Navigating Proposed Amendments to Requirements for the Remediation of Contaminated Sites and Development

Environmental Law Track (Central Meeting Room 1)

In October 2024, the NJDEP issued a proposed rule pitched as aligning the ARRCS, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E, with the Aug. 23, 2019, statutory changes to the Site Remediation Reform Act (SRRA 2.0). Chief among those revisions were changes to the ARRCS requiring disclosure of discharges discovered during pre-closing due diligence by prospective purchasers of real property to both the property owner and NJDEP. Such disclosure obligation marks a distinct change in the handling of all appropriate inquiry driven diligence. The purpose of this panel is to not only review the challenges associated with such change – including but not limited to those concerns raised by the comments to the proposed rule – but to discuss strategies for helping clients adapt to this new paradigm.

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ENVIRONMENTAL PROTECTION

CONTAMINATED SITE REMEDIATION AND REDEVELOPMENT

Industrial Site Recovery Act Rules

Administrative Requirements for the Remediation of Contaminated Sites

Technical Requirements for Site Remediation

Heating Oil Tank System Remediation Rules

Proposed Amendments: N.J.A.C. 7:26B-1.10; 7:26C-1.2, 1.3, 1.4, 1.6, 1.7, 2.2, 2.3, 3.1, 3.3, 3.5, 4.5, 4.6, 5.1, 5.2, 5.5, 5.6, 5.9 through 5.13, 6.2, 6.4, 7.1, 7.11, 7.12, 7.13, 9.5, 9.10, 9.12, 10.6, 14.2, 16.2, and 7:26C Appendices B, C, and D; 7:26E-1.1, 1.5, 1.6, 1.7, 1.8, 1.11, 1.12, 1.14, 1.15, 2.1, 3.7, 3.12, 4.1, 4.2, 4.3, 4.5, 4.7, 4.9, 5.1, 5.2, 5.7, and 7:26E Appendix A; and 7:26F-3.7 and 4.3

Proposed Repeal and New Rule: N.J.A.C. 7:26C-7.7

Proposed New Rules: N.J.A.C. 7:26C-2.4, 5.14, 7.5, and 7.10

Proposed Repeals: N.J.A.C. 7:26C-7.8 and 7.9

Proposed Recodifications with Amendments: N.J.A.C. 7:26C-7.2 and 7.3 as 7.3 and 7.4, Respectively, and 7.4, 7.5, 7.6, and 7.10 as 7.2, 7.8, 7.9, and 7.6, Respectively

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 13:1K-6 et seq., 58:10-23.11 et seq., 58:10B-1 et seq., and 58:10C-1 et seq.

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

DEP Docket Number: 12-24-09.

Proposal Number: PRN 2024-124.

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A public hearing concerning this notice of proposal will be held on Thursday, November 21, 2024, at 1:00 P.M. The public hearing will be conducted virtually through the Department of Environmental Protection's (Department) video conferencing software, Microsoft Teams. A link to the virtual public hearing with telephone call-in option will be provided on the Department's website at https://www.nj.gov/dep/rules/notices.html.

If you are interested in providing oral testimony or submitting written comments at the virtual public hearing, please email the Department at CSRR_rules@dep.nj.gov, no later than 5:00 P.M. on Wednesday, November 20, 2024, with your contact information (name, organization, telephone number, and email address). You must provide a valid email address, so the Department can send you an email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer or mobile device that can connect to Microsoft Teams. This hearing will be recorded. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared remarks to the Department through email.

Submit comments by December 20, 2024, electronically at http://www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Attn: DEP Docket Number: 12-24-09

Office of Legal Affairs

Department of Environmental Protection

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401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

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

The agency proposal follows:

Summary

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

Overview

The Department is proposing to amend the Industrial Site Recovery Act (ISRA) Rules, N.J.A.C. 7:26B, the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, the Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E, and the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, to codify and implement the provisions at P.L. 2019, c. 263 (the Act), which concerned the remediation of contaminated sites, and amended and supplemented various parts of the statutory law. The Act became effective on August 23, 2019, and it included amendments to the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and related amendments to ISRA, N.J.S.A. 13:1K-6 et seq., the Spill Compensation Control Act (Spill Act), N.J.S.A. 58:23-11 et seq., and the Brownfield and Contaminated Site Remediation Act (Brownfield Act), N.J.S.A.

58:10B-1 et seq. The Department has determined that rulemaking is necessary for it to implement the Act, and to assist the regulated community in complying with the Act. The Department is integrating the Act's requirements into the existing rules to provide the regulated community and the public with comprehensive rules that address site remediation.

In addition to amendments related to the Act, the Department is proposing amendments to further simplify the remedial action permit process, streamline implementation of the licensed site remediation professional (LSRP) program, make technical changes and corrections, and clarify language.

This Summary is organized by subject, such as the 2019 SRRA legislation amendments, the remedial action permit paradigm, the 2021 remediation standards amendments, and Department administrative updates. The relevant proposed amendments are discussed below each subject heading. Consequently, proposed amendments to a rule section, such as to the definitions in the Technical Requirements at N.J.A.C. 7:26E-1.8, may be discussed in several places in the Summary.

Stakeholder Process

Since the August 2019 amendments to ARRCS, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E, stakeholders and other interested parties have requested that the Department propose additional amendments to help streamline remediation. The Department is incorporating such into this rulemaking.

In developing the proposed rulemaking, the Department met with invited stakeholders on February 24, 2020, April 22, 2020, December 1, 2021, August 30, 2022, January 23, 2023, and

June 14, 2023. The invited stakeholders included the New Jersey Department of Transportation, the Licensed Site Remediation Professional Association, the New Jersey Business and Industry Association, the Commerce and Industry Association of New Jersey, the Site Remediation Industry Network, the Brownfield Coalition of the Northeast, the Utility and Transportation Contractors Association of NJ, the Chemical Council of NJ, the New Jersey Builders Association, the Chamber of Commerce of NJ, the Chamber of Commerce of Southern NJ, environmental justice advocates, county planners, municipalities, and other associations. During the COVID-19 pandemic and subsequently, the Department regularly kept in contact with these stakeholders through both email and virtual meetings to discuss the issues, suggestions, and recommendations of the stakeholders, and considered such in preparing the proposed rules.

Amendments Related to the 2019 Site Remediation Reform Act Legislation

The Department is proposing amendments to ARRCS, N.J.A.C. 7:26C, and the Technical Requirements, N.J.A.C. 7:26E, to incorporate the August 23, 2019 statutory changes in the Act, to address concerns from the regulated community, and to resolve inconsistencies in the existing rules. The Act made various changes to the laws governing licensed site remediation professionals (LSRPs) and the remediation of contaminated sites. The Department is proposing several rule changes based on the statutory changes to SRRA, clarifying its regulatory authority by expanding the LSRPs' obligations to oversee cases and the work of environmental professionals who are not LSRPs. The Department is also proposing amendments to discharge reporting and direct oversight rules and requirements for persons responsible for conducting remediation.

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Definitions

The Department is proposing to add or modify, for clarification and consistency with the Act, the existing regulatory definitions of "remediation" and "retained." The Act amended the statutory definition of "remediation" or "remediate," as used in various existing site remediation laws, to remove the clarifier "necessary" and to specify that remediation does not include the payment of compensation for damage to, or loss of, natural resources. Accordingly, the Department proposes to amend the existing regulatory definition of "remediation" or "remediate" in the Technical Requirements at N.J.A.C. 7:26E-1.8, Definitions, so that it is identical to the definition in the Act. The existing definition mirrored the statutory definition that existed before the Act, including the phrase "as necessary," as related to actions and remedial activities to address hazardous substances and wastes, and not including the limiting phrase "or any portion thereof," as related to site remediation activities.

The Act amended SRRA to require a person who is issued a remedial action permit for the operation, maintenance, and inspection of engineering or institutional controls and related systems installed as part of a remedial action to retain an LSRP to manage, supervise, or perform the requirements of the permit for the duration of the permit. See N.J.S.A. 58:10C-19.d. Accordingly, the Department is proposing a new definition for "retained," which is identical to the Act's statutory definition in SRRA. The new definition is proposed in ARRCS at N.J.A.C. 7:26C-1.3, Definitions. "Retained" means hired, individually or through a firm or other person, by or on behalf of, a person responsible for conducting remediation, to perform, manage, or supervise remediation or to periodically review and evaluate a remediation performed by other

persons. The Department is also proposing companion amendments throughout ARRCS to change existing references to an LSRP being "hired" to "retained," specifically at N.J.A.C. 7:26C-1.7(f), 2.3(a), 10.6(a), 14.2(b)1, 16.2(a)1, and in the Model Deed Notice, N.J.A.C. 7:26C Appendix B at 7Bii.

The Act also provided that a person is not required to retain an LSRP to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by a retained LSRP, provided that the sampling or investigation: (1) is not required pursuant to any law, rule, regulation, or order; (2) is not conducted in order to obtain a response action outcome; and (3) is not conducted in order to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant. As a result of, and consistent with this statutory change, the Department proposes to add language at N.J.A.C. 7:26C-2.3, Requirements for the person responsible for conducting the remediation. The Department proposes new N.J.A.C. 7:26C-2.3(a)1iv to expressly note that an LSRP does not have to be retained to conduct sampling or investigation to confirm or evaluate a remediation performed or supervised by an LSRP, provided that the sampling/investigation is not: (1) legally required; (2) conducted to obtain a response action outcome; and (3) conducted to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant.

Notification

Prior to passage of the Act, a person responsible for conducting a remediation was statutorily required to provide written notice of the remediation to the municipality and county in which the contaminated site is located prior to initiating the remedial action. Section 11 of the

Act requires that such written notice now be provided earlier in the site remediation process – prior to the initiation of the remedial investigation. Section 12 of the Act also expanded the types of documents a person responsible for conducting the remediation is required to provide to a municipality or county, upon request. The person responsible for conducting the remediation must also respond to any inquiries from the public regarding the status of the remediation that the person receives or that the Department receives and forwards to that person. The person's response must include either: (1) information or documents that are responsive to the public inquiry; or (2) a written summary status report for the remediation in a form and manner as determined by the Department. Further, the person may designate an LSRP to respond to such public inquiries. See Section 13 of the Act.

The Department is proposing amendments to ARRCS to incorporate the Act's changes to statutory notification obligations for a person responsible for conducting a remediation to respond to public inquiries whether written, emailed, or forwarded by the Department. ARRCS, at proposed amended N.J.A.C. 7:26C-1.7(h), expressly states that the person responsible for conducting a remediation must provide information or documents that are responsive to the public inquiry or a written summary status report for the remediation. The summary status report, which is available on the Department's website at www.nj.gov/dep/srp/srra/forms, requires a description of the site's industrial history, source(s) of contamination, description of contamination, current remedial status, proposed remedial actions with a schedule, extent of contamination, actions performed to minimize the impact to the public, and a list of online resources for information about the contaminants.

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Immediate Environmental Concern (IEC) Requirements

Prior to the Act, SRRA defined an "immediate environmental concern" involving migration of contamination into a structure as requiring the structure to be "occupied." See N.J.S.A. 58:10C-2. The Act changed the statutory definition to remove the requirement that the structure be "occupied." As a result of this statutory change, the Department is proposing a parallel amendment to the definition of an "immediate environmental concern (IEC)" in the Technical Requirements at N.J.A.C. 7:26E-1.8, so that it means the "contamination that has migrated into an occupied structure, unoccupied structure, or confined space" producing a toxic or harmful atmosphere or other harmful condition, without regard to whether the structure is occupied.

Before passage of the Act, the Department established expedited timeframes to address immediate environmental concerns. However, pursuant to section 23 of the Act, no further remediation relative to an immediate environmental concern that affects an unoccupied structure is required if a person responsible for conducting the remediation provides to the Department a written certification from the property owner that the building: (1) is not occupied; (2) will not be occupied; and (3) will be demolished. As a result of this statutory change, the Department is proposing new language in the Technical Requirements at new N.J.A.C. 7:26E-1.11(b) to create a new carve-out from further remediation of the immediate environmental concern for unoccupied structures. If an LSRP obtains specific knowledge of a condition in an unoccupied structure, that, in the LSRP's independent professional judgment, constitutes an immediate environmental concern, and the person responsible for conducting remediation provides the Department with a written certification from the property owner that the building: (1) is not occupied; (2) will not be

occupied; and (3) will be demolished, then no further remediation relative to the immediate environmental concern in the unoccupied structure shall be required, provided the conditions of the certification are maintained.

As related to N.J.A.C. 7:26E-1.11, Immediate environmental concern requirements, the Department is also proposing to clarify its existing requirement at N.J.A.C. 7:26E-1.11(a)7i that the person responsible for conducting the remediation submit to the Department an updated form. Although the information is already required by the existing rule, the Department is including more descriptive language to explain that the form includes a summary and status of the source investigation, identifying potential contaminant source areas contributing to the immediate environmental concern.

