

Soil Remedial Action Permit Guidance Document

Contaminated Site Remediation &
Redevelopment Program

New Jersey Department of Environmental Protection



June 2024
Version 1.1

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I. Intended Use of Guidance Document

This guidance is designed to assist the person responsible for conducting the remediation (PRCR) to determine when a Soil Remedial Action Permit (RAP) Application should be submitted and by whom and to assist in navigating the Soil RAP process. This guidance will be used by many different people involved in the remediation of a contaminated site; such as permit applicants, permittees, Licensed Site Remediation Professionals (LSRPs), non-LSRP environmental consultants and other environmental professionals. Therefore, the generic term “investigator” will be used to refer to any person, including the remediating party itself, that uses this guidance to remediate a contaminated site on behalf of a remediating party.

In applying administrative guidance, the New Jersey Department of Environmental Protection (NJDEP or Department) recognizes that professional judgment may result in a range of interpretations on the applications of the guidance to site conditions. The deviations of this guidance should be documented in the submittal. This guidance is not intended to supersede any rule or regulation.

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II. Purpose

A Soil RAP is required when soil contamination exceeding the applicable Remediation Standards, N.J.A.C. 7:26D, specifically the Soil Remediation Standards (SRS), Soil Leachate Remediation Standards (SLRS), or an Alternative Remediation Standard (ARS) for soil or soil leachate, remains after the remedial action has been completed pursuant to N.J.A.C. 7:26C-7.5. In addition, even if there is no exceedance of the ARS, a Soil RAP is required when an ARS for soil is developed and approved by the Department in accordance with N.J.A.C. 7:26D, Appendix 6 II, III(a), and III(b)1 and 3; III(b)4 and Appendix 7 II, III(a),

III(b)1iv, and III(b)3 due to specific site or Area of Concern (AOC) conditions (e.g., if the site conditions require a change in exposure frequency, depth of contamination, or vegetative cover from the default values, then there will need to be an institutional control and associated Soil RAP in place to ensure that these conditions are met such that people are not exposed more frequently than the conditions of the ARS, or that clean soil is not removed changing the depth of contamination from those used to calculate the ARS, or that the vegetative cover is not maintained at the level specified in the ARS). The post-remediation site conditions must be protective of public health and safety and of the environment. All Soil RAPs include a Deed Notice or a Notice in Lieu of Deed Notice, and an engineering control(s) may or may not be required. A Soil RAP that has an engineering control will require Financial Assurance (FA) if there is no exemption (see Section VII below).

Note that a Soil RAP is not needed when soil concentrations remain above the applicable remediation standard at individual sampling locations and soil has been demonstrated to have achieved compliance in accordance with the Department's Technical Guidance for the Attainment of Remediation Standards and Site-Specific Criteria.

In addition to reading this document, read the instructions for the Soil RAP Application forms (<https://dep.nj.gov/srp/forms/>) prior to submitting a Soil RAP Application. Be advised that all RAP Application forms have an "Other Information Provided" section that can be used for professional judgment justification, compliance averaging, variances from rules/guidance, etc.

III. When to Submit a Soil Remedial Action Permit Application

The Soil RAP Application can be submitted once a soil remedial action has been implemented and determined to be protective as follows:

1. Pursuant to N.J.A.C. 7:26E-4.2(a), all soil contamination has been horizontally and vertically delineated to the applicable remediation standard. Be advised that modeling/extrapolation of the soil contamination is not acceptable at the conclusion of the remedial action; as indicated in Section V of the Department's Policy Statement: Interpretation of Technical Requirements for Site Remediation requirement to "complete the remedial investigation", delineation must be established through collection of actual soil samples;
2. Pursuant to N.J.A.C. 7:26E-5.1(e), all free and/or residual product in soil has been treated, removed, and/or contained to the extent practicable. **Note that Extractable Petroleum Hydrocarbons (EPH) concentrations greater than the free product threshold are considered free product as referenced in the Department's Evaluation of Extractable Petroleum Hydrocarbons (EPH) in Soil Technical Guidance document for petroleum discharges.** This guidance document states a Soil RAP that includes both institutional controls and engineering controls is required for a site where the EPH concentration exceeds the default product limits, an AOC specific alternative product limit or the EPH ceiling limit, as applicable, and it is impracticable to remove or treat the EPH product;
3. The engineering control(s), if required, has been completed and is in place at the site. Refer to Section V below for additional information on engineering controls;
4. The Deed Notice has been filed with the appropriate county or the Notice in Lieu of Deed Notice notification letters have been sent by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3 pursuant to N.J.A.C. 7:26C-7.6(b)1. Refer to Sections VI and XV below for additional information on Deed Notices and Notice in Lieu of Deed Notices; and

5. FA, if required, has been established for the operation, maintenance, and monitoring of any engineering control(s) necessary for the duration the engineering control(s). If it is determined that the engineering control(s) will be in place in perpetuity, then this time period equates to a rolling 30-year period that FA will be required. Refer to Section VII below for additional information on FA.

Note that variances from a technical requirement or deviation from guidance must be documented and adequately supported with data or other information in the RAR or the “Other information” Section of the Soil RAP Application. The procedures for a person to vary from the technical requirements in regulation are outlined in N.J.A.C. 7:26E-1.7.

LSRP Retention:

All required RAPs must be issued by the Department prior to the LSRP issuance of the Response Action Outcome (RAO) pursuant to N.J.A.C. 7:26C-Appendix D. A LSRP shall be retained to manage, supervise, or perform the requirements of the RAP for the duration of the RAP pursuant to N.J.S.A. 58:10C-19. Note that all permittees are required to comply with the RAP; however, the Department will contact the permittee with “Primary Contact for Permit Compliance” as indicated on the Soil RAP Application first for initial compliance issues with the RAP followed by contact with other permittees as necessary.

The Department considers the LSRP who submits the RAP Application to be the LSRP retained for the RAP after the RAO is issued. If the LSRP is dismissed or dismisses him/herself for the RAP any time after the issuance of the RAO, then the LSRP shall submit the Licensed Site Remediation Professional Notification of Retention or Dismissal Form online and the permittee shall retain another LSRP within 45 days pursuant to N.J.A.C. 7:26C-2.3. A permittee that fails to retain a new LSRP within 45 days will be deemed out of compliance and subject to potential enforcement actions.

Note: Certain Traditional Oversight Cases do not require retention of a LSRP pursuant to N.J.A.C. 7:26C-2.3(a). For Traditional Oversight Cases, contact the Bureau of Case Management (BCM) at (609) 633-1455 to determine if a Soil RAP and LSRP are required for those cases.

IV. Permittees

1. Permittees for a Soil RAP include, but are not limited to:
 - a. PRCR; this includes any person who has received a conditional No Further Action (NFA) Letter;
 - b. Statutory permittee;
 - c. Owner and operator of an underground storage tank facility;
 - d. Owner and operator of an industrial establishment;
 - e. Any person in any way responsible for a discharge; and
 - f. Any other person that will be assuming responsibility for permit compliance, such as operators or tenants.

Note: See N.J.A.C. 7:26C-2.2 and 7.4 for the full list.

2. If there is more than one permittee pursuant to above, each person, as a co-permittee, is jointly and severally liable for:
 - a. Compliance with the conditions of a RAP pursuant to N.J.A.C. 7:26C-7.7 and 7.8;
 - b. Payment of all RAP fees pursuant to N.J.A.C. 7:26C-4;
 - c. Payment of penalties for violations of a RAP pursuant to N.J.A.C. 7:26C-9; and
 - d. Maintenance of FA for engineering controls pursuant to N.J.A.C. 7:26C-7.10.
3. Once the Soil RAP has been issued, the PRCR can only be changed/modified if the responsible entity no longer exists and documentation is submitted. If the contact information (contact name, phone number, and email address) for the PRCR needs to be updated, use the RAP Contact Information Change form (available at <https://dep.nj.gov/srp/forms/>). Additional permittees may be added to a RAP at any time by submitting a Soil RAP Modification Application (Addendum A).
4. Frequently Asked Questions (FAQs) Regarding Permittee Documentation for Soil RAP Application:
 - a. PRCR No Longer Exists: If a PRCR cannot be found for a Soil RAP Initial or Modification Application, then document a good faith effort to locate the PRCR who received the NFA letter or RAO; this includes but is not limited to, the use of certified letters, business databases, phone logs, and internet searches.

If the PRCR who received the NFA letter or RAO no longer exists, provide appropriate documentation; this includes but is not limited to, bankruptcy court filings (e.g., Notices of Discharge, approved Chapter 11 plans, etc.), and business database printouts. If it is documented that the PRCR is not a viable entity, then the Department will not include that entity as permittee on the Soil RAP.
 - b. Signatures: Prior to the submission of a Soil RAP Application, there may be circumstances where a signature cannot be obtained. In these situations, a copy of the completed permit application excluding the signature should be provided to the entity whose signature that cannot be obtained. A copy of the letter transmitting the permit application to the missing entity must be included with the application submitted to the Department. The Department will then put the entity as a permittee on the Soil RAP in accordance with N.J.A.C. 7:26C-7.
 - c. Contact Information: All contact information provided in the Soil RAP Application should be for the PRCR and current property owner, not the agent/person with power of attorney to sign this application on behalf of the PRCR and current property owner. "Care of" (C/O) is not acceptable unless it is for a special circumstance (e.g., condo association, or person requiring special assistance); if this is the case, then explain why and provide additional documentation as necessary.
 - d. Property Owner/Tax Database: Verify the property owner's name and address via checking the tax database. The Department uses the following tax databases to cross-check the submittal: etaxmaps.com and http://tax1.co.monmouth.nj.us/cgi-bin/prc6.cgi?district=1301&ms_user=monm. If there is a discrepancy from what is in these tax databases, then provide an explanation in Section K (Other Information) of the Soil RAP Application.

