prevent the violation, which may include closure of the injection well.

7:14A-8.5 Authorization of injection into Class V wells by permit-by-rule

(a) – (b) (No change.)

(c) [The] **Except for wells described in (b)11 above, the** owner or operator of a Class V injection well shall submit inventory information to the Department at the address indicated in (i) below within 90 days of installation of the Class V injection well. The inventory information shall consist, at a minimum, of the following information:

1. – 7. (No change.)

(d) [The] **Except for wells described in (b)11 above, the** Department will notify pursuant to (e) below any owner or operator of any Class V injection well authorized by rule pursuant to this section to apply for and obtain a UIC permit pursuant to N.J.A.C. 7:14A-8.8, if:

1. – 4. (No change.)

(e) – (i) (No change.)

CHAPTER 14B

UNDERGROUND STORAGE TANKS

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.6 Definitions

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

...

“Unregulated heating oil tank system” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil (**as defined at N.J.A.C. 7:26F-1.5**) for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil (**as defined at N.J.A.C. 7:26F-1.5**) for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

...

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.5 Release response plan

(a) The owner or operator shall prepare, and update as necessary to reflect changes to the facility and to regulations governing response plans, a release response plan which includes the following information:

1. – 2. (No change.)
3. The name and telephone number of [any retained] **the owner or operator’s contractor to implement a release response plan, including, but not limited to, a licensed site remediation professional to conduct the remediation, and an individual certified pursuant to N.J.A.C. 7:14B-13 or 16 to address system closure and**

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equipment failure, and a contractor with hazardous material emergency response capability; and

4. (No change.)

(b) - (c) (No change.)

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.2 Investigating a suspected release

(a) (No change.)

(b) If the investigation **that the owner or operator** conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator **shall immediately notify the Department hotline at 1-877-WARNDEP (1-877-927-6337) that the owner or operator is conducting the site investigation of a suspected release, and** shall, in accordance with the schedule in the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-3.14, conduct and complete a site investigation [designed to confirm or disprove a suspected discharge] in accordance with the Technical Requirements for Site Remediation [rules], at N.J.A.C. 7:26E-3.3. If a discharge is confirmed, the owner or operator shall [initiate action pursuant to] **comply with** N.J.A.C. 7:14B-7.3. The owner or operator shall keep documentation of an investigation in accordance with this section that disproves a suspected discharge at the facility and make it available for inspection by the Department for the operational life of the underground storage tank system.

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SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS
AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.5 Reporting and recordkeeping requirements

(a) – (b) (No change.)

(c) Along with the site investigation report submitted pursuant to (b) above, if the owner or operator concludes in the site investigation report that no further remediation is required, then the owner or operator shall submit a response action outcome pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6.

(d) Along with the site investigation report submitted pursuant to (b) above, if the owner or operator concludes in the site investigation report that further remediation is required, then the owner or operator shall conduct additional remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation at N.J.A.C. 7:26E.

[(c)] (e) (No change in text.)

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING
PROCEDURES

7:14B-12.1 Penalties

(a) – (b) (No change.)

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(c) [Upon] **Notwithstanding (d) below, upon** a finding that any individual or business **firm** who is certified pursuant to N.J.A.C. 7:14B-13 or 16 has failed to comply with any requirement of the State Act or N.J.A.C. 7:14B-1, 3, [or] 7 through 11 **or 7:26F**, the Department may:

1. – 2. (No change.)
3. Assess a civil administrative penalty pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-9 **or 7:14B-12.4, as applicable.**

(d) Upon a finding that any individual or business firm, certified in subsurface evaluation of unregulated heating oil tank systems pursuant to N.J.A.C. 7:14B-16, has failed to properly perform underground tank services pursuant to the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, the Department may assign penalty points, as described in Table 12-1 below.

(e) When the Department assigns a penalty point to the individual and business firm, the Department:

1. Shall send to the individual and business firm written documentation of the noncompliance, the applicable citation of the rule that was violated, and the associated penalty points; and
2. Shall post the following information on its unregulated heating oil tank system website, www.nj.gov/dep/srp/unregulatedtanks/:
 - i. The name of the individual;
 - ii. The name of the business firm;
 - iii. A brief description of the noncompliance;

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- iv. The number of penalty points assigned to the individual and business firm for the noncompliance; and**
- v. The cumulative number of penalty points assigned to the individual and business firm during a three-year calendar period.**

Table 12-1

Certified Subsurface Evaluator Penalty Point Assignment Schedule

Major Deficiencies (20 Points Each)

- 1. Submitting a request for a heating oil tank system no further action letter determination, pursuant to N.J.A.C. 7:26F-7.3, when further remediation is required;**
- 2. Failing to apply the applicable soil and ground water remediation standards pursuant to N.J.A.C. 7:26F;**
- 3. Compositing post-excavation soil samples;**
- 4. Failing to provide direct on-site supervision of remediation activities to ensure compliance with N.J.A.C. 7:26F;**
- 5. Failing to properly dispose of wastes (including, but not limited to, improper waste classification, delivery of wastes to an improper waste facility, failure to provide complete paperwork or providing paperwork that contains errors, or improper reuse of waste material);**
- 6. Failing to conduct a ground water investigation pursuant to N.J.A.C. 7:26F-4.2 and 3.3;**

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7. Failing to evaluate potable water wells pursuant to N.J.A.C. 7:26F-6.2; or

8. Failing to evaluate vapor intrusion impacts pursuant to N.J.A.C. 7:26F-6.3.

Moderate Deficiencies (10 Points Each)

1. Failing to indicate depth to ground water and/or bedrock in the remedial action report;

2. Failing to obtain soil samples from a proper depth or interval, as identified in N.J.A.C. 7:26F-3.4 and 3.5;

3. Failing to properly locate soil sampling points, as identified in N.J.A.C. 7:26F-3.4 and 3.5;

4. Failing to properly collect samples, in accordance with N.J.A.C. 7:26F-3.4 and 3.5;

5. Failing to collect the required number of soil samples, as identified in N.J.A.C. 7:26F-3.4 and 3.5;

6. Failing to use the proper sample preservation method, in accordance with N.J.A.C. 7:26F-2.2(a)2;

7. Using improper fill when backfilling a tank excavation, in accordance with N.J.A.C. 7:26F-3.3(f)2;

8. Failure to manage excavated soil in accordance with N.J.A.C. 7:26F-3.3(d);

9. Failing to perform required analytical analyses;

10. Failing to use approved analytical methods, as identified in N.J.A.C. 7:26F-2.2, Table 2-1, to evaluate a soil or water sample;

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- 11. Using a laboratory that is not certified to perform the analytical method, as identified in N.J.A.C. 7:26F-2.2(a)1; or**
- 12. Failing to follow other applicable regulations or laws, pursuant to N.J.A.C. 7:26F-1.2(e) and (f).**

Minor Deficiencies (Five Points Each)

- 1. Submitting incomplete or inaccurate maps to the Department;**
- 2. Failing to submit soil boring logs and/or soil descriptions to the Department;**
- 3. Failing to properly field screen soil borings/samples/excavations, pursuant to N.J.A.C. 7:26F-3.5;**
- 4. Stockpiling known contaminated soil or potential contaminated soil based on visual or field screening evidence, on site for a period that violates the storage timeframes set forth in the Solid Waste rules at N.J.A.C. 7:26 or the Hazardous Waste rules at N.J.A.C. 7:26G;**
- 5. Failing to address data usability issues identified pursuant to N.J.A.C. 7:26F-7.2(a)11v and vi;**
- 6. Failing to submit reports to the Department in the format required by N.J.A.C. 7:26F-7.2; or**
- 7. Failing to submit all required documentation to the Department as required by the Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund pursuant to N.J.A.C. 7:26F-9.**

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SUBCHAPTER 16. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS FOR UNREGULATED UNDERGROUND STORAGE TANK SYSTEMS

7:14B-16.2 General requirements for certification

(a) – (n) (No change.)

(o) An individual or business firm who is certified in subsurface evaluation of unregulated heating oil tank systems shall perform all activities pursuant to the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F.

7:14B-16.3 Classifications of unregulated heating oil tank services

(a) (No change.)

(b) The activities which comprise the classifications in (a) above include the following:

1. – 4. (No change.)

5. Subsurface evaluation of unregulated heating oil tank systems includes all activities regarding site investigation, remedial investigation and remedial action, and/or the evaluation for selection of release detection monitoring systems, as follows:

i. For site investigation, remedial investigation, and/or remedial action, subsurface evaluation activities required pursuant to **the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, and, if applicable,** the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, inspecting the excavation for contamination, performing (or overseeing) necessary field screening tests, selecting soil and ground water sampling locations, and submitting or reviewing of the report(s) required under N.J.A.C. 7:26E **and 7:26F**;

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ii. – v. (No change.)

6. – 7. (No change.)

7:14B-16.4 Application procedures

(a) – (b) (No change.)

(c) The applicant shall sign and certify the application as follows:

1. The following documents required to be submitted to the Department shall be executed and include a certification pursuant to N.J.A.C. 7:14B-1.7:

i. (No change.)

ii. Any document submitted in accordance with **the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, and, if applicable,** the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and prepared by a certified individual or professional engineer in accordance with N.J.A.C. 7:26E **and 7:26F**.

(d) (No change.)

7:14B-16.11 Denial, suspension, revocation, and refusal to renew a certification

(a) The Department may deny, suspend, revoke, or refuse to renew a certification issued pursuant to this subchapter, for any of the following:

1. A violation, or abetting another to commit a violation of any provision of this subchapter, **the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F**, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the [Department Oversight of the Remediation of Contaminated Sites Rule] **Administrative**

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- Requirements for the Remediation of Contaminated Sites**, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or of an order issued pursuant to any of these [Acts] **acts**;
2. Making a false, inaccurate, or incomplete statement on an application for certification or other information required by the Department pursuant to this subchapter, **the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F**, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the [Department Oversight of the Remediation of Contaminated Sites Rule] **Administrative Requirements for the Remediation of Contaminated Sites**, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or of an order issued pursuant to any of these [Acts] **acts**;
3. – 5. (No change.)
6. Any other violation of this subchapter, **the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F**, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the [Department Oversight of the Remediation of Contaminated Sites Rule] **Administrative Requirements for the Remediation of Contaminated Sites**, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or of an order issued pursuant to any of these [Acts] **acts**.

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(b) – (e) (No change.)

CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 3. NOTIFICATION AND REMEDIATION REQUIREMENTS

7:26B-3.4 Remediation funding source requirements

(a) The owner or operator shall establish and maintain a remediation funding source in accordance with N.J.A.C. 7:26C-5:

1. Within [30] **14** days [of the Department’s approval or] **after the Department receives a remedial action workplan certified by** a licensed site remediation [professional’s certification of a remedial action workplan] **professional** for the industrial establishment;
- 2.-3. (No change.)

SUBCHAPTER 5. ALTERNATE COMPLIANCE OPTIONS

7:26B-5.9 De minimis quantity exemption

- (a) (No change.)
- (b) An owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:
 1. (No change.)
 2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the

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mixture at any one time during the owner's or operator's period of ownership or operation[,] does not exceed 500 pounds or 55 gallons; **and**

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

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

(c) – (d) (No change.)

(e) The owner or operator of the subject industrial establishment that satisfies the criteria established in (b) above may apply for a de minimis quantity exemption by submitting:

1. A completed **ISRA Alternative Compliance Option Application** de minimis quantity exemption application form available from the Department on its website at www.nj.gov/dep/srp/srra/forms, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided on the form, that includes information that identifies the owner or operator and the industrial establishment, describes the quantities and nature of the hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at the industrial establishment[, and includes a certification that, to the best of the owner or operator's knowledge, the industrial establishment is not contaminated above any standard set forth in the Remediation Standards, N.J.A.C. 7:26D]; and

2. (No change.)

(f) (No change.)

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CHAPTER 26C

ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.3 Definitions

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

...

“Building” has the meaning as defined in the Technical Requirements for Site

Remediation at N.J.A.C. 7:26E-1.8.

...

“Cleanup and removal costs” has the meaning as defined in the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11b.

...

"Deed notice" means a document that is identical in wording to the model deed notice found at N.J.A.C. 7:26C, Appendix [D] **B**, except where the model deed notice indicates that property-specific information is to be inserted.

...

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“Direct oversight” means the oversight of the remediation of a site that the Site Remediation Reform Act requires the Department to apply to certain sites pursuant to N.J.A.C. 7:26C-14.

...

“Heating oil tank system” means any system as defined in the Heating Oil Tank Discharge Remediation Rules, N.J.A.C. 7:26F-1.5.

...

“Historically applied pesticides” means any organic or inorganic chemical that has been and is no longer used for pest control, and that has been found to have long-lived residues and lasting health and environmental impacts. This does not include the manufacture, mixing, or other handling of these chemicals that results in a discharge.

...

“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] its political subdivisions [of or found within the State of New Jersey], or any of the other meanings which apply to the common understanding of the term. "Person" shall, for the purpose of enforcement, also include a responsible corporate official, which includes a managing member of a limited liability company or a general partner of a partnership.

...

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["Public entity" means any State, county, municipality, or public school district, but shall not include any authority created by those entities.]

...

"Remediation costs" means all costs associated with conducting the preliminary assessment, site investigation, remedial investigation, feasibility study when applicable, and remedial action, including the development and implementation of a remediation including all direct and indirect capital costs, **Department fees and oversight costs**, engineering costs, and annual operation, maintenance and monitoring costs, and costs incurred by a certified public accountant or an independent auditor pursuant to N.J.A.C. 7:26C-4.10. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and administrative and capital costs. Certain legal costs may be considered remediation costs to the extent that they are directly supporting the remediation, but remediation costs shall not include those legal costs associated with: recovery of costs expended on remediation, compelling a party to take part in the remediation, and defense against a Department enforcement action. Remediation costs do not include interest on monies owed.

...

"Responsible party" means a discharger or any person in any way responsible for a discharged hazardous substance pursuant to N.J.S.A. 58:10-23.11g.c.

...

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“State costs” means all costs the State of New Jersey incurs as the result of a discharge, including without limitation, cleanup and removal costs, the costs of any enforcement investigation, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty pursuant to this chapter, including interest on these costs calculated at the rate established by Rule 4:42-11 of the Rules Governing the Courts of the State of New Jersey. State costs also include treble damages that accrue to the Department when a person fails to comply with a directive the Department issues pursuant to N.J.S.A. 58:10-23.11f.

...

"Statutory permittee" means a person who [subsequently] becomes [an], **subsequent to the placement of an institutional control or an engineering control on a property, the** owner, operator, or tenant [of a site for which the Department has issued a remedial action permit pursuant to this chapter; provided, however, that the Department may terminate a person's status as a statutory permittee if that person follows] **of that property, who, therefore, is required to comply with** the [applicable] procedures in [this chapter] **N.J.A.C. 7:26C-7.**

...

7:26C-1.4 Applicability and exemptions

(a) Except as provided in (c) and (d) below, each of the following persons shall comply with this chapter:

1. – 3. (No change.)

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4. Each person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, for any hazardous substance that was discharged, including, without limitation:

i. – ii. (No change.)

iii. A holder of a security interest in [the] **a site, an underground storage tank system, or a heating oil tank system** who, **prior to foreclosure**, actively participated in the management of [the] **a site, [or regulated] an underground storage tank [that was the subject of a remedial action that includes an engineering and/or institutional control] system, or a heating oil tank system; or**

iv. A holder of a security interest in [the] **a site, an underground storage tank system, or a heating oil tank system** who, **after foreclosure**, negligently caused a new discharge at [the] **a site [after the date of foreclosure on a security interest in the site or the regulated underground storage tank that was the subject of the remedial action that includes an engineering and/or institutional control]; [or]**

[v. A statutory permittee during that person's ownership, tenancy, or operation, depending on that person's continuing liability for the remediation pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g;]

[5. The person responsible for conducting the remediation when:]

5. Each person listed in (a)1 through 4 above, when:

i. (No change.)

ii. The licensed site remediation professional rescinds his or her own response action outcome; [and]

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6. A statutory permittee during that person's ownership, tenancy, or operation;

7. A person who is conducting an evaluation of a child care center pursuant to the

Department of Children and Families Manual of Requirements for Child Care

Centers, N.J.A.C. 10:122-5.2(i); and

[6.] **8.** (No change in text.)

(b) (No change.)

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

1. (No change.)

2. Remediating a landfill, unless:

i. The landfill or any portion thereof is [slated]:

(1) Slated for redevelopment [that includes structures intended for human occupancy;] **with a building;**

(2) Does not have a final remediation document, but has already been developed with a building; or

(3) Does not have a solid waste approval from the Department, but has already been developed with a building;

ii. (No change.)

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

[or]

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

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4. Except as provided in N.J.A.C. 7:26F-1.2(d)2 and 3, 1.6(b), and 3.7(e), remediating a discharge from a heating oil tank system in accordance with N.J.A.C. 7:26F.

[(d) The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank, is only required to comply with the requirements of N.J.A.C. 7:26C-4 and 13.]

[(e)] **(d)** Unless notified in writing by the Department that additional remediation is necessary, the person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirements at N.J.A.C. 7:26C-2.3 to use the services of a licensed site remediation professional or to submit documents to the Department:

1. A petroleum surface spill **or a surface spill of mineral oil from a transformer**, of less than 100 gallons, that does not reach the waters of the State of New Jersey provided that:

- i. – ii. (No change.)
- 2. – 3. (No change.)

[(f)] **(e)** (No change in text.)

7:26C-1.5 [Certifications] **Signatures and certifications**

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

- 1. [Certify] **Sign, date, and certify** all submissions in accordance with **this chapter and the** certification instructions on the applicable form; and
- 2. (No change.)

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[(b) The person responsible for conducting the remediation shall ensure that the certifications required in (a) above are signed and dated original certifications, and not photocopies.

(c) The person responsible for conducting the remediation shall ensure that the certification required by (a) above is signed as follows:

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

(d) The person responsible for conducting the remediation may have that person's duly authorized representative sign the certification required in (a) above. A person is deemed to be a duly authorized representative only if:

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

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authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.]

(b) The following individuals shall sign and certify, on behalf of the person responsible for conducting the remediation, each form that that person submits to the Department as follows:

1. For a corporation, a responsible corporate official. For purposes of this section, a responsible corporate official means:

- i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or**
- ii. The manager of one or more manufacturing, production, or operating facilities, provided:**

- (1) The manager is authorized to make management decisions that govern the operation of the facility, including having the explicit or implicit duty of recommending major capital investment, initiating and directing comprehensive measures to ensure long-term compliance with environmental laws and rules, and ensuring that the necessary systems are established or actions taken to gather complete and accurate monitoring; or**
- (2) The authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;**

2. For a limited liability company, a responsible company official. For the purpose

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of this section, a responsible company official means an individual who has the authority to bind the limited liability company to the provisions of this chapter, including without limitation, an officer, member, or manager of the limited liability company;

3. For a partnership, a responsible corporate official;

4. For a sole proprietorship, the proprietor;

5. For a municipality, county, State, Federal, or other public agency, either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

i. The chief executive officer of the agency; or

ii. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (such as a Regional Administrator); or

6. A duly authorized representative of anyone in (b)1 through 5 above, if:

i. The authorization is made in writing by a person described in (b)1 through 5 above;

ii. The authorization specifies either an individual or a position whose occupant has responsibility for the remediation, or an individual or position whose occupant has overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

iii. The person responsible for conducting the remediation submits the written authorization to the Department along with the form being submitted.

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(c) The person responsible for conducting the remediation shall make the following certification on each form that that person submits to the Department:

“I certify under penalty of law that:

- *I have read, understand, and have followed the applicable rules and instructions for this form;*
- *I have personally examined and am familiar with the information submitted on this form and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information;*
- *I believe that the submitted information is true, accurate, and complete;*
- *I have the authority to prevent a violation of the Site Remediation Reform Act, N.J.S.A. 58:10C, or of the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, as well as to correct any such violation should one occur;*
- *I am the person required, pursuant to N.J.A.C. 7:26C-1.5(b), to sign this form for the persons responsible for conducting the remediation; and*
- *I am aware that there are significant civil penalties for knowingly submitting false, inaccurate, or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute or regulation, I am personally liable for penalties.”*

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7:26C-1.7 Notification and public outreach

(a) (No change.)

(b) The person responsible for conducting the remediation shall immediately notify the Department hotline at 1-877-WARNDEP [or] (1-877-927-6337) when [either] **any** of the following [is] **are** identified at a site:

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

2. An immediate environmental concern[.]; **or**

3. Contamination, which was previously reported to the Department, has been determined to have migrated onto the site from another site.

(c) [The person responsible for conducting the remediation shall notify the Department pursuant to this subsection if that person determines that contamination migrated onto the site from another site. The] **Notwithstanding (b) above, the** person responsible for conducting the remediation [shall] **is not required to** notify the Department hotline at 1-877-WARNDEP (1-877-927-6337) **if the only discharge that has occurred at the site is historic fill.**

(d) The person responsible for conducting the remediation shall notify the Department in writing, on the Confirmed Discharge Notification form available from the Department at www.nj.gov/dep/srp/srra/forms, within 14 days after the occurrence of any of the following events:

1. (No change.)

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2. The owner or operator of a regulated underground storage tank[:

i. Determines] **determines** that there has been a [known or suspected] discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-6 or 7[:];

[ii. Is required to close a regulated underground storage tank, pursuant to N.J.A.C. 7:14B-8.1(b)6, 9.1(d), or 9.2; or

iii. Is otherwise required to conduct a site investigation pursuant to N.J.A.C. 7:14B.]

(e) (No change.)

(f) The person responsible for conducting the remediation shall include contact information for the person responsible for conducting the remediation [and], the name and telephone number for the licensed site remediation professional [of record] **hired pursuant to N.J.A.C. 7:26C-2.3(a)1, the Department program interest number** for the site in the notification and any updates **thereto**, and the fact sheet and any updates required in (h), (k), (l), (n), and (o) below.

(g) To document compliance with this section, the person responsible for conducting the remediation shall submit one copy of each of the following [in the subsequent applicable remedial phase report] **to the Department within 14 days after the timeframes set forth in (h) and (l) below, with the appropriate form found on the Department's website at www.nj.gov/dep/srp/srra/forms:**

1. (No change.)

2. The public notification fact sheet and any updates, and the list of recipients required at (h) below and (l) below; **and**

3. The display advertisement required at (l)3 below or a photograph of the notification

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sign required in (h) below[; and].

[4. The appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms.]

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

1. (No change.)
2. Within 14 days prior to commencing **initial** field activities associated with the remedial [action, provide] **investigation:**

i. Provide notification to any local property owners and tenants who reside within 200 feet of the contaminated site, and to the government entities noted in (h)2[iii]**iv** below. The notification shall summarize site conditions and describe the activities that are to take place to remediate the site and shall either be in the form of written correspondence or the posting of a sign visible to the public, which shall be located on the boundaries of the contaminated site[. The person responsible for conducting the remediation shall also:];

[i.] **ii.** Send a notification letter to each local property owner and tenant to whom notification was sent pursuant to (h)2**i** above that describes the current condition and progress of the remediation every two years until the required remediation is completed and the final remediation document is filed with the Department;

[ii.] **iii.** (No change in text.)