All Appropriate Inquiry

The Department is proposing new N.J.A.C. 7:26C-2.4, Conducting remediation and all appropriate inquiry, in ARRCS to address conducting remediation and all appropriate inquiry. The proposed rule considers the statutory language in the Brownfield Act, SRRA, and the Spill Act since the passage of the Act. "All appropriate inquiry," as defined in the Spill Act at N.J.S.A. 58:10-23.11g.d(2), "shall mean the performance of a preliminary assessment, and site investigation, if the preliminary assessment indicates that a site investigation is necessary." However, the Spill Act limits that definition to those activities "establishing that a person had no reason to know that any hazardous substance was discharged." For that reason, the regulated community may contend that all appropriate inquiry is not remediation because the objective of all appropriate inquiry is to find the absence of contamination.

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Thus, if a person discovers a discharge during the course of all appropriate inquiry, then the person is obligated to report that discharge to both the Department and the record owner of the property because the person now knows that there is a discharge. Conversely, if a person conducts all appropriate inquiry and does not discover a discharge, then the person is not required to report anything. At N.J.A.C. 7:26C-2.4(a), in furtherance of the Department's statutory obligation to formulate comprehensive policies for the promotion of environmental protection and the prevention of pollution of the environment of the State, the Department seeks to ensure that property owners are provided notice of a discharge, as they may be subject to liability. See N.J.S.A. 13:1D-9 and 58:10-23.11e. Further, at new N.J.A.C. 7:26C-2.4(b), consistent with the statutory defense to liability provision from the Spill Act at N.J.S.A. 58:10-23.11g, the Department is clarifying that the person undertaking all appropriate inquiry shall not be liable for cleanup and removal costs of the discharge unless and until the person acquires the property.

Finally, through new N.J.A.C. 7:26C-2.4(c), the Department maintains that whenever a person obtains specific knowledge of a discharge, then the person is obligated to notify the Department of the discharge. Numerous provisions in the relevant statutes, including the Spill Act at N.J.S.A. 58:10-23.11a, 58:10-23.11c, 58:10-23.11e, and 58:10-23.11x, and in the Department's enabling act, provide authority for this provision, which is intended to ensure that the Department is alerted to the discovery of hazardous substance discharges and can effectively carry out its legislatively mandated duty to protect human health and the environment.

Remediation Funding Sources and Financial Assurance

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The Act made several changes to State laws governing the establishment of remediation funding sources, and when and how those remediation funding sources may be used, dispersed, and released. Section 8 of the Act provides that a person may establish as a remediation funding source a surety bond from an entity that is listed as an acceptable surety on Federal bonds in United States Treasury Department Circular 570. The Act also established requirements for using a surety bond as a remediation funding source. The following proposed amendments regarding remediation funding sources and financial assurance reflect the statutory requirements.

Surety bonds

Consistent with Section 8 of the Act (see N.J.S.A. 58:10B-3.i.), the Department is proposing to add a surety bond as a remediation funding source option throughout N.J.A.C. 7:26C-5, Remediation Funding Source and Financial Assurance. The addition of a surety bond will provide persons required to establish a remediation funding source with another option to satisfy this funding requirement. Many members of the regulated community who are in the construction and redevelopment field are already familiar with and can readily procure, surety bonds. The issuance of a bond by a surety may free up liquid assets for a person responsible for conducting remediation to pay for the remediation itself. Some mechanisms, such as a trust, require the total cost of the remediation, in cash, to be put aside in a trust account up front. With other mechanisms, the lending financial institution often requires cash, collateral, or well-established credit from the borrower, which has become increasingly difficult for borrowers to provide in recent years. The Department anticipates that because the use of a surety bond is an option with cheaper up-front costs, borrowers may ultimately be able to fund more remediations.

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The Department proposes to add surety bonds at: N.J.A.C. 7:26C-5.1(a)8, the list of items addressed in the section; N.J.A.C. 7:26C-5.2(h)5, the list of remediation funding source mechanisms; and N.J.A.C. 7:26C-5.9(a)5, the list of financial mechanisms requiring a remediation funding source surcharge.

In conjunction with this addition at N.J.A.C. 7:26C-5.2(h)5, the Department is recodifying existing paragraph (h)5 (loan or grant) as paragraph (h)7, so that the options for financial assurance are grouped together in the list. The existing rules state that the person responsible for conducting the remediation may use one or a combination of financial mechanisms to satisfy the financial assurance requirement at N.J.A.C. 7:26C-5.3, except for a self-guarantee. See N.J.A.C. 7:26C-5.2(j). However, because the use of State loans and State grants is limited to remediation costs (for preliminary assessment, site investigation, remedial investigation, and remedial action), the Department proposes to amend N.J.A.C. 7:26C-5.2(j), to expressly exclude such State loans and State grants from being used as financial assurance. Financial assurance is funding that is used for post-remediation expenses (costs to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit, as estimated at the time a person submits a complete remedial action permit application). This proposed amendment clarifies that the intended use of State funds obtained pursuant to ARRCS at N.J.A.C. 7:26C-11, Hazardous Discharge Site Remediation Fund, and 12, Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for a Regulated Underground Storage Tank, is for remediation costs and not post-remediation expenses.

The Department proposes to explain the requirements for, and the use of, a surety bond option at new N.J.A.C. 7:26C-5.14. This new section is similar in construction to existing

N.J.A.C. 7:26C-5.5(a), which explains environmental insurance policy requirements. Proposed new N.J.A.C. 7:26C-5.14(a) requires that a surety bond agreement be issued by a certified surety company listed on the U.S. Department of Treasury Circular 570 as an acceptable surety, as noted in section 8 of the Act, and that the surety company also have a surety license for the State of New Jersey. The Department is also requiring that the surety bond agreement include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address, which information is also required, by existing rule, for environmental insurance policies. Further, the Department is including cancellation restrictions in the proposed rule, including that a surety bond cannot be cancelled by the principal without written authorization from the Department, and that cancellation by the surety company requires a 120-day advance notice of cancellation sent to the Department and the principal by certified mail or overnight courier. The Department has determined that 120 days is an "appropriate notice" time, as required by section 8 of the Act, because that length of time has been employed successfully by the Department for environmental insurance policies, lines of credit, and letters of credit. See existing N.J.A.C. 7:26C-5.5(a)4, 5.6(a)4, and 5.7(a)4, respectively. Also, proposed new N.J.A.C. 7:26C-5.14(b) directs that the Department will require an annual valuation and verification document for a surety bond, as is already required for a remediation trust fund, an environmental insurance policy, and a line of credit. See existing N.J.A.C. 7:26C-5.4(b), 5.5(b), and 5.6(b), respectively.

Environmental Insurance Policies

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The Department is proposing amendments at N.J.A.C. 7:26C-5.5, Environmental insurance policy requirements, to ensure that an environmental insurance policy is not canceled or not renewed without prior approval from the Department. The existing rule language addresses policy revocation and termination, which are policy changes that happen during the mid-policy period. To round out the intended scope of the section, the Department is adding "renewal" and policy "cancelation," which are changes that occur at the end of an insurance policy term. Additionally, proposed new N.J.A.C. 7:26C-5.5(a)6 requires that the environmental insurance policy expressly note that the issuer of the policy must notify both the person who established the policy and the Department of any non-renewal of the policy by certified mail within 30 days after the policy end date, in the event that the person who established the environmental insurance policy either cancels the policy or does not renew the policy at the end of the term. Further, the Department will then have 120 days to access the policy pursuant to N.J.A.C. 7:26C-5.13, Failure to perform remediation, provided that an alternate remediation funding source has not been established.

Further, at proposed new N.J.A.C. 7:26C-5.5(a)3, the Department is adding the requirement that an environmental insurance policy issue period is for at least one year. The Department is proposing this 12-month period requirement for consistency with the other financial mechanisms of N.J.A.C. 7:26C-5, Remediation Funding Source and Financial Assurance, that require a 120-day notification to the Department prior to expiration. All of these additions are consistent with the intent of the Act because the Department must verify that a viable remediation funding source (such as an environmental insurance policy) remains in place and the Department must be given notice when there are any changes to the environmental

insurance policy. These proposed amendments ensure that the Department will be timely notified of all environmental insurance policy activity and changes throughout the full policy period.

Disbursements

The Department is proposing a correction at N.J.A.C. 7:26C-5.12, Disbursements from the remediation funding source, by removing mention of an environmental insurance policy and letter of credit at subsection (a). Disbursements may be made only from a remediation trust fund or a line of credit, due to the nature of the remediation funding source mechanism itself. As such, the Department is also proposing deletion of the existing companion paragraph at N.J.A.C. 7:26C-5.5(a)5. Unlike a remediation trust fund and a line of credit, an environmental insurance policy and letter of credit do not provide access to liquid assets. This proposed correction does not reflect a change in Department policy or practice because disbursements from the remediation funding source are not made from environmental insurance policies or letters of credit.

Remediation Funding Source Exemption

As stated in ARRCS, at existing N.J.A.C. 7:26C-5.2(b) and (d), specific persons responsible for performing a remediation are not required to establish a remediation funding source. The existing language throughout the section applies to remediation at a primary or secondary residence, a licensed child care center, and a property of a small business. Written in the present tense, the existing language implies that there are only limited periods of time within which a person will be exempt from the remediation funding source requirement. For instance, the existing rule reads that a small business will be exempt only when the small business is

located at the site that is being remediated. So, if the person responsible for performing the remediation (the small business) moves to another location, then that person would no longer be exempt from the remediation funding source exemption. To clarify the application of the remediation funding source exemption in the rule, the Department proposes to expand the language by adding the phrase, "present or former," in relation to a primary or secondary residence, a licensed child care center, and a property of a small business, so that the regulated community is aware that such persons are always exempt from establishing a remediation funding source, regardless of their location. The Department expects that these amendments will increase the number of entities that are eligible to be exempt from remediation funding source requirements.

Direct Oversight

Section 8 of the Act added language to the Brownfield Act at N.J.S.A. 58:10B-3.e that limited disbursements from lines of credit to only those monies that the Department or the LSRP authorizes, in writing, to be disbursed. The Department proposes to incorporate this statutory change in ARRCS at N.J.A.C. 7:26C-5.6(a)5, which applies to any person who chooses to establish a line of credit as a remediation funding source. If the remediation of the site is under direct oversight by the Department, then the Department must approve, in writing, the amount to be disbursed. For all other situations, the LSRP must approve, in writing, the amount to be disbursed. As explained at existing N.J.A.C. 7:26C-5.12(b), for sites where the person responsible for conducting the remediation is subject to direct oversight, the Department must

approve any disbursement from a remediation funding source, regardless of whether it is a line of credit, remediation trust fund, or some other financial mechanism.

A person conducting remediation at a site subject to direct oversight by the Department is required to establish a remediation funding source; there are no remediation funding source exemptions applicable for sites in direct oversight. Further, the existing rules allow only a remediation trust fund as an acceptable remediation funding source for sites in direct oversight because prior to the Act, SRRA directed that a person remediating a site in direct oversight was required to establish a remediation trust fund; other remediation funding sources were prohibited. However, section 26 of the Act amended SRRA at N.J.S.A. 58:10C-27, Direct oversight of remediation by department; conditions, to require the person conducting the remediation to establish a remediation funding source other than a self-guarantee, instead of limiting the choice to only a remediation trust fund. From the effective date of the Act, all forms of remediation funding sources, except a self-guarantee, are allowed. Accordingly, the Department proposes to amend N.J.A.C. 7:26C-5.2, Establishing a remediation funding source and financial assurance, at (h), (j), and (k) to reflect that remediation funding sources other than self-guarantees are allowed, which is consistent with the Act.

Further, the Department is proposing amendments at N.J.A.C. 7:26C-14.2, Compulsory direct oversight, consistent with section 26 of the Act. The Department has the authority to modify a direct oversight requirement if the person responsible for conducting the remediation demonstrates financial hardship that prevents the performance of the remediation due to the imposition of direct oversight. These statutory changes, now proposed for codification at N.J.A.C. 7:26C-14.2(b)2ii and 6, allow for the use of any financial mechanism other than a self-

guarantee. This includes the new surety bond mechanism at proposed N.J.A.C. 7:26C-5.14, as well as the other existing financial mechanisms. The Department anticipates that the regulatory choice and variety of mechanisms available to persons responsible for conducting remediations will alleviate the burden on the responsible party to put up the entire cost of the remediation in cash through a remediation trust fund.

The Act provides that when a contaminated site is subject to direct oversight, the requirements of direct oversight run with the site, regardless of who owns the property, and regardless of whether there is a transfer of ownership of the property. See section 26 of the Act and N.J.S.A. 58:10C-27f. The Department is proposing new subsection (b) in ARRCS at N.J.A.C. 7:26C-3.1, Scope, which is in step with the Act, clearly identifying that direct oversight runs with the site, regardless of ownership or transfer thereof.