V. Engineering Controls/Caps

Pursuant to N.J.A.C. 7:26E-1.8, “an engineering control means any physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. An engineering control may include, without limitation a cap, cover, building, dike, trench, leachate collection system, fence, physical access control, and ground water containment system including, without limitation, a slurry wall and a ground water pumping system.” The simplest definition of a cap is a barrier located over contaminated media that mitigates exposure to potential receptors. As with any selected remedial action, the capping remedy must be protective of public health and safety and of the environment. Typically, such protection is provided by interrupting an exposure pathway or by exerting control of contaminant movement.

Refer to the Department’s Technical Guidance on the Capping of Sites Undergoing Remediation, Capping of Volatile Contaminants for the Impact to Ground Water Pathway [currently known as the Migration to Ground Water (MGW) Exposure Pathway], Capping of Inorganic and Semi-Volatile Contaminants for the Impact to Ground Water Pathway (currently known as the MGW Exposure Pathway), and the Presumptive and Alternative Remedy Technical Guidance prior to the selection/completion of the engineering control(s)/cap(s) at the site. Be advised that N.J.A.C. 7:26E-5.3 has specific remedial action requirements that must be in place for soil contamination at residences, schools, and childcare centers. **All alternative remedies for a Residence, School, or Child Care Center must be approved by the Department pursuant to N.J.A.C. 7:26E- 5.3.**

Regardless of the engineering control/cap construction (material and thickness), the protectiveness of the engineering control/cap needs to be demonstrated in the soil Remedial Action Report (RAR). All documentation for the engineering controls/caps should include multiple lines of evidence and design considerations (i.e., Professional Engineer (PE) design/professional opinion) as necessary to support the independent professional judgment of the LSRP and any deviations from guidance, including the Technical Guidance on the Capping of Sites Undergoing Remediation. **For hardscape engineering controls/caps at non-residential sites, which are not addressed by the Technical Guidance on the Capping of Sites Undergoing Remediation, anything less than 8 inches of hardscape (asphalt or concrete with permeable material sub-base) should include the LSRP’s technical basis for concluding that the remedy is protective. The Department typically receives and approves Soil RAP Applications that include a total of 8 inches of hardscape based on high vehicular traffic areas. Specifically, explain how the proposed engineering control/cap is suitable for the intended site use and will be durable with normal site conditions and routine operation and maintenance.** Note that just providing the information required in Exhibit C of the Deed Notice or the Notice in Lieu of Deed Notice is not sufficient.

Be advised that recommended engineering control/cap criteria for soil contamination at a non-residential site may not be appropriate for certain types of sites (e.g., sites with high soil contaminant levels remaining, sites with certain contaminants of concern such as hexavalent chrome and PCBs, sensitive receptors in the vicinity of the site). During engineering control/cap design and selection, it is advisable to account for the concentrations of remaining contaminants with respect to all exposure pathways and current and future land use.

When a fence is being used as an engineering control for the Soil RAP/Deed Notice, a minimum of one sign should be placed visible to the public at a location(s) sufficient to notify the public of the access restriction to the site. The location(s) of the sign(s) should be described in the submittal and/or provided on a map. The following language is recommended to be on all signs (post-remedial action):

NOTICE
Soil Remedial Action Permit Site – Restricted Access
NJDEP Site Name:
NJDEP PI#:
PRCR/LSRP Name:
Choice of Contact Information (PRCR or LSRP) (phone, email, or website)
Posted Date:

Notes:

- i. An engineering control(s)/cap(s) is not required for a non-residential property when soil contamination remains above the Residential remediation standards, but below the Non-Residential remediation standards, and the SLRS, SRS, or ARS for the MGW Exposure Pathway has been evaluated and is not a concern.
- ii. PCBs: Toxic Substances Control Act (TSCA) subject sites should use EPA/Department engineering control/cap criteria in lieu of the above (<https://dep.nj.gov/wp-content/uploads/srp/pcbremediation.pdf>).
- iii. The Department is required to inspect all sites with an engineering control/cap every five years pursuant to N.J.S.A. 58:10B-13g.
- iv. Be advised that vapor mitigation systems that have been installed as a result of ground water contamination should be included in the Ground Water RAP for the site. Contact the Bureau of Remedial Action Permitting (BRAP) at (609) 984-2990 for questions regarding vapor mitigation systems that have been installed as a result of soil contamination.

VI. Preparing a Deed Notice

The following items should be noted when preparing a Deed Notice:

1. A Deed Notice must follow the exact wording of the Model Deed Notice document pursuant to N.J.A.C. 7:26C-7.2(a)1. Site specific information should be included within the Exhibits of the Model Deed Notice document.
2. Check block and lot numbers to ensure that the current block and lot numbers in a Deed Notice are being used. The Department uses the following tax databases to cross-check the submittal: etaxmaps.com and http://tax1.co.monmouth.nj.us/cgi-bin/prc6.cgi?district=1301&ms_user=monm. If there is a discrepancy from what is in the above databases, then provide an explanation in the Soil RAP Application and/or the Deed Notice Termination form.
3. Exhibits must contain **legible** maps, site diagrams, and tables. One suggestion is to use multiple site maps with a key sheet for large sites so the extent of soil contamination can be easily identified, other options may be acceptable.

Note: See Section XV below for how to prepare a Notice in Lieu of Deed Notice.

VII. Financial Assurance

FA is required if the remedial action includes an engineering control as defined in N.J.A.C. 7:26E-1.8. Refer to Section V above for additional information on engineering controls. For Soil RAPs, this generally includes the capping mechanism for the area where soils exceed the Non-Residential remediation standards. If the remedial action does not include an engineering control, then FA is not required for the Soil RAP.

1. When FA is Required:

FA must be established and submitted with the Soil RAP Application unless all permittees are exempt from establishing FA pursuant to N.J.A.C. 7:26C-7.10(c). If one or more permittees is required to establish FA, and one or more of the permittees is exempt from this requirement, the non-exempt permittee(s) shall have the requirement to establish the full amount of the FA required. The following persons do not have an obligation to establish FA:

- a. A government entity (e.g., Departments, Agencies, and public universities);
- b. A person who is not otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, who purchased a contaminated site prior to May 7, 2009, and is remediating, or has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g.d;
- c. A person who undertakes remediation at their primary or secondary residence;
- d. The owner or operator of a childcare center who performs remediation at the licensed childcare center;
- e. The PRCR at a public school, private school, or charter school (i.e., K through 12); and
- f. The owner or operator of a small business who is responsible for performing a remediation at his or her business property. N.J.A.C. 7:26C-1.3 defines a "Small Business" as a business entity that does not acquire property for development or redevelopment, and that, during the prior three tax years, employed not more than 50 full-time employees or the equivalent thereof, and qualifies as a small business concern within the meaning of the federal "Small Business Act," 15 U.S.C. section 631 et seq.

Note: The certification to any of the above claims as provided on the Soil RAP Application may require further documentation to prove that you meet one of these eligible entities.

A FA instrument is typically not required when the current property owner is a homeowner association or condominium association, and the association's annual budget includes the operation, maintenance, and monitoring of the engineering control(s) at the site [N.J.A.C. 7:26C-5.3(e)]. A copy of the association's annual budget that includes a separate line item identifying the appropriation of funds for the operation, maintenance, and monitoring of the engineering control should be provided with the Soil RAP Application and any subsequent Soil Remedial Action Protectiveness/Biennial Certification Forms submitted for the site. If the association is ever unable to meet this requirement, then the PRCR is required to establish the FA for the Soil RAP if they are not exempt pursuant to N.J.A.C. 7:26C-7.10(c).

If it is determined that FA must be established for the site, then a completed Remediation Cost Review and RFS-FA Form which describes how the LSRP estimated the amount of the FA should be submitted with the Soil RAP Application. This form can be found at

<https://dep.nj.gov/srp/forms/>. Attach the original FA instrument(s) if available or a copy if the person is using an existing Remediation Funding Source (RFS) instrument as FA.

2. FA Instruments:

The following financial instruments are acceptable as FA:

- a. A Remediation Trust Fund in accordance with N.J.A.C. 7:26C-5.4;
- b. An Environmental Insurance Policy in accordance with N.J.A.C. 7:26C-5.5*;
- c. A Line of Credit in accordance with N.J.A.C. 7:26C-5.6;
- d. A Letter of Credit in accordance with N.J.A.C. 7:26C-5.7; and
- e. A Surety Bond in accordance with N.J.S.A. 58:10C-19c(1).

Note: A Self-Guarantee is not acceptable as FA.

***Environmental Insurance Policy Requirements:** N.J.A.C. 7:26E-5.5 allows for an insurance policy to act as FA. Insurance policies are reviewed on a case-by-case basis for compliance with the requirements outlined in N.J.A.C. 7:26C-5.5. In general, insurance companies will not issue a new policy for this purpose, but many sites are conducting remediation with funds from a pre-existing insurance policy. In such cases, the older policy often does not meet the requirement of N.J.A.C. 7:26E-5.5(a)7 (i.e., that the Department be listed as the insured). The policy itself must be changed or an official rider added to the policy to add the Department as an additional insured. Also, there must not be any deductibles or exclusions. The willingness of insurance companies to update a policy to meet the requirements varies widely in the industry. If the insurance company is not willing to change the policy, then another financial instrument must be used.