[iii.] **iv.** Submit one copy of the notification letter and list of recipients required in (h)2[i]**ii** above or a photograph of the notification sign required in (h)2[ii]**iii** above,

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and one copy of the fact sheet required in (l)1 below and the display advertisement required in (l)3 below, to the local government entities as follows:

(1) – (2) (No change.)

(i) (No change.)

(j) The person responsible for conducting the remediation of any [unregulated] heating oil tank system **in accordance with N.J.A.C. 7:26F, except as provided in N.J.A.C. 7:26C-1.4(c)4**, or the person responsible for conducting an emergency response action, shall [only] comply **only** with the notification requirements of (a) through (d) above.

(k) If the person responsible for conducting the remediation proposes to bring [contaminated material] **alternative fill, as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8**, on to the site [in an amount that is in excess of the amount that is needed to complete the remediation requirements or to raise the topographic level in a floodplain] **that does not meet the requirements of the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.2(b)**, the person shall:

1. Obtain the Department’s prior written approval **through the submission of a proposal and completion of the Remedial Action Workplan Form available from the Department at www.nj.gov/dep/srp/srra/forms; and**

[2. Comply with the N.J.A.C. 7:26E-5.2; and]

[3.] **2.** Provide notification, which includes the type and concentrations of contaminants in the **alternative fill** [material], the proposed use **and volume** of the **alternative fill**, and the controls designed to reduce or eliminate exposure, to the following:

i. – v. (No change.)

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(l) – (m) (No change.)

(n) Unless under direct oversight pursuant to N.J.A.C. 7:26C-14, the person responsible for conducting the remediation may implement a public notification and outreach plan that is different from the requirements [stet for the] **set forth** in (g), (h), and (l) above if that plan is prepared by a licensed site remediation professional and adequately provides notifications and public outreach substantially equivalent to the public notification otherwise required in (g), (h), and (l) above. The person responsible for conducting the remediation shall include in the applicable remedial phase report that is submitted to the Department the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice.

(o) - (q) (No change.)

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

7:26C-2.3 Requirements for the person responsible for conducting the remediation

(a) Upon the occurrence of any of the events listed in N.J.A.C. 7:26C-2.2(a), the person who is responsible for conducting the remediation at a site pursuant to N.J.A.C. 7:26C-1.4(a) shall:

1. Hire **and maintain** a licensed site remediation professional, unless:

i. – iii. (No change.)

2. Notify the Department, on a form found on the Department's website at

www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the

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remediation, including the number of contaminated areas of concern and impacted media known at the time the form is submitted and determined pursuant to N.J.A.C. 7:26C-4.2, within 45 days after:

- i. [If] **May 7, 2012, when** the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurred prior to November 4, 2009[, May 7, 2012]; **or**
 - ii. [If the] **The date of the occurrence of the** earliest of the events listed at N.J.A.C. 7:26C-2.2(a), **when the event** occurred [between] **on or after** November 4, 2009 [and May 7, 2012, the date of that occurrence];
 - [iii. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurs after May 7, 2012, the date of that occurrence; or
 - iv. If a different licensed site remediation professional is hired to replace the licensed site remediation professional about whom the person notified the Department pursuant to (a)2i through iii above prior to the issuance of a response action outcome, the date of hiring of the new licensed site remediation professional;]
3. - 9. (No change.)
- (b) (No change.)
- (c) The person responsible for conducting the remediation and the licensed site remediation professional shall notify the Department, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms:**
- 1. Within 48 hours after the dismissal, resignation, or incapacity of that licensed site remediation professional, in cases where there is an immediate environmental concern; and**

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2. Within 45 days after the dismissal, resignation, or incapacity of that licensed site remediation professional, in cases where there is not an immediate environmental concern.

(d) The person responsible for conducting the remediation shall notify the Department, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms:

- 1. Within 48 hours after the dismissal, resignation, or incapacity of the former licensed site remediation professional identified in (c)1 above, of the name and license information of the replacement licensed site remediation professional; and**
- 2. Within 45 days after the dismissal, resignation, or incapacity of the former licensed site remediation professional identified in (c)2 above, of the name and license information of the replacement licensed site remediation professional.**

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.2 Regulatory timeframes

- (a) The person responsible for conducting the remediation who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through [5] 7 shall comply with the regulatory timeframes established by all applicable statutes, rules and guidance, including, but not limited to, the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter.
- (b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:

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

i. – ii. (No change.)

iii. A description of the cause or causes of the need for the extra time needed to complete the work[; and].

(1) If the request for an extension of a regulatory timeframe is due to a delay in obtaining site access, then provide the information required by N.J.A.C.

7:26C-8.2(e); and

iv. (No change.)

2. (No change.)

(c) – (d) (No change.)

7:26C-3.3 [Mandatory] **Statutory and mandatory** remediation timeframes

(a) The person responsible for conducting the remediation who is remediating any discharge that was identified or should have been identified (for example, through a preliminary assessment or site investigation) prior to May 7, 1999, shall complete the remedial investigation of the entire site and submit the remedial investigation report by the following applicable date:

1. May 7, 2014, for those persons who applied for an extension but the Department then revoked the extension pursuant to N.J.S.A. 58:10C-27.1.c;

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- 2. May 7, 2016, for those persons who applied for and continued to meet the conditions for an extension pursuant to N.J.S.A. 58:10C-27.1.a;**
- 3. Two years after receipt of funding from the Hazardous Discharge Site Remediation Fund, or two years after the Department determines that the applicant is no longer eligible for such funding, for those persons who applied for the extension pursuant to N.J.S.A. 58:10C-27.1.b; or**
- 4. May 7, 2014, for all other persons subject to N.J.S.A. 58:10C-27.a(3).**

[(a)] **(b)** [The] **For all sites not subject to N.J.S.A. 58:10C-27.a(3),** the person responsible for conducting the remediation who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through [5] 7 shall:

1. – 6. (No change.)

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

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

(e) A person responsible for conducting the remediation as set forth in (a) above is ineligible for an extension of the remedial investigation timeframe set forth in (a) above.

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[(d)] (f) A person responsible for conducting the remediation **as set forth in (b) above** may request an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.4 Expedited [site specific] **site-specific** remediation timeframes

(a) – (c) (No change.)

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

(e) (No change.)

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

(a) – (c) (No change.)

(d) The Department may grant an extension of a mandatory remediation timeframe or of an expedited site specific timeframe by granting the approval in writing if appropriate and adequate rationale has been provided pursuant to (a) above and when an extension is needed as a result of the following:

1. A delay in obtaining access to property in accordance with N.J.A.C. 7:26C-8, provided that the person responsible for conducting the remediation **provides the information required pursuant to N.J.A.C. 7:26C-8.2(e) and** demonstrates that good faith efforts

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have been undertaken to gain access, access has not been granted by the property owner, and, after good faith efforts have been exhausted, a complaint was filed in the Superior Court to gain access;

2. – 3. (No change.)

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.2 Annual remediation fee formula

(a) (No change.)

(b) The Department shall calculate annual remediation fees for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year as follows:

1. – 3. (No change.)

4. Using the base contaminated area of concern fee calculated in (b)3 above, the Department shall establish the contaminated area of concern fee for each of the four Categories described below as follows:

i. Category 1: The fee for Category 1 is the base fee. This category applies where:

(1) (No change.)

(2) Historic fill is the only contaminated area of concern; [or]

(3) The number of contaminated areas of concern has not been determined based on the information known at the time the fee is calculated; **or**

(4) A site to be used as a child care center is being remediated, pursuant to N.J.S.A. 52:27D-130.4 and the Manual of Requirements for Child Care Centers at N.J.A.C. 10:122-5.2(i);

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ii. Category 2: The fee for Category 2 is two times the base fee. This category applies where:

(1) (No change.)

(2) The areas of concern are limited to any number of contaminated regulated underground storage tanks [except a single regulated heating oil tank system,] and there are no other contaminated areas of concern;

iii. – iv. (No change.)

5. – 6. (No change.)

(c) (No change.)

7:26C-4.3 Annual remediation fee

(a) Except as provided in (i) below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.3 shall submit the applicable annual remediation fee to the Department pursuant to this section.

1. (No change.)

2. Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report in accordance with N.J.A.C. 7:26-4.2(c), the person responsible for conducting the remediation shall pay an annual remediation fee, which shall be calculated by multiplying the number of contaminated media by \$1,400, and adding to the resultant dollar amount the fee listed at (a)2i through iv below, for the applicable contaminated area of concern category as determined pursuant to N.J.A.C. 7:26C-4.2(b)[:]. **Thereafter, the person responsible**

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for conducting the remediation shall pay the applicable annual remediation fee indicated in the most recent Annual Site Remediation Reform Act Program Fee

Calculation Report:

- i. – iv. (No change.)
3. – 4. (No change.)
5. For each subsequent year, the person responsible for conducting the remediation shall pay an annual remediation fee in response to a Department invoice as follows:
 - i. For a person paying the fee pursuant to (a)3 above, on the anniversary date of the first year that the annual remediation fee was **required to be** submitted; or
 - ii. (No change.)
6. If a person responsible for conducting the remediation does not submit the initial annual remediation fee pursuant to (a)3 or 4 above by the time the subsequent year's annual remediation fee is due pursuant to (a)4 above, and does not provide [any information required in N.J.A.C. 7:26E-4.2(b)3 and 5 so that the Department cannot otherwise calculate the annual remediation fee] **the Department with the number of contaminated areas of concern and number of contaminated media as required in N.J.A.C. 7:26C-4.3(a)1**, that person shall:
 - i. For each year the Department is not able to calculate the annual remediation fee, pay the applicable Category 2 annual remediation fee as amended annually pursuant to N.J.A.C. 7:26C-4.2(c) until that person provides [the information required by N.J.A.C. 7:26E-4.2(b)3 and 5] **the Department with the number of contaminated**

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areas of concern and number of contaminated media as required in N.J.A.C.

7:26C-4.3(a)1; and

ii. (No change.)

7. (No change.)

(b) (No change.)

(c) Where a [public] **governmental** entity, or a non-profit organization that meets the definition set forth at 26 U.S.C. § 501(c)3, is the person responsible for conducting the remediation of a brownfield development area, the person responsible for conducting the remediation shall pay an annual remediation fee in an amount that equals the sum of the applicable contaminated site fee and the total contaminated media fee as may be amended pursuant to N.J.A.C. 7:26C-4.2(c), except that, regardless of the number of sites within each brownfield development area:

1. – 2. (No change.)

(d) – (h) (No change.)

(i) The person responsible for conducting the remediation does not have to pay the annual remediation fee [in the following circumstances:

1. Upon] **upon** receipt of notice from the Department that it has assigned a full time case manager to the entire site[;].

[2. If that person is remediating a child care center; or

3. If that person is the owner or operator of an unregulated heating oil tank system.]

(j) The person responsible for conducting the remediation does not have to pay a contaminated media fee for a billing year after a preliminary assessment and site

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investigation pursuant to N.J.A.C. 7:26E-3 confirms that the sole source of contamination is historic fill. Until such confirmation, the person responsible for conducting the remediation shall be subject to a contaminated media fee, if applicable, for each billing year prior to and including the date of confirmation.

7:26C-4.4 Individual document review fees

(a) The person responsible for conducting the remediation shall submit to the Department, at the address noted on the appropriate document submission form or questionnaire, provided by the Department at www.nj.gov/dep/srp/srra/forms, the applicable nonrefundable document review fee pursuant to this section each time that the person submits any of the following documents to the Department unless the person is subject to an annual remediation fee:

- | | |
|---|----------------------|
| [1. Remedial action report for unregulated heating oil tank system | \$400.00 |
| 2. Re-issuance of no further action letter for unregulated heating oil tank system | \$100.00;] |
| [3.] 1. Biennial certification, unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification | \$375.00; and |
| [4. Child care center renewal certification | \$225.00; and] |

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[5.] 2. (No change in text.)

(b) – (c) (No change.)

[(d) The person responsible for conducting the remediation who is remediating a discharge from an unregulated heating oil tank system shall pay a \$400.00 fee for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3.]

7:26C-4.6 Payment of remedial action permit fees

(a) Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c), the permittee shall submit to the Department the applicable remedial action permit activity fees pursuant to the following table. Thereafter, the permittee shall pay the applicable remedial action permit activity fees [as published] **indicated** in the **most recently posted** Annual Site Remediation Reform Act Program Fee Calculation Report:

Remedial Action	Soil Remedial	Ground Water -	Ground Water -
<u>Permit Fees</u>	<u>Action Permit</u>	Natural Attenuation	Active System
		<u>Remedial Action</u>	<u>Remedial Action</u>
		<u>Permit</u>	<u>Permit</u>

...

(b) Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c) and 4.5(e), the permittee shall pay an annual remedial action permit

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fee in response to a Department invoice, on the anniversary date of the Department issuing the remedial action permit, as follows. Thereafter, the permittee shall pay the annual remedial action permit fee [as published] **indicated** in the **most recently posted** Annual Site Remediation Reform Act Program Fee Calculation Report:

1. – 2. (No change.)

7:26C-4.7 Oversight costs

(a) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to this section whenever the Department assesses those costs against the person responsible for conducting the remediation that is subject to any of the following circumstances:

1. (No change.)

2. The Department assigns a case manager pursuant to the criteria in the Site Remediation Reform Act at N.J.S.A. 58:10C-21b or c; [or]

3. The provisions of N.J.A.C. 7:26C-4.3(i)[1 or 2.]; **or**

4. The person incurred oversight costs prior to May 7, 2009.

(b) – (h) (No change.)

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

7:26C-5.2 Establishing a remediation funding source and financial assurance

(a) – (h) (No change.)

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(i) Any person may establish, on behalf of any person required to establish a remediation funding source **or financial assurance**, any of the mechanisms listed at (h) above except for a self-guarantee.

(j) – (k) (No change.)

(l) The person responsible for conducting the remediation required to establish and maintain a remediation funding source or financial assurance shall submit evidence of the establishment of a remediation funding source or financial assurance to the Department no later than the following deadlines as applicable, unless the Department approves an extension of that deadline:

1. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to ISRA, N.J.S.A. 13:1K-6 et seq., shall submit evidence of the remediation funding source:

i. (No change.)

ii. Upon submission to the Department of a remediation certification pursuant to N.J.A.C. 7:26B-[4]**3.3(c)**.

2. – 4. (No change.)

7:26C-5.4 Remediation trust fund requirements

(a) Any person who is required or chooses to establish a remediation trust fund as a remediation funding source or financial assurance pursuant to this subchapter shall submit to the Department the original remediation trust fund agreement. The remediation trust fund agreement must:

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1. Be executed by an entity that has the authority to act as a trustee [and], whose trust operations are regulated and examined by a New Jersey or Federal agency, **and who is not the person responsible for conducting the remediation;**

2. – 6. (No change.)

(b) (No change.)

7:26C-5.8 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall complete and submit to the Department a form found on the Department's website at www.nj.gov/dep/srp/srra/forms that contains the following information:

1. – 3. (No change.)

4. Audited financial statements for the preceding fiscal year that ended closest to the date of the self guarantee statement, including, but not limited to, an income statement, a balance sheet and a consolidated statement of cash flow, in which the auditor expresses an unqualified opinion. This information must be prepared in accordance with Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board Accounting Standards Codification or the International Accounting Standards Board International Financial Reporting Standards. This information must be audited in accordance with the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board's auditing standards **or the International Standards on Auditing;** and

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5. (No change.)

(b) – (d) (No change.)

7:26C-5.11 Changes in the remediation funding source or financial assurance amount or type and return of the remediation funding source or financial assurance

(a) – (d) (No change.)

(e) The Department shall return:

1. (No change.)

2. The financial assurance when:

i. (No change.)

ii. [When another] **Another** permittee has established financial assurance; [or]

iii. The Department has modified the remedial action permit pursuant to N.J.A.C. 7:26C-7.12(b)3 to reflect the determination by the licensed site remediation professional that the remedy no longer requires an engineering control to be protective of public health and safety and the environment; or

[iii.] **iv.** (No change in text.)

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.2 Response action outcomes

(a) The licensed site remediation professional **retained by the person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a)1** shall issue a response action outcome to the person who has conducted the remediation:

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1. (No change.)

2. After the Department has issued all remedial action permits required for the remedial action, **including a modified remedial action permit required due to a change in a remedial action pursuant to N.J.A.C. 7:26C-6.4;**

3. (No change.)

4. After all wells no longer used for remediation have been properly decommissioned or otherwise accounted for pursuant to N.J.A.C. 7:9D;

Recodify existing 4. – 5. as **5. – 6.** (No change in text.)

(b) – (g) (No change.)

(h) In accordance with (a) above, no other licensed site remediation professional may issue a response action outcome for the remediation.

7:26C-6.3 (Reserved)

7:26C-6.4 [Modification] **Correction**, rescission, **withdrawal**, and invalidation of a final remediation document

(a) A remedial action [is] **may not be** protective of the public health[,], **and** safety and the environment [when any of the following occur] **if**:

1. A discharge that occurred **at a contaminated site or area of concern** prior to the issuance of a final remediation document is discovered after the issuance of the final remediation document [and the remediation of that discharge should have been addressed in the remediation to which the final remediation document pertains];

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[2. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude and the person responsible for conducting the remediation fails to complete further remediation;]

[3.] **2.** A contaminant exposure pathway from a discharge that predates the final remediation document is identified after the issuance of the final remediation document; [and was not addressed in the remediation to which the final remediation document pertains;

4. Any person who is obligated to comply with the conditions of the final remediation document fails to do so;

5. The permittees fail to comply with a remedial action permit;]

[6.] **3.** The remediation was not conducted in accordance with [the] **a** remediation standard[s];

[7.] **4.** [The] **A** conclusion[s] in the final remediation document [are] **is** not supported by environmental data as required by this chapter;

[8.] **5.** The scope of the final remediation document is not consistent with the scope of the [actual] remediation **to which it applies;**

Recodify existing 9. and 10. as **6. and 7.** (No change in text.)

[11.] **8.** A presumptive remedy or alternative presumptive remedy was not implemented [when] **as** required; [or]

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[12.] **9.** [Other] **Any other** factor[s exist] that [demonstrate] **indicates** that the remediation [is] **may not be** protective of the public health, safety, and the environment[.];

10. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the level or concentration of the new remediation standard for a contaminant and the residual level or concentration of a contaminant at the contaminated site or area of concern differs by an order of magnitude or more; or

11. The permittee fails to certify, pursuant to N.J.A.C. 7:26C-7.8(d), that a remedy remains protective.

[(b) The licensed site remediation professional shall rescind his or her response action outcome when he or she determines that:

1. The remedial action is not protective of the public health, safety, and the environment pursuant to (a) above; or
2. The person responsible for conducting the remediation implemented a remedial action that will render the property unusable for future redevelopment or recreational use.]

(b) The licensed site remediation professional who has issued a response action outcome for a contaminated site or area of concern shall:

1. Immediately upon learning that any of the circumstances described in (a)1 through 9 above may apply to the contaminated site or area of concern, inform in writing the person to whom the licensed site remediation professional issued the response action outcome of that circumstance, copying the Department; and

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2. Within 30 days after learning of any of the circumstances described in (a)1 through 9 above, either:

i. If retained, then address the circumstance described in (a)1 through 9 above, confirm the protectiveness of the remedial action, notify the Department in writing, and, if necessary, amend the response action outcome; or

ii. If either not retained or unable to confirm the protectiveness of the remedial action, then withdraw the response action outcome and send a copy of the withdrawal to both the Department and the person to whom the licensed site remediation professional issued the response action outcome.

(c) When the person responsible for conducting the remediation learns of any of the circumstances described in (a) above, including by being informed pursuant to (b)1 above, the person responsible for conducting the remediation shall:

1. Within two days after the discovery of any circumstance described in (a) above, inform the Department as indicated in N.J.A.C. 7:26C-1.6(a), of the specific circumstance in (a) above applicable to the remediation;

2. Within seven days after the discovery of any circumstance described in (a) above, retain a licensed site remediation professional pursuant to N.J.A.C. 7:26C-2.3(a)2, if the person responsible for conducting the remediation has not already retained a licensed site remediation professional;

3. Within 30 days after the discovery of any circumstance described in (a) above, either:

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i. If the retained licensed site remediation professional is the licensed site remediation professional who issued the response action outcome, then:

(1) Address the circumstance described in (a) above, confirm the protectiveness of the remedial action, notify the Department in writing, and, if necessary, have the licensed site remediation professional amend his or her response action outcome; or

(2) If the licensed site remediation professional cannot confirm the protectiveness of the remedial action, then have the licensed site remediation professional withdraw his or her response action outcome and send a copy of the withdrawal to the Department; or

ii. If the retained licensed site remediation professional is not the licensed site remediation professional who issued the response action outcome, then:

(1) Address the circumstance described in (a) above, confirm the protectiveness of the remedial action, notify the Department in writing, and, if necessary, request that the Department invalidate the response action outcome; and

4. If the response action outcome has been withdrawn or invalidated, then within one year after the discovery of any circumstance described in (a) above, conduct pursuant to N.J.A.C. 7:26C-2.3 the remediation necessary to implement a remedial action that is protective of the public health and safety and the environment, and obtain a response action outcome.

[(c)] (d) The Department shall[:

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1. Invalidate a response action outcome when it determines that the licensed site remediation professional has failed to comply with (b) above; or
2. Invalidate a response action outcome or] rescind a no further action letter when it determines that:

[i.] **1.** The remedial action is not protective of the public health[,] **and** safety[,] and the environment [pursuant to (a) above]; or

[ii.] **2.** (No change in text.)

Recodify existing (d) – (e) as **(e) – (f)** (No change in text.)

SUBCHAPTER 7. DEED NOTICES, GROUND WATER CLASSIFICATION EXCEPTIONS AREAS, AND REMEDIAL ACTION PERMITS

7:26C-7.2 Administrative requirements for using a deed notice in a remedial action

(a) – (b) (No change.)

(c) If the person responsible for conducting the remediation, who uses a deed notice pursuant to (a) and (b) above, is not the property owner of the contaminated site, then the person responsible for conducting the remediation shall:

- 1. Provide the Department with the property owner's written agreement to record the deed notice; or**
- 2. Submit the property owner's written agreement to provide notice in lieu of a deed notice, pursuant to (b)2 above, as follows, if the property owner is any local, county, State, or Federal government agency, and a deed is not associated with the property (such as roads and sidewalks):**

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- i. For a municipality, the written agreement shall be in the form of a formal resolution by the municipal government;**
 - ii. For a county, the written agreement shall be in the form of a formal resolution by the county freeholders; and**
 - iii. For a State or Federal governmental agency, the head of the agency or its designee shall sign the written agreement.**
- (d) The person responsible for conducting the remediation and the statutory permittee shall, within 30 days after municipal subdivision approval of such a site that triggers a remedial action permit termination application pursuant to N.J.A.C. 7:26C-7.13(c):**
- 1. Terminate the existing deed notice on the site using the form at N.J.A.C. 7:26C Appendix C;**
 - 2. File a new deed notice for each subdivided parcel of the site using the form at N.J.A.C. 7:26C Appendix B; and**
 - 3. Apply for a new remedial action permit pursuant to N.J.A.C. 7:26C-7.5.**

7:26C-7.3 Administrative requirements for establishing and removing a ground water classification exception area in a remedial action

(a) – (c) (No change.)