Pursuant to section 26 of the Act, if a person responsible for conducting a remediation fails to meet certain conditions, the Department will not undertake direct oversight of the contaminated site if the person demonstrates, and the Department finds, that: (1) the person was unable to meet the applicable timeframe because the person was unable to enter the contaminated site because the person does not own the property, and the person took all appropriate and timely action to gain access to the site; or (2) the contaminated site is subject to Federal oversight, the person has made timely submissions to the Department, and the person was unable to meet the applicable timeframe due to the performance of additional review by the Department. At proposed new N.J.A.C. 7:26C-3.1(c), the Department is codifying this language to expressly allow a person responsible for conducting remediation to avoid the Department undertaking direct oversight at a contaminated site if the delay for triggering direct oversight was due to either access being denied

to the site by the property owner, or in instances where the site is subject to Federal oversight, and the delay was caused by the need for additional Department review.

Remedial Action Permit Paradigm

Generally

The Department is proposing amendments to ARRCS, N.J.A.C. 7:26C, to broaden remedial action permit options for the regulated community and to simplify the administrative process to obtain a permit and revise a permit. Existing N.J.A.C. 7:26C-7, Deed Notices, Ground Water Classification Exception Areas, and Remedial Action Permits, provides options for soil remedial action permits and ground water remedial action permits. As a result of the Department's May 2021 adoption of new indoor air standards in the Remediation Standards, N.J.A.C. 7:26D, the Department has determined that a third media option, indoor air, is needed for remedial action permits, in addition to soil and ground water. In addition, because of the possibility that a contaminated site may have up to three different impacted media present, the Department proposes to change its remedial action permit paradigm to combine all impacted media into one permit. Accordingly, the Department proposes to recodify, with amendments, portions of existing N.J.A.C. 7:26C-7, propose two new sections, and rename the subchapter "Institutional Controls and Remedial Action Permits." The Department proposes to update cross-references throughout ARRCS, N.J.A.C. 7:26C, the Technical Requirements, N.J.A.C. 7:26E, and the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F.

Proposed new N.J.A.C. 7:26C-7.7, Remedial action permit types, explains the Department's new permit paradigm of one remedial action permit for the contaminated site,

including all impacted media. This approach is a change from the existing paradigm where the Department requires a permittee to obtain a separate permit for each impacted medium. The Department anticipates that combining soil, ground water, and indoor air components into a one-permit system will expedite the issuance of Department permits for remediation, simplify the administrative process, and ensure that a permittee's biennial protectiveness evaluations and annual fees are all on the same schedule.

Proposed amended N.J.A.C. 7:26C-7.1, Purpose and scope, explains that the subchapter establishes the requirements of the permittee for remedial action permits and the use of institutional and engineering controls. The Department proposes to delete existing N.J.A.C. 7:26C-7.1(b), the list of sections in the subchapter, because it is reorganizing and renaming the subchapter with this rulemaking. Existing N.J.A.C. 7:26C-7.1(c) and (d), which are proposed for recodification, with amendments, as subsections (b) and (c), respectively, explain the legal limits of a remedial action permit and further compliance with the subchapter. Proposed N.J.A.C. 7:26C-7.2, Permittees of remedial action permits, identifies the persons who are required to obtain remedial action permits is recodified from N.J.A.C. 7:26C-7.4, with updated cross-references.

The Department's revised approach to remedial action permitting addresses a concern of the regulated community, as this one-permit system will provide a consistent permit schedule for the submission of biennial protectiveness evaluations to the Department. See proposed new N.J.A.C. 7:26C-7.10, which consolidates, with amendments, the requirements at existing N.J.A.C. 7:26C-7.7, 7.8, and 7.9. The existing rules require the permittee to submit a certification to the Department every two years, based on the date the Department issued the permit. As soil permits and ground water permits are issued separately by the Department, the submission schedules for

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their corresponding biennial certifications are often on different dates. With a one-permit system for all impacted media, the regulated community benefits from a single permit schedule, which ensures that all biennial protectiveness evaluations and all annual fees are due at the same time.

This proposed approach provides easier scheduling for the regulated community, and easier tracking by the Department. By including all media in one permit, a permittee will be able to make administrative changes to a permit (such as change in property ownership or a change in address of a permittee) once, instead of possibly multiple times with each soil permit and ground water permit. See proposed amended N.J.A.C. 7:26C-7.11, Administrative changes for a remedial action permit. For example, the existing rules require that if there is a change in property ownership, then the permittee must submit to the Department a transfer change in ownership application for each permit. When a permittee has both a ground water remedial action permit and a soil remedial action permit for one property, pursuant to the existing rules, that permittee must submit two transfer change in ownership applications to the Department. This proposed permit process also impacts administrative changes, which are discussed further below.

Focused Remedial Action Permits

Proposed new N.J.A.C.7:26C-7.7, Remedial action permit types, explains the one-permit system and the focused remedial action permits that may be obtained to undertake certain regulated activities for which the types, terms, and conditions are established in the rule. As for all remedial action permits, applications submitted for these focused permits known as a Permit I, Permit II, Permit III, Permit IV, and Permit V require Department review and issuance of the permit. The Department's use of these permits will allow the Department to separate simpler

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remedial action permit applications from more complex remedial action permit applications, ensuring the Department's expedited issuance of such permits and a reduced cost for the regulated community.

As explained at proposed N.J.A.C. 7:26C-7.7(b)3i, a Permit I is a soil remedial action permit with only a deed notice and no engineering controls, which is to be used when there is soil contamination at a non-residential property above residential standards, but below non-residential standards and any applicable soil remediation standards for the migration to ground water exposure pathway. A Permit I will incur a shorter Department review time, as compared to a soil remedial action permit pursuant to the existing rules, because Permit I cases will not require financial assurance or an engineering control.

A Permit II is a soil remedial action permit that implements a presumptive remedy, but in the instance when a presumptive remedy is not a regulatory requirement. See proposed N.J.A.C. 7:26C-7.7(b)3ii. Permit II is not an option for the permittee when the remediation requires the use of a presumptive remedy. (A presumptive remedy, as listed in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E, Table 5.1, is a requirement for any remediation initiated on or after May 7, 2010, when new construction of, or a change in use to, a residence, a school, or child care center will occur.) As such presumptive remedies are protective for the most sensitive population, the Department believes that its review of the protectiveness of such a remedy is not necessary in instances when a presumptive remedy is not required by rule. Consequently, the Department expects that its review of a Permit II will be conducted more quickly, as compared to a review of a soil remedial action permit pursuant to the existing rules, because the remedy for a Permit II is already approved.

Proposed new Permit III is a soil remedial action permit that has a pre-approved alternative remedy that is required pursuant to N.J.A.C. 7:26E-5.3, Remedial action requirements for residences, schools, and child care centers, to use an unrestricted use remedy, a presumptive remedy, or an alternative remedy pre-approved by the Department. See proposed N.J.A.C. 7:26C-7.7(b)3iii. As the remedy is pre-approved by the Department, a further Department review of the remedy is not needed. As a result, the Department expects that its review of a Permit III will be conducted more quickly than that of a soil remedial action permit pursuant to the existing rules because the remedy for a Permit III is already approved by the Department. Regardless, the Department would still have to review and approve the financial assurance mechanism and the deed notice for the Permit III.

The Permit IV, discussed at proposed N.J.A.C. 7:26C-7.7(b)3iv, is a soil remedial action permit for an historic-fill-only area of concern that is issued by the Department when the permittee has investigated all areas of concern at a site and, except for the historic fill material area of concern, those areas are being, or have been, remediated. For a Permit IV, the property owner must certify that either: (1) a preliminary assessment for the entire site was performed and all areas of concern identified in the preliminary assessment are being or have been remediated; or (2) that the historic fill material area of concern was sampled in accordance with N.J.A.C. 7:26E-3, Preliminary Assessment and Site Investigation, to ensure that the contamination at the site is historic fill only. The Department requires only the property owner to sign for a Permit IV (and its application) because the permittee typically did not place the historic fill on the site. If the Department approves this type of permit application, then the permittee need not include the area of concern on any other remedial action permit. As a result, the Permit IV simplifies the

remediation at multi-tenant facilities for developers and municipalities, as they will no longer have to submit to the Department multiple permit modifications for a property with which they are no longer involved and contamination that they did not cause when the only remaining area of concern is historic fill. The Department expects that it will conduct its review of a Permit IV more quickly than that for a soil remedial action permit pursuant to the existing rules because the Permit IV addresses only one area of concern.

As described at proposed new N.J.A.C. 7:26C-7.7(b)3v, a Permit V is a remedial action permit for ground water monitored natural attenuation (MNA) in instances where the classification exception area (CEA) is completely located within site boundaries and no on-site receptors are impacted. The Department expects the regulated community to use the Permit V to address a CEA that is smaller, in both size and duration, than a CEA submitted with other ground water remedial action permits. For instance, a remedial action permit may include a ground water CEA that extends off-site, implying that there is a greater extent of contamination impacting off-site receptors on multiple properties. As proposed, for those properties with ground water contaminant plumes that have not migrated off-site, the regulated community may opt to use the proposed Permit V, which would incur a shorter Department review time because there are no impacted receptors and no active remedy to review.

For Permit I, Permit II, Permit III, Permit IV, and Permit V, the permittee cannot vary from the requirements at N.J.A.C. 7:26C-7.7 because a variance alters the specific requirements of these focused remedial action permits, defeating their purpose. In addition, variances from rule requirements make the Department's review more complicated since every variance needs to be fully evaluated for its protectiveness. By not allowing for variances and by limiting the scope of

requirements for these focused remedial action permits, the Department anticipates that its review time will be decreased. Accordingly, as a companion change, the Department proposes to replace the Technical Requirements at N.J.A.C. 7:26E-1.7(b)8 to add that the person responsible for conducting the remediation cannot vary from the requirements of a Permit I, Permit II, Permit III, Permit IV, or Permit V.

Permit Application and Financing

The Department's rules for remedial action permit applications, schedules, requirements, and financial assurance are included at proposed new N.J.A.C. 7:26C-7.8, 7.9, 7.10, and 7.6, respectively. The content of these proposed sections is from existing N.J.A.C. 7:26C-7.5 through 7.10. These proposed new sections explain the requirements for applying for a remedial action permit, including signature and certification requirements for the person responsible for conducting the remediation, the property owner, and the LSRP. In addition, the Department proposes that the permittee submits with a permit application not only the operation, maintenance, and evaluation information, but also the monitoring information for each engineering control to be used in the remedial action. Adding this information to the application will confirm that the engineering control is operating as designed and will ensure that the permittee also submits the cost of monitoring the engineering control in any future cost estimate.

Proposed new N.J.A.C. 7:26C-7.8(e) explains the requirements for a remedial action permit for an indoor air remedial action. These requirements are not in the existing subchapter. As with soil and ground water components, the permittee must submit specific documents to the Department, including an application, fact sheet form, and permit fee. In addition, the permittee

is required to submit to the Department a copy of the remedial action report, and if applicable, each final remediation document issued, a change-in-use evaluation plan, a vapor intrusion long-term monitoring plan, and an indeterminate vapor intrusion pathway status analysis. A change-in-use evaluation plan ensures that the remedial action has taken into consideration the future use of the property, where the results of the soil gas samples are above the residential soil gas screening levels for a non-residential property. The permittee must also conduct an analysis of the vapor intrusion pathway to determine whether a contaminant has an indeterminate status. An "indeterminate status" means that, within a building, if a contaminant is present that is associated with the building's operational use, handling, storage, or other technical reason, and that contaminant exists at a level above the soil gas screening levels, then the pathway link between the subsurface and the indoor air cannot be determined (that is, the pathway status is indeterminate). Further discussion of the actions to be taken by the person responsible for conducting the remediation for an indeterminate pathway is in the "indoor air notification area" and "response action outcome (RAO)" sections of the Summary below.

In addition, the permittee must submit an as-built drawing for each engineering control, an operation, maintenance, and monitoring plan, and a schedule to evaluate the indoor air remedial action. The Department requires these documents to ensure that the proposed remedial action is, and will remain, protective of human health and the environment. As-built drawings provide the Department with a visual representation of the engineering control, which assists the Department in confirming that the engineering control is designed appropriately. The submission of the operation, maintenance, and monitoring plan and schedule provides the Department with

information on the engineering and institutional control, how it will be maintained and monitored to ensure that it is functioning as designed, and if/when corrective action is needed.