Refer to the “Remediation Funding Source (RFS) and Financial Assurance (FA) Guidance” for model FA documents at <https://dep.nj.gov/srp/guidance/rfs-guide/>; scroll down to the FA documents for the correct models. **Using the RFS models is incorrect.**

3. Calculating FA:

The investigator is responsible for determining the amount of funds needed to operate, maintain, and monitor the engineering control(s) at the site, including permit fees, for as long as the engineering control(s) are needed, up to thirty (30) years (minimum of \$30,000 for a 30-year period) pursuant to N.J.A.C. 7:26C-5.2(e) and 7.10.

The costs are evaluated over the duration that the engineering control will be in place. For a small site with simple engineering controls (e.g., parking lot), the minimum calculation would be \$30,000. For larger sites or sites with more complicated controls (e.g., low permeability caps), the cost may be higher. For complicated sites, commercially available software may be used to calculate FA (e.g., RACER, Cost Pro).

4. Present Value Calculation:

The investigator may elect to use a Present Value (PV) calculation and discount rate to determine the amount of FA to be established. The Department requires that all assumptions for the calculation be disclosed, and justification/explanation of the applied assumptions be provided.

A published rate (e.g., the most recent Nominal or Real Discount rates from Appendix C of the Office of Management and Budget (OMB) Circular No. A-94) may be used as an approximate discount rate. This OMB Circular No. A-94 Appendix C provides different rates for periods of 3

years, 5 years, 7 years, 10 years, 20 years, and 30 years.

For a permanent soil engineering control, the rate should be based on 30 years. For non-permanent engineering controls, the discount rate corresponding to the appropriate time period may be used.

PV uses the estimated interest over 30 years to reduce the amount of FA to be posted. The “discount rate” is the average rate of interest expected over the 30-year period.

Example:

The investigator concludes that the minimum \$30,000 should be sufficient for a site. The investigator is using a trust fund as the FA for the site. The investigator contacts the trust fund trustee to determine the interest rate. The trustee says the interest rate is 1.36% for the firm’s account. The investigator uses the following formula:

$$\text{\$ amount to be posted} = \text{Original FA Value} / (\text{discount rate})^{30}$$

$$\text{\$(amount to be posted)} = \$30,000 / (1.0136)^{30}$$

The amount to be posted for FA is \$20,000.

The investigator instructs the permit applicant and the trustee to use the FA model Remediation Trust Fund Agreement and establish a trust fund for \$20,000. The investigator submits the trust fund agreement, calculations, and justification attached to a Remediation Cost Review and RFS/FA Form with the Soil RAP Application.

Be advised that, if PV calculations are used, the Department may draw down on the FA at any time.

5. Using Part of an Existing RFS Instrument as FA:

If an investigator is using an existing RFS instrument as the FA for the site, then all three of the following criteria must be met:

- a. The amount of funds needed to operate, maintain, and monitor the engineering control(s) at the site must be a minimum of \$30,000 for a 30-year time frame;
- b. The amount of the funds in the existing RFS is equal to the amount of the funds required to be posted for both RFS and FA; and
- c. The RFS is NOT in the form of a self-guarantee. If the RFS is in the form of a self-guarantee, you cannot use the existing RFS, but must obtain a separate financial mechanism for FA.

In this scenario, one instrument is maintained for both RFS and FA until all areas of concern have been remediated and a RAO can be issued for the case. Annual cost reviews and biennial certifications are required and must indicate “Using RFS as FA” under Section C of all of the Remediation Cost Review and RFS/FA Forms submitted.

6. Transitioning an Existing RFS Instrument to FA:

To transition an existing RFS instrument to FA, the following criteria must be met:

- a. The LSRP will be issuing a RAO (i.e., RAO-A for all areas of concern for the case or a RAO-E for the entire site) following the issuance of the RAP for which the RFS will be used as FA. In other words, there are no remaining areas of concern which require remediation at the site. If there are remaining areas of concern, RFS is still required, and the RFS cannot be transferred to BRAP;

- b. The amount of the funds in the RFS instrument is equal to the amount of the funds required to be posted for FA at the time the Soil RAP Application is submitted. If the amount of the funds in the RFS is either greater than or less than the amount required for FA, the person must follow the requirements at N.J.A.C. 7:26C-5.11 to either increase or decrease the funds PRIOR TO the submission of the Soil RAP Application; and
- c. The RFS is NOT in the form of a self-guarantee or line of credit. If the RFS is in the form of a self-guarantee or Line of Credit, the person cannot use the existing RFS, but must obtain a separate FA mechanism.

If an investigator is using an existing RFS as FA and had previously submitted the Remediation Cost Review and RFS-FA Form in order to adjust the amount of the RFS so that it is equal to the FA, the investigator may submit a copy of that form with the Soil RAP Application.

Also, the RFS Instrument (Letter of Credit, Remediation Trust Fund or Environmental Insurance Policy) must be changed from the RFS Model format to the FA Model format. For Letter of Credit, this will entail an amendment from the bank to change the language and/or amount. For a Remediation Trust Fund, the Trustee and Grantor may sign and submit an amendment to the Remediation Trust Fund Agreement for the Department to sign (for most agreements, Section 16 allows this). Lines of Credit may not be amended, and new Line of Credit agreements must be submitted.

In general, transitioning a financial instrument from a Remediation Funding Source to FA is not a simple process, and it may be easier to submit a new financial instrument and request release of the RFS once the RAO is issued.

7. Change in FA instrument:

If there is a change in the type of FA, then the Department will not authorize the release of an existing FA instrument until a new FA instrument is established and approved pursuant to N.J.A.C. 7:26C-5.11. The change of the FA instrument type is not considered a modification to the Soil RAP; however, if a Letter of Credit is replaced by a different financial instrument type, then annual valuation requirements will apply (even though they will not be in the Permit Schedule table in the permit). A Remediation Cost Review and RFS/FA Form is required to document any FA instrument change; it is recommended that the Remediation Cost Review and RFS/FA Form be submitted with the next Soil Remedial Action Protectiveness/Biennial Certification Form due for the site to support the change in the FA instrument. Note changing from one FA mechanism type to a new FA mechanism of the same type (i.e., Letter of Credit to a new Letter of Credit) is still considered a Change in FA instrument and requires a Remediation Cost Review and RFS/FA Form as noted above.

8. Change in FA amount:

There are instances in which the amount of FA might change (e.g., change in engineering control). When the amount of FA decreases, Department pre-approval is needed pursuant to N.J.A.C. 7:26C-5.11(b). When the amount of FA increases, then Department pre-approval is not needed pursuant to N.J.A.C. 7:26C-5.11(c). To implement any change in FA, submit the following:

- a. Remediation Cost Review and RFS/FA Form; it is recommended that the Remediation Cost Review and RFS/FA Form be submitted with the Soil Remedial Action Protectiveness/Biennial Certification Form due for the site to support the change in the FA amount;

- b. Cost estimates, calculations, and rationale; and
- c. New financial instrument or amendment to existing financial instrument. In cases where a bank insists on sending the instrument or amendment directly, attach a copy. Ensure that the bank is sending to the correct address and that the bank is using the PI# on the instruments or amendments. If it is discovered that the bank used the wrong address or did not use the PI#, notify the Department.

9. Disbursements from FA Instruments:

There is some confusion caused by N.J.A.C. 7:26C-7.10(f), which suggests that permittees may draw down on FA. Only the Department may draw down on FA, and the Department may do so when the permittee has failed to comply with the Soil RAP requirements.

FA must be maintained for the duration of the Soil RAP so any disbursement from a FA instrument would require an immediate increase to the FA back to the original amount.

10. Using one FA Instrument for different Program Interest (PI) #s or permit types:

It is acceptable to post one financial instrument for the total FA for two or more RAPs. Be advised that if the Department needs to draw down on FA for one of the RAPs, the Department will draw the entire amount, not just the amount that applies to the non-compliant RAP. FA will have to be re-established for the other RAPs.

11. Using more than one FA instrument:

It is acceptable to use more than one financial instrument to post FA.

VIII. Establishing Inspection/Monitoring Schedules for the Soil Remedial Action Permit

1. Institutional Controls Only:

The potential change in site use needs to be evaluated for all Deed Notices to remain protective of public health and safety and of the environment. For example, this could be verified every year through inspection or evaluation of tax records.

2. Engineering Controls/Caps:

The investigator will determine what monitoring is necessary to ensure the engineering control(s)/cap(s) remains protective of public health and safety and of the environment. At a minimum, the investigator should determine the frequency that an engineering control/cap needs to be inspected or monitored. The investigator can determine the monitoring parameters, frequency, and schedule.

For those sites where a Presumptive Remedy is required pursuant to N.J.A.C. 7:26E-5.3, refer to the referenced regulation and the Department's Presumptive and Alternative Remedy Technical Guidance to establish the monitoring frequency for engineering controls/caps. Be advised that N.J.A.C. 7:26E-5.3 has specific remedial action requirements that must be in place for soil contamination at residences, schools, and childcare centers.