(d) The person responsible for conducting the remediation shall notify by mailing a copy of the CEA/Well Restriction Area (WRA) Fact Sheet form, via certified mail, return receipt requested, the following persons of the intent to establish the ground water classification exception area:

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1. – 4. (No change.)

5. The Pinelands Commission if the ground water classification exception area is located within the jurisdiction of that Commission; **and**

[6. New Jersey Department of Environmental Protection Water Supply Administration:

i. Bureau of Safe Drinking Water; and

ii. Bureau of Water Systems and Well Permitting of Water Allocation; and]

[7.] **6.** (No change in text.)

(e) – (g) (No change.)

(h) The ground water classification exception area established for historic fill **or historically applied pesticides** pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.7(b) **and 4.9(a), respectively**, shall remain effective indefinitely. However, a ground water remedial action permit is not required for the ground water classification exception area **resulting from historic fill or historically applied pesticides.**

7:26C-7.5 Application for a remedial action permit

(a) – (d) (No change.)

(e) **The permittee shall, within 30 days after municipal subdivision approval for the site that triggers a remedial action permit termination application pursuant to N.J.A.C.**

7:26C-7.13(c), simultaneously apply for:

1. A remedial action permit termination of the existing remedial action permit

(including paying the applicable remedial action permit application fee) for each site

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created by the subdivision upon which an engineering or institutional control exists;

and

2. A new remedial action permit for the modified remedial action permit (including paying the applicable remedial action permit application fee) for each site upon which an engineering or institutional control exists.

7:26C-7.6 Remedial action permit application schedule

(a) – (b) (No change.)

(c) The Department shall issue a remedial action permit when a person implements a restricted use remedial action, a limited use restricted remedial action, or any other remedial action that includes an engineering or institutional control if the person responsible for conducting the remediation does not timely apply for a remedial action permit pursuant to this section.

(d) The Department shall issue a modified remedial action permit if the person responsible for conducting the remediation does not timely apply for a remedial action permit modification to make the existing remedial action permit:

1. Consistent with the requirements of this subchapter; or

2. Conditions adequate to monitor the effectiveness of the remedial action necessary to ensure the protection of the public health and safety and the environment.

(e) Within 30 days after the Department issues a remedial action permit or modification pursuant to (c) or (d) above, the permittee shall pay the applicable remedial action permit fee pursuant to N.J.A.C. 7:26C-4.6.

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7:26C-7.7 General conditions applicable to all remedial action permits

(a) The permittee shall:

1. Prepare and submit to the Department biennially a remedial action protectiveness certification on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, as required by this subchapter and the remedial action permit. Information concerning the protectiveness of the remedial action to be supplied by filling out the form includes:

i. – v. (No change.)

vi. The use of the [property] **site**;

vii. Any land disturbances at the site;

[vii.] **viii.** If any additional remediation was conducted at the site; and

[viii.] **ix.** (No change in text.)

2. (No change.)

3. Maintain financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; [and]

4. Pay all applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.6[.];

5. Inform the Department when the municipality has revised the lot and block designations of the site, no later than the submission of the next Remedial Action Protectiveness Certification; and

6. Inform the Department when the permittee changes its address.

(b) (No change.)

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7:26C-7.8 Specific conditions applicable to soil remedial action permits

(a) – (c) (No change.)

(d) As part of the evaluation of the protectiveness of the soil remedial action, the permittee shall either:

1. (No change.)

2. If the permittee cannot provide the certification required in (d)1 above, **then** the permittee shall [ensure] **take all necessary actions** so that the remedial action [remains] **is** protective of the public health and safety and the environment [by, as necessary, modifying the remedial action, proposing a revision to the deed notice, and applying for a modification of the soil remedial action permit] **before the due date of the next biennial certification.**

(e) (No change.)

7:26C-7.11 Transfer of a remedial action permit **by a statutory permittee**

(a) [Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.4(a)2) may, prior to changing such status,] **A statutory permittee whose status as a statutory permittee has changed shall, pursuant to (b) below,** request that the Department transfer the **remedial action** permit to a new owner, operator, or tenant. The **existing statutory** permittee shall pay the **remedial action** permit transfer fee pursuant to N.J.A.C.

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7:26C-4.6 and has the burden of showing that its **status as a statutory** permittee [status] is so limited by law.

(b) [In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least] **No later than** 60 calendar days [prior to] **after** the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, [notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit] **a statutory permittee shall apply for the remedial action permit transfer pursuant to (c) below.**

(c) **To apply for a remedial action permit transfer, the statutory permittee shall submit a completed application for a remedial action permit transfer** by providing the following information on a form appropriate for the specific remedial action permit, found on the Department's website at www.nj.gov/dep/srp/srra/forms:

1. – 5. (No change.)

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

1. The **statutory** permittee requesting transfer of the **remedial action** permit complies with the notice requirements in (b) above;
2. The **statutory** permittee requesting transfer of the **remedial action** permit actually terminates its status as subsequent owner, operator, or tenant; and
3. A permittee, other than the one requesting that the Department rescind its status as a **statutory** permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.10.

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7:26C-7.12 Modification of specific requirements in a remedial action permit

(a) (No change.)

(b) A permittee shall apply to have the Department modify a remedial action permit [within 30 days] after **the person responsible for conducting the remediation modifies the remedial action, including, but not limited to**, the occurrence of any of the following, by submitting a completed form appropriate for the specific remedial action permit, as described in (c) below, [as appropriate, found on the Department's website] **available** at

www.nj.gov/dep/srp/srra/forms:

1. A [determination that the remedial action is not adequately protective of the public health and safety and of the environment] **change in the remedial action pursuant to N.J.A.C. 7:26C-6.4;**

[2. A determination that the size, duration, or contaminants of a ground water classification exception area, or the frequency and parameters of the ground water monitoring, need to be modified;]

[3.] **2.** A [person proposes to change] **modification of** the engineering or institutional controls [applicable to the site, as described], **which will result in changes to the exhibits in the deed notice or** in the notice [that complies with the requirements of] **in N.J.A.C. 7:26C-7.2[(b)](c)2** concerning deed notices; **or**

[4. The person responsible for conducting the remediation modifies the remedial action;

5. A determination that the municipality has revised the lot and block designations of the property; or]

[6.] **3.** (No change in text.)

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

1. The form appropriate for the specific remedial action permit, found on the Department's website at www.nj.gov/dep/srp/srra/forms, which includes:
 - i. Identification of the contaminated site; and
 - ii. Identification and contact information of the applicant;
2. A copy of the following as applicable:
 - i. The filed copy of a new deed notice;
 - ii. A revised ground water classification exception area application; or
 - iii. A revised remedial action workplan; and
3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4] **pursuant to N.J.A.C. 7:26C-7.5, and pay the applicable remedial action permit modification fee in accordance with N.J.A.C. 7:26C-4.6.**

7:26C-7.13 Termination of a remedial action permit

- (a) (No change.)
- (b) A permittee may request that the Department terminate a remedial action permit by submitting, on the form appropriate for the specific remedial action permit, [found on the Department's website] **available** at www.nj.gov/dep/srp/srra/forms, the following:
 1. – 4. (No change.)

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5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with **N.J.A.C. 7:26C** Appendix [D to this chapter] **C**, incorporated herein by reference; and

6. (No change.)

(c) The permittee shall apply to the Department for termination of a remedial action permit within 30 days after municipal subdivision approval of the site, and apply for a new remedial action permit pursuant to N.J.A.C. 7:26C-7.5(e).

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

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.1 Scope

(a) This subchapter governs administrative enforcement actions the Department may take for a person's violation of any of the following:

1. – 5. (No change.)

6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; [or]

[7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.]

7. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E; or

8. The Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F.

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(b) This subchapter:

1. – 3. (No change.)

4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; [and]

5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f[.]; **and**

6. Governs the procedures the Department will follow when it assesses State costs.

7:26C-9.5 Civil administrative penalty determination

(a) (No change.)

(b) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

<u>Subchapter and Violation</u>	<u>Citation</u>	Type of <u>Violation</u>	Grace Period <u>Days</u>	Base <u>Penalty</u>
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Underground Storage Tanks N.J.A.C. 7:14B

...

13 Certification of individuals and business firms

<p>Performance of entire system installation or release detection monitoring system installation, closure, tank testing, subsurface evaluation, or corrosion protection system analysis without proper certification and/or supervision.</p>	<p>7:14B-13.1(a)1</p>	<p>NM</p>	<p>\$5,000 for the first offense; \$10,000 for the second offense; \$20,000 for the third and each subsequent offense</p>
<p>Conducting remediation on an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter without holding a LSRP license.</p>	<p>7:14B-13.1(a)2</p>	<p>NM</p>	<p>\$5,000 for the first offense; \$10,000 for the second offense; \$20,000 for the third and each</p>

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				subsequent
				offense
Failure to make the Department-	7:14B-13.1(b) and	M	30	\$5,000 for
issued certification card available to	(c)			the first
the Department or its authorized				offense;
agent upon request or to				\$10,000 for
conspicuously display the				the second
Department-issued certificate at the				offense;
office of the business firm as				\$20,000 for
required.				the third
				and each
				subsequent
				offense
Failure to ensure all services	7:14B-13.1(d)	NM		\$5,000 for
performed on regulated underground				the first
storage tank systems pursuant to				offense;
N.J.A.C. 58:10A-21 et seq. and				\$10,000 for
N.J.A.C. 7:14B are performed by a				the second
certified individual or under the				offense;
immediate, on-site supervision of a				\$20,000 for
certified individual, and that				the third
remediation is being conducted by a				and each
LSRP.				subsequent
				offense
Failure of an individual performing	7:14B-13.1(e)	NM		\$5,000 for
services on a regulated underground				the first

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<p>storage tank system to be employed by a certified firm and be certified in the same category of service as the firm, or to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.</p>		<p>offense; \$10,000 for the second offense; \$20,000 for the third and each subsequent offense</p>
<p>Failure to retain a licensed site remediation professional to conduct remediation pursuant to N.J.A.C. 7:26C.</p>	<p>7:14B-13.1(g) NM</p>	<p>\$5,000 for the first offense; \$10,000 for the second offense;</p>
<p>Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.</p>	<p>7:14B-13.1(i) NM</p>	<p>\$20,000 for the third and each subsequent offense \$5,000 for the first offense; \$10,000 for the second offense;</p>

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					\$20,000 for
					the third
					and each
					subsequent
					offense
Failure of a business firm to notify	7:14B-13.1(k)	NM			\$5,000 for
the Department in writing, within					the first
three business days, of a certifying					offense;
officer leaving the business firm or					\$10,000 for
losing his or her certification.					the second
					offense;
					\$20,000 for
					the third
					and each
					subsequent
					offense
Failure of an individual certified	7:14B-13.1(l)	M	30		\$5,000 for
pursuant to N.J.A.C. 7:14B-13 to					the first
sign the certification statement					offense;
pursuant to N.J.A.C. 7:14B-10.3(b)					\$10,000 for
for all documents prepared pursuant					the second
to N.J.A.C. 7:14B and submitted to					offense;
the Department.					\$20,000 for
					the third
					and each

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				subsequent
				offense
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card, or the license number of the Licensed Site Remediation Professional as applicable, when requested by the local construction official.	7:14B-13.1(m)	M	30	\$5,000 for the first offense;
				\$10,000 for the second offense;
				\$20,000 for the third and each subsequent offense
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to comply with the professional business practices described in N.J.A.C 7:14B-13.9	7:14B-13.1(n)	NM		[\$15,000]
				\$5,000 for the first offense;
				\$10,000 for the second offense;
				\$20,000 for the third and each subsequent offense

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Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM	<p>\$5,000 for the first offense;</p> <p>\$10,000 for the second offense;</p> <p>\$20,000 for the third and each subsequent offense</p>	
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation when requested.	7:14B-13.7(f)	M	30	<p>\$5,000 for the first offense;</p> <p>\$10,000 for the second offense;</p> <p>\$20,000 for the third and each subsequent offense</p>
Failure to maintain evidence of financial responsibility assurance for the mitigation or remediation of a hazardous substance discharge	7:14B-13.8(a)	NM		<p>[\$15,000]</p> <p>\$5,000 for the first offense;</p>

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resulting from the performance of services.					\$10,000 for the second offense;
					\$20,000 for the third and each subsequent offense
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	NM	30		\$5,000 for the first offense;
					\$10,000 for the second offense;
					\$20,000 for the third and each subsequent offense
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 shall perform all services in accordance with all Federal, State and local rules and regulations and comply with the listed professional business practices.	7:14B-13.9(a) through (c)	NM			[\$15,000]
					\$5,000 for the first offense;
					\$10,000 for the second offense;

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				\$20,000 for
				the third
				and each
				subsequent
				offense
Failure of an individual or business	7:14B-13.9(d)1 and	M	30	\$5,000 for
firm certified pursuant to N.J.A.C	2			the first
7:14B-13 to submit to the				offense;
Department documentation of the				\$10,000 for
individual and business firm's cost				the second
for providing the services for which				offense;
the Fund is providing financial				\$20,000 for
assistance, and to facilitate an audit				the third
by the Department of the individual				and each
and business firm's pricing and				subsequent
business practices.				offense
Failure of an individual or business	7:14B-13.9(e)	NM		\$5,000 for
firm certified pursuant to N.J.A.C				the first
7:14B-13 to provide the Department				offense;
with all information that will aid in				\$10,000 for
its review of loan and grant				the second
applications, investigation of				offense;
complaints of discharges of				\$20,000 for
hazardous substances or any				the third
suspected violation of this				and each
subchapter.				

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				subsequent offense
	...			
3	Failure to comply with [each] the applicable [mandatory] timeframe for sites subject to N.J.S.A. 58:10C-27a(3).	7:26C-3.3(a)	NM	\$20,000
	Failure to comply with each applicable mandatory timeframe for sites not subject to N.J.S.A. 58:10C-27a(3).	7:26C-3.3(b)	NM	\$20,000
	...			
4	Fees and oversight costs Failure to pay document review fees as required.	7:26C-4.4(a) [through (d)], (b) , and (c)	NM	100 percent of the amount of the fee that is in arrears
6	Final Remediation Documents			
	Failure to confirm the protectiveness of the remedy.	7:26C-6.4(c)	NM	\$20,000
	Failure to hire a licensed site remediation professional to conduct remediation and submit the required form.	7:26C-6.4(c)	NM	\$15,000

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<p>Failure to conduct additional remediation after a response action outcome has been invalidated or withdrawn, or after the Department rescinds a no further action letter.</p>	<p>7:26C-6.4(c)</p>	<p>NM</p>	<p>\$20,000</p>
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[13 Remediation of Unregulated Heating Oil Tank Systems

<p>Failure to use either an appropriately certified subsurface evaluator or a licensed site remediation professional to perform the remediation of a discharge from an unregulated heating oil tank system.</p>	<p>7:26C-13.2(a)</p>	<p>NM</p>	<p>\$15,000</p>
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<p>Failure to submit the required information.</p>	<p>7:26C-13.3</p>	<p>M</p>	<p>30</p>	<p>\$15,000</p>
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<p>Failure to obtain the required approvals when conducting remediation of an unregulated heating oil system.</p>	<p>7:26C-13.5(b)</p>	<p>NM</p>	<p>\$15,000]</p>
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HEATING OIL TANK SYSTEM REMEDIATION RULES, N.J.A.C. 7:26F

1 General Information

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Failure to conduct additional remediation.	7:26F-1.2(c)	NM		\$15,000
Failure to notify the Department of a discharge.	7:26F-1.6	NM		\$15,000
Failure to pay a document review fee as required.	7:26F-1.8	NM		100 percent of the amount of the fee that is in arrears
Failure to certify a document.	7:26F-1.9	M	30	\$10,000
Failure to use an environmental professional to remediate a discharge from a heating oil tank system.	7:26F-1.11	NM		\$15,000
2 General Remediation Requirements				
Failure to close and/or remove a heating oil tank.	7:26F-2.1(a)	NM		\$15,000
Failure to hire an environmental professional to oversee the remediation of a discharge from a heating oil tank.	7:26F-2.1(a)	NM		\$15,000
Failure to have soil and water analyzed by a certified laboratory.	7:26F-2.2(a)1	NM		\$15,000

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	Failure to follow the requirements for quality assurance for sampling and laboratory analysis in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.	7:26F-2.2(a)2	NM	\$15,000
	Failure to follow the analytical requirements for heating oil tank system discharges at N.J.A.C. 7:26F-2.4(a)3, Table 2-1.	7:26F-2.2(a)3	NM	\$15,000
3	Soil Remediation Requirements			
	Failure to remediate free product.	7:26F-3.2	NM	\$15,000
	Failure to remediate soil contamination.	7:26F-3.4 or 3.5	NM	\$15,000
	Failure to determine compliance for a soil sample collected for a discharge at or from a heating oil tank system containing No. 2, No. 4, or No. 6 heating oil or kerosene.	7:26F-3.6	NM	\$15,000
	Failure to establish a required institutional control or engineering control and obtain a remedial action permit.	7:26F-3.7(b)	NM	\$15,000
	Failure to secure agreement of the person who has legal or equitable	7:26F-3.7(b)	NM	\$15,000

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title to the property to implement a remedial action.

Failure to establish a required 7:26F-3.7(b) NM \$15,000

institutional control or engineering control.

Failure to properly restore the site 7:26F-3.8 NM \$15,000

once the remedial action is completed.

4 Ground Water Remediation Requirements

Failure to remediate ground water 7:26F-4.2 or 4.3 NM \$15,000

contamination.

Failure to establish a required 7:26F-4.3(f) NM \$15,000

institutional control.

6 Receptor Evaluation

Failure to conduct a receptor 7:26F-6 NM \$15,000

evaluation, when required.

7 Remedial Action Report and Heating Oil Tank System No Further Action Letter Request Requirements

Failure to prepare a remedial 7:26F-7.2 and 7.3 NM \$15,000

action report pursuant to N.J.A.C.

7:26F-5.2 and submit required

documents for remediation of a

heating oil tank system.

7:26C-9.9 Procedures for assessment and payment of civil administrative penalties

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(a) – (b) (No change.)

(c) If the violator **fails to contest or** does not pay, **in whole or in part**, a civil administrative penalty **imposed pursuant to this subchapter, or fails to agree to a payment schedule**, within 30 calendar days [after] **of** the date [of a final order, and] **that** the penalty is [not contested pursuant to N.J.A.C. 7:26C-9.6, or if the violator does not make a required payment pursuant to a payment schedule entered into with the Department,] **due and owing, the violator shall be subject to** an interest charge [shall accrue] on the amount of the penalty from the [30th calendar day] **date** that **the** amount was due and owing and **the interest charge shall** continue until the violator pays the penalty in full.

[(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-9.10 and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.]

Recodify existing (e) – (f) as **(d) – (e)** (No change in text.)

7:26C-9.10 Adjudicatory hearings

(a) A person may request a hearing to contest:

- 1. A revocation of a no further action letter pursuant to N.J.A.C. 7:26C-6;**
- 2. An invalidation of a response action outcome pursuant to N.J.A.C. 7:26C-6;**
- 3. A new or modified remedial action permit or a denial of an application to transfer a remedial action permit pursuant to N.J.A.C. 7:26C-7;**
- 4. An administrative order pursuant to N.J.A.C. 7:26C-9;**

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- 5. An assessment of a civil administrative penalty pursuant to N.J.A.C. 7:26C-9;**
- 6. An assessment of cleanup and removal costs pursuant to N.J.A.C. 7:26C-9; or**
- 7. Any other document when the Department determines that the matter constitutes a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.**

(b) The person requesting a hearing on a document listed in (a) above, shall, within 20 calendar days after that person's receipt of the document for which the hearing is sought, deliver, to the Department at the addresses in (e) below, a copy of the document for which the hearing is sought, a completed Administrative Hearing Request Checklist, which accompanied the document being contested, and the following information:

- 1. The date the person received the document for which the hearing is sought;**
- 2. The name, address, telephone number, and e-mail address of:**
 - i. The person the Department named in the document for which the hearing is sought;**
 - ii. A contact person or authorized representative, if the person the Department named in the document is other than an individual; and**
 - iii. The person's attorney, if any;**
- 3. An admission, a denial, or an averment of insufficient knowledge or information of each of those findings in the document being contested that the Department listed on the Administrative Hearing Request Checklist, which accompanied the document for which the hearing is sought. The person shall base any denial or averment of insufficient knowledge or information on all knowledge and information in that person's possession, custody, or control, or in the possession, custody, or control of**

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any other person whom that person has the legal right to obtain such knowledge or information. The person shall make each admission, denial, or averment of insufficient knowledge or information as follows:

i. If the person is without knowledge or information sufficient to form a belief as to the truth of a specific finding, the person shall so state and this shall have the effect of a denial;

ii. If the person intends to deny any finding or portion of any finding in the document:

(1) The person shall specify what part of the finding is denied. A general denial of some or all of the findings shall have the effect of an admission of each finding generally denied;

(2) For each finding or portion of any finding the person denies, the person shall explain the factual and legal basis of the denial. Any failure to provide a factual and legal basis for a denial shall have the effect of an admission of the finding; and

(3) The person shall ensure that each denial fairly meets the substance of the finding or portion of any finding denied. A denial that does not meet the substance of the finding denied shall have the effect of an admission of the finding; and

iii. If a person fails to either admit or deny any specific finding or portion of any finding, this shall have the effect of an admission of that finding;

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4. A list of all factual and legal issues that the person is contesting, with each defense position stated in short and plain terms;

5. If the person's response to a Department allegation of noncompliance is that the person has complied with some or all of the applicable requirements, a description of all such compliance, including a specific citation to each applicable requirement with which the person alleges it has complied, the facts and circumstances of the compliance, including a copy of any submission that is required by that applicable requirement, or otherwise provide evidence of compliance, and the date of the compliance;

6. An estimate of the time required for the hearing (in days and/or hours); and

7. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(c) The Department shall deny a request for a hearing if:

1. The Department does not timely receive a complete request for a hearing pursuant to (b) above, as applicable;

2. The person fails to include in the request for a hearing all of the information required by (b) above, as applicable; or

3. The person seeks only to challenge a duly promulgated regulation and not the Department's application of the regulation to the person in a particular case.

(d) The Department shall conduct all hearings granted pursuant to this section 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.

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(e) The person shall send the request for an adjudicatory hearing pursuant to this section to both the:

1. New Jersey Department of Environmental Protection

Office of Legal Affairs

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

Attention: Hearing Request; and

2. New Jersey Department of Environmental Protection

Site Remediation and Waste Management Program

Bureau of Enforcement and Investigation

Mail Code 401-06U

PO Box 420

Trenton, NJ 08625-0420

Attention: Hearing Request.