In conjunction with the addition of a remedial action permit for an indoor air remedial action and the indoor air notification area discussed below, the Department proposes to amend its civil administrative penalty table at N.J.A.C. 7:26C-9.5(b). The Department proposes a non-minor violation with a base penalty of $15,000 for failure to comply with specific conditions applicable to an indoor air remedial action permit. This proposed violation and penalty mirror the existing violations and penalties for failure to comply with specific conditions applicable to a soil remedial action permit or a ground water remedial action permit. Also, like the existing penalties for failure to properly prepare and follow procedures for an institutional control (a deed notice or a classification exception area), the proposed penalty for failure to properly prepare, submit, and file information related to the new indoor air notification area institutional control is a non-minor violation with a base penalty of $15,000.

The Department is proposing to repeal existing N.J.A.C. 7:26C-7.9 and include its contents, with amendments, as new N.J.A.C. 7:26C-7.10, Requirements and conditions applicable to remedial action permits. Consequently, the Department is proposing to recodify N.J.A.C. 7:26C-7.6 as 7.9, Remedial action permit application schedule, with amendments. The proposed amendments add a schedule for the proposed new indoor air remedial action at N.J.A.C. 7:26C-7.9(b)4, and rename the "biennial certification" as the "remedial action protectiveness/biennial certification form."

The Department is also proposing to repeal N.J.A.C. 7:26C-7.7 and 7.8 and include their contents, with amendments, as new N.J.A.C. 7:26C-7.10. Proposed new N.J.A.C. 7:26C-7.10,

Requirements and conditions applicable to remedial action permits, is a combination of existing N.J.A.C. 7:26C-7.7, 7.8, and 7.9, which include general and specific conditions for remedial action permits. The Department is consolidating into the proposed new section the requirements for maintaining a permit, a remedial action protectiveness/biennial certification evaluation, and all other conditions of the permit, including those for the proposed new indoor air component. At proposed N.J.A.C. 7:26C-7.10, the Department is adding the operation, maintenance, and monitoring plan and schedule for all engineering controls to the requirements for the remedial action protectiveness/biennial certification evaluation. These items are necessary for the Department to confirm that the remedial action is performing as designed and that it remains protective, and to ensure that the permittee is conducting the required inspections and monitoring, as scheduled.

Proposed new N.J.A.C. 7:26C-7.10(b) requires the permittee to include in the remedial action protectiveness/biennial certification, the results of any additional sampling conducted at the site, including any change in the monitoring plans and schedules, which has occurred during the two years covered by the remedial action protectiveness/biennial certification evaluation. The Department currently requires this information in the remedial action protectiveness/biennial certification evaluation form but is now proposing to expressly include it in the rule to ensure that the remedial action is regularly inspected and monitored to confirm that it is performing as designed and remains protective.

The Department is also proposing to recodify existing N.J.A.C. 7:26C-7.10 as 7.6, Financial assurance for remedial action permits for remedial actions that include engineering controls, with amendments. As the permittee is required to obtain financial assurance prior to

applying for a remedial action permit, the Department is moving these financial assurance provisions to an earlier position in the subchapter. At recodified N.J.A.C. 7:26C-7.6(b), the Department is clarifying that one or more permittees are required to establish financial assurance pursuant to this section. If there is at least one permittee who is not exempt from obtaining financial assurance, regardless of whether one or more additional permittees are exempt pursuant to N.J.A.C. 7:26C-7.6(c), then the permittee (or permittees) who is not exempt is responsible to establish the full amount of financial assurance required for the remedial action permit. Also, at proposed N.J.A.C. 7:26C-7.6(c), the Department is clarifying the financial assurance exemption language in the rule by including the phrase, "present or former" in relation to a primary or secondary residence, a licensed child care center, and a property of a small business. The Department believes that this language will ensure the regulated community's awareness that such persons are always exempt from obtaining financial assurance, regardless of whether they still own or operate at the location. This language is similar to that proposed for the remediation funding source exemption at existing N.J.A.C. 7:26C-5.2, as discussed above.

Further, unlike in the existing rule, proposed N.J.A.C. 7:26C-7.6 does not allow any party to disburse money from financial assurance; the intent of the financial assurance is to ensure that there is enough funding to continuously maintain the engineering control. If funding were to be disbursed, then there would not be a consistent amount of funding required to maintain the engineering control. As in the existing rule, the Department may authorize a draw on financial assurance to achieve compliance when a permittee fails to comply with the actions required pursuant to a remedial action permit or this subchapter, as monies may be disbursed only from a

remediation funding source in such instances. See N.J.A.C. 7:26C-5.12, Disbursements from the remediation funding source.

Institutional Controls

Classification Exception Area

The Department proposes to recodify and amend existing N.J.A.C. 7:26C-7.3 as 7.4, Ground water classification exception area in a remedial action. This recodified section is proposed for amendment to add language from existing N.J.A.C. 7:26C-7.9(f) (proposed to be deleted) that addresses the termination of a classification exception area. The Department is consolidating the classification exception area information into one section, which is consistent with the approach for indoor air notification areas and deed notices, discussed below. At proposed N.J.A.C. 7:26C-7.4(a)3, the permittee who is proposing a ground water classification exception area must submit, among other documents, a revised classification exception area, if applicable. If the remedial investigation report and the remedial action report are submitted separately at different times, then a classification exception area proposal must be submitted with each report. When that happens, the Department expects that the classification exception area proposal submitted by the permittee with the subsequent remedial action report will be a revised classification exception area that is based on point-by-point compliance, instead of extrapolation.

The Department's addition of "if applicable" at N.J.A.C. 7:26C-7.4(a)3 accounts for the situation when the permittee did not previously submit a classification exception area proposal to the Department. Although the Department requires that a classification exception area proposal be submitted with a remedial investigation report, there are times when the Department receives

both a remedial investigation report and a remedial action report at the same time. In those cases, only one classification exception area proposal is submitted to the Department. As a companion change, the Department is proposing to amend the Technical Requirements at N.J.A.C. 7:26E-5.7(b)14 to require the person responsible for conducting the remediation to include an updated ground water classification exception area proposal in the remedial action report submission to the Department.

The Department proposes to require the permittee to submit maps and cross-sections when proposing a ground water classification exception area. See proposed N.J.A.C. 7:26C-7.4(a)2. As the Department often receives maps that do not include the locations of ground water contaminant source areas, the Department proposes to now require the identification of such source area locations on submitted maps, pursuant to proposed recodified N.J.A.C. 7:26C-7.4(c)1v. This information is necessary for the Department to approve a ground water classification exception area proposal, unless the contaminant source (area of concern) is known/identified, the Department cannot determine an accurate extent of the contamination because knowing the source of the contamination is essential to evaluating the appropriateness of the remediation. Likewise, the Department is expressly requiring that the permittee submit cross-sections defining the approximate ground water contaminant plume centerline, which identify the transect location used to create the cross-section figure, as well as any existing soil and ground water engineering control locations. The Department needs this information to make an accurate assessment of the completeness of the remedial action, and to determine whether the remedial action is appropriate.

In addition, the Department is specifying at proposed new N.J.A.C. 7:26C-7.4(g) that, within 180 calendar days after the anticipated expiration of the ground water classification

exception area, the permittee must collect at least two rounds of ground water samples that are at least 90 days apart, such that the time between sampling events accounts for seasonal fluctuations in the ground water table. As compared to existing N.J.A.C. 7:26C-7.9(f), this proposed 90-day period requirement is new. The permittee must account for seasonal fluctuation and properly evaluate depth to ground water data to justify the removal of a classification exception area. Seasonal fluctuation of the depth to ground water can impact the movement of the contamination. When a permittee collects samples at least 90 days apart, that provides sufficient documentation of seasonal fluctuation.

The Department will terminate (remove) a classification exception area when the contamination in the ground water is at or below the New Jersey Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C. The permittee's sample timing for one of the two sampling rounds at or below the GWQS that is needed to remove a classification exception area should reflect the time of the year in which the highest levels of contamination are expected, based on the results of historic ground water data. This ensures that the remediation is complete, and that no ground water contamination remains, which warrants the Department's termination of the classification exception area. Once the Department terminates the classification exception area, then the ground water remedial action permit can also be terminated.

The Department is also proposing an additional requirement at N.J.A.C. 7:26C-7.4(g)2i, for when a permittee modifies a ground water remedial action when contaminant concentrations have not decreased to or below the applicable remediation standards throughout the ground water classification exception area. In that instance, in addition to modifying the remedial action by re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to

the ground water classification exception area, and applying for a modification of the remedial action permit, the permittee must also propose a revision to the ground water monitoring plan and schedule. This additional requirement ensures that the permittee will update all of the documents pertaining to the ground water remedial action concurrently, which should save time for both the Department and the regulated community.

Indoor Air Notification Area

The Department uses institutional controls, such as classification exception areas and deed notices, to inform the public that contamination above applicable remediation standards is present at a site. The existing rules provide for institutional controls for soil and groundwater, but as a result of the Department's May 2021 adoption of its new indoor air remediation standards, the Department is including a new institutional control called an "indoor air notification area," which addresses the indoor air/vapor intrusion exposure pathway. The Department modeled proposed new N.J.A.C. 7:26C-7.5, Indoor air notification area in a remedial action, after existing N.J.A.C. 7:26C-7.3, the requirements for a classification exception area in a remedial action. Proposed new N.J.A.C. 7:26C-7.5 explains how an indoor air notification area will serve as notification to the public that air inside a building on a site is above the applicable remediation standards, and that it requires treatment and monitoring to ensure that any occupants of the building are protected. Similar to the classification exception area, the indoor air notification area will be part of the remedial action permit and a GIS layer will be on the Department's website.

An indoor air notification area, which is administratively similar to a classification exception area (CEA) for ground water, requires data evaluations, mapping, and notification to

ensure that persons in a building are aware that there is a potential exposure risk if an engineering control is not maintained. The permittee who proposes an indoor air notification area must submit for Department approval, a form with attached PDF and GIS-compatible map and cross sections, a remedial investigation report, and a proposal including documentation that: (1) a site-specific evaluation was conducted regarding how changes in property use or conditions above the indoor air notification area could affect the migration of vapors emanating from the contaminants on-site; and (2) the horizontal extent of the indoor air notification area includes all properties that have results above the indoor air remediation standards pursuant to N.J.A.C. 7:26D. When a permittee proposes the indoor air notification area, the permittee must also notify municipal officials, health departments, county planning boards, and nearby real property owners, tenants, and occupants. The Department will then establish an indoor air notification area based on information received and post a map of the indoor air notification area on its website (https://www.nj.gov/dep/gis/geowebsplash.htm).

The Department is also proposing to amend the Technical Requirements at new N.J.A.C. 7:26E-5.7(b)15 to require the person responsible for conducting the remediation to include in the remedial action report submission to the Department the indoor air notification area reflecting current site conditions for the area of the indoor air contaminated by a discharge at the site. Pursuant to N.J.A.C. 7:26C-7.5, the Department may revise or reestablish an indoor air notification area at any time to more accurately reflect indoor air conditions using any relevant data, as the duration of the indoor air notification area is indeterminate. The Department will remove the indoor air notification area if sampling data reveals that the concentrations of contaminants in the soil gas and indoor air are at or below the applicable soil gas screening levels

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and indoor air remediation standards, respectively, pursuant to N.J.A.C. 7:26D, for two sampling rounds. This new institutional control is also similar to the deed notice, which provides public notification about soil.

Model Deed Notice

The Department proposes to recodify and amend existing N.J.A.C. 7:26C-7.2 as 7.3, Deed notice and notice in lieu of deed notice in a remedial action. The proposed section explains that the deed notice is the institutional control for soils, and it is required for a soil remedial action permit because it memorializes the existence of soil contamination on the property. At proposed N.J.A.C. 7:26C-7.3(d), the Department is requiring the permittee to, within 60 days after municipal subdivision, take action to change a deed notice and remedial action permit, as necessary. The existing rule at N.J.A.C. 7:26C-7.2(d) notes a 30-day period, but the Department is proposing a 60-day period for consistency with the regulatory 60-day period for property transfers. See also proposed recodified N.J.A.C. 7:26C-7.8(f), 7.11(a), and Appendix B at paragraph 6A(ii).

The Department is also adding language at proposed recodified N.J.A.C. 7:26C-7.3(d) to explain that when a permittee is required to obtain new remedial action permits for a subdivided parcel, the Department considers one of the new permits as a modification of the original permit, instead of requiring the termination of the original permit. This approach results in a lower permit fee for the permittee because the fee for a permit modification is less than the combined fee for a permit termination and a new remedial action permit. Additionally, the Department proposes new

N.J.A.C. 7:26C-7.3(e) to outline the process to terminate a deed notice or notice in lieu of deed notice, codifying the Department's existing practice.

Moreover, throughout proposed N.J.A.C. 7:26C-7, the Department is adding a notice in lieu of deed notice as an institutional control option for soils. For purposes of remedial action permits, the Department considers a notice in lieu of deed notice equivalent to a formal deed notice in situations when a deed notice is not obtainable (for example, a public roadway parcel with no existing deed). The Department is adding this notice in lieu of deed notice option because a deed notice and a notice in lieu of deed notice are substantively equivalent documents in relation to remedial action permits.