3. Inspection/Monitoring Frequency:

For those sites where a Presumptive Remedy is not required, the investigator will determine what inspection/monitoring frequency is necessary to ensure the engineering control(s)/cap(s) remains protective of public health and safety and of the environment. Relative to the engineering

control/cap monitoring frequency, the investigator should consider the likelihood that damage or failure may occur, the anticipated mode of failure and the contaminant concentrations, construction details (e.g., surface slope, use of vegetation, profile thickness), site use (e.g., traffic conditions), and type of potential receptors.

All documentation for the inspection/monitoring frequency should include multiple lines of evidence as necessary to support the independent professional judgment of the LSRP. Note that just providing the information required in Exhibit C of the Deed Notice or the Notice in Lieu of Deed Notice is not sufficient.

The inspection frequency for different types of engineering controls/caps should reflect the degree of maintenance required for the engineering control to remain protective of public health and safety and of the environment. For example, an asphalt or concrete cap is recommended to be inspected every two years whereas fencing, low permeability caps to address the MGW exposure pathway, vegetative caps, or deviation from the Technical Guidance on the Capping of Sites Undergoing Remediation document is recommended to be inspected every year or more frequently. The technical justification used to establish the monitoring frequency should be provided in the RAR.

IX. Initial Soil Remedial Action Permit

1. The PRCR shall obtain an Initial Soil RAP for the following:
 - a. To support a conditional RAO;
 - b. To support a Post-NFA determination, the permit application will not be processed until all RAP annual fees and the Remedial Action Protectiveness/Biennial-Certification fee, including any past dues fees, have been paid in full;
 - c. Subdivision of the property subject to an existing Soil RAP unless the permit application is for a subdivision and the restricted area is limited to just one sub-divided parcel; or
 - d. For other reasons (e.g., pursuant to N.J.A.C. 7:26C-14.3 for chromate chemical production waste).
2. To apply for an Initial Soil RAP, the statutory permittee shall submit the following required items:
 - a. A hard copy *and* electronic copy the completed RAP Initial Application – Soil using the current form available at <https://dep.nj.gov/srp/forms/>. (N.J.A.C. 7:26C-7.5(b)1);
 - b. The applicable Soil RAP Application fee. (N.J.A.C. 7:26C-7.5(b)7);
 - c. An electronic copy of the Deed Notice that was recorded by the county officer responsible for recording deeds for each county in which the property is located (i.e., the stamped copy that has the instrument number or book and page numbers) or the Notice in Lieu of Deed Notice with the proof of sending the notification letters by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3 and the written agreement or formal resolution from the owner. All electronic copies of either document should include all associated attachments/exhibits that are submitted as a separate Adobe Portable Document Format (PDF) file. Note that a Deed Notice may include filings in more than one county. (N.J.A.C. 7:26C-7.5(b)2);

- d. A soil RAR, approved by either the Department or LSRP, that demonstrates the effectiveness of the soil remedial action. Submission of the RAR is now required through the online service (<https://dep.nj.gov/online/>) and should be submitted prior to submitting the Soil RAP Application. For Post-NFA cases, submit an electronic copy of the RAR and any other pertinent reports/letters (e.g., Remedial Action Workplan (RAW) Approval Letters). (N.J.A.C. 7:26C-7.5(b)4i);

The RAR shall meet the requirements of N.J.A.C. 7:26E-5.7(b), including a description of each AOC at the site, a summary table of all historic soil data collected for the site (make a clear distinction between what soil samples have been treated or removed and what remains at the site), a map(s) showing area of concern/source and showing and/or explaining horizontal and vertical delineation of the soil contamination, a summary table of the construction details for any engineering control(s)/cap(s), a discussion of vertical/horizontal delineation of the soil contamination at the site, and a detailed discussion of how ecological receptors were addressed;

- e. An electronic copy of each NFA letter the Department issued for the soil at the site, if applicable. (N.J.A.C. 7:26C-7.5(b)4ii);
- f. An electronic copy of the completed Remediation Cost Review and RFS/FA Form with a detailed cost estimate, if applicable. See Section VII above for further details on FA. (N.J.A.C. 7:26C-7.5(b)6); and
- g. A Geographic Information System (GIS) compatible map (shape file) showing the area covered by the Deed Notice or the Notice in Lieu of Deed Notice (email to srpgis_dn@dep.nj.gov). (N.J.A.C. 7:26C-7.2(a)2i).

Note: All electronic copies should be provided in Adobe PDF file format on a compact disc (CD). All the documents required below can be combined into a single Adobe PDF file with the exception of the filed Deed Notice or the Notice in Lieu of Deed Notice document, which must be a separate Adobe PDF file.

3. Once the Department issues a Soil RAP for a site, the permittees must:
 - a. Comply with all requirements in the Soil RAP including, but not limited to, performing all required operation, maintenance, and monitoring activities, paying required fees, and complying with any restrictions on the use of the property; and
 - b. Submit a completed Soil Remedial Action Protectiveness/Biennial Certification Form (available at <https://dep.nj.gov/srp/forms/>) biennially (every two years) as indicated by the Soil RAP Schedule. The form should be accompanied by inspection logs; photo-documentation; documentation of disturbance(s) and restoration of the engineering control(s) to original condition(s); and any other additional documentation necessary to demonstrate that the remedial action remains protective of public health and safety and of the environment. (N.J.A.C. 7:26C-7.7 and 7.8).

X. Soil Remedial Action Permit Modification

The Soil RAP Modification Application should be submitted immediately after completion of any of the changes listed below. (N.J.A.C. 7:26C-7.12(b)).

1. The permittee(s) shall apply for a modification of the Soil RAP when any of the following occur:
 - a. Change in institutional control pursuant to N.J.A.C. 7:26C-7.12(b)1*;
 - b. Change in engineering control pursuant to N.J.A.C. 7:26C-7.12(b)2*;
 - c. Permittee address change pursuant to N.J.A.C. 7:26C-7.12(b)3;
 - d. Adding an Additional PRCR to the Soil RAP; or
 - e. Any other reason in accordance with N.J.A.C. 7:26C-7.12(c).
- * If you are changing the institutional and/or engineering control(s), see the Deed Notice Termination Section XIII below.

Note: The temporary disturbance of an engineering control(s) where the engineering control(s) is returned to pre-disturbance conditions within 60 days does not require a Soil RAP Modification Application; note that the August 2018 revisions to N.J.A.C. 7:26C removed the requirement to notify the NJDEP Hotline for a disturbance to a Deed Notice from the Model Deed Notice document (Appendix B). These activities should be reported with the submission of the Soil Remedial Action Protectiveness/Biennial Certification Form.

2. To apply for a Soil RAP Modification, submit the following required items:
 - a. A hard and electronic copy of the completed RAP Modification Application – Soil using the current form available at <https://dep.nj.gov/srp/forms/>. (N.J.A.C. 7:26C-7.5(b)1);
 - b. The applicable Soil RAP Application fee. (N.J.A.C. 7:26C-7.5(b)7);
 - c. A cover letter/report explaining the reason(s) for the Soil RAP Modification Application. (N.J.A.C. 7:26C-7.5(b)1);
 - d. An electronic copy of the Deed Notice that was recorded by the county officer responsible for recording deeds for each county in which the property is located (i.e., the stamped copy that has the instrument number or book and page numbers) or the Notice in Lieu of Deed Notice with the proof of sending the notification letters by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3 and the written agreement or formal resolution from the owner. All electronic copies of either document should include all associated attachments/exhibits that are submitted as a separate Adobe PDF file. Note that your Deed Notice may include filings in more than one county. (N.J.A.C. 7:26C-7.5(b)2);
 - e. An electronic copy of the completed Remediation Cost Review and RFS/FA Form with a detailed cost estimate, if applicable. See Section VII above for further details on FA. (N.J.A.C. 7:26C-7.5(b)6); and
 - f. A GIS compatible map (shape file) showing the area covered by the Deed Notice or the Notice in Lieu of Deed Notice (email to srpgis_dn@dep.nj.gov), if applicable. (N.J.A.C. 7:26C-7.3(c)1).

Notes:

- i. All electronic copies should be provided in Adobe PDF file format on a CD. All the documents required in subsection X.2 immediately above can be combined into a single Adobe PDF file with the exception of the filed Deed Notice or the Notice in Lieu of Deed Notice document, which must be a separate Adobe PDF file.
- ii. The Soil RAP Modification Application may not be processed until all RAP annual fees, including any past due fees, have been paid in full, and all previously required RAP Applications have been submitted.
- iii. It is not acceptable to correct, modify, supplement, or amend a Deed Notice associated with a Soil RAP. Any change to a Deed Notice requires the Deed Notice to be Terminated and a new Deed Notice filed. See the Deed Notice Termination Section XIII below for additional information.
- iv. The PRCR that is currently identified on a RAP can only be changed/modified if that entity no longer exists and appropriate documentation is submitted to the Department supporting that conclusion. See Section IV.4.a above for what is appropriate documentation. If it is documented that the PRCR is not a viable entity, then the Department will not include that entity as a permittee on the Soil RAP.

XI. Soil Remedial Action Permit – Transfer/Change of Property Ownership

The permittee(s) shall submit to the Department a RAP Transfer/Change of Property Ownership Application form (available at <https://dep.nj.gov/srp/forms/>) with the applicable fee within 60 days after the sale or transfer of the property pursuant to N.J.A.C. 7:26C-7.11.