7:26C-9.12 Procedures for assessment, payment, and settlement of assessment of cleanup and removal costs in notices of administrative assessment of State costs

(a) The Department may assess State costs by issuing a notice of administrative assessment of State costs pursuant to the procedure in this section.

(b) To assess State costs in a notice of administrative assessment of State costs, the

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Department shall notify a responsible party by:

- 1. Certified mail, return receipt requested, and regular mail, with the simultaneous mailing of such constituting effective service; or**
- 2. Personal service upon the responsible party.**

(c) A notice of administrative assessment of State costs shall include, as applicable:

1. The Site Remediation Program name and Site Remediation Program Interest Number of the site, and the street address, municipality, and county of the site

where the discharge occurred;

2. The responsible party, including:

i. Name and address; and

ii. The responsible party's relationship to the hazardous substance that was discharged;

3. To the extent readily available:

i. The date of the discharge;

ii. The name and quantity of the hazardous substance that was discharged; and

iii. The extent of the discharge and the resulting injury to natural resources;

4. A concise statement of the facts relating to the State costs assessed, including the nature and amount of the State costs being assessed and the interest on those costs at the post-judgment rate established by Rule 4:42-11 of the Rules Governing the Courts of the State of New Jersey; and

5. Notice to the responsible party of the right to request a hearing pursuant to the procedures in N.J.A.C. 7:26C-9.10.

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(d) The responsible party shall pay the assessed State costs upon the responsible party's receipt of the Department's final order in a contested case, or when a notice of administrative assessment of State costs otherwise becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:26C-9.10, the notice of administrative assessment of State costs becomes a final agency order on the 21st day following the date the responsible party receives the notice of administrative assessment of State costs; or

2. If the Department denies a hearing request, the notice of administrative assessment of State costs becomes a final agency order when the responsible party receives the denial; or

3. If an adjudicatory hearing is held and a Final Decision is issued in favor of the Department, then the notice of administrative assessment of State costs becomes a final agency order.

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

7:26C-11.2 Application for loans and grants

[A person or public entity] **An applicant**, as defined [pursuant to N.J.S.A. 58:10B-1] **at N.J.A.C. 19:31-8.2, New Jersey Economic Development Authority, Authority Assistance Programs**, may apply for [financial assistance] **a loan or grant** from the Hazardous Discharge Site Remediation Fund by submitting **to the Department** a completed form[,] **and following the instructions, both of which are** found on the Department's website at

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www.nj.gov/dep/srp/srra/forms [and by following the Hazardous Discharge Site Remediation Fund Application Guidance].

7:26C-11.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs that were incurred prior to an application pursuant to this subchapter provided that:

1. The remediation costs were incurred after June 16, 1993; [and]
2. [The] **If a person other than a licensed site remediation professional conducted the remediation, the** Department has approved the remediation associated with the remediation costs[.]; **and**
3. **If a licensed site remediation professional conducted a phase of remediation and submitted the document to the Department pursuant to this chapter.**

7:26C-11.4 Disbursements of grants and loans

(a) A person responsible for conducting remediation using a loan or a grant as part of the remediation funding source requirement shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

(b) **A person responsible for conducting remediation using a loan or grant, other than as part of a remediation funding source, shall comply with N.J.A.C. 7:26C-5.12(b) for a site where the remediation is subject to direct oversight.**

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(c) All other persons responsible for conducting remediation shall request disbursement of loan or grant funds by submitting to the Department a completed form available on the Department's website at www.nj.gov/dep/srp/srra/forms. Instructions for completing the form are also available on the website.

SUBCHAPTER 12. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND FOR A REGULATED UNDERGROUND STORAGE TANK

7:26C-12.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, to fund projects [eligible] pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 et seq., **except that this subchapter does not apply to applications for a loan or grant for remediation costs associated with an unregulated heating oil tank. For such requirements, see N.J.A.C. 7:26F-7, Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.**

7:26C-12.2 Application for loans and grants

[A person] **An applicant, as defined at N.J.S.A. 58:10A-37.2,** may apply for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund by submitting to the Department a completed [Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Form] **form and following the form's**

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instructions, both of which are found on [available from] the [Department] Department's website at www.nj.gov/dep/srp/finance/ustfund and by following the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Instructions and Cost Guide, both of which are a part of the application package] www.nj.gov/dep/srp/srra/forms.

7:26C-12.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

1. (No change.)

[2. The remediation associated with the remediation costs was conducted with Department oversight.]

2. The remediation performed was not paid for prior to submitting the application for a grant, other than those costs associated with performing a preliminary assessment or site investigation.

7:26C-12.4 Disbursements of grants and loans

(a) **A person responsible for conducting a remediation subject to direct oversight shall comply with N.J.A.C. 7:26C-5.12(b) for the disbursement of grant or loan funds.**

(b) **All other persons responsible for conducting a remediation shall request disbursement of grant or loan funds by submitting to the Department a completed form available on the Department's website at www.nj.gov/dep/srp/srra/forms. Instructions for completing the form are also available on the website.**

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SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. DIRECT OVERSIGHT

7:26C-14.2 Compulsory direct oversight

(a) (No change.)

(b) The person responsible for conducting the remediation that is in direct oversight as described in (a) above[,] shall:

1. Proceed with the remediation as the Department directs, [including retaining] **and hire** a licensed site remediation professional **within 14 days after the applicable event in (a) above**, if one has not yet been retained;

2. Submit to the Department within 90 days after the applicable event in (a) above:

i. A remediation cost review pursuant to N.J.A.C. 7:26C-5.10(a). The remediation cost review shall be submitted annually thereafter;

ii. Proof that the person has established and maintains a remediation trust fund pursuant to N.J.A.C. 7:26C-5.4 in an amount at least equal to the estimated cost of the remediation;

iii. For Department approval pursuant to N.J.S.A. 58:10C-27.c(7), a proposed public participation plan that contains the strategy for and schedule of soliciting public comment from the members of the surrounding community concerning the remediation of the site;

iv. A receptor evaluation pursuant to N.J.A.C. 7:26E-1.12; and

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v. A direct oversight remediation summary report that includes:

(1) A summary of all data and information concerning remediation conducted at the site as of the date that site became subject to direct oversight; and

(2) A schedule that lists each task that remains to be addressed at the site in order for the licensed site remediation professional to issue a response action outcome for the site, and the date by which each task will be completed;

Recodify existing 2. – 3. as **3. – 4.** (No change in text.)

[4. Submit an initial remediation cost review, pursuant to N.J.A.C. 7:26C-5.10(a), within 60 days after the applicable event in (a) above, and submit an annual remediation cost review on the same calendar day each year thereafter;

5. Establish a remediation trust fund pursuant to N.J.A.C. 7:26C-5.4 in the amount of the estimated cost of the remediation, within 90 days after the applicable event in (a) above, and maintain a remediation trust fund in the amount of the estimated cost of the remediation;]

Recodify existing 6. – 7. as **5. – 6.** (No change in text.)

[8.] **7.** Ensure that all submissions prepared by the licensed site remediation professional concerning the remediation required by the Department are provided simultaneously to the Department and the person responsible for conducting the remediation; **and**

[9. Submit a proposed public participation plan, with a schedule, to the Department for approval pursuant to N.J.S.A. 58:10C-27.c7, that contains the strategy for soliciting public comment concerning the remediation from the members of the surrounding

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community concerning the remediation of the site, within 30 days after the applicable event in (a), above; and]

[10.] **8.** (No change in text.)

7:26C-14.4 Adjustments in direct oversight

(a) [The] **After the person responsible for conducting the remediation complies with the requirements for direct oversight pursuant to N.J.A.C. 7:26C-14.2(b), the** Department may, **in its sole discretion,** determine that certain **of those** direct oversight requirements [established in this subchapter] are [not applicable] **no longer appropriate** to a specific case based upon a finding that such an action would be:

1. – 2. (No change.)

(b) When the Department makes a determination pursuant to (a) above, the Department shall notify the person responsible for conducting the remediation of its determination, and the person responsible for conducting the remediation may discontinue implementing those requirements upon receipt of the Department's **written** determination.

(Agency Note: The text of N.J.A.C. 7:26C Appendices B and D follows with proposed new text indicated in boldface **thus**; and proposed deletions indicated in cursive braces {thus}):

APPENDIX B

MODEL DEED NOTICE

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Instrument Number

...

DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by [*Insert the full legal name and address of each current property owner*] (together with his/her/its/their successors and assigns, collectively "Owner").

1. – 2. (No change.)

3. SOIL CONTAMINATION. [*Insert the full legal name of the person that was responsible for conducting the remediation*] has remediated contaminated soil at the Property, such that soil contamination remains {in} **at** certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property{; this}. **Such** soil contamination is described, including the type, concentration and specific location of such **contamination, and the existing engineering controls on the site are described**, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice [*include if appropriate: and engineering controls*] in accordance with N.J.S.A. 58:10B-13.

4. CONSIDERATION. In accordance with the remedial action for the site which included the Property, and in consideration of the terms and conditions of that remedial action, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, **lessors**, lessees and

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operators **of the Property** of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. (No change.)

5B. RESTRICTED LAND USES. The following statutory land use restrictions apply to the Restricted Areas:

i. (No change.)

ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to a single family residence or a child care facility {without the Department's prior written approval}.

[{Insert} ***Insert** the following paragraph when engineering controls are also implemented at the site:*

5C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls is provided in Exhibit C.]

6A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners, **lessors**, and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice.

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Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at www.nj.gov/srp/forms within {thirty (30)} **30** calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the **Owner's or subsequent** owner's interest in the Restricted Area.

iii. (No change.)

6B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, **lessors**, lessees and operators while each is an owner, **lessor**, lessee, or operator of the Property.

7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners, **lessors**, and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. Except as provided in Paragraph 7B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first {obtaining a soil remedial action permit modification pursuant to N.J.A.C. 7:26C-7} **retaining a licensed site remediation professional**.

Nothing herein shall constitute a waiver of the obligation of any person to comply with all

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applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.

iii. {Notwithstanding subparagraph 7Aii., above, a} A soil remedial action permit modification is {not} required {for} **prior to** any **permanent** alteration, improvement, or disturbance {provided that} **and** the owner, **lessor**, lessee or operator **shall submit the following within 30 days after the occurrence of the permanent alteration, improvement, or disturbance:**

(A) {Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;} **A Remedial Action Workplan or Linear Construction Project notification and Final Report Form, whichever is applicable;**

(B) **A Remedial Action Report and Termination of Deed Notice Form; and**

(C) **A revised recorded Deed Notice with revised Exhibits, and Remedial Action Permit Modification or Remedial Action Permit Termination form and Remedial Action Report.**

iv. **No owner, lessor, lessee or operator shall be required to obtain a Remedial Action Permit Modification for any temporary alteration, improvement, or disturbance, provided that the site is restored to the condition described in the Exhibits to this Deed Notice, and the owner, lessee, or operator complies with the following:**

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{(B)}{(A)} Restores any disturbance of an engineering control to pre-disturbance conditions within {sixty (}60{)} calendar days after the initiation of the alteration, improvement or disturbance;

{(C)}{(B)} Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

{(D)}{(C)} Ensures that human exposure to contamination in excess of the remediation standards does not occur; and

{(E)}{(D)} Describes, in the next biennial certification the nature of the **temporary** alteration, improvement, or disturbance, the dates and duration of the **temporary** alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the **temporary** alteration, improvement, or disturbance, {a description of} the notice the Owner gave to those persons prior to the disturbance.

7B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or **an** immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:

i. – v. (No change.)

vi. Restores the engineering control to the pre-emergency conditions as soon as possible{,}; and

vii. {provides notification} **Submits** to the Department of Environmental Protection within{sixty (}60{)} calendar days after completion of the restoration of the engineering control, **a report** including: (a) the nature and likely cause of the emergency; (b) {the potential

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discharges of or exposures to contaminants, if any, that may have occurred; (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (d) the measures completed or implemented to restore the engineering control; and (e) the (d) any changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.

8. TERMINATION OF DEED NOTICE.

i. This Deed Notice may be terminated only upon {filing of} **recording a Department-approved** Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the [*Insert as appropriate the County Clerk/Register of Deeds and Mortgages*] of [*Insert the name of the County*] County, New Jersey, expressly terminating this Deed Notice.

ii. Within {thirty (}30{)} calendar days after {the filing of} **recording a Department-approved** Termination of Deed Notice, the owner of the property {shall} **should** apply to the Department for termination of the soil remedial action permit pursuant to N.J.A.C. 7:26C-7.

9. ACCESS. The Owner, and the subsequent owners, **lessors**, lessees, and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, **lessors**, lessees, and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners, **lessors**, and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted

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Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

10 - 12A. (No change.)

12B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map – A separate map for each restricted area that includes:

(A) – (B) (No change.)

(C) Designation of all soil and **all upland** sediment sample locations within the restricted areas that exceed any soil {or sediment} standard that are keyed into one of the tables described in the following paragraph.

ii. (No change.)

12C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls [*Insert as appropriate:* and engineering controls] as follows:

i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) Description and estimated size [*Identify units of measure*] of the Restricted Areas as described above;

(B) – (C) (No change.)

ii. (No change.)

13. (No change.)

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14. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is a general or limited partnership]

WITNESS: *[Name of partnership]*

_____ By: _____, General Partner

[Signature]

[Signature]

[Print name and title]

[Print name]

STATE OF *[State where document is executed]* SS.:

COUNTY OF *[County where document is executed]*

I certify that on _____, 20____, *[Name of person executing document on behalf of owner partnership]* personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is a general partner of *[Owner]*, the partnership named in this document;

(b) Signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of *[Owner]*; and

(c) This document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public

[Signature]

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[Print name]

{14.} **15.** (No change in text.)

APPENDIX D

MODEL RESPONSE ACTION OUTCOME DOCUMENT

...

NOTICES

[Insert {All} **each** of the {Following Notices} **following notices** that {are Applicable} **is applicable** to this {Remediation} **remediation**. **Do not insert a notice that is not applicable**].

Well Decommissioning

[Select One: Pursuant to N.J.A.C. 7:9D-3, all wells installed as part of this remediation have been properly decommissioned by a New Jersey licensed well driller of the proper class in accordance with the procedures set forth in N.J.A.C. 7:9D and **I have verified that** the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. OR Pursuant to N.J.A.C. 7:9D-3 any wells installed as part of this remediation that will no longer be used for remediation have been properly decommissioned{. If any wells have been properly decommissioned,} **by a New Jersey licensed driller of the proper class and I have verified that** the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. **Wells considered to be abandoned, lost,**

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damaged, or destroyed pursuant to N.J.A.C. 7:9D have been reported to the Bureau of Water Allocation and Well Permitting pursuant to N.J.A.C. 7:9D. Pursuant to N.J.S.A. 58:4A, any monitoring wells remaining onsite shall be properly decommissioned prior to the termination of the applicable remedial action permit. A New Jersey licensed well driller shall decommission the well(s) in accordance with the requirements of N.J.A.C. 7:9D-3 and submit the decommissioning report on your behalf to the Bureau of Water Allocation and Well Permitting. More information about regulations regarding the maintenance and decommissioning of wells in New Jersey can be found at www.nj.gov/dep/watersupply. For a list of New Jersey licensed well drillers, click on the "reports" button in the left column and select "access the well permit reports." Questions can be emailed to {wellpermitting@dep.state.nj.us}**wellpermitting@dep.nj.gov.** {[Select if applicable: Please note that [add count of wells to which this applies] well(s) could not be located or properly decommissioned. Contact has been made with the Bureau of Water Allocation and Well Permitting regarding appropriate steps to document and conclude efforts in this regard.]}

...

In-Service Railroad Line, Spurs and Sidings Not Remediated

Please be advised that this Response Action Outcome does not include the remediation of contamination that may be present within, or directly adjacent to, the in-service railroad line, spur and/or siding at this site. Contamination that may be present may include, but is not limited to, polynuclear aromatic hydrocarbons, polychlorinated biphenyls (PCBs) and metals. Remediation of this area is not required while the railroad line, spur and/or siding remain in-service. Please note that you may have an affirmative obligation, pursuant to the

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Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate any contamination associated with the railroad line, spur and/or siding within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27 at such time that these areas are no longer in-service. Please consult www.nj.gov/dep/srp/srra/ for additional guidance.

Known On-site Contamination Source Not Remediated - Historic Fill (Area of Concern Response Action Outcome)

Please be advised that this Response Action Outcome does not include the remediation of contamination in the form of historic fill. In the event that an Entire Site Response Action Outcome is to be issued, the historic fill must be remediated in accordance with N.J.A.C. 7:26E.

Soil Contamination From an Off-Site Source Not Remediated- General

Please be advised that contamination in the soil at this site exists above the Department's applicable soil Remediation Standards, N.J.A.C. 7:26D-4. Based on completion of a preliminary assessment and site investigation (PA/SI) of the entire site, as applicable, pursuant to N.J.A.C. 7:26E-3, I have confirmed that the source of this contamination is from an off-site source and that there is no on-site contribution to this contamination. This aspect of the site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. Any redevelopment on this site should take into consideration the potential for direct contact soil exposure.

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Soil Contamination From an Off-Site Source Not Remediated - Diffuse Anthropogenic Pollution

The reference in the following Notice to Child Care Facilities should only be included in a child care Response Action Outcome. It should not be included in a non-child care Response Action Outcome.

Please be advised that contamination in the soil at this site exists above the Department’s applicable soil Remediation Standards, N.J.A.C. 7:26D-4. Based on an evaluation of data and the Department’s “Diffuse Anthropogenic Pollution (DAP) Guidance,” it has been determined that surficial contamination that was identified during the evaluation of the site is consistent with DAP. This impact to soils at the site was not required to be reported to the Department’s Hotline and therefore no incident number was generated. Development or redevelopment on this site should take into consideration the potential for direct contact soil exposure to contaminants in soil caused by DAP. [Select for Response Action Outcomes involving Child Care Facilities Only: However, to minimize potential direct contact at this Child Care Center an impermeable barrier should be installed over the surface of the outdoor play area in its entirety in accordance with Department guidance for presumptive remedies found at www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance.pdf. The Department recommends that any such barrier consist of impermeable materials, such as hard surfacing, poured rubber, or rubber matting, etc. Finally, the Department recommends

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that the Child Care Center maintain documentation that provides proof of installation and proper maintenance of the integrity of the barrier.]

Naturally Occurring Levels of Constituents in Ground Water

Note that use of this Notice primarily applies to metals, and excludes anthropogenic background contamination including, but not limited to, synthetic organic chemicals such as petroleum byproducts/hydrocarbons, chlorinated compounds, and any compound that cannot be considered naturally occurring, including on-site source.

Please be advised that concentrations of [insert specific materials] were detected in the ground water at this site above the Department's Ground Water Remediation Standards (N.J.A.C. 7:26D-2). However, these concentrations are associated with naturally occurring levels of these constituent(s) in the ground water. Pursuant to N.J.S.A. 58:10B, remediation beyond naturally occurring levels is not required. Development or redevelopment on this site should take into consideration the potential for exposure to constituents that exceed the Ground Water Quality Standards (N.J.A.C. 7:9C).

Historically Applied Pesticides Not Addressed

This Notice should not be used in situations where the manufacturing, mixing, or other handling of these chemicals resulted in a discharge to the environment. This Notice also would not be appropriate for properties going through a change of use to residences, schools, child care centers, and/or playgrounds.

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Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of contaminants that may exist from the historical application of pesticides. As a result, any risks presented by the historical application of pesticides may remain. An evaluation of historical pesticides should be completed if there is a land use change to residences, schools, child care centers and playgrounds. This exclusion does not apply if the pesticide contamination is from a discharge due to manufacturing, mixing, or other handling of these chemicals and not from application.

Ground Water Contamination due to Regional Historic Fill (Ground Water Confirmation Sampling has not been Conducted)

Please be advised that ground water contamination at this site may exist above the Ground Water Quality Standards (N.J.A.C. 7:9C), which may limit ground water use at this site. Ground water sampling has not been conducted at this site, but based on the observed presence of historic fill (through methods including, but not limited to, sampling, physical characterization, and/or mapping), it is concluded that contamination related to regional historic fill may be present in the ground water underlying the site. It has been determined that this presumed contamination is solely related to regional historic fill and there is no other on-site source of contamination contributing to this presumed ground water contamination. Based on these presumptions and conclusions, a Classification Exception Area (CEA) pursuant to N.J.A.C. 7:26E-4.7(b) is required for the footprint of this property. Since the source of this presumed contamination is from regional historic fill only, the Department will maintain the Classification Exception Area, and a Remedial

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Action Permit for this contamination is not required. The duration of this Classification Exception Area is for an “indeterminate” period.

Sediment Contamination from an Off-Site Source Not Remediated - General

Please be advised that contamination in the sediment at this site exists above ecological screening criterion, Lowest Effects Levels (LELs) and Severe Effects Levels (SELs). Based on completion of a preliminary assessment and site investigation (PA/SI) of the entire site, as applicable, pursuant to N.J.A.C. 7:26E-3, I have confirmed that the source of this contamination is from an off-site source and that there is no on-site contribution to this contamination. This aspect of the site was reported to the Department and assigned the Department’s Hotline incident number(s) 00-00-00-0000-00. [Select only if there is verified known off-site source: This sediment contamination is being addressed under Department Program Interest # _____.] Any redevelopment on this site should take into consideration the potential for ecological exposure to contaminated sediment.

[End APPLICABLE Notices]

...

CHAPTER 26E

TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

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7:26E-1.3 Applicability

(a) This chapter applies to any person to whom the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, apply.

(b) **Except as provided in the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F-1.2(d), this chapter does not apply to any person who is remediating a discharge from a heating oil tank system in accordance with N.J.A.C. 7:26F.**

7:26E-1.6 General reporting requirements

(a) (No change.)

(b) The person responsible for conducting the remediation shall include, in each remedial phase workplan and report, the following information:

1. – 5. (No change.)

6. A summary table(s), organized by area of concern, of all sampling results, including sample location, medium, sample depth, field and laboratory identification numbers, analytical results, and comparison to remediation standards, and the following:

i. (No change.)

ii. [Identification of each sample with a method detection limit or a practical quantitation level] **For each sample, identification of each contaminant for which there is a reporting limit** that exceeds a remediation standard, along with an explanation in the table key; and

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- iii. A report of all soils and solids sample results in milligrams per kilogram on a dry weight basis, **tissue sample results on a wet weight basis**, aqueous sample results in micrograms per liter, and air results in micrograms per cubic meter;
7. (No change.)
8. Maps and figures, with map scale and orientation, including:
- i. – ii. (No change.)
 - iii. Ground water elevation contour maps showing the location of all monitoring wells, piezometers, or other ground water sampling points, for each set of static ground water level measurements for each aquifer **or water bearing zone**;
9. – 10. (No change.)