The Department is also proposing changes to the Model Deed Notice at N.J.A.C. 7:26C Appendix B. In paragraph 12Bi at Exhibit B(A), the Department proposes to delete the listed examples from the description of "as-built diagrams of each engineering control" because the Department does not want to convey the impression that it is limiting the types of engineering controls that the person conducting the remediation may employ. The Department believes that since the regulated community is sufficiently familiar with engineering controls, it is not necessary to provide examples for clarification. Further, the Department is revising the language and the document instructions in the Model Deed Notice to make it more user friendly for the regulated community. The Department has found that some of the language in the existing Model Deed Notice is confusing regarding certifying entities and property descriptions. For example, in Appendix B paragraph 1, the Department proposes to delete the phrase "in fee simple" because there are many types of property ownership other than fee simple to which the Model Deed Notice may be applicable. In addition, the Department has found that the regulated community

has been confused by the signature options and instructions in the existing Model Deed Notice. For instance, a responsible party may not legally identify as one of the specifically named entity options listed as signatories (that is, general partner, secretary, etc.). Also, a responsible party may be confused as to who signs the acknowledgement on the responsible party's behalf (versus who signs as a witness). As a result, the Department is proposing updated signature requirements, which are also consistent with N.J.S.A. Title 46, Property, ensuring that the Model Deed Notice meets the statutory requirements for recorded documents. See N.J.S.A. 46:26A-3. Further, as a companion change, the Department is proposing the same signature requirement updates to the Model Termination of Deed Notice in ARRCS at N.J.A.C. 7:26C Appendix C.

Permit Changes and Termination

To further streamline the remedial action permit process, the Department is proposing to amend the process for modifying existing remedial action permits that require administrative amendments, such as remedial action permit transfer changes (transfer of property or assets) and permittee address changes. Administrative permit updates, which account for approximately 25 percent of all remedial action permits submitted to the Department, require only limited Department review to verify the administrative changes. However, because such administrative changes are included with permit modifications in the existing rules at N.J.A.C. 7:26C-7.12, Department technical staff often process these administrative permit revisions, instead of Department administrative staff.

To separate permit administrative changes from technical modifications in the rules, the Department proposes to amend and rename N.J.A.C. 7:26C-7.11 as Administrative changes for a

remedial action permit, as it also sets forth the requirements at existing N.J.A.C. 7:26C-7.12(b)3, permittee address changes. As the Department proposes to move administrative changes to their own section within ARRCS, the Department is also including instances when a permittee needs to be removed from a permit due to death or legal dissolution. The Department believes that such administrative changes also need to be expressly mentioned in the new rule to ensure the proper identification of remedial action permittees. Through this proposed new section, remedial action permit administrative changes may be handled either by Department administrative staff or electronically with minimal Department staff involvement, through a new (yet to be developed) online service. As a result, the Department anticipates that this proposed amendment will result in better Department efficiency, saving time and money for both permittees and the Department.

The Department proposes to amend N.J.A.C. 7:26C-7.12, Modification of specific requirements in a remedial action permit, to include elements of the proposed new remedial action permit paradigm. When a permittee seeks to add or remove a remedial action permit component (for example, one impacted medium such as soil, ground water, or indoor air) from a remedial action permit containing multiple components, the Department will consider that action a modification of the remedial action permit. For example, if a permittee applies to add a soil component to an existing remedial action permit that only addresses ground water, then the permittee would request a permit modification to add the soil component. Likewise, if a permittee applies to remove the soil component from a remedial action permit for soil and ground water (multiple components of impacted media), then the permittee must request that the Department modify the permit because the permit still includes another component (ground water). For this example, in the existing remedial action permit paradigm the permittee would

have had two separate permits – one for soil, and one for ground water. As separate media are currently addressed in separate remedial action permits, the Department would have terminated the soil permit, and the ground water permit would have continued without change.

Additionally, as noted at proposed new N.J.A.C. 7:26C-7.12(d), if a permittee requests that the Department modify a focused Permit IV (see N.J.A.C. 7:26C-7.7(b)3iv) to add a remedial action permit component, then the permittee must add the person responsible for conducting the remediation as a permittee. Pursuant to proposed new N.J.A.C. 7:26C-7.12(b)3, if an additional component for a medium or area of concern is added to or removed from a remedial action permit, then the permit must be modified. Although the Department is requiring that only the property owner sign the permit application for a Permit IV, any permit modification to the Permit IV to include or exclude any other area of concern or any other media still requires that the person responsible for conducting remediation be added as a permittee.

Moreover, as in the existing rules, the Department may modify a remedial action permit as needed to protect the public health and safety and the environment. Consequently, if the Department requests the modification of any remedial action permit, then the permittee must submit, to the Department, a remedial action permit application and pay the applicable permit modification fee. See proposed N.J.A.C. 7:26C-7.12(e). The Department requires the permittee to do this when the Department determines that a remedial action permit is no longer protective.

The Department proposes to amend N.J.A.C. 7:26C-7.13, Termination of a remedial action permit, to add new subsection (d). The new subsection directs that the Department may revoke a remedial action permit that is no longer protective of the public health and safety and of the environment. The Department believes that this new subsection is needed for those cases in

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which the Department issued a remedial action permit that was not protective, or when the permittee does not maintain the provisions outlined in the remedial action permit, making the permit not protective.

Remedial Action Permit Fees

The authority for charging annual remediation fees to cover the Department's costs of administering the program is in both SRRA, N.J.S.A. 58:10C-1 et seq., and the Brownfield Act, N.J.S.A. 58:10B-1 et seq. SRRA allows the Department to charge reasonable application fees to cover the costs of processing applications for remedial action permits for engineering or institutional controls, and to charge reasonable annual fees to cover the costs of the administration and enforcement of the remedial action permits (N.J.S.A. 58:10C-19.d). The Brownfield Act requires a person who initiates a remediation to pay all applicable fees and oversight costs as required by the Department (N.J.S.A. 58:10B-1.3.b(5)). The Department's proposed revised approach to remedial action permitting necessitates changes at existing N.J.A.C. 7:26C-4.5, Remedial action permit fee formula, to reflect the one permit paradigm, the focused permits, the biennial certification requirements, the administrative changes to permits, the permit modifications, and the termination of permits. Specifically, the Department is proposing amendments at N.J.A.C. 7:26C-4.5(b) to incorporate the remedial action permit types and administrative changes to permits.

Additionally, at N.J.A.C. 7:26C-4.6, Payment of remedial action permit fees, the Department proposes to delete the existing table at subsection (a), which illustrates remedial action permit fees for soil and ground water and replace it with a new table noting the proposed

fees required for a remedial action permit with components (soil, ground water, indoor air, or a combination thereof) and the cost to add or change a permit component. Also included in the proposed table are the fees for focused permits (Permit I, Permit II, Permit III, Permit IV, and Permit V), and for remedial action permit modification, administrative change, and termination fees. At proposed N.J.A.C. 7:26C-4.6(b), the Department proposes to delete paragraphs (b)1 and 2, the list of annual soil and ground water permit fees and replace it with paragraphs (b)1, 2, 3, and 4, a list of fees for the proposed new remedial action permit options, including the indoor air remedial action, and a remedial action that includes more than one remedial action component (soil, ground water, or indoor air).

At N.J.A.C. 7:26C-4.6(a) and (b), which address initial permit application fees and recurring annual remedial action permit fees, respectively, the Department proposes that, on or before the first day of the State fiscal year following the effective date of the chapter, which will be the date the adoption of these proposed amendments is published in the New Jersey Register, the permittee shall pay an annual remedial action permit fee in the dollar amounts listed in the proposed rules at N.J.A.C. 7:26C-4.6. Thereafter, the permittee would be required to pay the applicable remedial action permit activity fees indicated in the most recently posted Annual Site Remediation Reform Act Program Fee Calculation Report. The first day of the State fiscal year is July 1. Therefore, for example, if the adoption of the proposed amendments is published in the New Jersey Register in August 2024, then beginning on July 1, 2025, the fees in the most recently posted Annual Site Remediation Reform Act Program Fee Calculation Report will apply.

Amendments Related to the 2021 Remediation Standards Adoption

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Existing N.J.A.C. 7:26E-5.1(b)1 provides that the person responsible for conducting the remediation must implement a remedial action when the concentration of any contamination exceeds any applicable remediation standard. To integrate the new indoor air remediation standards that were part of the May 17, 2021 adoption of the Remediation Standards, N.J.A.C. 7:26D, the Department proposes to add at N.J.A.C. 7:26E-5.1(b)1, the requirement that a person must also implement a remedial action if an ecological risk-based remediation goal is exceeded.

Terminology Update

The Department is proposing to add a new definition for "direct contact" to the Technical Requirements at N.J.A.C. 7:26E-1.8, Definitions. "Direct contact," as used in the chapter, means the soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways. As discussed in the Department's May 17, 2021 adoption of the Remediation Standards, N.J.A.C. 7:26D, the Department established soil remediation standards for the soil ingestion-dermal and the soil inhalation exposure pathways to address direct contact soil exposure. See 53 N.J.R. 775(b). The Department recognized that the term "direct contact" as used in the Technical Requirements, N.J.A.C. 7:26E, needed clarification, and through a future rulemaking, the Department intended to clarify that the term "direct contact" means both the soil ingestion-dermal and soil inhalation exposure pathways. See the Response to Comments 84 and 85 at 53 N.J.R. 802. The Department believes that making this change to the Technical Requirements will eliminate uncertainty regarding the use of the term "direct contact."

In the Department's 2021 adoption of remediation standards, the Department changed the name of the soil impact to ground water pathway to the "migration to ground water exposure

pathway." As a result of this change in terminology, the Department proposes to amend the Technical Requirements at N.J.A.C. 7:26E-4.2, Remedial investigation of soil, at paragraph (a)3 for consistent reference to "migration to" ground water, instead of the existing "impact to" ground water.

Indoor Air Remediation Standards

Indoor air remediation standards require the application of soil gas screening levels and ground water screening levels in the evaluation of a site or area of concern, consistent with N.J.A.C. 7:26E-1.15, Receptor evaluation - vapor intrusion. An exceedance of a soil gas screening level or a ground water screening level triggers the requirement for a person to evaluate the vapor intrusion exposure pathway; soil gas sampling and ground water sampling are integral steps to evaluating that pathway. After both soil gas and ground water sampling, the last step in the evaluation of the vapor intrusion pathway, indoor air sampling, is conducted to assess whether that exposure pathway is complete. Indoor air sampling is required if there is an exceedance of the conditions found at N.J.A.C. 7:26E-1.15(a), as those exceedances are strong indications that there is a potential for vapor intrusion into a building.

Additionally, the Department proposes to replace the term "vapor intrusion indoor air screening levels" throughout N.J.A.C. 7:26E-1.15 with "indoor air remediation standards." Likewise, the Department is amending the definition of "vapor concern" at N.J.A.C. 7:26E-1.8 to replace "vapor intrusion indoor air screening levels" with "indoor air remediation standards."

Building Interior Investigations

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The Department is proposing to amend its rules for site investigation and remedial investigation to include vapor intrusion. Members of the regulated community have expressed confusion about when a vapor intrusion investigation is necessary, as the existing rules mention the requirement of such an investigation only during a preliminary assessment. The Department is proposing to amend N.J.A.C. 7:26E-3.7(b) to add the exceedance of indoor air remediation standards as a requirement for the person responsible for conducting the remediation to conduct a remedial investigation. Further, at proposed new N.J.A.C. 7:26E-3.7(c) and 4.5(b), the Department proposes to add language requiring the person responsible for conducting the remediation to conduct a vapor intrusion investigation if any condition listed at N.J.A.C. 7:26E-1.15(a) is identified, such as volatile organic ground water contaminants, free product, or other indications that human health and safety may be impacted through the vapor intrusion pathway.

For site investigations of building interiors, the Department aims to ensure that all unoccupied structures are evaluated to determine if an immediate environmental concern condition exists at a structure. If an existing immediate environmental concern condition meets the criteria listed at N.J.A.C. 7:26E-1.15(a), then the person responsible for conducting the remediation must address the immediate environmental concern condition. For remedial investigations of building interiors, the Department believes this amendment is necessary to ensure that a vapor intrusion investigation continues throughout the evaluation of a site. If the person responsible for conducting the remediation encounters new areas of concern at a remediation site during the delineation of the contamination, then additional areas may need to be evaluated for vapor intrusion.

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Response Action Outcome (RAO)

In ARRCS at N.J.A.C. 7:26C-6.2, Response action outcomes, the Department proposes to include the remediation of indoor air at subsections (f) and (g). N.J.A.C. 7:26C-6.2(f) directs that the LSRP must certify that contaminants at the site or area of concern meet soil and ground water remediation standards, as applicable. As a result of its May 2021 adoption of indoor air remediation standards, the Department is now updating ARRCS to expressly include those standards in the list of remediation standards requirements, in addition to soil and ground water. Likewise, at existing N.J.A.C. 7:26C-6.2(g), which directs that an LSRP shall issue a response action outcome when all contaminated soil and ground water have been remediated, as applicable, the Department is including the remediation of indoor air as a requirement.