1. To apply for a RAP Transfer/Change of Property Ownership Application, submit the following required items:
 - a. A hard and electronic copy of the completed RAP Transfer/Change of Property Ownership Application using the current form available at <https://dep.nj.gov/srp/forms/>. (N.J.A.C. 7:26C-7.11(c));
 - b. The applicable Soil RAP Application fee. (N.J.A.C. 7:26C-7.5(b)7); and
 - c. An electronic copy of the completed Remediation Cost Review and RFS/FA Form with a detailed cost estimate, if applicable. See Section VII above for further details on FA. (N.J.A.C. 7:26C-7.10 and 7.11(c)5iii).

Notes:

- i. All electronic copies should be provided in Adobe PDF file format on a CD.
- ii. The new property owner must sign on as a co-permittee before the former owner is removed from the permit. Any FA that was established by the former property owner will not be released until a new form is established and in place.
- iii. The RAP Transfer/Change of Property Ownership Application may not be processed until all RAP annual fees have been paid in full, including any past due fees, and all previously required RAP Applications have been submitted (e.g., the PRCR or interim owner(s) should have submitted a modification or transfer application).
- iv. If the contact information (contact name, phone number, and email address) for the PRCR needs

to be updated, use the RAP Contact Information Change form (available at <https://dep.nj.gov/srp/forms/>).

- v. Contact BRAP at (609) 984-2990 with any questions on the transfer of the operation of the property or termination of a lease as the RAP Transfer/Change of Property Ownership Application form does not specifically address these scenarios.

XII. Soil Remedial Action Permit Contact Information Change

1. The permittee(s) shall submit to the Department a RAP Contact Information Change Form (available at <https://dep.nj.gov/srp/forms/>) to make the following free administrative changes to a Soil RAP:
 - a. To change the fee billing contact person/information for a Soil RAP;
 - b. To change the contact information (contact person, phone number, and email address) only for the PRCR and the Property Owner currently identified on the Soil RAP; and
 - c. To change the co-permittee designated as the Primary Contact for Permit Compliance; see Section III above for an explanation of the designation of Primary Contact for Permit Compliance.
2. To apply for a RAP Contact Information Change, submit a hard and electronic copy of the completed RAP Contact Information Change Form using the current form available at <https://dep.nj.gov/srp/forms/>.

Notes:

- i. All electronic copies should be provided in Adobe PDF file format on a CD.
- ii. These administrative updates will be made in our computer database (NJEMS) for the Soil RAP only and the Department will not be issuing a revised Soil RAP for the site.
- iii. To make changes in the address of the PRCR or the Property Owner, the permittee(s) must submit a Soil RAP Modification Application (available at <https://dep.nj.gov/srp/forms/>) to modify the Soil RAP pursuant to N.J.A.C. 7:26C-7.12(b)3.
- iv. The PRCR that is currently identified on a Soil RAP can only be changed/modified if the responsible entity no longer exists and appropriate documentation is submitted to the Department supporting that conclusion. See Section IV.4.a above for what is appropriate documentation. If it is documented that the PRCR is not a viable entity, then the Department will not include that entity as a permittee on the Soil RAP. This situation would require the submission of a Soil RAP Modification Application to modify the Soil RAP.

XIII. Deed Notice Termination

1. A Deed Notice Termination Form should be submitted to the Department when the any of the following occur:
 - a. Site remediated to the applicable remediation standard (e.g., remediation after the initial Deed Notice was filed) (N.J.A.C. 7:26C-7.13(a));
 - b. Compliance Option/Attainment Method or Alternate Remediation Standard developed that requires a change to the original Deed Notice;

- c. Change in promulgated remediation standards that requires a change to the original Deed Notice;
 - d. Change in institutional and/or engineering control (e.g., physical change in the construction of the engineering control);
 - e. Subdivision. (N.J.A.C. 7:26C-7.13(c)); or
 - f. Other - provide reason (e.g., change in site boundaries due to eminent domain).
2. To request the Termination of Deed Notice, the following items should be submitted:
- a. A hard and electronic copy of the completed Termination of Deed Notice Form using the current form available at <https://dep.nj.gov/srp/forms/>;
 - b. A hard and electronic copy of the cover letter summarizing the request for the Deed Notice termination; and
 - c. A hard copy with original signatures of the Deed Notice Termination document to be filed;

Note: Leave the NJDEP signature certification sections blank (_____), these are the bracketed/italicized areas: [*Month, day, year*], [*Insert name of person executing document on behalf of the New Jersey Department of Environmental Protection*], [*insert title*], and [*title*]. Also, leave blank the [*month, day, year*] for “The Department approved the request by way of letter dated...” in Section 3 of the Model Termination of Deed Notice;
 - d. An electronic copy of the Deed Notice Termination document to be filed;
 - e. An electronic copy of the Filed Deed Notice document to be terminated with Book and Page Numbers or instrument number or both as appropriate; and
 - f. An electronic copy of the RAR or other documents supporting the termination of the Deed Notice. A new RAR should be submitted when a different attainment method is used or new information/data (e.g., post-excavation soil sampling) was obtained for the site. The Original RAR may be submitted if it supports the Deed Notice termination. Any administrative changes/other supporting information should be discussed in the cover letter required above.

Notes:

- i. All electronic copies should be provided in Adobe PDF file format on a CD.
- ii. The Deed Notice Termination Form may not be processed until all RAP annual fees and the Remedial Action Protectiveness/Biennial-Certification fee (if applicable - Post- NFA Cases), including any past due fees, have been paid in full. See the Post-No Further Action Compliance Notice for Post-NFA cases requiring remedial action permits, which can be found at: https://dep.nj.gov/wp-content/uploads/srp/post_nfa_compliance_notice.pdf.
- iii. See Appendix 1 for the procedures for terminating a Deed Notice.
- iv. See Section XV below for the procedure for terminating a Notice in Lieu of Deed Notice. Contact BRAP at (609) 984-2990 with any questions on terminating a Notice in Lieu of Deed Notice as the Deed Notice Termination Form does not specifically address this scenario.

XIV. Termination of a Soil Remedial Action Permit:

Once the Deed Notice has been terminated, in accordance with Section XIII above, then submit a Soil RAP Termination Application.

If this Soil RAP Termination Application is due to a subdivision of a restricted area already under a Soil RAP, then new Initial Soil RAP Applications must also be submitted for the newly sub-divided parcels in accordance with N.J.A.C. 7:26C- 7.2(d).

If consolidating multiple Soil RAPs on contiguous properties under common ownership, then contact BRAP at (609) 984-2990.

1. To apply for a Soil RAP Termination, submit the following items:
 - a. A hard and electronic copy of the completed Soil RAP Termination Application Form using the current form available at <https://dep.nj.gov/srp/forms/>. (N.J.A.C. 7:26C-7.5(b)1);
 - b. The applicable Soil RAP Application fee. (N.J.A.C. 7:26C-7.5(b)7);
 - c. A hard copy *and* electronic copy of the cover letter explaining the reason(s) for the Soil RAP Termination Application; and
 - d. An electronic copy of the Deed Notice Termination document that was recorded by the county officer responsible for recording deeds for each county in which the property is located (i.e., the stamped copy that has the instrument number or book and page numbers), or the proof that the notification letters were sent by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3 for the termination of the Notice In-Lieu of Deed Notice.

Notes:

- i. All electronic copies should be provided in Adobe PDF file format on a CD.
- ii. The Soil RAP Termination Application will not be processed until all RAP annual fees, including any past due fees, have been paid in full, and all previously required RAP Applications have been submitted.

XV. Notice in Lieu of Deed Notice

1. Establishment of a Notice in Lieu Deed Notice:

For sites where soil contamination extends onto a public roadway, utility easement, railway, or other right of way or property which does not have a deed associated with the land (hereinafter, “Non-Deed Property”), the PRCR shall prepare a Notice in Lieu of Deed Notice as required by N.J.A.C. 7:26C(b)(2) instead of filing a Deed Notice with the county. In these cases, the owner of the Non-Deed Property will be identified as the “owner” on the Soil RAP Application and the Soil RAP issued by the Department. The PRCR shall obtain the property owner's written consent to ensure that the property owner understands the nature of the remediation and the potential restrictions to which the property will be subject when the remediation is concluded in accordance with N.J.A.C. 7:26C-7.2(c)2. The steps to follow (not necessarily in order) are:

- a. Obtain a formal resolution or written agreement from the property owner accepting the Notice in Lieu of Deed Notice. If the entity is a municipality or county, obtain a formal resolution from the municipality or county pursuant to N.J.A.C. 7:26C-7.2(c)2. If the entity is a state or federal agency, obtain a written agreement from the state or federal agency pursuant to

N.J.A.C. 7:26C-7.2(c)2. The formal resolution or written agreement must contain the acceptance of the Notice in Lieu of Deed Notice and the Soil RAP. Model templates for a formal resolution and written agreement are located in Appendices 4 and 5, respectively. The formal resolution or written agreement should clearly indicate the Owner's acceptance of the Notice in Lieu of Deed Notice and Soil RAP and acknowledgement that each impose restrictions on the Property as stated therein. After the Soil RAP has been issued, the Department should be notified and provided with a copy of any changes made to the formal resolution or written agreement and the modified document should be included with the submission of the next Soil Remedial Action Protectiveness/Biennial Certification Form as well as any subsequent Soil RAP Modification Applications as necessary.