7:26E-1.7 Variance from the technical requirements

- (a) (No change.)
- (b) The person responsible for conducting the remediation shall not vary from any of the following applicable requirements:
 - 1. – 4. (No change.)
 - 5. A requirement to comply with a quality assurance laboratory requirement; [or]
 - 6. A requirement to obtain the Department's prior **written** approval[.];
 - 7. The requirements of N.J.A.C. 7:26E-5.2(b); or**
 - 8. The requirement to not import hazardous waste as fill material, pursuant to N.J.A.C. 7:26E-5.2(f).**

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7:26E-1.8 Definitions

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

...

“Heating oil tank system” has the meaning as defined in the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F-1.5.

...

"Immediate environmental concern" or "IEC" means a condition where any of the following types of contamination, or any of the following conditions related to a discharge, are found:

1. Contamination in [a] **any potable well or irrigation well that is** used for potable purposes at a concentration above [any Class II ground water quality standard pursuant to N.J.A.C. 7:9C Appendix Table 1] **the minimum ground water remediation standards at N.J.A.C. 7:26D-2.2(a)1;**

2. – 5. (No change.)

For the purpose of this definition, an “unacceptable human health exposure” is based on an evaluation of site specific conditions and the toxicity of the contaminant present. An oxygen-deficient atmosphere is defined as any atmosphere containing oxygen at a concentration below 19.5 percent at sea level and an acute health exposure means that an adverse human health impact could result from an exposure of less than two weeks to a contaminant. The potential for exposure is based on site-specific conditions, and therefore, the person responsible for conducting the remediation shall evaluate the reasonable likelihood of exposure.

...

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[Practical quantitation level” or “PQL” means the lowest quantitation level of a given analyte that can be reliably achieved among laboratories within the specified limits of precision and accuracy of a given analytical method during routine laboratory operating conditions.]

...

“Reporting limit” means, for a compound analyzed by a particular method, the sample equivalent concentration (that is, based on sample specific preparation and analysis factors), **for organics**, associated with the lowest concentration standard used in the calibration of the method **and for inorganics, derived from the concentration of that analyte in the lowest level check standard (which could be the lowest calibration standard in a multi-point calibration curve).**

...

“Tentatively identified compound” or “TIC” means a non-targeted compound detected in a sample using a GC/MS analytical method which has been tentatively identified using a mass spectral library search. [Alkane compounds attributed to a petroleum product will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.] An estimated concentration of the TIC is also determined.

...

7:26E-1.11 Immediate environmental concern requirements

(a) The person responsible for conducting the remediation shall, upon the identification of any immediate environmental concern (IEC):

1. – 2. (No change.)

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3. Within 14 days after identifying an IEC, submit the following to the

Department:

i. A completed form found on the Department's website at

www.nj.gov/dep/srp/srra/forms. Information to be supplied by filling out the

form includes:

(1) – (3) (No change.)

(4) The name of the licensed site remediation professional **or certified**

subsurface evaluator, as applicable, and a certification statement;

ii. A completed spreadsheet, found on the Department's website at

www.nj.gov/dep/srp/srra/forms, which contains all test results and actions taken

to remediate the IEC. Information to be supplied by filling out the form includes:

(1) – (4) (No change.)

(5) The name of the licensed site remediation professional **or certified**

subsurface evaluator, as applicable, and license **or certification** number;

iii. – iv. (No change.)

4. – 9. (No change.)

7:26E-1.14 Receptor evaluation – ground water

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water quality standard, as follows:

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1. Within 90 days after ground water contamination is detected, conduct a well search to identify wells that may be impacted by contamination from the site as follows:

i. – ii. (No change.)

iii. For each well, other than a monitoring well, [located pursuant to (a)1i or ii above]

that is to be sampled pursuant to (a)2ii through iv below, identify the type

(potable, irrigation, industrial, etc.), status (that is, active, inactive, properly

decommissioned pursuant to N.J.A.C. 7:9D), and the construction of each well;

iv. – vi. (No change.)

2.-3. (No change.)

(b) If any contaminant is identified in excess of [any Class II ground water quality standard pursuant to] **the minimum ground water remediation standards at N.J.A.C. 7:26D-**

2.2(a)1 in any potable or irrigation well that may be utilized for potable purposes, then the person responsible for conducting the remediation shall conduct all actions pursuant to

N.J.A.C. 7:26E-1.11, according to the schedule in that section.

(c) (No change.)

7:26E-1.16 Receptor evaluation – ecological

(a) – (c) (No change.)

(d) This section does not apply to a person responsible for conducting the remediation of an underground storage tank storing heating oil for on-site consumption in a one-to-four family residential building.

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SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that all sampling and laboratory analysis are conducted, **and results are reported**, as follows:

1. – 6. (No change.)

7. Use canister-based collection techniques for the analysis of air samples when analyzed by NJDEP Method LLTO-15 which can be found [at] on the Department's website at www.nj.gov/dep/srp/guidance/vaporintrusion/newmethod2007/llto15.pdf, or USEPA Method TO-15, incorporated herein by reference, as amended and/or supplemented, found on the USEPA's website at www.epa.gov/ttn/amtic/airtox.html;

i. When using USEPA Method TO-15 analyses, prepare a laboratory control sample and analyze at a frequency of at least one per every 24-hour analytical sequence and concurrently with the samples;

8. (No change.)

9. Analyze all potable water samples as follows:

i. For **volatile** organic contaminants, use [the version of] USEPA [500 series methods] **Method 524.2**, incorporated herein by reference, in effect on the date of analysis, **plus TICs**; [and]

ii. For organic contaminants other than volatiles, analyze the samples for the non-volatile Target Compound List compounds, using the methods that meet the data quality objectives specified in the site specific QAPP, plus TICs; and

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[ii.] **iii.** (No change in text.)

10. – 14. (No change.)

15. [Laboratory] **Submit to the Department laboratory** data deliverables, as listed in [chapter] **N.J.A.C. 7:26E** Appendix A, [shall be as follows] **with the applicable data deliverable form found on the Department’s website at www.nj.gov/dep/srp/srra/forms, consistent with the following** unless otherwise specifically required pursuant to an NJPDES permit:

i. (No change.)

ii. Extractable petroleum hydrocarbon (EPH) deliverables shall be those defined in “Extractable Petroleum Hydrocarbons Methodology (Version 3.0), August 2010,” as amended and/or supplemented (see http://www.nj.gov/dep/srp/guidance/srra/eph_method.pdf);

Recodify existing ii. – iii. as **iii. – iv.** (No change in text.)

(b) (No change.)

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

1. (No change.)

2. Initial potable water samples shall be analyzed for the **following** compound [list specified in the analytical method utilized plus TICs. All] **and all** results [are to] **shall** be reported in the applicable remediation phase report submitted to the Department[;]:

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- i. If volatile organic compounds are of concern, samples shall be analyzed for the compounds listed in USEPA Method 524.2 in effect on the date of analysis, incorporated herein by reference, plus TICs;**
 - ii. If semi-volatile organic compounds are of concern, the samples shall be analyzed for all semivolatile TCL compounds plus TICs;**
 - iii. If chlorinated pesticides compounds are of concern, the samples shall be analyzed for all chlorinated pesticide TCL compounds;**
 - iv. If aroclor compounds are of concern, the samples shall be analyzed for all aroclor TCL compounds; and**
 - v. If inorganic analytes are of concern, the samples shall be analyzed for all TAL analytes;**
3. Initial vapor intrusion samples (sub-slab, indoor air, and ambient air) shall be analyzed for the compound list in Table [A] 1 of the NJDEP Method LLTO-15, plus TICs. In addition, when vapor intrusion samples (sub-slab, indoor air or ambient air) are taken due to petroleum contamination other than all gasolines or light petroleum distillates, the samples shall be analyzed for naphthalene [and 2-methyl naphthalene] in addition to any other site specific contaminant that may be present. All results are to be reported; and
4. (No change.)
- (d) – (e) (No change.)

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TABLE 2-1		
ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS		
<u>Petroleum Product</u>	<u>Soil/Sediment</u>	<u>Water</u>
...		
Fuel Oil No. 2[, Diesel Fuel]	EPH ⁴ . Analyze 25 percent of samples where EPH is detected over 1,000 mg/kg for 2-Methyl Naphthalene and Naphthalene ⁸	VO[+TICs] ² , SVO[+TICs] ³
Diesel Fuel	EPH⁴. Analyze 25 percent of samples where EPH is detected over 1,000 mg/kg for 2-Methyl Naphthalene and Naphthalene⁸	VO+TICs², SVO+TICs³
...		

Footnotes

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1. EPA Target Compound List volatile organic compounds excluding 1,2-Dibromo-3-chloropropane and 1,4-Dioxane with a library search of the 15 highest TICs.

Tentatively Identified Compounds (TICs) for volatiles - Identify up to 15 organic compounds of greatest concentration which are not surrogates, internal standards, [individual alkanes,] or targeted compounds listed under TCL. [Alkane concentrations attributed to the petroleum product contamination will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.]

2. EPA Target Compound List volatile organic compounds excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane, and 1,4-Dioxane with a library search of the 15 highest TICs (**except that analyses of Fuel Oil No. 2 shall not include a library search of the 15 highest TICs**).

Tentatively Identified Compounds (TICs) for volatiles - Identify up to 15 organic compounds of greatest concentration which are not surrogates, internal standards, [individual alkanes,] or targeted compounds listed under TCL. [Alkane concentrations attributed to the petroleum product contamination will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.]

3. EPA Target Compound List semivolatile organic compounds **including 1-Methyl Naphthalene, but** excluding phenol and substituted phenols, with a library search of the 15 highest TICs that are not alkanes unless otherwise specified by analytical protocol (**except that analyses of Fuel Oil No. 2 shall not include a library search of the 15 highest TICs, but instead include the analysis of 1,2,4-Trimethylbenzene**).

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Tentatively Identified Compounds (TICs) for semivolatiles - Identify up to 15 organic compounds of greatest concentration which are not surrogates, internal standards, [individual alkanes,] or targeted compounds listed under TCL. [Alkane concentrations attributed to the petroleum product contamination will be summed and reported as total alkanes. For purposes of TIC identification, the total alkanes are treated as one compound.]

4. – 8. (No change.)

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) – (c) (No change.)

(d) The person responsible for conducting the remediation shall prepare and submit to the Department a remedial investigation work plan for **written approval from the Department** that describes all the actions to be conducted to fulfill the purpose of (a) above and the requirements of (c) above when the remediation is being conducted:

1. – 3. (No change.)

7:26E-4.10 Remedial investigation regulatory timeframes

(a) Except as provided in (d) **and (f)** below, or as lengthened under (b) and (c) below, the person responsible for conducting the remediation shall complete the remedial investigation and submit to the Department a remedial investigation report prepared pursuant to N.J.A.C.

7:26E-4.9 by the earliest applicable regulatory timeframe as follows:

1. – 3. (No change.)

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(b) – (e) (No change.)

(f) The regulatory timeframes in this section do not apply to any discharge that was identified or should have been identified (for example, through a preliminary assessment or site investigation) prior to May 7, 1999, pursuant to N.J.A.C. 7:26C-3.3(a).

SUBCHAPTER 5. REMEDIAL ACTION

7:26E-5.1 Remedial action requirements

(a) (No change.)

(b) The person responsible for conducting the remediation shall implement a remedial action when:

1. (No change.)

2. [The] **An environmentally sensitive natural resource is identified pursuant to N.J.A.C. 7:26E-1.16, in which the** concentration of any contaminant exceeds any aquatic surface water quality standard [or], any ecological screening criterion, **or site-specific ecological risk-based remediation goal approved by the Department pursuant to N.J.A.C. 7:26E-4.8(c)3; or**

3. (No change.)

(c) – (e) (No change.)

(f) The person responsible for conducting the remediation shall submit a remedial action workplan prepared pursuant to N.J.A.C. 7:26E-5.5 or a corrective measures study work plan

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prepared pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., to the Department for **written** approval when the remediation is being conducted:

1. – 3. (No change.)

7:26E-5.2 Specific remedial action requirements

(a) (No change.)

(b) [The] **Except as provided in (c) below, the** person responsible for conducting the remediation may incorporate alternative fill from an off-site source into a remedial action [at an area of concern] **without prior written approval from the Department** provided that **no alternative fill:**

1. [The] **Contains any** contaminant[s] **that is not already** present [in the alternative fill are also present] at the receiving area of concern **above the applicable soil remediation standard in order to ensure that no new contaminant above the applicable soil remediation standard is brought to the receiving area of concern;**

2. [The maximum contaminant] **Contains a** concentration [in the alternative fill imported is less than] **of any individual contaminant above** the 75th percentile of [the contaminant] **that contaminant's** concentrations at the receiving area of concern **in order to ensure that the existing concentration of that contaminant is not exceeded;**
and

3. [No alternative fill is] **Is** imported in excess of the volume required [for the remedial action without the prior written approval of the Department] **to restore the pre-remediation topography and elevation of the receiving area of concern in order to**

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ensure that the volume of alternative fill used in the remedy for the receiving area of concern only includes the volume of alternative fill necessary to achieve this objective.

(c) For alternative fill from an off-site source that does not meet any of the requirements of (b)1, 2, or 3 above, the person responsible for conducting the remediation shall obtain prior written approval from the Department before bringing that alternative fill to the site. The person responsible for conducting the remediation shall include the technical information outlined in N.J.A.C. 7:26E-1.7(a) as part of the request.

[(c)] **(d) The person responsible for conducting the remediation may use alternative fill from an on-site source as part of a remedial action at an area of concern:**

- 1. Without prior written approval from the Department, provided that the individual contaminants present in the alternative fill are also present at the receiving area of concern at concentrations above applicable remediation standards; or**
- 2. Only after obtaining prior written approval from the Department before incorporating that alternative fill at the receiving area of concern, if the concentrations of the individual contaminants at the receiving area of concern are not above applicable remediation standards. The person responsible for conducting the remediation shall include the technical information outlined in N.J.A.C. 7:26E-1.7(a) as part of the request for written approval from the Department.**

Recodify existing (d) – (g) as (e) – (h) (No change in text.)

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7:26E-5.3 Remedial action requirements for residences, schools, and child care centers

(a) (No change.)

(b) [The] **For any remediation initiated on or after May 7, 2010, when new construction of, or a change in use to, a residence, a school, or a child care center will occur, the** person responsible for conducting the remediation shall, **except as provided in (c) below,** implement **an unrestricted use remedial action or** a presumptive remedy [that is an unrestricted use remedial action] in the following two situations:

1. – 2. (No change.)

(c) [When] **For any remediation initiated on or after May 7, 2010, when new construction of, or a change in use to, a residence, a school, or a child care center will occur, when** the person responsible for conducting the remediation determines not to use an unrestricted use remedial action or a presumptive remedy, the person responsible for conducting the remediation shall:

1. Propose an alternative remedy by preparing and submitting to the Department for **written** approval a remedial action workplan pursuant to N.J.A.C. 7:26E-5.5 that includes the following information:

i. – iii. (No change.)

2. (No change.)

(d) [The] **For any remediation initiated on or after May 7, 2010, when new construction of, or a change in use to, a residence, a school, or a child care center will occur, the** person responsible for conducting the remediation shall submit a remedial action workplan

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pursuant to N.J.A.C. 7:26E-5.5 and obtain the Department's written approval **before implementing a remedial action** at any area of concern:

1. – 2. (No change.)

(e) The **new** construction of, **or change in use to**, a single family residence[s], school[s], or child care center[s] is prohibited on a landfill that undergoes [a] remediation **initiated on or after May 7, 2010**, if engineering controls are required for the management of landfill gas or leachate.

Table 5-1

Presumptive Remedies for Soil Contamination at
Schools, Child Care Centers, and Residences

Contamination Type	Subcategories/ Scenarios	Presumptive Remedy/ Remediation Goal	Remedial Action - Schools, Child Care Centers, and Type II Residential	Remedial Action - Type I Residential
...				
Historic Fill and/or all other discharged contaminants not otherwise excluded in N.J.A.C. 7:26E-5.3	Building Footprint – New Construction	Restricted Use	Option #1. <i>Barrier</i> - Minimum of four inches of concrete; <i>Buffer</i> - Minimum four inches of sub base; <i>Demarcation</i> - Visible contamination boundary marker; and	Same engineering control requirement as Schools, Child Care Centers and Type II Residential

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Inspection - Annual

Option #2 (for crawl spaces).

Barrier - Minimum of one foot clean fill [and vapor barrier];

Buffer - Minimum of one foot clean fill;

Demarcation - Visible contamination boundary marker; and

Inspection - Semi-annual.

...

7:26E-5.5 Remedial action workplan requirements

(a) The person responsible for conducting the remediation shall prepare and submit to the Department[, at least 60 days] prior to implementation, a remedial action workplan for each area of concern requiring a remedial action, unless a final remediation document for unrestricted use is filed with the Department within one year after the earliest applicable requirement to remediate, pursuant to N.J.A.C. 7:26C-2.2.

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(b) – (c) (No change.)

7:26E-5.6 Permit identification and requirements for discharge to ground water proposals

(a) The person responsible for conducting remediation shall **request or** apply for and obtain all required permits, **authorizations, or approvals** prior to initiating the activity requiring the permit, permit modification, **authorization**, or [certification] **approval**.

(b) For each discharge to ground water that is subject to the New Jersey Pollutant Discharge Elimination System [rules] **permit-by-rule** at N.J.A.C. 7:14A-7.5(b), the person responsible for conducting the remediation shall submit a discharge to ground water proposal with a **completed** form found on the Department's website at www.nj.gov/dep/srp/srra/forms[, that]. **The person responsible for conducting remediation shall include in each such submission the information listed at N.J.A.C. 7:26E-1.6(a)1 and 2 and, if the person responsible for conducting the remediation does not own the property where any discharge will occur, include the name and address of each owner of that property, and documentation indicating that each owner of such property consents to any discharge proposed on the property. The person responsible for conducting the remediation shall also include the following in the submission:**

1. Either of the following:

[1.] **i.** A summary of the remedial investigation [of contaminated ground water] **in the area of the proposed discharge, completed as of the date of the discharge to ground water proposal**, including the ground water flow direction and the nature, type, concentrations, and extent of contamination, **and the information listed at**

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- N.J.A.C. 7:26E-1.6(b)1, 2, 3, 6, 7, 8, and 10, as well as all data collected and maps or reports prepared as of the date of the discharge to ground water proposal to fulfill the requirements of N.J.A.C. 7:26E-4.3(a)1 through 6, as it relates to the area of the proposed discharge and any areas of concern that will or may be impacted by the discharge; or**
- ii. A copy of a remedial investigation report that includes the information listed in (b)1i above and a complete set of the most recent sampling data available;**
2. The concentrations of all contaminants expected to be present in [the] recovered ground water, prior to any treatment, **if applicable;**
3. The type, **specific location within the contaminated site**, volume and duration of the proposed discharge to ground water, and [the] **a description of any** potential effects that the proposed discharge [would] **could** have on ground water or any other receptor;
4. A detailed description of how the discharge to ground water would comply with the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Surface Water Quality Standards, N.J.A.C. 7:9B, as applicable **including, but not limited to:**
- i. Whether the discharge is consistent with the antidegradation policy of N.J.A.C. 7:9C-1.8 and whether any constituent standard modifications at N.J.A.C. 7:9C-1.9(a) are appropriate;**
- ii. Whether the temporary, localized, direct, or indirect impacts of the discharge on ground water would require a classification exception area under N.J.A.C. 7:9C-1.6(c) and 1.9(b);**

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- iii. Proposed effluent limitations or treatment goals if the discharge is recovered ground water; and**
 - iv. If the discharge could impact surface water, how, pursuant to N.J.A.C. 7:9C-1.2(b) and 1.7(g), the discharge will not cause a contravention of the surface water quality standards applicable to those surface waters;**
5. The chemical content of all fluids and substances to be discharged or placed into, or onto the ground to implement a remedial action **and identification of the applicable ground water quality criteria at N.J.A.C. 7:9C-1.7, including specific or interim specific criteria if they exist for any constituent in the substances to be discharged, or if they exist for any possible break-down products of the substances to be discharged;**
6. [Specifications] **The well drilling permit number for each injection well, if applicable, specifications for the design of [an underground] each injection [system pursuant to] well as defined at N.J.A.C. 7:14A-[8]1.2, and specifications for the design of each infiltration/percolation lagoon, overland flow area, spray irrigation system or other type of discharge to ground water, as applicable;**
7. [A proposal to establish a ground water] **If the information required pursuant to (b)4 and 5 above indicates that it will be necessary for the Department to establish a classification exception area for [the] an area [where the permitted discharge will exceed] of noncompliance due to the localized effects of the discharge as provided in the Ground Water Quality Standards[,] at N.J.A.C. 7:9C-1.6(c) and 1.9(b), then the following information:**

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- i. An explanation of why any impacts to ground water quality are necessary or appropriate in order to allow the remediation of existing contamination to proceed, why the discharge would be protective of other receptors, and how the monitoring plan, pursuant to (b)8 below, will document this protectiveness and the temporary or localized nature of any impact;**
 - ii. A map outlining the area(s) where the proposed discharge may or will impact ground water quality, including all ground water sampling points that will define this area;**
 - iii. A list of the constituents in the discharge and in ground water that could or will exceed constituent standards, as defined at N.J.A.C. 7:9C-1.4; and**
 - iv. A description of whether the proposed classification exception area for the proposed discharge is within or is outside of any existing ground water classification exception area for the contaminants of concern at the site, if applicable; and**
8. A monitoring plan **consistent with N.J.A.C. 7:26E-2.2**, including, but not limited to[, the monitoring wells to be sampled, the]:
- i. The sampling locations for ground water and other media, as necessary, to address risks to any potentially affected receptors;**
 - ii. The frequency of sampling [for wells, and if];**
 - iii. If applicable, monitoring of the fluid to be discharged[, a];**
 - iv. A list of all the analytes to be monitored [,.]; and [a]**
 - v. A schedule and format for the submission of sampling results.**

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(c) When the discharge to ground water will exceed 180 days, the person responsible for conducting the remediation shall:

1. – 2. (No change.)

3. Publish the public notice of the discharge to ground water in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site, at least [45] **35** days prior to the proposed startup date of the ground water discharge; and

4. Submit to the Department, **within 15 days after the notice is published**, proof of publication for the public notice [within 15 days after the notice is published,] and [provide] the names and addresses of everyone that was sent a copy of the public notice and discharge to ground water proposal pursuant to (c)2 above.

(d) – (e) (No change.)

7:26E-5.8 Remedial action regulatory timeframes

(a) (No change.)

(b) The person responsible for conducting the remediation shall complete the implementation of the remedial action **and submit a remedial action report** for a contaminated site within the following **regulatory** timeframes:

1. Except as provided in (b)2 below, for sites subject to the statutory requirement at N.J.S.A. 58:10C-27(3) to complete the remedial investigation on or before May 7, 2014:

i. For the remediation of a discharge that only resulted in soil contamination, (six months from the effective date of these amendments); or

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ii. For the remediation of all other contamination, May 7, 2019;

2. For sites subject to the statutory requirement at N.J.S.A. 58:10C-27(3) to complete the remedial investigation on or before May 7, 2014, and that obtained and maintained an extension to complete the remedial investigation on or before May 7, 2016, pursuant to N.J.S.A. 58:10C-27.1:

i. For the remediation of a discharge that only resulted in soil contamination, May 7, 2019; or

ii. For the remediation of all other contamination, May 7, 2021;

3. For every other site not subject to (b)1 or 2 above:

Recodify existing 1.-2. as **i.-ii.** (No change in text.)