The Department is also proposing three new notices at N.J.A.C. 7:26C at Appendix D, the Model Response Action Outcome Document. Two of these notices, which are discussed further below, result from the Department's 2021 adoption of remediation standards and were previously released in the Department's technical guidance. The proposed notice, "Indeterminate Vapor Intrusion (VI) Pathway Not Yet Investigated," must be included when an indeterminate VI pathway is identified. This notice is meant to ensure the disclosure of an ongoing environmental condition because of vapor intrusion. The Department's purpose for this new notice is two-fold: the notice is meant as a stop gap mechanism for ongoing soil gas issues, as well as a notice to the public and prospective purchasers of the site, to ensure the accurate and timely disclosure of protective measures. If the LSRP cannot complete a vapor intrusion investigation due to the inability to collect representative indoor air samples, then the vapor intrusion pathway is considered indeterminate, which requires that a technical variance be applied to the building or

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structure. With the use of this notice, the LSRP must also submit to the Department one electronic copy of a GIS-compatible map of the currently known extent of the vapor intrusion area identified in the notice at the same time of submittal of the response action outcome so that the regulated community is aware that vapor intrusion conditions exist at a site. Such information would be helpful to prospective purchasers of the site and nearby properties, notifying them that potential exposure risks are present since this notice considers limited public disclosure and awareness of this prolonged condition.

The proposed "Long-Term Vapor Intrusion Monitoring" notice must be included when analytical results indicate that contaminant levels are above soil gas screening levels, but below the indoor air remediation standards. The purpose of this notice is to notify the regulated community of a condition that is threatening the health and safety and the environment. Long-term vapor intrusion monitoring signifies the potential for vapor intrusion to occur based on elevated soil gas concentrations. To maintain protectiveness of human receptors, regular indoor air monitoring is warranted until such time that soil gas concentrations no longer represent the potential for vapor intrusion to occur. Due to the limited public disclosure and awareness of this prolonged condition, the Department intends this notice to inform any interested party that the risk of vapor intrusion continues to be present. As with the proposed "Indeterminate Vapor Intrusion (VI) Pathway Not Yet Investigated" notice, this notice includes the requirement that the LSRP submit one electronic copy of a GIS-compatible map of the currently known extent of the identified vapor intrusion area at the same time as submission of the response action outcome, so that the public and prospective purchasers of the site are aware that vapor intrusion conditions exist at a site.

Once long-term vapor intrusion monitoring is in place, a person should terminate such monitoring only with Department approval, based on the sampling requirements outlined in Section 6.6 of the Department's Vapor Intrusion Technical (VIT) Guidance. The frequency of indoor air sample collection and analysis depends on soil gas concentrations, as well as other factors outlined in Section 6.5.2 of the Department's VIT Guidance. Long-term vapor intrusion monitoring should also include an annual inspection of the building to determine if there are any changes to allow vapors to more easily enter the building. If such changes have occurred, the person should conduct a revaluation of the vapor intrusion pathway, inclusive of sampling.

The third notice that the Department is proposing to add at N.J.A.C. 7:26C Appendix D is the "Transfer of Monitoring Well Use (Redesignated Use)," which allows for a monitoring well that was part of an investigation to remain in place, even after the remediation for which the monitoring well was originally required is completed. In effect, the original ownership of that monitoring well is transferring to an unrelated contaminated site, which requires further ground water investigation. The Department is adding this new notice at the behest of the regulated community, so that monitoring of contaminated ground water may continue uninterrupted, regardless of property ownership.

Department Administrative Updates

ISRA Rule Technical Correction

The existing rules at N.J.A.C. 7:26B-1.10, Liability for ISRA compliance, direct that an owner or operator shall not transfer ownership or operations of an industrial establishment until an LSRP has certified a remedial action workplan for the industrial establishment pursuant to

N.J.A.C. 7:26B-1.7(b). However, the cross-reference to existing N.J.A.C. 7:26B-1.7(b), which is a reserved section of the chapter, is an error. The Department proposes to amend N.J.A.C. 7:26B-1.10(b)2 to cross-refer directly to statute, stating that such ownership and operations shall not be transferred until an LSRP has certified a remedial action workplan pursuant to the Site Remediation Reform Act at N.J.S.A. 58:10C-14, Certification of documents by site remediation professional.

Contaminated Site

The Department proposes to amend the definition of "contaminated site" in the Technical Requirements at N.J.A.C. 7:26E-1.8. The existing definition of "contaminated site" at N.J.A.C. 7:26C-1.8 means all portions of environmental media and any location where contamination is emanating, or which has emanated therefrom, that contain one or more contaminants at a concentration above any remediation standard or screening criterion. The Department proposes to add language to expressly state that contaminated site means any locations impacted by a discharge, including the location of where the discharge originated and all locations and media impacted by migration of the discharge. The Department is proposing to amend the language because the existing definition's phrase of "all portions of environmental media and any location where contamination is emanating, or which has emanated there from," may be misleading if a ground water contamination plume is passing through an off-site property.

Clarifications

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The Department proposes to amend ARRCS at N.J.A.C. 7:26C-3.3(a) to clarify that a person responsible for conducting the remediation who is remediating any discharge that was identified or should have been prior to May 7, 1999, shall complete the remedial investigation of the contaminated site, not the "entire site." The existing phase "entire site" implies that a full preliminary assessment and site investigation is required. However, the intent of the rule language is to require a remedial investigation of the area of concern and the location of wherever the contamination from that area of concern has migrated. The Department proposes to remove the word "entire" and replace it with "contaminated," so that it is clear that a remedial investigation is required for the extent of a contaminated site. This proposed amendment should also prevent confusion regarding the requirements of a remedial investigation of an ISRA site, as ISRA requires a full preliminary assessment and site investigation for the "entire" industrial establishment, not just the known contaminated area.

The Department is proposing to amend ARRCS at N.J.A.C. 7:26C-3.5, Extension of a mandatory or an expedited site specific remediation timeframe, to clarify the meaning of the existing phrase "a description of the cause or causes for the extra time needed to complete the work" at N.J.A.C. 7:26C-3.5(a)1iii. Stakeholders noted that the existing phrase made it unclear how they were to request extra time to extend a timeframe – whether a description was needed of the amount of extra time needed or the reason for the need of extra time. To address this concern, the Department proposes to rephrase N.J.A.C. 7:26C-3.5(a)1iii to require a description of the "reason that the timeframe was not met and the justification for the amount of extra time needed" to complete the work.

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For consistency with the Remediation Standards, N.J.A.C. 7:26D, the Department proposes to amend the specific remedial action requirements at N.J.A.C. 7:26E-5.2(a)4. At amended N.J.A.C. 7:26E-5.2(a)4i, the Department is adding language to specify that a deed notice must be filed when a person responsible for conducting the remediation implements a soil remedial action when residual contaminant concentrations exceed the applicable soil remediation standards for the migration to ground water exposure pathway. Additionally, the Department is proposing companion changes at N.J.A.C. 7:26E-3.12(b) to also include the migration to ground water exposure pathway. Further, to remind the regulated community of its obligation to obtain a remedial action permit, the Department is expressly noting at new N.J.A.C. 7:26E-5.2(a)4ii that the person responsible for conducting the remediation is required to use an institutional control and obtain a soil remedial action permit when implementing an alternative remediation standard pursuant to N.J.A.C. 7:26D Appendices 6 and 7.

Annulment of a Response Action Outcome (RAO)

The Department proposes to add language throughout ARRCS, N.J.A.C. 7:26C, to include “annul” or “annulment” for when an LSRP cannot make changes to a response action outcome due to incapacitation, death, or non-renewal of license. This addition is necessary because, at present, when a response action outcome needs to be revised and it is not revised, the Department considers it necessary to invalidate the response action outcome. This proposed new distinction distinguishes between instances when an LSRP refuses to address the issue of protectiveness and when the LSRP cannot address it.

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Accordingly, the Department proposes new language at N.J.A.C. 7:26C-6.4, Modification, rescission, annulment, and invalidation of a final remediation document, to include the annulment of a response action outcome, at new paragraph (c)3, when the Department determines that an LSRP cannot change the response action outcome due to incapacitation, death, or non-renewal of license. As companion amendments, the Department proposes to add annulments of response action outcomes to the existing sections of ARRCS that address invalidation of response action outcomes as related to rule applicability at N.J.A.C. 7:26C-1.4(a)5i, required remediation at N.J.A.C. 7:26C-2.2(a)5, and adjudicatory hearings at N.J.A.C. 7:26C-9.10(a)2, as the Department considers the annulment of a response action outcome parallel to an invalidation of a response action outcome in those regards.

Permit Revocation and Adjudicatory Hearings

The existing rules specify that the Department may only terminate a remedial action permit if it is not protective of human health and safety and of the environment. In practice, there are instances when the person responsible for conducting the remediation requests that the Department terminate a remedial action permit because a site is in compliance with the Ground Water Quality Standards, N.J.A.C. 7:9C, or the Remediation Standards, N.J.A.C. 7:26D. To differentiate between when a person requests a permit termination and when the Department terminates a permit because it is no longer protective, the Department proposes to add the concept of permit "revocation" to the rules to address Department-initiated termination of a remedial action permit. In conjunction with this proposed change, the Department is amending ARRCS at N.J.A.C. 7:26C-9.10(a) to expressly state that final agency decisions regarding remedial action

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permits also include remedial action permit revocations. If the Department chooses to revoke a remedial action permit, then the person may request a hearing to contest that decision. Additionally, the Department is proposing a technical change at N.J.A.C. 7:26C-9.10(e)2 to correct the name of the Department program from "Contaminated Site Remediation and Waste Management Program" to "Contaminated Site Remediation and Redevelopment."

Alternative Fill

The Department proposes to update, reorganize, and clarify existing N.J.A.C. 7:26E-5.2(b) through (h) related to alternative fill by replacing these subsections. As proposed at new N.J.A.C. 7:26E-5.2(h), the Department seeks to ensure that alternative fill (off-site or on-site) is not moved to an uncontaminated area because this could create a new area of concern. The proposed amendments make clear that off-site contaminated soil may not be moved to another contaminated area of concern on the site when the volume of that soil exceeds that which is required to restore the pre-remediation topography and elevation of the receiving area of concern and that soil contains contaminants that do not meet the like-on-like and 75th percentile requirements at existing N.J.A.C. 7:26E-5.2(b). With the proposed reorganization of existing subsections (b) through (h) and the addition of two new subsections (e) and (h), the Department is not proposing to change the three existing triggers for pre-approval for the import of off-site alternative fill, which are recodified at proposed subsection (g). Rather, the proposed changes explain what the triggers are for the Department's written pre-approval for the on-site movement of alternative fill. These proposed amendments modify the conditions that a person responsible for conducting the remediation must meet when moving alternative fill from one area of concern

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to another, when the donor material does not meet the like-on-like requirement of existing N.J.A.C. 7:26E-5.2(d)1.

The Department proposes to move the language at existing N.J.A.C. 7:26E-5.2(b) and relocate it to subsection (g). Likewise, existing N.J.A.C. 7:26E-5.2(e), (f), (g), and (h) are relocated to N.J.A.C. 7:26E-5.2(c), (d), (e), and (b), respectively. This proposed reorganization of this section should aid the regulated community because it clarifies the rule requirements, presenting them in a more logical structure. Existing N.J.A.C. 7:26E-5.2(c), relocated to proposed N.J.A.C. 7:26E-5.2(h), is amended to clarify that the person responsible for conducting the remediation shall obtain prior written approval from the Department for the fill use plan before bringing alternative fill to the site.

The Department believes that the language at existing N.J.A.C. 7:26E-5.2(d) for the reuse of on-site alternative fill does not clearly establish that on-site alternative fill shall not be relocated to a clean area of the site. To remedy this issue, the Department proposes to delete existing N.J.A.C. 7:26E-5.2(d) and incorporate its elements into new N.J.A.C. 7:26E-5.2(i). Proposed paragraph (i)1 is similar to existing N.J.A.C. 7:26E-5.2(d)1, in that the person responsible for conducting the remediation may use alternative fill from an on-site source without prior written approval from the Department if the individual contaminants present in the alternative fill are also present at the receiving area of concern at concentrations above applicable remediation standards (like-on-like). However, unlike existing N.J.A.C. 7:26E-5.2(d)1, proposed new N.J.A.C. 7:26E-5.2(i)1 also includes the provision that the soil concentration of any individual contaminant cannot exceed the 75th percentile of that contaminant's concentrations at the receiving area of concern. Further, the Department is setting forth, at proposed new N.J.A.C.