- b. Complete a Notice in Lieu of Deed Notice using the model in Appendix 2, including signatures by all parties. **Note that the Notice in Lieu of Deed Notice may be edited as necessary. It is recommended that BRAP be contacted at (609) 984-2990 prior to making any changes to the Notice in Lieu of Deed Notice.**
- c. Using the model in Appendix 3 (this is a cover letter with the exhibits of the Notice in Lieu of Deed Notice), send the notification letters by trackable submission (e.g., certified mail) to the following:
 - i. Each road department of each municipality in which the property is located;
 - ii. Each road department of each county in which the property is located;
 - iii. The New Jersey Department of Transportation;
 - iv. Each utility company with an easement on the roadway; and
 - v. All other parties specified in N.J.A.C. 7:26C-7.2(b)2 and 3.
- d. The completed Initial Soil RAP Application should be submitted with the Notice in Lieu of Deed Notice along with the proof of sending the notification letters by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3 and the written agreement or formal resolution from the owner. Put the date of the notification letter in the "Deed Notice filing date" field in Section G of the Soil RAP Application; the rest of the filing information in this section may be left blank.
- e. As part of the issuance of the Soil RAP by the Department, the permittee is required to comply with monitoring and maintenance (biennial certification and fees) required by the Notice in Lieu of Deed Notice.

2. Supersedence of a Notice in Lieu of Deed Notice:

- a. A Notice in Lieu of Deed Notice may not be modified, it may only be superseded by issuing a new Notice in Lieu of Deed Notice expressly superseding the prior Notice in Lieu of Deed Notice. See subsection XV.1 immediately above for the procedure for establishing a Notice in Lieu of Deed Notice.
- b. Submit a completed Soil RAP Modification Application with the new Notice in Lieu of Deed Notice along with the proof of sending the notification letters by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3 and the written agreement or formal resolution from the owner. Be advised that the written agreement or formal resolution should be reviewed to ensure that any changes for the proposed new Notice

in Lieu of Deed Notice are consistent with the provisions in the written agreement or formal resolution in place. The written agreement or formal resolution should be updated as necessary. Put the date of the notification letter in the “Deed Notice filing date” field in Section G of the Soil RAP Application; the rest of the filing information in this section may be left blank. See Section X above for the procedure for modifying a Soil RAP.

- c. As part of the issuance of the Soil RAP Modification by the Department, the permittee is required to comply with monitoring and maintenance (biennial certification and fees) required by the new Notice in Lieu of Deed Notice.

3. Termination of a Notice in Lieu of Deed Notice:

- a. A Notice in Lieu of Deed Notice may be terminated for the reasons listed in Section XIII.1 [except for item e (sub-division)].
- b. Use the Deed Notice Termination Form to terminate the Notice in Lieu of Deed Notice. Note that Sections F and J of the Deed Notice Termination Form do not need to be completed since this is for the termination of a Notice in Lieu of Deed Notice. An electronic copy of the RAR or other documents supporting the termination of the Notice in Lieu of Deed Notice should be provided with the Deed Notice Termination Form. A new RAR should be submitted when a different attainment method is used or new information/data (e.g., post-excavation soil sampling) was obtained for the site. The Original RAR may be submitted if it supports the Notice in Lieu of Deed Notice termination. Any administrative changes/other supporting information should be discussed in the cover letter required above.
- c. Once the Department has approved the Notice in Lieu of Deed Notice termination in writing, then send the notification letters by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3.
- d. Submit a completed Soil RAP Termination Application along with the proof that the notification letters were sent by trackable submission (e.g., certified mail) to the entities specified in N.J.A.C. 7:26C-7.2(b)2 and 3. Note that Sections F and J of the Soil RAP Termination Application do not need to be completed. See Section XIV above for the procedure for terminating a Soil RAP.

XVI. Potentially Applicable Guidance Documents

The below referenced potentially applicable guidance documents can be found at:

<https://dep.nj.gov/srp/guidance/>

1. Technical Guidance for Site Investigation of Soil, Remedial Investigation of Soil, and Remedial Action Verification Sampling for Soil
2. Technical Guidance for the Attainment of Remediation Standards and Site-Specific Criteria
3. Technical Guidance on the Capping of Sites Undergoing Remediation
4. Capping of Volatile Contaminants for the Impact to Ground Water Pathway (currently known as the MGW Exposure Pathway)
5. Capping of Inorganic and Semi-Volatile Contaminants for the Impact to Ground Water Pathway (currently known as the MGW Exposure Pathway)

6. Evaluation of Extractable Petroleum Hydrocarbons in Soil Technical Guidance
7. Fill Material Guidance for SRP Sites
8. Technical Guidance for Preparation and Submission of a Conceptual Site Model
9. NJDEP Policy Statement: Interpretation of Technical Requirements for Site Remediation requirement to “complete the remedial investigation”
10. Historic Fill Material Technical Guidance
11. Historically Applied Pesticide Technical Guidance
12. Administrative Guidance for Addressing Unknown Off-Site Sources of Contamination
13. Landfills Investigation Technical Guidance
14. Presumptive and Alternative Remedy Technical Guidance
15. Remedial Action Permit Requirements for RCRA GPRA 2020, CERCLA & Federal Facility Sites under Traditional DEP Oversight
16. Remediation Funding Source (RFS) Cost Guidance (including FA information)

Appendix 1

Procedure for Terminating a Deed Notice

1. Access the Model Termination of Deed Notice document from the NJDEP SRP home page in the forms section (<https://dep.nj.gov/srp/forms/>).
 - a. Delete paragraphs and signature sections that are not applicable and renumber.
 - b. Some information (date the Department approved the termination) should be left blank and will be filled in after receipt of the NJDEP termination approval letter. Leave blanks on the NJDEP signatures page for the signatures and delete name/month/day/title information in italics and leave blanks.
 - c. Complete the document and sign in original ink (signature, notary, witness).
2. Access the Termination of Deed Notice Form and instructions from the NJDEP SRP home page in the forms section.
3. Send the completed Termination of Deed Notice document with the Termination of Deed Notice Form to the NJDEP's Bureau of Case Assignment and Initial Notice (BCAIN) with a cover letter explaining why the termination is requested. Include any technical information (averaging data, change of standard) and/or RAR if additional remediation was undertaken.
4. The Termination of Deed Notice document will be signed and notarized by NJDEP representatives in original ink and returned with a NJDEP approval letter to the person designated in Section E of the Termination of Deed Notice Form.
5. File the completed NJDEP signed Model Termination of Deed Notice document and new Deed Notice, if applicable, with the County Clerk. It is strongly recommended that the Model Termination of Deed Notice document and new Deed Notice(s) be filed at the same time.

For a Post-NFA Case, send a copy of the filed Termination of Deed Notice document to the NJDEP personnel identified in the approval letter in an email attachment within 30 days of receipt from the County Clerk.

6. For a site with an existing Soil RAP, submit a completed Soil RAP Application (initial, modification, termination) as applicable for the site.

Note: It is not acceptable to correct, modify, supplement, or amend a Deed Notice associated with a Soil RAP. Any change to a Deed Notice requires a Deed Notice Termination and a new Deed Notice.

Appendix 2

Model Notice in Lieu of Deed Notice Example

Note that the Notice in Lieu of Deed Notice should be provided with the formal Resolution to be obtained by the Municipality or County and signed at that time as part of the resolution process.

Note that the Notice in Lieu of Deed Notice should be provided with the written agreement to be obtained by the State or Federal government agency (except for the Department of Defense) and signed at that time as part of the written agreement process.

MODEL NOTICE IN LIEU OF 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.

Prepared by: _____

[Signature]

[Print name below signature]

NOTICE IN LIEU OF DEED NOTICE

This Notice in Lieu of 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 as depicted on Exhibit B-1, the restricted area map below; [*Insert, as appropriate: 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. REMEDIATION.

i. [*Insert name of the Licensed Site Remediation Professional and LSRP License No. of the LSRP that approved this Notice in Lieu of Deed Notice*] has approved this Notice in Lieu of Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.

ii. N.J.A.C. 7:26C-7 requires the Owner, among other persons, to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.

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 at certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property. 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 Notice in Lieu of 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 operators of the Property of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Notice in Lieu of Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of 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 (the “Restricted Areas”); a narrative description of these restrictions is provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental officials.

5B. RESTRICTED LAND USES. The following statutory land use restrictions apply to the Restricted Areas:

i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(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 childcare facility, or public, private, or charter school without the Department’s prior written approval, unless a presumptive remedy is implemented; and

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 childcare facility.

[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 Notice in Lieu of 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 and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at <https://dep.nj.gov/srp/forms/> within 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. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at <https://dep.nj.gov/srp/forms/>, within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.

6B. SUCCESSORS AND ASSIGNS. This Notice in Lieu of 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 retaining a licensed site remediation professional. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.

iii. A soil remedial action permit modification is required for any permanent alteration, improvement, or disturbance 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) A Remedial Action Workplan or Linear Construction Project notification and Final Report Form, whichever is applicable;

(B) A Remedial Action Report, if applicable; and

(C) A revised Notice in Lieu of 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 Notice in Lieu of Deed Notice, and the owner, lessee, or operator complies with the following:

(A) Restores any disturbance of an engineering control to pre-disturbance conditions within 60 calendar days after the initiation of the alteration, improvement or disturbance;

(B) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(C) Ensures that human exposure to contamination in excess of the remediation standards does not occur; and

(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, 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. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- ii. Hires a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;
- 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 DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- vi. Restores the engineering control 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, 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; and (d) any changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.