(c) – (d) (No change.)

APPENDIX A - LABORATORY DATA DELIVERABLES FORMATS

I. Full Laboratory Data Deliverables are required for the following analytical data:

(a) (No change.)

(b) Air (including sub-slab, indoor and ambient) analyzed by NJDEP Method LLTO-15 or USEPA Method TO-15.

Data are to be submitted according to the most recent update of the NJDEP-SRWM Low Level USEPA Method TO-15 (NJDEP-LL TO-15-3/2007 for Ambient Air, NJDEP Regulatory Data Report Format - Appendix 1 March 2007) in effect as of the date of sample analysis by the laboratory with the following exceptions and additions:

1. Additional deliverables for NJDEP Method LLTO-15 or USEPA Method TO-15:

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i. – iv. (No change.)

v. The laboratory shall report all compounds detected other than those noted in Table 1 of Appendix 1 as Tentatively Identified Compounds (TICs) for all samples, blanks, and clean canister certification data (Appendix 1, Section 6.11); [and]

vi. For TO-15 analyses only, the instrument run log for the continuing calibration shall start with the injection of the continuing calibration verification standard and end with the last sample analyzed within the 24 hour sequence (Appendix 1, Section 10.3)[.]; **and**

vii. For TO-15 analyses only, the laboratory control sample data.

2. (No change.)

(c) – (h) (No change.)

II. Reduced Laboratory Data Deliverables

(a) (No change.)

(b) Gas chromatography/mass spectrometry (GC/MS) Requirements for each analytical fraction

1. Analytical Results Summary Form - An analytical results summary form shall be submitted for each sample and for each GC/MS analytical fraction (i.e., volatiles and semi-volatiles). Each form shall contain the following information: date sample collected, date sample received, date sample extracted, date sample analyzed, sample weight/volume/units, sample ID numbers, sample delivery group (SDG), sample matrix, level, sample moisture content, dilution factor, GC column used, list of analytes,

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reporting limit, method detection limit, [practical quantitation level] and detected analyte concentrations;

2. – 8. (No change.)

9. Chromatograms - The total ion chromatograms for all field samples and method blanks shall be submitted. All peaks on the chromatograms shall be identified as either an internal standard, surrogate compound, target compound or non-target compound. All peaks on a chromatogram shall also be associated with retention times, either directly on the chromatogram or identified and cross-referenced in tabular form[.];

10. Laboratory Control Sample Results Summary - When specified by the analytical method, the results of the laboratory control sample (LCS) shall be submitted. The following information shall be reported: laboratory SDG number, control sample matrix, list of all target analytes, the true concentration for each analyte in the control sample, the reported concentration for each target analyte in the control sample, the percent recovery for each target analyte and the QC limit for percent recovery for each target analyte.

(c) GC Requirements

1. – 6. (No change.)

7. Chromatograms - The primary analysis chromatograms and confirmation analysis chromatogram (when applicable) for all field samples and method blanks shall be submitted. All peaks on the chromatogram attributable to target and surrogate compounds shall be identified as such along with the retention time for each peak. The reference standard chromatogram for all multi-peak target compounds (e.g., toxaphene, PCBs) for

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both the primary and the confirmation analysis (when applicable) shall also be submitted[.];

8. Laboratory Control Sample Results Summary - When specified by the analytical method, the results of the laboratory control sample (LCS) shall be submitted. The following information shall be reported: laboratory SDG number, control sample matrix, list of all target analytes, the true concentration for each analyte in the control sample, the reported concentration for each target analyte in the control sample, the percent recovery for each target analyte and the QC limit for percent recovery for each target analyte.

(d) Metals Requirements

1. Analytical Results Summary - An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample ID number (laboratory and/or field ID), laboratory SDG number, sample matrix, date sample collected, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes, detected analyte concentrations, **reporting limits**, and method detection limits;

2. Blank Results Summary - A blank results form shall be submitted for all instrument calibration blanks and reagent blanks associated with all field and QC samples. Each form shall contain the following information: a list of all target analytes, matrix of the reagent blank, concentration units of the reagent blank, reported concentration of all target analytes found in all calibration and reagent blanks, **reporting limits**, and method detection limits;

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3. Calibration Summary - A calibration summary shall be submitted for all initial calibration standards and continuing calibration standards associated with field samples, blanks and QC samples. Each form shall contain the following information: laboratory SDG number, initial and continuing calibration source, list of all target analytes, the true concentration for the initial and continuing calibration standards, the reported (or found) concentrations for the initial calibration standards and continuing calibration standards, the percent recovery for each initial calibration standard and continuing calibration standard and the percent recovery QC limits for each target analyte. In addition, this form shall also list the **reporting limit**, method detection limit, and instrument detection limit for each target analyte;

4. – 11. (No change.)

(e) General Chemistry Requirements

1. Analytical Results Summary - An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample ID number (laboratory and/or field ID), sample matrix, date sample collected, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes and detected analyte concentrations, **reporting limits**, and method detection limits;

2. – 6. (No change.)

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CHAPTER 26F

HEATING OIL TANK SYSTEM REMEDIATION RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26F-1.1 Scope

(a) This chapter constitutes the minimum administrative and technical requirements for the remediation of a discharge of heating oil from a heating oil tank system. All other discharges shall be remediated pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(b) This chapter contains provisions concerning the remediation of a discharge from a heating oil tank system, including:

1. General remediation requirements, N.J.A.C. 7:26F-2;
2. Soil and free product remediation requirements, N.J.A.C. 7:26F-3;
3. Ground water remediation requirements, N.J.A.C. 7:26F-4;
4. Contamination not related to the heating oil tank system under investigation, N.J.A.C. 7:26F-5;
5. Receptor evaluation, N.J.A.C. 7:26F-6;
6. Remedial action report and heating oil tank system no further action letter request requirements, N.J.A.C. 7:26F-7;
7. Administrative orders and civil administrative penalties, N.J.A.C. 7:26F-8; and
8. Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund, N.J.A.C. 7:26F-9.

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(c) This subchapter contains provisions that specify the following:

- 1. Applicability and exceptions, N.J.A.C. 7:26F-1.2;**
- 2. Liberal construction, N.J.A.C. 7:26F-1.3;**
- 3. Severability, N.J.A.C. 7:26F-1.4;**
- 4. Definitions, N.J.A.C. 7:26F-1.5;**
- 5. Notification requirements, N.J.A.C. 7:26F-1.6;**
- 6. Site access requirements, N.J.A.C. 7:26F-1.7;**
- 7. Fees, N.J.A.C. 7:26F-1.8;**
- 8. Certification of a submission to the Department, N.J.A.C. 7:26F-1.9;**
- 9. Variance from the requirements of this chapter, N.J.A.C. 7:26F-1.10; and**
- 10. Selection of environmental professionals, N.J.A.C. 7:26F-1.11.**

7:26F-1.2 Applicability and exceptions

(a) An owner shall comply with this chapter to remediate a discharge of heating oil from a heating oil tank system. For the purposes of this chapter, when the fill hose is connected to the heating oil tank system, any discharge from the fill hose is considered a discharge from the heating oil tank system.

(b) When there has been a surface discharge of less than 100 gallons of heating oil from a heating oil tank system that does not reach the waters of the State, the owner shall notify the Department in accordance with N.J.A.C. 7:26F-1.6, and shall either:

- 1. Remediate the discharge under the oversight of local authorities; or**

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2. Remediate the discharge in accordance with this chapter, if local authorities refer the oversight of the remediation to the Department.

(c) The owner shall conduct additional remediation beyond the requirements set forth in this chapter when the Department determines that site-specific conditions warrant such additional remediation in order to protect the public health and safety and the environment.

(d) If heating oil is discharged from a heating oil tank system that is located on a site with other contaminated areas of concern, then the owner may remediate the discharge from the heating oil tank system either:

1. Through compliance with this chapter, independent from the other areas of concern;

2. As a part of the remediation of all areas of concern at the site through compliance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including retaining a licensed site remediation professional pursuant to N.J.A.C. 7:26C-2.3 who shall issue a response action outcome pursuant to N.J.A.C. 7:26C-6.2; or

3. Pursuant to (d)2 above when the owner is remediating the site pursuant to the Industrial Site Recovery Act rules, N.J.A.C. 7:26B.

(e) This chapter does not relieve any person from:

1. Complying with more stringent requirements imposed by any other Federal, State, or local statute, rule, or regulation; and

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2. Obtaining any and all permits required by Federal, State, or local statute, rule, or regulation.

7:26F-1.3 Liberal construction

The rules in this chapter, being necessary to promote and protect public health and safety and the environment, shall be liberally construed in order to permit the Department to effectuate the purposes of the Department's Enabling Act, N.J.S.A. 13:1D-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Underground Storage Tank Act, N.J.S.A. 58:10A-21 et seq., the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq., and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

7:26F-1.4 Severability

If a court of competent jurisdiction finds that any section, subsection, provision, clause, or portion of this chapter is invalid or unconstitutional, the remainder of this chapter shall remain in effect.

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7:26F-1.5 Definitions

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

"Applicant" means a person who files an application for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for payment of eligible project costs of a remediation due to a discharge of petroleum from a petroleum underground storage tank, for payment of eligible project costs of a replacement or closure of a petroleum underground storage tank that is not regulated pursuant to N.J.S.A. 58:10A-21 through 35 or 42 U.S.C. §§ 6991 through 6991m, or for payment of eligible project costs of an upgrade or closure of a regulated tank.

"Area of concern" has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Certified closure contractor" means an individual who is certified to perform closure of unregulated heating oil tank systems pursuant to the Underground Storage Tanks rules at N.J.A.C. 7:14B-16.

"Certified subsurface evaluator" means an individual who is certified to perform subsurface evaluation of unregulated heating oil tank systems pursuant to the Underground Storage Tanks rules at N.J.A.C. 7:14B-16.

"Clean fill" has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Closure" has the meaning as defined in the Underground Storage Tanks rules at N.J.A.C. 7:14B-1.6.

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“Consolidated formation” means a geologic formation where the sands, gravels, clays, or other similar materials have been lithified.

“Contamination” or “contaminant” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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

“Discharge” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Environmentally sensitive natural resource” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Environmental professional” means an individual who is a certified subsurface evaluator or a licensed site remediation professional.

“Extractable petroleum hydrocarbons” or “EPH” means extractable aliphatic and aromatic petroleum hydrocarbons determined using the Department’s “Extractable Petroleum Hydrocarbons Methodology,” as amended or supplemented, currently available at www.nj.gov/dep/srp/guidance/srra/eph_method.pdf. EPH includes, but is not limited to, No. 2 fuel oil, diesel fuel, and heavier petroleum products, but excludes the lighter petroleum products, including gasoline and mineral spirits.

“Farm” means land that qualifies for a special tax assessment pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., or any land less than five acres in area that would otherwise qualify for that farmland assessment and that has produced agricultural or horticultural products with a wholesale value of \$10,000 or more

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annually for at least the two successive years immediately preceding the year in which the tank removal is performed.

“Free product” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Heating oil” means No. 2 heating oil, No. 4 heating oil, No. 6 heating oil, and kerosene used for heating a building.

“Heating oil tank system” means a residential above ground heating oil tank system, a small, non-residential above ground heating oil tank system, or an unregulated heating oil tank system.

“Heating oil tank system no further action letter” means the Department’s written determination that the heating oil tank system discharge has been remediated pursuant to this chapter.

“Licensed site remediation professional” or “LSRP” has the meaning as defined in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Limited restricted use remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Non-residential building” means any building that is not a residential building.

“Owner” means a person who owns a heating oil tank system or, in the absence of any such person, a person who has a legal or equitable title to real property at which a heating oil tank system is located.

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“Person” has the meaning as defined in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Receptor” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Remediation standard” has the meaning as defined in the Remediation Standards at N.J.A.C. 7:26D-1.5.

“Residential above ground heating oil tank system” means any one or a combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, of any capacity, used to store heating oil for on-site consumption in a residential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures, and other related equipment, is less than 10 percent below the ground.

“Residential building” means a single or multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure used primarily as a dwelling.

“Residual contamination” means contamination remaining in soil at a site, after implementation of a remedial action, at a concentration that exceeds the applicable soil remediation standard in this chapter or in the Remediation Standards, N.J.A.C. 7:26D.

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“Response action outcome” has the meaning as defined in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.3.

“Restricted use remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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

“Target compound list plus 30” or “TCL + 30” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

"Tentatively identified compound" or "TIC" has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“Unconsolidated formation” means a geologic formation with loosely arranged sands, gravels, clays, or other similar materials.

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

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the appurtenant pipes, lines, fixtures, and other related equipment, is 10 percent or more below the ground.

“Unrestricted use remedial action” has the meaning as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

7:26F-1.6 Notification requirements

(a) Upon discovery of a discharge, the owner shall immediately notify the Department by calling the Department Hotline at 1-877-WARNDEP (1-877-927-6337).

(b) When remediating a discharge from a heating oil tank system in accordance with this chapter, the owner shall comply with the notification requirements of the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1.7(j).

7:26F-1.7 Site access requirements

(a) The owner shall take all appropriate action, as outlined in (b) below, to obtain access to any property to which the owner does not have legal or equitable title and which is necessary to implement the remediation pursuant to this chapter.

(b) The owner who, in order to implement the remediation pursuant to this chapter, requires access to property to which the owner does not have legal or equitable title shall send, via certified mail, to each person who does have legal or equitable title to that property, a written request for access to that property. The owner shall include the following information in the written request:

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- 1. A description of the obligation that the owner has to remediate the discharge;**
- 2. A site map indicating each area for which the owner needs access;**
- 3. A description of the reason for which the owner needs access and the extent of access needed;**
- 4. A description of the remediation that the owner needs to conduct, indicating the approximate time when the owner will initiate the remediation and the approximate time necessary for the owner to complete that part of the remediation for which the owner needs access; and**
- 5. A request that the person who does have legal or equitable title to that other property respond in writing to the owner within 30 days after receipt of the owner's written request.**

(c) If the person with legal or equitable title to that other property does not respond, the owner shall send, by certified mail, a second written request to the person with legal or equitable title of that other property. The owner shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the person with legal or equitable title to that other property does not grant access, the owner shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The owner shall submit a copy of the court order if the court order indicates that the court denied access to the property.

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(e) The owner shall not construe anything in this section to relieve the owner of the obligation to conduct remediation at any portion of a site or area of concern to which the owner has access.

7:26F-1.8 Fees

(a) The owner shall submit to the Department the following nonrefundable review fee, as applicable, when the owner submits to the Department each document pursuant to this chapter:

- 1. A heating oil tank remedial action report pursuant to N.J.A.C. 7:26F-7.2, and any subsequent submissions, \$400.00 per submission;**
- 2. A request that the Department issue a corrected heating oil tank system no further action letter pursuant to N.J.A.C. 7:26F-7.3(e), \$100.00;**
- 3. A discharge to ground water proposal pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.6, \$350.00; and**
- 4. A workplan requesting an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26F-4.3(b)2iv, \$400.00.**

(b) The Department shall not issue a heating oil tank system no further action letter until the owner complies with all of the requirements of this chapter, including, without limitation, the requirement to submit all applicable fees required in (a) above.

(c) The owner shall pay the fees in (a) above by either:

- 1. Certified check, attorney check, money order, or personal check made payable to “Treasurer, State of New Jersey” and sent to the following address:**

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New Jersey Department of Environmental Protection

Site Remediation and Waste Management Program

Bureau of Case Assignment and Initial Notice

Mail Code 401-05H

401 East State Street, 5th floor

PO Box 420

Trenton, New Jersey 08625-0420; or

- 2. E-check or credit card, after the Department posts a notice on its website at www.nj.gov/dep/srp/ or in the New Jersey Register that the Department's portal for making payments by E-check or credit card is available.**

7:26F-1.9 Certification of a submission to the Department

- (a) An owner conducting the remediation of a discharge from a heating oil tank system pursuant to this chapter shall certify each submission to the Department as follows:**

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

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be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties.”

(b) A certified subsurface evaluator overseeing the remediation of a discharge from a heating oil tank system shall certify each submission to the Department as follows:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate, or incomplete information, and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate, and complete. I hereby certify that the area of concern being remediated was remediated consistent with the Heating Oil Tank System Remediation Rules, N.J.A.C 7:26F. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover evidence of a discharge of a hazardous substance, I will provide written notice to the owner of the heating oil tank system as to that discovery and to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.7. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties.”

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(c) A licensed site remediation professional conducting or overseeing the remediation of a discharge from a heating oil tank system pursuant to this chapter shall certify each submission to the Department as follows:

“I certify that I am a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C-1 et seq. to conduct business in New Jersey. [*SELECT ONE OR BOTH OF THE FOLLOWING, AS APPLICABLE: (1) As the Licensed Site Remediation Professional hired for this remediation, I directly oversaw and supervised all of the referenced remediation. (2) As the Licensed Site Remediation Professional hired for this remediation, I personally reviewed and accepted all of the referenced remediation presented herein.*] I believe that the information contained herein, including all attached documents, is true, accurate and complete. It is my independent professional judgment and opinion that the remediation conducted at this site, as reflected in this submission to the Department, conforms to, and is consistent with, the remediation requirements in the Site Remediation Reform Act, N.J.S.A. 58:10C-14. My conduct and decisions in this matter were made upon the exercise of reasonable care and diligence, and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals practicing in good standing, in accordance with N.J.S.A. 58:10C-16, in the State of New Jersey at the time I performed these professional services. I am aware pursuant to N.J.S.A. 58:10C-17 that for purposely, knowingly, or recklessly submitting false statement, representation, or certification in any document or information submitted to the Site Remediation Professional Licensing Board or Department, that there are

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significant civil, administrative, and criminal penalties, including license revocation or suspension, fines, and being punished by imprisonment for conviction of a crime of the third degree.

(d) A property owner who implements a remedial action that allows residual contamination pursuant to N.J.A.C. 7:26F-3.7 shall include the following certification in the remedial action report:

“Prior to the implementation of the remedial action, my environmental professional informed me that residual contamination would remain in certain areas of my property. *{Property owner shall choose one of the following statements:*

I have recorded a deed notice modeled after Appendix B of the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C

OR

Upon Department approval of a draft deed notice modeled after Appendix A of this chapter, I will record that deed notice

OR

I am choosing the small quantity exception for residual contamination pursuant to N.J.A.C. 7:26F-3.7, and I acknowledge that the heating oil tank system no further action letter will reference the small quantity exception for residual contamination with a diagram of the location(s) of that contamination.}”

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7:26F-1.10 Variance from the requirements of this chapter

(a) Except as provided in (b) below, the owner may vary from the requirements in N.J.A.C. 7:26F-2 through 7. For each variance, the owner shall submit the following information to the Department with the remedial action report pursuant to N.J.A.C.

7:26F-7:

- 1. The specific citation to the rule requirement from which the owner varied;**
 - 2. A detailed description of how the work the owner performed varied from the rule requirement; and**
 - 3. The owner's rationale for varying from the requirement, including all supporting information necessary to document that the work conducted:
 - i. Provided results that are verifiable and reproducible; and**
 - ii. Achieved the objective of the rule requirement from which the owner varied;****
- and**
- iii. Furthered the attainment of the purpose of the specific remedial phase.**

(b) The owner shall not vary from any of the following rule requirements:

- 1. The general remediation requirements at N.J.A.C. 7:26F-2.1;**
- 2. The sample analysis requirements at N.J.A.C. 7:26F-2.2;**
- 3. The requirement to comply with an applicable remediation standard at N.J.A.C. 7:26F-3 and 4;**
- 4. The requirement to remediate free product at N.J.A.C. 7:26F-3.2(a);**
- 5. The requirement to obtain a permit pursuant to N.J.A.C. 7:26F-3.3, 3.7, and 4.3;**

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6. The requirement to submit reports to the Department; and

7. Fees established pursuant to N.J.A.C. 7:26F-1.8(a) above.

(c) Whether the owner may vary from any requirement not contained in this chapter shall depend on whether the other rule allows such a variance. For example, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, govern when a person may vary from the requirements in that chapter.

7:26F-1.11 Selection of environmental professionals

(a) The owner shall retain one of the following to remediate a discharge from a heating oil tank system:

- 1. An individual employed by a business firm, both of which are certified for subsurface evaluation pursuant to the Underground Storage Tanks rules at N.J.A.C. 7:14B-16; or**
- 2. A licensed site remediation professional.**

SUBCHAPTER 2. GENERAL REMEDIATION REQUIREMENTS

7:26F-2.1 General remediation requirements

(a) When there is a discharge from a heating oil tank system, the owner shall:

- 1. Upon discovery of a discharge, immediately notify the Department in accordance with N.J.A.C. 7:26F-1.6, and take all actions necessary to stop the ongoing discharge.**
- 2. Within 48 hours after the discovery of the discharge:**

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- i. For an unregulated heating oil tank system:**
 - (1) Hire a certified closure contractor, unless the unregulated heating oil tank system is located on a farm;**
 - (2) Initiate closure of the unregulated heating oil tank system; and**
 - (3) Hire an environmental professional to remediate the discharge pursuant to this chapter; and**

- ii. For a residential above ground heating oil tank system or a small non-residential above ground heating oil system:**
 - (1) Hire an environmental professional to remediate the discharge pursuant to this chapter; and**
 - (2) Initiate removal of the residential above ground heating oil tank system or the small non-residential above ground heating oil system;**

- 3. Complete closure or removal of the heating oil tank system, as applicable;**
- 4. Remediate free product pursuant to N.J.A.C. 7:26F-3.2, as applicable;**
- 5. Remediate soil pursuant to N.J.A.C. 7:26F-3.3, 3.4, and 3.5; and**
- 6. Remediate the ground water pursuant to N.J.A.C. 7:26F-4.**

7:26F-2.2 Sample analysis

- (a) The owner shall have all soil and water samples collected and analyzed:**
 - 1. By a laboratory certified to analyze the contaminants in question pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18;**

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2. In accordance with the requirements for Quality Assurance for Sampling and Laboratory Analysis in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2; and
3. For the applicable parameters listed in Table 2-1 below.

Table 2-1		
Analytical Requirements for Samples from Heating Oil Tank System Discharges		
<u>Type of Heating</u>	<u>Soil</u>	<u>Water</u>
<u>Oil</u>		
Heating Oil No. 2	Extractable petroleum hydrocarbons (EPH)¹ Analyze 25 percent of samples that contain EPH greater than 1,000 mg/kg for Naphthalene⁷ and 2-Methyl Naphthalene^{7,8}	VO², SVO⁴
Heating Oil No. 4 and No. 6	Extractable petroleum hydrocarbons (EPH)¹ Analyze 25 percent of samples for PAH⁶ when EPH is detected over 100 mg/kg⁷	VO+TICs³, SVO+TICs⁵
Kerosene	VO+TICs³	VO+TICs³, SVO+TICs⁵

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Footnotes

1. Extractable petroleum hydrocarbons (EPH). Analyze for EPH using the method, “Analysis of extractable petroleum hydrocarbon (EPH) compounds in non-aqueous and aqueous matrices,” at www.nj.gov/dep/srp/guidance/srra/eph_protocol.pdf, as supplemented or amended.