7:26E-5.2(i)2, that prior written approval of the Department is required if the on-site alternative fill meets the like-on-like provision but contaminant concentrations exceed the 75th percentile of that contaminant's concentrations at the receiving area of concern. The Department proposes new N.J.A.C. 7:26E-5.2(i)3 to outline the requirements for the use of alternative fill if the individual contaminants present in the alternative fill and the receiving area of concern are not the same. In both cases, the person responsible for conducting the remediation must provide technical information set forth at N.J.A.C. 7:26E-1.7(a) to the Department and obtain written approval from the Department before moving the alternative fill. As set forth at N.J.A.C. 7:26E-5.2(i)3i, such movement of alternative fill must create a "clean area" at the donor area of concern, meaning that concentrations of all contaminants in the soil are at or below the most stringent soil remediation standard, any site-specific alternative remediation standard, any interim remediation standard, and all criteria or action levels for contaminants without soil remediation standards. The Department requires this "clean area" to compensate for the movement of alternative fill that does not comply with the "like-on-like" provision. As specified at N.J.A.C. 7:26E-5.2(i)3ii, this movement of alternative fill must also result in at least a 25 percent reduction of the original (pre-movement) areal extent of the donor area of concern. This approach is consistent with existing Department policy and the Department's Fill Material Guidance for SRP Sites Version 4.0 (October 2021), which may be found at https://www.nj.gov/dep/srp/guidance/srra/fill_protocol.pdf?version_4_0.

Additionally, new N.J.A.C. 7:26E-5.2(i) uses two new proposed terms, "donor area of concern" and "receiving area of concern," to clarify areas of concern related to alternative fill. The Department also proposes adding these two new terms at N.J.A.C. 7:26E-1.8, Definitions. The definition of "donor site" or "donor area of concern" means property (in-State or out-of-

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State) or an area of concern from which fill is obtained for use in the remediation of a contaminated site. The other term is "receiving area of concern," which means an area of concern at a contaminated site that is being remediated and for which fill will be imported for use in the remediation. The Department believes that both new definitions will provide clarity for the regulated community in its fulfillment of the technical requirements related to alternative fill.

Remedial Investigation and Extrapolation

Existing N.J.A.C. 7:26E-4, Remedial Investigations, requires full delineation of contamination at the end of a remedial investigation. The Department initially issued a policy statement in 2013 to assist persons responsible for conducting remediation in meeting the remedial investigation statutory timeframe of May 2014. The policy statement explained that extrapolation of contamination in soil and ground water was allowed only in the remedial investigation phase for soil and ground water. The Department then updated this policy statement in June 2014 and again in January 2020 to clarify that the policy statement did not apply to remedial actions or to remedial investigations of receptors. See https://www.nj.gov/dep/srp/guidance/srra/ri_complete_policy_statement_202001.pdf. In practice, the regulated community has misinterpreted this remedial investigation policy statement to apply to remedial actions, interpretating the policy to allow for extrapolation and modeling in the remedial action phase, which is not correct. N.J.A.C. 7:26E-5.2(a)3 provides that one must demonstrate compliance expressly by collecting and analyzing samples. The existing rule does not allow for extrapolation or derivations of values.

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To remedy this confusion regarding the intent of the policy statement, the Department is proposing to specifically state the requirements at N.J.A.C. 7:26E-4.2(b)1 and 4.3(a)4. Paragraph (a)3 at N.J.A.C. 7:26E-5.2, Specific remedial action requirements, is amended to state that delineation by extrapolation or modeling is prohibited in the remedial action phase. As a companion amendment, the Department proposes to add language at N.J.A.C. 7:26E-4.2(b)1 and 4.3(a)4 to expressly include reference to the procedures required in the remedial investigation phase. The proposed rule includes that the person responsible for conducting remediation may delineate the horizontal and vertical extent of contamination to the remediation standard, ensuring that receptors are fully evaluated, in each environmental medium at a contaminated site by demonstrating compliance with a remediation standard (a cross-reference to N.J.A.C. 7:26E-5.2(a)3) or delineating soil and ground water by: (1) extrapolation or modeling, based on existing data; (2) application for conceptual site models; or (3) other means for determining the extent of the contamination.

Paper Copies of Document Submissions

The Department proposes to remove references to paper documents in ARRCS at N.J.A.C. 7:26C-1.6(b) for forms and submissions, and in the Technical Requirements at N.J.A.C. 7:26E Appendix A section I(b), regarding laboratory data deliverables formats. The existing rules specify that, in certain circumstances, the regulated community provides copies of full laboratory deliverables and other documents to the Department in both paper and electronic format. In practice, the Department already receives most of its submissions in an electronic format, which

is a more environmentally friendly practice that the regulated community has embraced. The Department proposes to update its rules accordingly, to accept submissions in electronic formats.

Receptor Evaluations

The Department proposes amendments to the existing Technical Requirements, N.J.A.C. 7:26E, sections for receptor evaluation, including general and reporting requirements, ground water, and vapor intrusion. At N.J.A.C. 7:26E-1.12(c), the Department proposes to delete the clarifying phrase "for a contaminated site" from the description of the initial receptor evaluation that the person responsible for conducting the remediation must submit to the Department. The deletion of this phrase should enable the Department to enforce timeframes for initial receptor evaluation submissions for those sites where the Department does not have data determining whether contamination is above the remediation standards or a screening criterion.

In the ground water receptor evaluation section of the Technical Requirements at N.J.A.C. 7:26E-1.14, the person responsible for conducting the remediation is required to conduct a survey to determine the existence of any unpermitted potable or irrigation wells. The Department proposes to delete from this survey-conducting requirement the clarifying phrase "door-to-door" at N.J.A.C. 7:26E-1.14(a)1ii. This phrase has caused confusion among the regulated community since the phrase has been interpreted to mean that the Department will only accept a survey when a person has physically gone from door-to-door to gather information. As the Department recognizes that there are many ways to complete a survey with sufficient documentation, other than physically knocking on doors, it proposes deletion of the phrase "door-to-door."

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At N.J.A.C. 7:26E-1.15, Receptor evaluation - vapor intrusion, the Department proposes to amend the existing language at N.J.A.C. 7:26E-1.15(c). The Department is deleting paragraph (c)1, which requires a person responsible for conducting the remediation who is conducting a vapor intrusion investigation to notify the Department when that person contacts property owners and occupants for the purpose of gaining access to conduct sampling. The Department does not expect notification of such future sampling events, as noted in the June 10, 2014 Listserv message titled "[SRRA]: Updated Forms and Case Inventory Document Posted to Site Remediation Program Web Page." See https://www.nj.gov/dep/srp/srra/listserv_archives/2014/20140610_srra.html. Further, the Department proposes to amend existing paragraph (c)2 to clarify that a person responsible for conducting the remediation who is conducting a vapor intrusion investigation must collect an appropriate number of samples in appropriate locations and appropriate media. The Department is adding the phrase "and in soil, ground water, soil gas, indoor air, or a combination thereof, as appropriate" to clarify that the source of vapor intrusion may be in soil, ground water, or both media, and not exclusively in ground water.

Additionally, the Department proposes to amend existing N.J.A.C. 7:26E-1.15(e)4iv, which requires the person responsible for conducting the remediation, when submitting a vapor intrusion response action report to the Department, to include a GIS-compatible map of the currently known extent of ground water contamination or the vapor intrusion area. The Department is proposing that the GIS-compatible map also include a "soil source area," because the Department has found that soil source areas are often missing from remedial action reports

that are submitted to the Department. If a source area is not identified in the remedial action report, then that report cannot confirm that the remediation has been completed.

Existing N.J.A.C. 7:26E-5.1(b)1 provides that the person responsible for conducting the remediation must implement a remedial action when the concentration of any contamination exceeds any applicable remediation standard. In accordance with the Brownfield Act, N.J.S.A. 58:10B-1 et seq., and to clarify existing practice, the Department proposes to add at N.J.A.C. 7:26E-5.1(b)1, the express requirement that a person must also implement a remedial action if an ecological risk-based remediation goal is exceeded.

References – Clerical

The Department proposes to update the name and references to the New Jersey Department of Health, as "Department of Health" instead of "Department of Health and Senior Services." These updates are located throughout ARRCS, N.J.A.C. 7:26C, specifically at 7:26C-1.2(a)1ii, in the penalty table at 7:26C-9.5(b), and at 7:26C Appendix D, near the end of the Model Response Action Outcome Document. Also in Appendix D, in the existing "Child Care Building Interiors Not Addressed" notice, the Department is updating the reference to the Department of Health "Indoor Environments Program" to reflect its name change to "Environmental and Occupational Health Assessment Program" and its updated internet contact information. Further, the Department is adding to the notice, at the request of the Department of Health, a citation to its standards at N.J.A.C. 8:50, Standards for Indoor Environment Certification and for Licensure of Indoor Environmental Consultants.

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Additionally, the Department proposes to delete existing N.J.A.C. 7:26E-1.15(g) in the Technical Requirements, since the Department does not use the standards of the Department of Health, which are site-specific standards for child care facilities and educational facilities. As a result of this proposed change, existing N.J.A.C. 7:26E-1.15(h) and (i) are proposed for recodification as subsections (g) and (h), respectively. At recodified N.J.A.C. 7:26E-1.15(g), the Department proposes clarifying language directing the person responsible for conducting the remediation to submit, to the Department of Health, the indoor air analytical results at any child care facility or educational facility pursuant to N.J.A.C. 8:50, electronically through email at iep.program@doh.nj.gov. The Department of Health does not require submission of all indoor and ambient air analytical results; only those results from samples taken at a child care facility or educational facility must be submitted to the Department of Health, regardless of whether any analytes are detected.

The Department also proposes amending the Technical Requirements at N.J.A.C. 7:26E-1.7(a) to remove reference to submission of a variance form. This proposed amendment clarifies that the person responsible for conducting the remediation may still vary from the technical requirements at N.J.A.C. 7:26E-1 through 5 if that person submits technical information to the Department prior to varying from any technical requirement, even though the Department no longer requires that a variance form be used for the procedure. The Department also proposes to change a form reference in ARRCS at existing N.J.A.C. 7:26C-1.7(d) for consistency within the section. Regarding notification and public outreach, the person responsible for conducting the remediation is required to submit forms to the Department, which are available on the Department's website at www.nj.gov/dep/srp/srra/forms, for both confirmed discharges and to

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document compliance. Existing subsection (d) specifies the use of a "Confirmed Discharge Notification" form, while subsection (g) notes use of "the appropriate form." As the forms in both cases may be found at the same website location, the Department proposes to remove the formal title of the "Confirmed Discharge Notification," and replace it with "the appropriate form," as already referenced at subsection (g).

The Department proposes to amend the rules to correct errors (including website addresses) and update cross-references. At existing N.J.A.C. 7:26C-5.13, Failure to perform remediation, the Department proposes to correct the spelling of "moneys," replacing the word with "monies" at subsection (d). Likewise, in the Technical Requirements, N.J.A.C. 7:26E, in Appendix A, Laboratory data deliverables formats, at I(e), the Department is correcting the spelling of "note book" (two words) to "notebook." Further, in the same Appendix A at I(d)3, the Department is updating the cross-reference for the method specific USEPA Region 2 Standard Operating Procedure (SOP), USEPA SW-846 Method 8280 Region 2 SOP HW-11, from Revision 2 to Revision 3, as the document has been updated by the USEPA, and the updated version is already being used by the regulated community. In order to ensure that future revisions are incorporated into the Department's rules, the Department proposes to specify that the USEPA Region 2 SOPs are incorporated herein by reference, "as supplemented or amended."

References – Legal

The Department is amending N.J.A.C. 7:26C-1.2, General requirements, at paragraph (a)2 to add the Regulations of the New Jersey Site Remediation Professional Licensing Board (SRPLB), N.J.A.C. 7:26I, to the list of State rules that the person responsible for conducting the

remediation must follow. Within that list at paragraph (a)2, the Department is also correcting the existing references to the Technical Requirements, N.J.A.C. 7:26E, and the Remediation Standards, N.J.A.C. 7:26D, by removing the redundant phrase "rules at" in both references.

In ARRCS at N.J.A.C. 7:26C-1.3, Definitions, the Department proposes to amend the definition of "hazardous waste" to directly cross-reference the definition of the same term as it appears in the existing Technical Requirements at N.J.A.C. 7:26E-1.8, which means "any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26G." This amendment ensures that both ARRCS and the Technical Requirements define "hazardous waste" the same. This cross-referencing to the Technical Requirements is consistent with that of other site remediation rule definitions.