8. SUPERSEDEANCE OR TERMINATION OF NOTICE IN LIEU OF DEED NOTICE.

i. This Notice in Lieu of Deed Notice may be superseded only upon issuing a revised Notice in Lieu of Deed Notice expressly superseding this Notice in Lieu of Deed Notice. The Soil RAP Modification Application with the revised Notice in Lieu of Deed Notice should be submitted immediately after completing the needed changes or remedial action pursuant to N.J.A.C. 7:26C-7.

ii. If all the soil contamination is remediated in the Notice in Lieu of Deed Notice area, then a Deed Notice Termination Form should be submitted requesting the termination of the Notice in Lieu of Deed Notice 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 Notice in Lieu of 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 Notice in Lieu of 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.

10. ENFORCEMENT OF VIOLATIONS.

i. This Notice in Lieu of 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 Notice in Lieu of Deed Notice. To enforce violations of this Notice in Lieu of Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11, and 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.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Notice in Lieu of 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 Notice in Lieu of 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 Notice in Lieu of Deed Notice shall remain in full force and effect.

12A. EXHIBIT A. Exhibit A should include a USGS Quad map with the Property location and names of roads depicted on it or a similar map with the Property location, roads, and other important geographical features on it.

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) The Easting (X) and Northing (Y) Coordinates in NAD 83 New Jersey state plane feet for each vertex of the polygon that makes up the Notice of in Lieu of Deed Notice boundary;

(B) Major surface topographical features such as railroads, buildings, roads, parking lots, etc. to facilitate locating the restricted area;

(C) As-built diagrams of each engineering control, including caps, fences, slurry walls, (and, if any) ground water monitoring wells that may be required as part of a ground water engineering control in addition to the Notice in Lieu of Deed Notice;

(D) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(E) Designation of all soil and all upland sediment sample locations within the restricted areas that exceed any soil 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 either (A) or (B) through (F):

(A) Only for historic fill extending over the entire site or a portion of the site and for which analytical data are limited or do not exist, a narrative that states that historic fill is present at the site, a description of the fill material (e.g., ash, cinders, brick, dredge material), and a statement

that such material may include, but is not limited to, contaminants such as PAHs and metals;

(B) Sample location designation from Restricted Area map (Exhibit B-1);

(C) Sample elevation based upon depth below grade;

(D) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;

(E) The restricted and unrestricted use standards for each contaminant in the table; and

(F) The remaining concentration of each contaminant at each sample location at each elevation.

12C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls [*Insert as appropriate:* and engineering controls] as follows:

(i) Description of the Property and remedial activities;

(ii) Description of the institutional and/or engineering controls; and

(iii) Planned response in the event that the state of an institutional and/or engineering control is unacceptable.

[*Repeat the contents of Exhibit C, renumbering accordingly, for each separate engineering control that is part of the remedial action for the site.*]

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Notice in Lieu of Deed Notice as of the date first written above.

WITNESS:

OWNER

[Signature]

By: _____, [title]
[Signature]

[Print name and title]

[Print name]

[Print name]

Exhibit A

Site Location



Exhibit B-1 Restricted Area Map

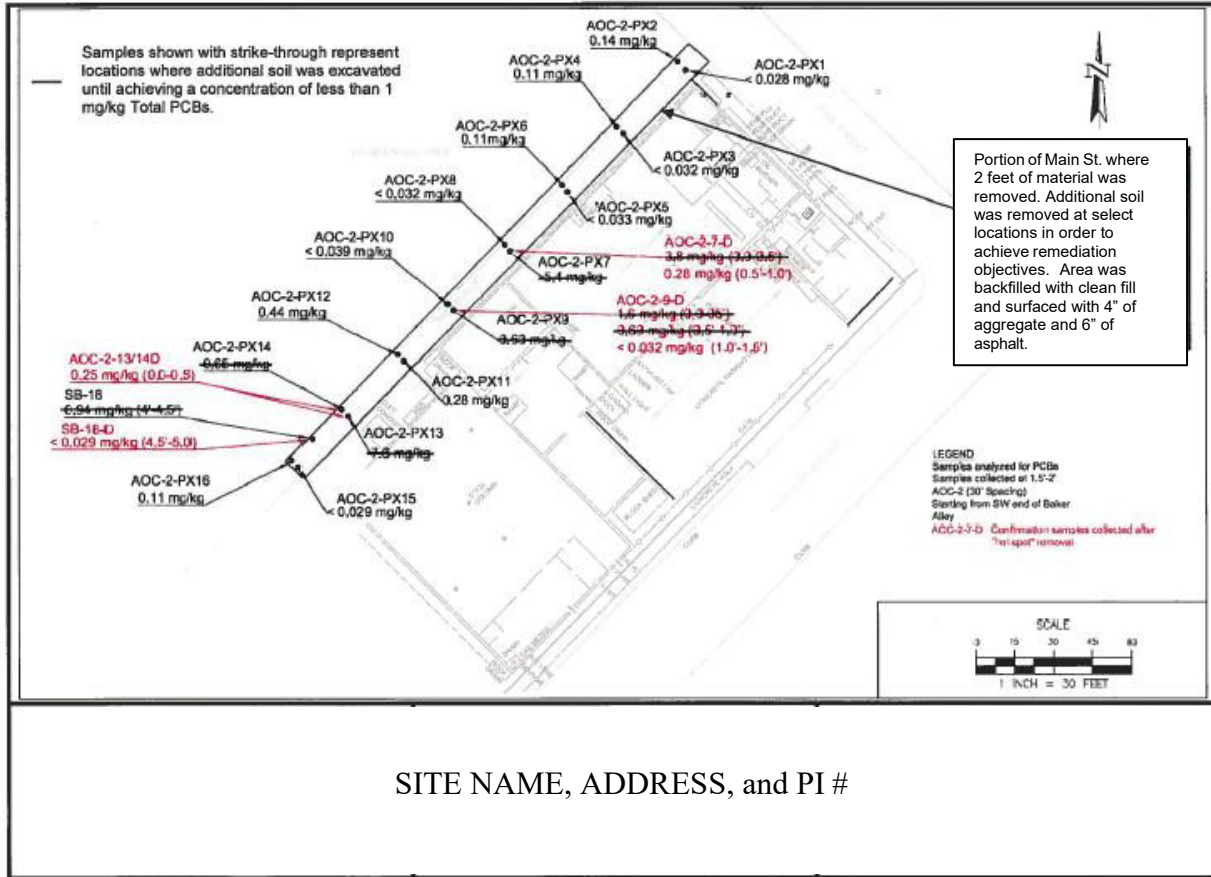


Exhibit B-2 Restricted Area Table

POST-EXCAVATION SOIL ANALYSIS DATA TABLE
AOC1/AOC2 MAIN ST.

Area of Concern				AOC-2	AOC-2	AOC-2	AOC-2	AOC-2	AOC-2
Location ID				AOC2-PX1	AOC2-PX2	AOC2-PX3	AOC2-PX4	AOC2-PX5	AOC2-PX6
Sample ID				AOC2-PX1	AOC2-PX2	AOC2-PX3	AOC2-PX4	AOC2-PX5	AOC2-PX6
Lab ID				AC33605-001	AC33605-002	AC33605-003	AC33605-004	AC33605-005	AC33605-006
Sample Depth (ft-bgs)				1.5-2.0	1.5-2.0	1.5-2.0	1.5-2.0	1.5-2.0	1.5-2.0
Sample Date				10/12/2007	10/12/2007	10/12/2007	10/12/2007	10/12/2007	10/12/2007
Current Status				Left In Place	Left In Place	Left In Place	Left In Place	Left In Place	Left In Place
Analyte	RDCSRS	NRDCSRS	IGWSSL						
	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg
PCB 1016	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.029 U
PCB 1221	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.029 U
PCB 1232	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.029 U
PCB 1242	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.029 U
PCB 1248	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.029 U
PCB 1254	0.2	1	0.2	0.028 U	0.14	0.032 U	0.11	0.033 U	0.029 U
PCB 1260	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.11
PCB 1262	0.2	1	0.2	0.028 U	0.029 U	0.032 U	0.31 U	0.033 U	0.029 U
Total PCBs	0.2	1	0.2	0.028 U	0.14	0.032 U	0.11	0.033 U	0.11

RDCSRS = Residential Direct Contact Soil Remediation Standard
 NRDCSRS = Non-Residential Direct Contact Soil Remediation Standard
 IGWSSL = Impact to Ground Water Soil Screening Level
 mg/kg = parts per million dry weight basis
 U = Not detected at or above the method detection limit shown
 Bold = Reported at or above Residential Direct Contact Soil Remediation Standard
 Shaded = Reported at or above Non-Residential Direct Contact Soil Remediation Standard

Exhibit C

The site undergoing remediation was used for ...DESCRIBE THE SITE. DESCRIBE THE DISCHARGE (TANK OR WHATEVER). EXPLAIN WHY COMNTAMINATION WAS NOT REMOVED (WOULD JEOPARDIZE ROAD, SIDEWALK, ETC.)

Due to the continued presence of the contamination, the ROAD, SIDEWALK, ETC. will serve as the engineering control. Inspections will be conducted on an annual (SPECIFY FREQUENCY) basis and consist of STATE WHAT YOU ARE GOING TO DO, ESPECIALLY IF THE AREA IS NOT READILY ACCESSIBLE (YOU MIGHT BE LOOKING OVER FENCES, ETC.).