2. United States Environmental Protection Agency (EPA) Target Compound List volatile organic compounds including 1,2,4-Trimethylbenzene, but excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane, and 1,4-Dioxane (except that analyses of Fuel Oil No. 2 shall not include a library search of the 15 highest Tentatively Identified Compounds (TICs)).

3. EPA Target Compound List volatile organic compounds excluding 1,2-Dibromo-3-chloropropane, 1,2-Dibromoethane, and 1,4-Dioxane with a library search of the 15 highest TICs.

TICs for volatiles - Identify up to 15 organic compounds of greatest concentration that are not surrogates, internal standards, or targeted compounds listed under TCL, except that analyses of Fuel Oil No. 2 shall not include a library search of the 15 highest TICs.

4. EPA Target Compound List semi-volatile organic compounds including 1-Methyl Naphthalene, but excluding phenol and substituted phenols.

5. EPA Target Compound List semi-volatile organic compounds excluding phenol and substituted phenols with a library search of the 15 highest TICs.

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TICs for semi-volatiles - Identify up to 15 organic compounds of greatest concentration that are not surrogates, internal standards, or targeted compounds listed under TCL, except that analyses of Fuel Oil No. 2 shall not include a library search of the 15 highest TICs.

6. EPA Target Compound List Polynuclear Aromatic Hydrocarbons (PAH).

7. Conduct the additional analyses on sample(s) with the highest EPH concentration(s), with a minimum of one sample.

8. May perform synthetic precipitation leaching procedure (SPLP) extraction to develop a site specific impact to ground water remediation standard for 2-Methyl Naphthalene (see <http://www.nj.gov/dep/srp/guidance/rs/index.html>, as supplemented or amended).

SUBCHAPTER 3. SOIL AND FREE PRODUCT REMEDIATION REQUIREMENTS

7:26F-3.1 Scope

(a) This subchapter governs:

1. Free product remediation, N.J.A.C. 7:26F-3.2;

2. Soil remediation, generally, N.J.A.C. 7:26F-3.3;

3. Initiating soil remediation with delineation during excavation, N.J.A.C. 7:26F-3.4;

4. Initiating soil remediation with delineation, N.J.A.C. 7:26F-3.5;

5. Unrestricted use soil remedial action, N.J.A.C. 7:26F-3.6;

6. Soil remedial actions that allow residual contamination, N.J.A.C. 7:26F-3.7; and

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7. Site restoration, N.J.A.C. 7:26F-3.8.

7:26F-3.2 Free product remediation

(a) The owner shall, within 60 days after identifying the presence of free product:

- 1. Initiate the removal of free product; and**
- 2. Excavate all free product saturated soil.**

(b) The owner shall:

- 1. Delineate the horizontal and vertical extent of free product;**
- 2. Determine the thickness of the free product;**
- 3. Remediate free product until either there is no observable sheen, or there is only a discontinuous sheen. A discontinuous sheen is an observable amount of heating oil on the surface of the water in any well or excavation, that is:
 - i. Broken or intermittent and does not cover the majority of the water surface;**
 - and**
 - ii. Less than 0.25mm thick as measured using an interface probe;****
- 4. Complete the remediation of free product within one year after its discovery; and**
- 5. After the removal of free product, remediate contaminated ground water pursuant to N.J.A.C. 7:26F-4.**

7:26F-3.3 Soil remediation, generally

(a) The owner shall remediate soil contaminated by a discharge from a heating oil tank until soil sampling indicates that the property meets the requirements for unrestricted

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use at N.J.A.C. 7:26F-3.6 or, the residual contamination requirements at N.J.A.C. 7:26F-3.7.

(b) The owner shall initiate remediation of soil contaminated by a discharge from a heating oil tank system by either:

- 1. Excavating contaminated soil while delineating the extent of contamination, pursuant to N.J.A.C. 7:26F-3.4; or**
- 2. Delineating the horizontal and vertical extent of contaminated soil pursuant to N.J.A.C. 7:26F-3.5 prior to implementing a remedial action.**

(c) The owner shall investigate soil contaminated by a discharge from a heating oil tank system as follows:

- 1. Bias soil sample locations to areas of greatest suspected soil contamination;**
- 2. Analyze the soil samples for the substances listed in N.J.A.C. 7:26F-2.2, Table 2-1; and**
- 3. Exclude composite sampling, except as necessary for waste classification sampling pursuant to the Hazardous Waste rules, N.J.A.C. 7:26G.**

(d) The owner shall properly manage and dispose of all excavated contaminated soil pursuant to the Solid Waste rules, N.J.A.C. 7:26, and the Hazardous Waste rules, N.J.A.C. 7:26G.

(e) The owner shall return excavated soil from drill cuttings or test pit excavations to the original location only if:

- 1. Drill cuttings are returned in accordance with the Well Construction and Maintenance; Sealing of Abandoned Wells rules, N.J.A.C. 7:9D;**

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2. Neither free product nor residual contamination is present in the excavated soil;

3. The contamination present in the excavated soil is addressed as part of the remediation of the area of concern in compliance with this chapter; and

4. The replacement of the soil does not pose any threat to public health, safety, or the environment.

(f) When backfilling an excavation, the owner shall:

1. Use fill material that is:

i. Not contaminated above any remediation standard, pursuant to N.J.A.C.

7:26D;

ii. Free of extraneous debris and solid waste; and

iii. Of equal or lesser permeability than the soil removed; and

2. If an excavation extends into the saturated zone, compact the backfilled soil in one-foot intervals.

(g) The owner shall obtain a permit from the Department prior to implementing any soil remedial action where dewatering or in situ treatment of contaminated soils is proposed, or for any other remedial action for which a permit is required.

7:26F-3.4 Initiating soil remediation with delineation during excavation

(a) An owner electing to initiate soil remediation by excavating contaminated soil while delineating the extent of soil contamination shall:

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1. Unless the owner leaves residual contamination pursuant to N.J.A.C. 7:26F-3.7, excavate contaminated soil until contamination is no longer detectable by methods including, but not limited to, field instrumentation, sight, or smell;

2. For a discharge from an unregulated heating oil tank system, collect post-excavation soil samples on the same day as the excavation of the contaminated soil, as follows:

i. If the discharge is from the tank, the owner shall:

(1) Collect one sample from the tank centerline for every six feet of tank length or fraction thereof;

(2) Distribute sample locations equally along the center line of the tank and collect samples from zero to six inches below the base of the final excavation, whether or not ground water is present;

(3) Collect one sample for every 30 linear feet of each sidewall of the excavation or fraction thereof, with a minimum of one sample from each sidewall of the excavation; and

(4) If contamination extends to bedrock or if ground water is encountered in the excavation, then collect a ground water sample pursuant to N.J.A.C. 7:26F-4.2; and

ii. If the discharge is from the piping associated with an unregulated heating oil tank system, the owner shall collect a minimum of one soil sample for every 15 linear feet of piping or fraction thereof, from zero to six inches below the base of the final excavation; and

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- 3. For a discharge from a residential above ground heating oil tank system or a small, non-residential above ground heating oil tank system, collect post-excavation soil samples on the same day as the excavation of the contaminated soil, as follows:**
 - i. If the perimeter of the excavation is 30 feet or less, then collect at least one sample from the bottom of the excavation and one surface sidewall sample (zero to six inches below the ground surface) from the sidewall of the excavation, each of which shall be biased in the direction of water runoff over the ground surface;**
 - ii. If the perimeter of the excavation is greater than 30 feet, then collect at least one additional surface sidewall sample for every 30 linear feet of perimeter, or fraction thereof, and one additional sample from the bottom of the excavation for every 100 square feet of bottom area, or fraction thereof;**
 - iii. For an excavation that is three feet in depth or greater, collect at least one additional sample from the bottom of each sidewall for every 30 linear feet of perimeter, or fraction thereof; and**
 - iv. If contamination extends to bedrock or if ground water is encountered in the excavation, then collect a ground water sample pursuant to N.J.A.C. 7:26F-4.2.**
- 4. Evaluate the soil sample data to determine whether the sample meets the requirements for unrestricted use in accordance with N.J.A.C. 7:26F-3.6;**
- 5. If the sample data indicate that the sample meets the requirements of N.J.A.C. 7:26F-3.6, then complete the remediation pursuant to this chapter;**
- 6. If the sample data indicate that the sample does not meet the requirements of N.J.A.C. 7:26F-3.6, then:**

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i. Implement a soil remedial action that leaves contaminated soil in place, in accordance with N.J.A.C. 7:26F-3.7; or

ii. Proceed with additional remediation as follows:

(1) Excavate additional contaminated soil beyond the original extent;

(2) Collect the following post-excavation samples:

(A) One additional soil sample from the bottom of the excavation for each additional 100 square feet of newly excavated area; and

(B) One additional sidewall sample for each additional 30 linear feet of sidewall, or fraction thereof;

(3) Analyze the soil samples collected pursuant to (a)6ii(2) above to determine whether the samples meet the requirements for unrestricted use in accordance with N.J.A.C. 7:26F-3.6; and

(4) Repeat the activities set forth in this paragraph until sample data indicate that the sample meets the requirements for unrestricted use in accordance with N.J.A.C. 7:26F-3.6.

7:26F-3.5 Initiating soil remediation with delineation

(a) An owner electing to initiate soil remediation by first delineating contaminated soil shall:

1. Install a minimum of four soil borings, no more than 10 feet from where the discharge was discovered, in four equal directions (for example, north, south, east, and west);

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2. Field screen each boring;

3. Continue to install additional soil borings horizontally and vertically and conduct field screening until no further contamination is observed or until bedrock is encountered;

4. Collect a sufficient number of soil samples from the soil borings to confirm delineation horizontally (all directions) and vertically when field screening indicates no further contamination; and

5. Collect a ground water sample pursuant to N.J.A.C. 7:26F-4.2 when contamination extends to bedrock or ground water is encountered.

(b) When the delineation of the horizontal and vertical extent of the soil contamination is complete, the owner shall implement an in situ remedial action, excavate the contaminated soil to the extent of the delineated samples, or implement a soil remedial action that allows residual contamination in accordance with N.J.A.C. 7:26F-3.7.

(c) After the owner has implemented an in situ remedial action in an area previously delineated in accordance with (a) above, the owner shall drill soil borings within and at the boundaries of the horizontal and vertical extent of the delineated contaminated area to confirm that the soil results comply with N.J.A.C. 7:26F-3.6 by:

1. Collecting a minimum of two soil samples per 300 square feet, or fraction thereof, of the originally delineated area;

2. Where the originally contaminated area exceeds two feet in depth, collecting two additional soil samples per 300 square feet, or fraction thereof, of the originally delineated area for each additional two feet of depth; and

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3. Biasing sampling to the originally delineated area and depths of greatest contamination identified during previous field screening or sampling events pursuant to (a) above.

(d) Except as set forth at N.J.A.C. 7:26F-3.7, an owner implementing a remedial action pursuant to this section shall analyze the soil samples to determine whether the remediation meets the requirements for an unrestricted use soil remediation in accordance with N.J.A.C. 7:26F-3.6:

1. If the analysis indicates that the soil remediation meets the requirements of N.J.A.C. 7:26F-3.6, then the owner shall complete the remediation pursuant to this chapter; or

2. If the analysis indicates that the soil remediation does not meet the requirements of N.J.A.C. 7:26F-3.6, then the owner shall continue to remediate the soil until analysis indicates that the remediation meets the requirements of N.J.A.C. 7:26F-3.6.

7:26F-3.6 Unrestricted use soil remedial action

(a) For a discharge of No. 2 heating oil, the owner may implement an unrestricted use soil remedial action when, for each soil sample:

1. The extractable petroleum hydrocarbons concentration is less than or equal to 1,000 mg/kg; or

2. The following conditions are met:

i. The extractable petroleum hydrocarbons concentration is greater than 1,000

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mg/kg, but less than or equal to 5,100 mg/kg;

ii. No impacts to ecological receptors, as determined by N.J.A.C. 7:26F-6.4;

iii. The Naphthalene concentration is less than or equal to six mg/kg; and

iv. The 2-Methyl Naphthalene concentration:

(1) Is less than or equal eight mg/kg; or

(2) If a Synthetic Precipitation Leachate Procedure analysis is performed:

(A) The 2-Methyl Naphthalene concentration in soil is less than or equal to 230 mg/kg; and

(B) The 2-Methyl Naphthalene concentration in leachate from the Synthetic Precipitation Leachate Procedure analysis is less than or equal to 600 ug/l.

(b) For a discharge of No. 4 heating oil or No. 6 heating oil, or a combination thereof, the owner may implement an unrestricted use soil remedial action when, for each soil sample:

1. The extractable petroleum hydrocarbons concentration is less than or equal to 100 mg/kg; or

2. The following conditions are met:

i. The extractable petroleum hydrocarbons concentration is greater than 100 mg/kg but less than or equal to the Department calculator-generated extractable petroleum hydrocarbons residential soil remediation criterion, which is found on the Department's website at

www.nj.gov/dep/srp/guidance/srra/eph_calculator.xls;

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ii. There is no impact to any ecological receptor, as determined by N.J.A.C.

7:26F-6.4; and

iii. Each polyaromatic hydrocarbon compound is less than or equal to the most stringent of either:

(1) The applicable residential soil remediation standard pursuant to N.J.A.C.

7:26D; or

(2) The applicable site-specific impact to ground water remediation standard pursuant to N.J.A.C. 7:26D.

(c) For a discharge of kerosene, the owner may implement an unrestricted use soil remedial action when, for each soil sample, each volatile organic compound is less than or equal to the most stringent of either:

1. The applicable residential soil remediation standard pursuant to N.J.A.C. 7:26D;

or

2. The applicable site-specific impact to ground water remediation standard pursuant to N.J.A.C. 7:26D.

7:26F-3.7 Residual contamination

(a) If an owner does not implement an unrestricted use soil remedial action pursuant to N.J.A.C. 7:26F-3.6, an owner may implement a soil remedial action pursuant to one of the alternatives at (b) below, which allow residual contamination to remain, if:

1. As to ecological receptors, there is no impact to any ecological receptor, as determined by N.J.A.C. 7:26F-6.4, or the impact to any ecological receptor is

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mitigated; and

2. As to ground water:

i. Property conditions did not require a ground water investigation pursuant to N.J.A.C. 7:26F-4;

ii. The owner conducted a ground water remedial investigation that did not identify any ground water contamination above the applicable ground water remediation standards, N.J.A.C. 7:26D-2; or

iii. The owner implemented a ground water remedial action that remediated the concentration of all contaminants in ground water to or below the applicable ground water remediation standards, N.J.A.C. 7:26D-2.

(b) An owner shall implement one of the following:

1. A limited restricted or restricted use soil remedial action, as applicable, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, which shall include, without limitation:

i. If the property upon which the residual contamination remains is owned by another person, obtaining the property owner's written agreement for the owner to implement a soil remedial action by which residual contamination remains on the property;

ii. Recording, or having the person who owns the property record, a deed notice, pursuant to N.J.A.C. 7:26C-7.2, for the area of soil contaminated

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above all of the applicable residential use soil remediation standards,

N.J.A.C. 7:26D;

iii. Obtaining a soil remedial action permit pursuant to N.J.A.C. 7:26C-7;

and

iv. Paying all applicable fees.

2. A soil remedial action for a residential property at which remediation of an on-site discharge is impeded because the soil contamination is located under a residential building, a paved area, or a capped easement (for example, a sidewalk containing utilities), provided:

i. If the property upon which the on-site residual contamination remains is owned by another person, obtaining the property owner's written agreement for the owner to implement a soil remedial action by which residual contamination remains on the property;

ii. All soil contamination not located under a residential building, a paved area, or a capped easement is remediated pursuant to N.J.A.C. 7:26F-3.6;

iii. A Deed Notice prepared pursuant to N.J.A.C. 7:26F Appendix A is placed on the property; and

iv. As part of the application for a heating oil tank system no further action letter in accordance with N.J.A.C. 7:26F-7, the owner submits to the Department:

(1) A remedial action report that includes the information at (c)

below; and

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(2) A draft deed notice prepared pursuant to N.J.A.C. 7:26F

Appendix A.

3. A soil remedial action for a residential property at which remediation of an on-site discharge results less than 15 cubic yards of residual contamination under a residential building, provided that:

i. If the property upon which the on-site residual contamination remains is owned by another person, obtaining the property owner's written agreement for the owner to implement a soil remedial action by which residual contamination remains on the property;

ii. All soil contamination not located under a residential building is remediated pursuant to N.J.A.C. 7:26F-3.6; and

iii. As part of the application for a heating oil tank system no further action letter in accordance with N.J.A.C. 7:26F-7, the owner submits to the Department, a remedial action report that includes the information at (c) below.

(c) For a remediation in accordance with (b)2 and 3 above, as part of the remedial action report that the owner submits to the Department with an application for a heating oil tank system no further action letter in accordance with N.J.A.C. 7:26F-7, the owner shall provide:

1. Written documentation that:

i. The owner has met the requirements of (b)2 or 3 above, as applicable;

ii. The remediation of the residual contamination on the residential property where the discharge occurred is impeded because it is located under a

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building, a paved area, or a capped easement (for example, a sidewalk containing utilities), including:

(1) Data that establish the horizontal and vertical extent of the residual contamination; and

(2) A narrative description and a map of the location of the residual contamination under the building, paved area, or capped easement;

2. A description of all steps that the owner has taken to remediate soil contamination prior to determining not to remediate the contaminated soil; and

3. A description of why further remediation is impeded or is otherwise impracticable.

(d) If the Department approves the application for a heating oil tank system no further action letter for the remediation of a site on which residual contamination remains, then the Department shall issue a heating oil tank system no further action letter that notes the presence of the residual contamination.

7:26F-3.8 Site restoration

(a) The owner shall restore the topography of each area of remediation to its pre-remediation condition.

(b) When a site is located adjacent to or in a wetland, or adjacent to or in any other environmentally sensitive natural resource, the owner shall also comply with all applicable restoration and soil management requirements, including, but not limited to,

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the Coastal Zone Management Rules, N.J.A.C. 7:7E, and the Fresh Water Wetlands Protection Act Rules, N.J.A.C. 7:7A.

SUBCHAPTER 4. GROUND WATER REMEDIATION REQUIREMENTS

7:26F-4.1 Scope

(a) This subchapter governs:

- 1. Ground water investigation requirements, N.J.A.C. 7:26F-4.2; and**
- 2. Ground water remedial action requirements, N.J.A.C. 7:26F-4.3.**

7:26F-4.2 Ground water investigation requirements

(a) The owner shall investigate ground water pursuant to (b) below to determine whether the discharge from a heating oil tank system contaminated the ground water when:

- 1. Any portion of the heating oil tank system is located within the seasonal high ground water table or within two feet of either ground water or bedrock;**
- 2. Soil sampling conducted pursuant to N.J.A.C. 7:26F-3 indicates the presence of a heating oil-related contaminant above the site-specific impact to ground water soil remediation standard determined by both soil water partitioning and Synthetic Precipitation Leachate Procedure for that contaminant as set forth at N.J.A.C. 7:26F-3; or**
- 3. Bedrock or ground water is encountered while excavating contaminated soil.**

(b) To investigate ground water contamination, the owner shall:

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1. Locate ground water sampling points as follows:

i. When the ground water is sampled prior to soil remediation, bias the ground water sampling point location to within 10 feet of the point of discharge in the expected downgradient ground water flow direction;

ii. When the ground water is sampled after soil remediation and the excavation extends less than 20 feet in any direction from the center line of the tank:

(1) Bias the ground water sampling point location to within 10 feet outside of the excavation in the expected downgradient ground water flow direction; or

(2) Where site conditions prohibit sampling of the ground water within 10 feet outside of the excavation in the expected downgradient ground water flow direction, locate the ground water sampling point within the excavation, after backfilling the excavation pursuant to N.J.A.C. 7:26F-3.3(f); or

iii. When the ground water is sampled after soil remediation and the excavation extends 20 feet or more in any direction from the center line of the tank:

(1) Locate a ground water sampling point within the excavation, biased in the expected downgradient ground water flow direction, after backfilling the excavation pursuant to N.J.A.C. 7:26F-3.3(f); and

(2) Locate a ground water sampling point in a location outside the backfilled excavation from which the heating oil tank was removed, but within 10 feet of the backfilled excavation, biased in the expected downgradient ground water flow direction;

2. Install each ground water sampling point as follows:

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i. For an unconsolidated formation:

(1) For monitoring wells, extend the well screen to five feet above the ground water table and 10 feet below the ground water table;

(2) For all other sampling technologies, the sampling interval shall extend across the ground water table; or

ii. For a consolidated formation:

(1) If ground water is encountered, extend the borehole to 10 feet below the first ground water encountered and complete construction of the well as a permanent well pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules at N.J.A.C. 7:9D-2.4(b);

(2) If ground water is not encountered by a depth of 35 feet into bedrock, then secure the borehole and inspect the location after a 24-hour equilibration period:

(A) If no measurable ground water or free product is detected after 24 hours, then no further ground water remediation is required; or

(B) If ground water or free product is detected in the borehole, then complete construction of the well as a permanent well pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules at N.J.A.C. 7:9D-2.4(b);

3. Sample ground water in accordance with the most recent version of the Department's Field Sampling Procedures Manual available at www.nj.gov/dep/srp/srra/guidance and, if, the excavation was not backfilled

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pursuant to N.J.A.C. 7:26F-3.3(f) prior to (the effective date of this chapter), then include the volume of water that fills the excavation when determining the volume of water to be purged prior to sampling, in accordance with the Department's Field Sampling Procedures Manual in effect on the date that the ground water sampling is performed;

4. Analyze all ground water samples for the substances listed in N.J.A.C. 7:26F-2.2, Table 2-1; and

5. Evaluate the data to determine compliance with the applicable ground water remediation standards, N.J.A.C. 7:26D-2.1(a):

i. If all of the analytical results are at or below the applicable ground water remediation standards, then no further remediation of ground water is necessary other than to complete the heating oil tank system remediation pursuant to N.J.A.C. 7:26F-6 and 7; and

ii. If any analytical result is above an applicable ground water remediation standard, then either:

(1) Collect two confirmation samples, evenly spaced and using similar purging and sampling techniques, within 60 days after the initial sample and average the results of the two confirmation samples and the original sample to determine compliance with the applicable standard:

(A) If the average does not exceed the applicable ground water remediation standard, then no further remediation of ground water is

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necessary other than to complete the heating oil tank system remediation pursuant to N.J.A.C. 7:26F-6 and 7; or

(B) If the average exceeds the applicable ground water remediation standard, then delineate the ground water contamination pursuant to (c) below; or

(2) Delineate the ground water contamination pursuant to (c) below;

(c) When the owner has confirmed the presence of ground water contamination, the owner shall:

- 1. Conduct a receptor evaluation pursuant to N.J.A.C. 7:26F-6;**
- 2. Delineate the horizontal and vertical extent of ground water contamination by locating ground water sampling points in a downgradient direction based on topographic relief, the location of surface water bodies, structural controls in the bedrock or soils, location of pumping wells and subsurface conduits at or below the water table or based on data from adjacent sites; and**
- 3. Implement a ground water remedial action pursuant to N.J.A.C. 7:26F-4.3.**

7:26F-4.3 Ground water remedial action requirements

(a) The owner shall perform a remedial action for ground water contaminated by a discharge from a heating oil tank system by:

- 1. Remediating free product in accordance with N.J.A.C. 7:26F-3.2; and**

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2. Remediating all ground water contamination in excess of the applicable ground water remediation standard, N.J.A.C. 7:26D, to a concentration at or below that applicable ground water remediation standard.