If the engineering control is not in acceptable condition, the permittees will ensure that the following entities are notified:

MAKE A LIST

Appendix 3
Sample Notification Letter
To Meet Requirements Pursuant to N.J.A.C. 7:26C-7.2(b)

DATE

CERTIFIED MAIL (or whatever, e.g., via FedEx)

MUNICIPAL CONTACT (if known)
ORGANIZATION
ADDRESS
CITY STATE ZIP

RE: Notice in Lieu of Deed Notice
Site Name (source of the contamination):
Site Address:
City:
County:
SRP Program Interest #: 000000
Block, Lot

Dear Sir or Madam: (OR CONTACT, IF KNOWN)

A Notice in Lieu of Deed Notice is enclosed to notify you that institutional and/or engineering controls have been implemented at the above-referenced property which affect the adjoining municipal right-of-way. This notice is made on behalf of PRCR NAME AND ADDRESS to comply with N.J.A.C. 7:26C-7.2(b)2. Exhibit A shows the location of the affected area, and Exhibit B shows the location of the contamination. Exhibit C describes the engineering control and the inspection details (i.e., observations to be made and inspection frequency).

This notice is being issued because the remedial actions at the site have resulted in contamination remaining in the right-of-way in excess of the Department of Environmental Protection's (Department) Soil Remediation Standards. The Department requires that a Soil Remedial Action Permit (RAP) be obtained for this remaining soil contamination. This permit will require PRCR to inspect the area of contamination and notify you if the condition of the engineering control (e.g., the roadway or sidewalk) needs attention to ensure that the engineering control remains protective of public health and safety and of the environment.

If you have questions, call me at (XXX) XXX-XXXX.

Sincerely,
LSRP or PRCR
LSRP # _____

Enclosure

Notice in Lieu of Deed Notice

Appendix 4

Resolution Concerning Notice in Lieu of Deed Notice Example

Resolution Approving the Notice in Lieu of Deed Notice for [describe the Property and location (e.g., street, intersection/cross streets, sidewalk), Municipality, County]; Acknowledging the Use Restrictions on the Property and the Obligations Imposed on the [City/County] Detailed Therein; and Authorizing Execution of the Notice in Lieu of Deed Notice, the Soil Remedial Action Permit Application, and Related Documents for the Property

Resolved by [*Municipality or County*]

WHEREAS, the [*Municipality or County*] is the Owner of certain real property designated as [*describe the Property and location (e.g., street, intersection/cross streets, sidewalk), Municipality, County*] (“Property”) (as shown in Attachment A)]; and

WHEREAS, hazardous substances discharged at the real property located at [*Street Address of Site, Municipality, County*] (“Site”), which DEP has designated as Site Remediation Program Interest No. PI Number # [], have been identified at the Property; and

WHEREAS, [*PRCR name*] is the Person Responsible for Conducting the Remediation (“PRCR”) of the Site and the PRCR’s Licensed Site Remediation Professional, [*identify the person and license number*] has approved a remedial action for the Site that will result in soil contamination remaining on the Property in concentrations that do not allow for the unrestricted use of the Property and which requires the use of engineering and/or institutional controls defined by the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8; and

WHEREAS, in accordance with N.J.A.C. 7:26C-7.2(b)(2), the PRCR has prepared the attached Notice in Lieu of Deed Notice which documents the required engineering and institutional controls; and

WHEREAS, a Soil Remedial Action Permit (“RAP”) issued by the New Jersey Department of Environmental Protection is required to memorialize the operation, maintenance, and monitoring required by the PRCR/Owner for the Notice in Lieu of Deed Notice [*add if appropriate...and engineering control(s)*]; and

WHEREAS, it is in the best interest of the citizens of [*identify the municipality or county*] to agree to the use restriction(s) and maintenance and monitoring requirements on the Property and to execute the Notice in Lieu of Deed Notice and related documents.

NOW AND THEREFORE BE IT RESOLVED BY the [*identify the entity and municipality and county or county only if this is a county resolution*] in the State of New Jersey, that:

1. The proper officials of the [*identify the entity and municipality or county*] are hereby authorized to execute a Notice in Lieu of Deed Notice, the Soil RAP Application, and all related documents required now and in the future for the Property and by attaching a copy of this Resolution to the document; and
2. The use restrictions on the Property detailed in the Notice in Lieu of Deed Notice and Soil RAP will be honored; and
3. Any operation, maintenance, and monitoring tasks assigned to the Owner in the Notice in Lieu of Deed Notice and/or Soil RAP will be performed in accordance with the Soil RAP and applicable statutes and requirements.

Appendix 5

Written Agreement Concerning Notice in Lieu of Deed Notice Example

This agreement (hereinafter “Agreement”) is made as of this __ day of _____, 20XX by and between the [Person Responsible for Conducting Remediation (PRCR's) Name] (“PRCR”), having a principal place of business at [full address] and the [Name of the State or Federal government agency (except for the Department of Defense) that owns the Property] (“[Owner]”) (having its principal place of business at [full address]). PRCR and Owner may collectively be referred to as “the Parties.” This Agreement shall serve as an agreement between the Parties regarding the Notice in Lieu of Deed Notice described herein.

BACKGROUND

PRCR is the person responsible for conducting the remediation of the hazardous substances discharged at the real property located at (Street Address of Site, Municipality, County) (“Site”), which the New Jersey Department of Environmental Protection (“DEP”) has designated as Site Remediation Program Interest No. PI Number # [].

Owner is the owner of certain real property designated as [describe the property and location (e.g., street, intersection/cross streets, sidewalk), Municipality, County] (“Property”) (as shown in Attachment A). The Property is a [right of way, easement, public roadway].

Hazardous substances discharged at the Site have been identified at the Property.

PRCR’s Licensed Site Remediation Professional, [identify the person and license number] has approved a remedial action for the Site that will result in soil contamination remaining on the Property in concentrations that do not allow for the unrestricted use of the Property and which requires the use of engineering and/or institutional controls.

NOW THEREFORE, in an effort to better clarify the roles and responsibilities of the Parties and the restrictions on the Property, the Parties hereby agree as follows :

PRCR’s Obligations

1. PRCR has prepared the attached Notice in Lieu of Deed Notice in accordance with N.J.A.C. 7:26C-7.2(b)2 and may also provide other related documents, as appropriate, for execution by the Owner.
2. PRCR will provide copies of the executed Notice in Lieu of Deed Notice to the entities designated in N.J.A.C. 7:26C-7.2(b)2 and 3.
3. [As appropriate, include paragraph(s) detailing what Operation, Maintenance, and Monitoring (OMM) tasks that the PRCR will perform].
4. PRCR will prepare and submit a Soil Remedial Action Protectiveness/Biennial Certification Form.

Owner’s Acknowledgments and Obligations

5. Owner acknowledges that it will comply with the restrictions on use of the Property detailed in the Notice in Lieu of Deed Notice and/or Soil RAP, specifically [that certain activities (e.g., repaving a road, excavating the road) on the Public Lands may be restricted or require NJDEP/LSRP notification/approval prior to the Owner conducting such activities].
6. [As appropriate, include paragraph(s) detailing what OMM tasks that the Owner will perform].
7. Owner acknowledges that execution of this Agreement will serve as Owner’s signature on the Notice in Lieu of Deed Notice and any subsequent Soil RAP Applications related to the Notice in Lieu of Deed Notice for this Property.

General Provisions

8. This Agreement shall be interpreted in accordance with the laws of the State of New Jersey.
9. This Agreement may be executed in counterparts, which shall bear the Parties' signatures. Each counterpart shall constitute one and the same instrument, shall be binding on the Parties, and shall for each and every intent, reason and purpose be considered an original thereof. This Agreement may be executed by facsimile or by portable document format (.pdf) signature, such that execution of this Agreement by facsimile or by portable document format (.pdf) signature shall be deemed effective for all purposes as though this Agreement was executed as a "blue ink" original.
10. Each undersigned representative of PRCR and Owner certifies that he or she is authorized to enter into this Agreement, and to execute and legally bind each party to this Agreement.
11. This Agreement may only be modified by the mutual agreement of the Parties. Further, any modification to this Agreement shall be in writing and executed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their proper officers on the dates set forth below.

PRCR: [PRCR's NAME]

Date: _____ By: _____
[PRCR's Signatory Name]
[Title]

PROPERTY OWNER: [PROPERTY OWNER'S NAME]

Date: _____ By: _____
[Property Owner's Signatory Name]
[Title]

Appendix 6

Acronyms

AOC	Area of Concern
ARS	Alternative Remediation Standard
BCAIN	Bureau of Case Assignment and Initial Notice
BCM	Bureau of Case Management
BRAP	Bureau of Remedial Action Permitting
C/O	Care of
CD	Compact Disc
EPH	Extractable Petroleum Hydrocarbon
FA	Financial Assurance
GIS	Geographic Information System
LSRP	Licensed Site Remediation Professional
MGW	Migration to Ground Water
NFA	No Further Action
NJDEP	New Jersey Department of Environmental Protection or Department
OMB	Office of Management and Budget
PDF	Portable Document Format
PE	Professional Engineer
PI	Program Interest
PRCR	Person Responsible for Conducting the Remediation
PV	Present Value
RAO	Response Action Outcome
RAP	Remedial Action Permit
RAR	Remedial Action Report
RAW	Remedial Action Workplan
RFS	Remediation Funding Source
SLRS	Soil Leachate Remediation Standards
SRS	Soil Remediation Standards
TSCA	Toxic Substances Control Act