(b) If the ground water remedial action includes a discharge to surface water, then the owner shall request an on-scene coordinator discharge authorization by submitting to the Department at the address in (c) below:

1. An Unregulated Heating Oil Tank System Remediation Form found at

www.nj.gov/dep/srp/unregulatedtanks;

2. A workplan including the following information:

i. A description of the contaminant source, remedial activities conducted to date and the site conditions that necessitate on-scene coordinator authorization in lieu of other treatment and/or disposal options;

ii. A list of contaminants of concern and concentrations, including all existing soil and ground water sample results;

iii. Proposed sampling parameters and analytical methodology;

iv. A site plan with all relevant features identified;

v. A topographic map of the site;

vi. Name of the stream receiving the discharge and its classification, which can be found in the Surface Water Quality Standards, N.J.A.C. 7:9B;

vii. Location of treatment system;

viii. Location of discharge point;

ix. Duration of the discharge;

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2. Propose a ground water classification exception area pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-7.3, as part of the ground water remedial action permit application required in (f)3 below;

3. Obtain a ground water remedial action permit pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-7; and

4. Submit a copy of the ground water remedial action permit, including all attachments, as part of the remedial action pursuant to N.J.A.C. 7:26F-7.2.

(g) When the concentrations of contaminants in ground water are at or below the applicable ground water quality standards, the owner may request that the classification exception area be removed and the ground water remedial action permit be terminated in accordance with the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-7.3 and 7.13, respectively.

SUBCHAPTER 5. CONTAMINATION NOT RELATED TO THE HEATING OIL TANK SYSTEM UNDER INVESTIGATION

7:26F-5.1 Contamination not related to the heating oil tank system under investigation

(a) An owner who is remediating a discharge from a heating oil tank system, who identifies a contaminant in excess of any remediation standard not related to the discharge that the owner is remediating, shall call the Department Hotline at 1-877-WARNDEP (1-877-927-6337) and report the observation of the contaminant.

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(b) Notwithstanding (a) above, the owner shall continue to remediate, pursuant to this chapter, all discharges from a heating oil tank system.

SUBCHAPTER 6. RECEPTOR EVALUATION

7:26F-6.1 Scope

(a) This subchapter governs:

- 1. Receptor evaluation – ground water, N.J.A.C. 7:26F-6.2;**
- 2. Receptor evaluation – vapor intrusion, N.J.A.C. 7:26F-6.3; and**
- 3. Receptor evaluation – ecological, N.J.A.C. 7:26F-6.4.**

7:26F-6.2 Receptor evaluation – ground water

(a) If the owner detects ground water contamination exceeding any applicable ground water remediation standard at N.J.A.C. 7:26D-2.2(a), then the owner shall:

- 1. Within 14 days after identifying ground water contamination exceeding the applicable standard, determine if any potable wells or irrigation wells used for potable purposes exist within 100 feet of the known extent of the ground water contamination by:
 - i. Contacting the local health department; and**
 - ii. Conducting a door-to-door survey; and****
- 2. If there are any potable wells or irrigation wells used for potable purposes within 100 feet of the known extent of the ground water contamination, then the owner shall:**

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i. Sample each potable well or irrigation well used for potable purposes within 90 days after identification of the well within 100 feet of the known extent of ground water contamination;

ii. Analyze each well sample pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)9;

iii. Prepare laboratory data deliverables pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15i; and

iv. Evaluate the data to determine if the concentration of any contaminant in any potable well or irrigation well used for potable purposes exceeds any Class II-A Ground Water Quality Standard, N.J.A.C. 7:9C:

(1) If any contaminant is identified in excess of any Class II-A Ground Water Quality Standard, N.J.A.C. 7:9C, then conduct all actions required by the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.11; or

(2) If no contaminant is identified in excess of any Class II-A Ground Water Quality Standard, N.J.A.C. 7:9C, then:

(A) Provide each property owner, occupant (if applicable), and applicable county/municipal health department with a copy and explanation of all ground water analytical results; and

(B) Provide the Department, as part of the remedial action report submitted pursuant to N.J.A.C. 7:26F-7.2, with a copy of the well data and the explanation submitted to each property owner, occupant (if applicable), and applicable county/municipal health department.

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7:26F-6.3 Receptor evaluation – vapor intrusion

(a) If, within 180 days after the discovery of the discharge, the owner does not remediate the free product and ground water contaminant concentrations to below the vapor intrusion ground water screening levels, which are available on the Department’s website at www.nj.gov/dep/srp/guidance/vaporintrusion/index.html, then the owner shall, within 240 days after the discovery of the discharge, conduct a vapor intrusion investigation by:

- 1. Identifying all buildings located within 30 feet of free product or ground water contamination that is in excess of the vapor intrusion ground water screening levels;**
- 2. Determining the specific use and construction of each building identified in (a)1 above, including whether each building has a basement, a crawl space, or is constructed on a slab, and the approximate square footage of each building footprint;**
- 3. Collecting an appropriate number of samples in appropriate locations, as referenced in the Vapor Intrusion Technical Guidance available at www.nj.gov/dep/srp/guidance/vaporintrusion/vig_main.pdf;**
- 4. Analyzing those samples pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)7; and**
- 5. Preparing laboratory data deliverables pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15i.**

(b) After conducting the vapor intrusion investigation in (a) above, the owner shall:

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1. Evaluate the results of the vapor intrusion investigation, including a comparison of the analytical results to the Department's vapor intrusion screening levels, which are available on the Department's website at

www.nj.gov/dep/srp/guidance/vaporintrusion/index.html; and

2. Determine if there is a complete vapor intrusion pathway for each building that the owner is investigating.

(c) For each building with an incomplete vapor intrusion pathway, which occurs when all indoor air results are equal to or less than all of the Department's vapor intrusion indoor air screening levels, which are found in tables available at

www.nj.gov/dep/srp/guidance/vaporintrusion/index.html, the owner shall comply with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.15(d).

(d) For each building with a complete vapor intrusion pathway:

1. If an indoor air result is greater than any of the Department's vapor intrusion indoor air screening levels, but less than or equal to any of the Department's vapor intrusion rapid action levels, which are found in tables available at

www.nj.gov/dep/srp/guidance/vaporintrusion/index.html, the owner shall comply with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.15(e); and

2. If an indoor air result is greater than any of the Department's vapor intrusion rapid action levels, the owner shall comply with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.15(f).

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7:26F-6.4 Receptor evaluation – ecological

(a) An ecological receptor evaluation is required when:

- 1. For a discharge from a heating oil tank system containing No. 2, No. 4, or No. 6 heating oil, any extractable petroleum hydrocarbons concentration in soil exceeds 1,700 mg/kg; or**
- 2. For a discharge from a heating oil tank system containing kerosene, the concentration of any volatile contaminant in soil is above the residential soil remediation standard pursuant to N.J.A.C. 7:26D.**

(b) The owner shall conduct an ecological receptor evaluation, except as provided in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16(d), as follows:

- 1. Determine if any environmentally sensitive natural resource, other than ground water:**
 - i. Is present on the site;**
 - ii. Is adjacent to the site; or**
 - iii. May be, has been, or is impacted by contamination from the site; and**
- 2. Determine if any contaminant concentration is present at the site that exceeds any ecological screening criterion or any aquatic surface water quality standard.**
- 3. If an environmentally sensitive natural resource is present and any contaminant concentration is present at the site that exceeds any ecological screening criterion or any aquatic surface water quality standard, then a licensed site remediation professional is required to prepare an ecological risk assessment pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8(c)2, for the**

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environmental professional to submit to the Department with the remedial action report.

SUBCHAPTER 7. REMEDIAL ACTION REPORT AND HEATING OIL TANK SYSTEM NO FURTHER ACTION LETTER REQUEST REQUIREMENTS

7:26F-7.1 Scope

(a) This subchapter governs:

- 1. Remedial action reports, N.J.A.C. 7:26F-7.2; and**
- 2. Heating oil tank system no further action letters, N.J.A.C. 7:26F-7.3.**

7:26F-7.2 Remedial action reports

(a) The owner shall prepare a remedial action report that includes the following:

- 1. A description of all remedial actions taken at the site;**
- 2. A list of all variances from the requirements of this chapter submitted pursuant to N.J.A.C. 7:26F-1.10;**
- 3. A description of the physical conditions of the site, including, but not limited to, the topography, geology, hydrogeology, and proximity to surface water and wetlands;**
- 4. The total amount of contaminated soil and ground water disposed of or treated;**
- 5. The total cost of the remediation;**
- 6. A scaled site map(s) that contains the following:**

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- i. A north arrow and a bar scale;**
 - ii. The location of: each former heating oil tank system; all structures, including, but not limited to, buildings, potable wells, storm drains, and septic systems; and the property boundaries;**
 - iii. The boundaries of the soil excavation and each area remediated;**
 - iv. The location of each post-excavation soil sample, with the corresponding sample depth, analytical results, and date that each sample was collected;**
 - v. If ground water was investigated or remediated, then the location of all ground water monitoring points, the horizontal and vertical extent of the contaminant plume, and the expected or determined downgradient ground water flow direction;**
 - vi. If vapor intrusion was investigated or remediated, then the location of all vapor intrusion sampling points; and**
 - vii. If potable wells or irrigation well used for potable purposes were investigated, then the location of all sampling points;**
- 7. A copy of all monitoring well and available potable well records and well construction details, including the depth to ground water, a description of each soil boring, well purging methods, and ground water sampling methods, if applicable;**
- 8. Photographs documenting the condition of each tank and the sides and bottom of each excavation, if available;**
- 9. The following documentation of the clean fill material used in the excavation, including:**

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- i. Copies of sample results;**
 - ii. A description of the source of the clean fill material;**
 - iii. A copy of the bill of lading documenting the source(s) of clean fill, including the street, town, lot and block, county, and state from which the clean fill originated;**
 - iv. A brief history of the source of the clean fill; and**
 - v. A copy of the certificate of destruction for contaminated soil that has undergone treatment;**
- 10. A copy of the disposal receipts for all contaminated soil, tank contents, and contaminated ground water, if applicable;**
- 11. All analytical data, including:**
- i. Soil sample results in tabular form including sample depth, the applicable soil remediation standard(s), and the date on which each sample was collected;**
 - ii. Ground water sample results in tabular form including sample depth, the applicable ground water remediation standard(s), and the date on which each sample was collected, if applicable;**
 - iii. Potable well or irrigation well used for potable purposes sample results in tabular form for each well that had no exceedance of any ground water remediation standard, including the applicable ground water remediation standard, the date on which each sample was collected, and a copy of the explanation given to each property owner and occupant (if applicable) of the potable well sample results, if applicable;**

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- iv. Vapor intrusion analytical results in tabular form for each building with an incomplete vapor intrusion pathway, including the type of sample (sub-slab, indoor air, or ambient), the applicable screening level(s), and the date on which each sample was collected, if applicable;**
 - v. One copy of all sample chain of custody forms, analytical summary tables, and nonconformance summaries from a laboratory certified pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18;**
 - vi. A statement of data usability based on any problems or issues associated with sample collection or transportation, chain of custody, or laboratory analysis;**
 - vii. The disk(s) containing reduced data deliverables for each soil and non-potable ground water sample pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15ii; and**
 - viii. One copy of the full data deliverables for all potable water and vapor intrusion sampling (including sub-slab, indoor air, and ambient) pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-2.1(a)15i, if applicable;**
- 12. Electronic data deliverables as follows:**
- i. For unregulated heating oil tank systems at residential buildings and residential above ground heating oil tank systems, electronic deliverables are not required; and**

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- ii. For unregulated heating oil tank systems at non-residential buildings and small, non-residential above ground heating oil tank systems, electronic data deliverables pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.6(a)5;**
- 13. Documentation of all actions taken under N.J.A.C. 7:26F-1.7 to obtain access to property that the owner does not have legal or equitable title, if applicable;**
- 14. Either a copy of the draft deed notice prepared pursuant to N.J.A.C. 7:26F-3.7(b)2 prior to filing, or a statement that the owner is applying the small quantity exception pursuant to N.J.A.C. 7:26F-3.7(b)3, if residual contamination remains on the property, if applicable;**
- 15. A copy of the ground water remedial action permit, including all attachments, if applicable;**
- 16. A copy of the ecological receptor evaluation prepared pursuant to N.J.A.C. 7:26F-6.4, if applicable; and**
- 17. A copy of the ecological risk assessment prepared pursuant to N.J.A.C. 7:26F-6.4(b)3, if applicable.**

7:26F-7.3 Heating oil tank system no further action letter

- (a) To obtain a heating oil tank system no further action letter from the Department, the owner shall submit the following to the Department:**

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1. A remedial action report prepared pursuant to N.J.A.C. 7:26F-7.2, and a completed and certified Unregulated Heating Oil Tank (UHOT) System Remediation Form available at www.nj.gov/dep/srp/srra/forms/;

2. For each environmental professional that conducts a portion or a phase of the remediation, a separate Unregulated Heating Oil Tank (UHOT) System Form that describes the work that the environmental professional performed; and

3. The applicable fee pursuant to N.J.A.C. 7:26F-1.8.

(b) Except as set forth in (c) below, the owner shall submit the items in (a) above to the following address:

New Jersey Department of Environmental Protection

Bureau of Case Assignment & Initial Notice

Mail Code 401-05H

PO Box 420

Trenton, New Jersey 08625-0420

(c) Within 90 days after the date that the Department informs the public, by a notice in the New Jersey Register, that an electronic portal is available, the owner shall submit to the Department electronically via the electronic portal all forms, applications, and documents required by this chapter.

(d) If an owner determines that incorrect administrative site information was submitted to the Department, the owner shall request that the Department issue a corrected heating oil tank system no further action letter by:

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1. Submitting an unregulated heating oil tank questionnaire, found at www.nj.gov/dep/srp/unregulatedtanks/uhot_app.pdf, and any supporting documentation; and

2. Paying the fee as required by N.J.A.C. 7:26F-1.8.

(e) The scope of the remediation limits the scope of the covenant not to sue that accompanies the heating oil tank system no further action letter, as addressed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6.5.

SUBCHAPTER 8. ADMINISTRATIVE ORDERS AND CIVIL ADMINISTRATIVE PENALTIES

7:26F-8.1 Administrative order and civil administrative penalty

Whenever the Department determines that an owner has violated any of the provisions of this chapter, the Department shall apply the Administrative Requirements of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.

7:26F-8.2 Denial, suspension, revocation, and refusal to renew a certification

The Department may deny, suspend, revoke, or refuse to renew a certification issued pursuant to N.J.A.C. 7:14B-16.11.

SUBCHAPTER 9. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND

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7:26F-9.1 Scope

This subchapter sets forth the requirements for an applicant to apply for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, to fund a project eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23.

7:26F-9.2 Application for financial assistance

(a) An applicant may apply for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund by:

1. Submitting to the Department a completed Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund Application Form available at www.nj.gov/dep/srp/srra/forms/; and

2. Following the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund Application Instructions and Cost Guide, both of which are a part of the application package.

(b) An applicant who applies for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund shall submit to the Department analytical data sufficient to support the proposed remediation.

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7:26F-9.3 Financial assistance for reimbursement of prior remediation costs

(a) An applicant may remediate a discharge from an unregulated heating oil tank system and then apply for financial assistance for reimbursement of remediation costs provided that:

- 1. The applicant must incur all of the remediation costs after August 30, 1997;**
- 2. The applicant did not, prior to submitting the application for financial assistance, pay for any of the remediation performed, unless the applicant:**
 - i. Performed and paid for remediation of a discharge related to an unregulated heating oil tank at an applicant's primary residence; or**
 - ii. Is a nonprofit organization, corporation, or association with not more than 100 paid individuals that is qualified for exemption from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad;**
- 3. For remediation conducted prior to (the effective date of this chapter), the remediation associated with the remediation costs was conducted in compliance with the rules in effect at the time the remediation was conducted and with the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23; and**
- 4. For remediation conducted on or after (the effective date of this chapter), the remediation associated with the remediation costs was conducted in compliance with**

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this chapter and with the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 through 37.23.

**APPENDIX A
MODEL DEED NOTICE**

Instrument Number

DEED NOTICE

This shell document contains blanks and matter in brackets []. These blanks shall be replaced with the required site information prior to recording.

Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN ACCORDANCE WITH THE BROWNFIELD AND CONTAMINATED SITE REMEDIATION ACT, N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

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Prepared by: _____

[Signature]

[Print name below signature]

Recorded by: _____

[Signature, Officer of County Recording Office]

[Print name below signature]

DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by *[Insert the full legal name and address of each current property owner]* (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. *[Insert the full legal name and address of each current property owner]* *[Insert as appropriate: "is" or "are"]* the owner in fee simple of certain real property designated as Block(s) ____ Lot(s) ____, on the tax map of the *[Insert, as appropriate:*

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City/Borough/Township/Town] of [*Insert the name of municipality*], [*Insert the name of county*] County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site which includes this property is [*Insert the Program Interest Number (Preferred ID)*]; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. SOIL CONTAMINATION. [*Insert the full legal name of the owner of the heating oil tank system*] has remediated contaminated soil at the Property. However, residual contamination that contains contaminants in concentrations that do not allow for the unrestricted use of the Property remains at certain areas of the Property that is not accessible because it is currently located under the following existing engineering control(s): [*Pick as applicable: a building, a paved area, or a capped easement (for example, a sidewalk containing utilities)*]. Such soil contamination, including the type, concentration and specific location, and the existing engineering control(s) on the site are described in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice and engineering controls in accordance with the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-13.

3. CONSIDERATION. In order to obtain approval of the remedial action for the remediation of a discharge from the heating oil tank system, and in consideration of the terms and conditions of that approval, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that

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impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessors, lessees, and operators of the Property of the restrictions outlined in this Deed Notice and required by law, as set forth herein.

4A. RESTRICTED AREAS. Due to the presence of residual contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property that contain the residual contamination (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit B, which is attached hereto and made a part hereof.

4B. RESTRICTED LAND USES. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.3.

4C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to maintain engineering controls on the Property as described in Exhibit B.

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5A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners, lessors, and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any, of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner or the subsequent owner shall provide written notice to the Department of Environmental Protection within 30 calendar days after the Owner's or subsequent owner's petition for or filing of any document initiating a rezoning of the Property to be used as a child care facility, or public, private, or charter school.

5B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessors, lessees, and operators while each is an owner, lessor, lessee, or operator of the Property.

6A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners, lessors, and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and

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location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. The Owner and all subsequent owners, lessors, and lessees shall restore any disturbance of an engineering control to pre-disturbance conditions within 60 calendar days after the initiation of the alteration, improvement, or disturbance, unless the Department approves, in writing, a period of time exceeding 60 calendar days.

iii. Except as provided in Paragraph 6B below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property that disturbs any engineering control at the Property without first obtaining the Department's written permission for the alteration, improvement, or disturbance, unless the person restores the engineering control to pre-disturbance conditions within 60 calendar days.

6B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or an immediate environmental concern, see the Site Remediation Reform Act at N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:

i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the Department Hotline at 1-877-WARNDEP (1-877-927-6337);

ii. Hires an environmental professional, as defined in the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F-1.5, to respond to the emergency;

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iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;

iv. Implements all measures necessary to limit actual or potential, present, or future risk of exposure to humans or the environment to the contamination;

v. Notifies the Department of Environmental Protection when the emergency or immediate environmental concern has ended by calling the Department Hotline at 1-877-WARNDEP (1-877-927-6337);

vi. Restores the engineering control(s) to the pre-emergency conditions as soon as possible; and

vii. Submits to the Department of Environmental Protection, within 60 calendar days after completion of the restoration of the engineering control(s), a report including: (a) the nature and likely cause of the emergency; (b) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (c) the measures completed or implemented to restore the engineering control(s); and (d) any changes to the engineering control(s) or site operation and maintenance plan to prevent recurrence of such conditions in the future.

7. TERMINATION OF DEED NOTICE. This Deed Notice may be terminated only upon recording a Department-approved Termination of Deed Notice, available in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C Appendix C, with the office of the *[Insert as appropriate the County Clerk/Register of Deeds*

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and Mortgages] of *[Insert the name of the County]* County, New Jersey, expressly terminating this Deed Notice.

8. ACCESS. The Owner, and the subsequent owners, lessors, lessees, and operators agree to allow the Department, its agents, and its representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice, and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessors, lessees, and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners, lessors, and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

9. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed

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Notice, the Department may initiate one or more enforcement actions pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, and the Site Remediation Reform Act, N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11 and N.J.S.A. 58:10C.

10. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

11A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description - A tax map of lots and blocks as well as a metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

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iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

11B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map - A separate map for each restricted area that includes:

(A) As-built diagrams of any buildings, paved areas, or capped easements (for example, a sidewalk containing utilities) that function as engineering controls; and

(B) Designation of all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes the following:

(A) Sample location designation from Restricted Area map (Exhibit B-1);

(B) Sample elevation based upon mean sea level; and

(C) The remaining concentration of each contaminant at each sample location at each elevation.

iii. Exhibit B-3: Narrative Descriptions of the Engineering Control(s) as follows:

(A) Description of the engineering control(s);

(B) The objective of the engineering control(s); and

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(C) How the engineering control(s) is(are) intended to function.

12. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is an individual]

WITNESS: _____

[Signature]

[Print name below signature]

STATE OF *[State where document is executed]* SS.:

COUNTY OF *[County where document is executed]*

I certify that on _____, 20__, *[Name of Owner]* personally came before me, and this person acknowledged under oath, to my satisfaction, that this person *[or if more than one person, each person]*

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

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_____, Notary Public

[Print Name and Title]

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is a corporation]

ATTEST: *[Name of corporation]*

_____ **By** _____

[Print name and title]

[Signature]

STATE OF *[State where document is executed]* **SS.:**

COUNTY OF *[County where document is executed]*

I certify that on _____, 20__, *[Name of person executing document on behalf of Owner]* personally came before me, and this person acknowledged under oath, to my satisfaction, that:

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(a) this person is the [*Pick as applicable: secretary/assistant secretary*] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [*Pick as applicable: president/vice president*] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[*Signature*]

[*Print name and title of attesting witness*]

Signed and sworn before me on _____, 20__

_____, Notary Public

[*Print name and title*]