Additionally, at N.J.A.C. 7:26C-9.12, Procedures for assessment, payment, and settlement of assessment of cleanup and removal costs in notices of administrative assessment of State costs, the Department is adding a statutory cross-reference at subsection (a) to clarify that the purpose of the section is to enact the Department's violation, remedy, and enforcement authority found in the Spill Act at N.J.S.A. 58:10-23.11u.c(4), and that the section does not pertain to the Spill Act lien provisions at N.J.S.A. 58:10-23.11f and the filing of Spill Act liens.

Updates to Better Protect Wildlife

The Department has learned that despite the language at N.J.A.C. 7:26E-1.1(b) that requires a person conducting site remediation to comply with "… any other Federal, State or local applicable statutes and regulations …" persons conducting site remediation often ignore

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protections for wildlife. To bring attention to this requirement, the Department is proposing to add a reference to the Endangered and Nongame Species Conservation Act (ENSCA), N.J.S.A. 23:2A-1 et seq., at N.J.A.C. 7:26E-1.1(b). The proposed language does not create a new requirement but is a reminder that ENSCA applies.

As further protection for wildlife, proposed amended N.J.A.C. 7:26E-1.5 and 1.6 require remediation be consistent with ENSCA. The person conducting the site remediation must not adversely affect the habitat of threatened or endangered species, including jeopardize or destroy the habitat, and not jeopardize the continued existence of a local population of a threatened or endangered species. The person conducting the remediation must report to the Department, in each remedial phase workplan, a description of the threatened or endangered species habitat, including the geographic coordinates, and any changes anticipated to be made to the threatened or endangered species habitat and the timing of when those changes are anticipated to be made.

Threatened and endangered species may occupy habitats that are present on and adjacent to sites undergoing remediation. The Department's Landscape Project mapping, available on NJ GeoWeb (https://dep.nj.gov/gis/nj-geoweb/), is a tool available to identify where such habitat may exist. Habitats and vegetation change over time and may become more or less suitable for wildlife, and wildlife moves to take advantage of those habitat changes. Landscape Project mapping should be used with consideration for these factors by assessing both on-site and adjacent off-site habitats and their suitability for threatened and endangered species.

When remediation activities are proposed for a site that includes or is adjacent to threatened or endangered species habitat, the person responsible for conducting the remediation must consider the location and timing of activities (including access roads and staging) in order to

avoid adverse impacts. For most activities, the person responsible can adjust timing to avoid the most vulnerable periods of wildlife, which include wildlife nesting, denning, and the active periods of slow-moving terrestrial wildlife, such as reptiles and amphibians.

As an example, a site may have a history of unauthorized waste disposal that, left untended over time, became overgrown with patchy grasses and shrubs. Adjacent land is mostly forested and supports populations of Northern Pinesnake and Timber Rattlesnake. These snake species are primarily forest dwellers but use more open habitats for breeding. The overgrown field of the unauthorized landfill provides the necessary open habitat that the species prefer in the breeding season and the species have been observed nesting there. Observations include a rattlesnake that made use of a discarded, exposed tire for her gestation and birthing phases. The occupation of this "contaminated" site by endangered species is not unusual and can be expected based on the habitat on-site, the adjacent habitats, and the documented occurrences of the snakes (in Landscape Project mapping) in the adjacent parcels. Documented occurrences in Landscape Project mapping are not dispositive; habitat maps can become quickly outdated, especially for grassland and early successional habitat types. Further, many areas of the State have not been surveyed for rare wildlife. Therefore, it is important for targeted site remediation projects to document current habitats and potential endangered species presence for each site.

The occupation by threatened or endangered wildlife in a site planned for remediation should not prevent the remediation from taking place. However, conducting the remediation in compliance with ENSCA requires the person responsible for conducting remediation to document the habitats on-site, investigate potential occupation by threatened or endangered wildlife, and plan to avoid adverse impacts by considering the types, location, and timing of activities that

could cause harm. In the example of occupation by threatened and endangered reptiles, protection of the species would require the person responsible for the remediation to avoid clearing vegetation, grading land, and using heavy machinery during the active periods of breeding and nesting when snakes are most vulnerable to injury or mortality. If the on-site habitat is suitable and occupied by threatened and endangered nesting birds, protecting the species would require avoiding clearing vegetation during the nesting season. In most cases, a professional biological consultant can confirm the presence of threatened and endangered wildlife by conducting a targeted survey.

Social Impact

The Department anticipates that the proposed amendments, repeals, and new rules will have a positive social impact. The proposed new rules, repeals, and amendments concerning site remediation will clarify, streamline, and simplify the implementation of the LSRP program by creating a one-permit paradigm to replace the existing multiple permit system that requires multiple permit updates for the same information (for example, permittee address changes).

As a follow up to the Department’s 2021 adoption of indoor air remediation standards for the vapor intrusion exposure pathway, the rulemaking also adds requirements to the rules to ensure that both the investigation and remediation of the vapor intrusion exposure pathway are completed appropriately. In addition, the proposed new indoor air notification area and the two new response action outcome (RAO) document notices require a new GIS layer on the Department's website, which will increase public awareness of indoor air contamination exceedances. The proposed requirement to investigate unoccupied structures provides a level of

protection for the public by ensuring that all buildings are evaluated and investigated for indoor air contamination, regardless of current building occupancy.

Lastly, the rulemaking will contribute to the conservation of wildlife species that the Department manages on behalf of the public. Preservation and management of wildlife habitats and species, particularly species that are threatened or endangered, are of value to the public (*Public Demand for Preserving Local Open Space*, *Society & Natural Resources* (2006), Jeffrey D. Kline, https://www.tandfonline.com/doi/abs/10.1080/08941920600742419; and *The Economic Benefits of Parks and Open Space: How Land Conservation Helps Communities Grow Smart and Protect the Bottom Line* (1999), Steve Lerner and William Poole, https://rosap.ntl.bts.gov/view/dot/14457). These studies have demonstrated that preserving natural resources adds value, both monetary and social, to neighborhoods and communities, as evidenced by the billions of dollars spent annually throughout the United States by people solely to "wildlife watch." The U.S. Fish and Wildlife Service calculated that wildlife watchers spent over $250 billion in 2022 alone. See *2022 Economic Contributions of Wildlife Watching in the United States: Addendum to the 2022 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, by Dr. James Caudill. 2022. U.S. Fish and Wildlife Service. https://www.fws.gov/sites/default/files/documents/2024-06/2022-economic-contributions-of-wildlife-watching-in-the-united-states.pdf.

Economic Impact

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

The proposed new remedial action permit paradigm, as implemented through ARRCS, N.J.A.C. 7:26C, is expected to have a positive economic impact as it will allow remediation to be completed more cost effectively, reducing the considerable expense associated with the process. Ultimately, remediation costs for both the regulated community and the Department are expected to decrease. The proposed new remedial action permit paradigm will reduce fees for some individuals, especially for administrative changes to permits, while increasing fees for others, specifically for the new indoor air permit component for which a separate fee did not previously exist. As a result, it is expected that individuals will continue to experience variations in fees; however, all should benefit from the improved predictability of the remediation action permit fee structure based on the types of media impacted and from the removal of requirements to submit duplicative information.

The proposed rules add requirements resulting from the Department's 2021 adoption of indoor air remediation standards for the vapor intrusion exposure pathway, including remedial action permit fees for remediation activities related to vapor intrusion. The addition of the new indoor air notification area and RAO notices, mentioned in the Social Impact above, may have a negative impact on property values because of the resulting wider knowledge of any indoor air contamination that may be present at the site. For those properties with known contamination, the values may decrease, while those other properties with no known contamination may increase in comparison. However, the Department does not believe that this knowledge of contamination will have a notable impact on housing affordability. Any costs to individual property owners would be justified to provide better protection from the health risks associated with indoor air contamination. It will be important for the regulated community to provide accurate information

to the Department, so that only properties with indoor air contamination are noted in the system/GIS layer, and that such information is removed when the site conditions change (that is, when a notice is no longer required).

The proposed amendments also refine the remediation permit process, which may reduce costs for the regulated community. For instance, the Department's proposed amendment to ARRCS at N.J.A.C. 7:26C-7.2(d)3, which directs that the Department shall consider one of the new remedial action permits for subdivided parcels as a permit modification for billing purposes, will result in a lower financial burden for the regulated community, as permit modification fees are less than fees for new permits.

For the Department, the total amount collected from parties responsible for conducting remediation to reimburse the Department for the administration of remedial action permits is not anticipated to change. The Department uses permitting fees to fund costs the Department incurs in administering its site remediation program, including enforcement efforts and staff salaries. The Department does not expect that the proposed amendments will result in the need for additional staff or otherwise increase the Department's operating expenses.

The proposed amendments concerning site remediation should also have a positive economic impact to the extent that they make the rules easier for the regulated community to understand and implement. For example, the proposed addition of a surety bond option at N.J.A.C. 7:26C-5, Remediation Funding Source and Financial Assurance, codifies the statutory addition in the Act, allowing surety bonds as a permissible remediation funding source mechanism for remediation costs. Additionally, the Department expects that the proposed amendment in ARRCS at N.J.A.C. 7:26C-7.10(c), which exempts owners and operators of small

businesses, childcare centers, and residential property owners (owners of either a primary or secondary residence) from financial assurance requirements, will provide additional cost savings to the regulated community.

The proposed rules also benefit municipalities and overburdened communities, while encouraging the development of brownfield sites. By their nature, contaminated sites increase environmental stressors on communities. The proposed amendments promote the reduction of environmental stressors by simplifying the Department's remediation administration process for municipalities. For example, the proposed new remedial action permit paradigm requires that a remedial action permit for historic fill list only the property owner. Developers and municipalities that own the property at the time an RAO is issued would be removed from the permit when they sell the property. The Department anticipates that this will be an efficiency gain for all parties involved.

The Department is also proposing to remove the existing requirement that the regulated community fully delineate soil and ground water contamination to the Remediation Standards, N.J.A.C. 7:26D, in the remedial investigation phase of a remediation. This proposed amendment allows the person responsible for conducting the remediation to use extrapolation and conceptual site modeling to delineate contamination. The Department anticipates that this proposed amendment will likely reduce remediation costs for the person responsible for conducting remediation.

Successful implementation of the proposed new rules, repeals, and amendments, with the new streamlined permit paradigm and the addition of focused permits, will aid in community development, helping to return dormant property sites to productive uses more quickly, which

will revitalize our communities and stimulate the State economy. The Department believes that this, in turn, will help reduce uncertainty for the regulated community in planning and coordination with lending institutions, investors, construction contractors, municipalities, and other stakeholders. In fact, the Department expects that the economic impact of the proposed rules on municipalities will be positive. Municipalities should experience a positive budgetary impact in terms of increased ratable businesses, as properties are more quickly remediated and returned to productive use. Additionally, remediation of blighted properties should help to improve the quality of life in municipalities by improving the nature and look of municipal landscapes. Reducing the number of blighted properties may help to enhance the attractiveness of a community, both to existing and future businesses and existing and future residents.

The Department anticipates that the proposed amendments related to threatened and endangered species will have an overall positive economic impact. The amendments reinforce the requirement that remediations be conducted in compliance with ENSCA. By including the information on habitat suitability and likelihood of threatened and endangered species presence in the planning stage, projects can be planned and conducted in compliance with ENSCA and without work interruptions that can be costly. In some cases, a permittee may prefer to hire biological consultants to document and protect threatened and endangered species, rather than adhere to timing restrictions to avoid adverse impacts, which could impose additional costs. In most cases, the early identification of the presence (or absence) of suitable habitat for local threatened and endangered species will provide for more efficient planning of projects.

Environmental Impact

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

The proposed new rules, repeals, and amendments concerning site remediation should have a positive environmental impact to the extent that they make the rules easier to understand and implement, encourage the continuous remediation of a site, and emphasize the importance of timely remediation. To the extent the rules provide deadlines for completing remediation, they reduce the amount of time that contamination remains in the environment.

The proposed amendments designed to protect species will also have a positive environmental impact. The Department estimates the species most likely to be impacted by the new rules are the endangered Timber Rattlesnake, endangered Red Cornsnake, threatened Northern Pinesnake, and several species of threatened or endangered birds that nest in grassy habitats. These species are known to inhabit sites that were disturbed due to human activities that are now in need of remediation. The snake species tend to inhabit forests, but require open areas for breeding and nesting; therefore, many such sites adjacent to forests provide a necessary habitat for the local population. Similarly, some bird species, including the threatened species of Grasshopper Sparrow and Savannah Sparrow, nest only in habitats that have grassy vegetation (sparse or dense) or small shrubs. These are habitats that change over time to become more dominated by shrubs and trees; their limited availability in the landscape makes them important for the species that require them. Accommodation for these species during the site remediation

process has positive environmental benefits for local populations of rare wildlife. Promoting and protecting the biodiversity of the State is one of the most important actions a person responsible for conducting the remediation can take to keep ecosystems intact. The actions taken to avoid adverse impacts to threatened and endangered wildlife are additive to the improvements to environmental health gained by site remediation.

Federal Standards Statement

The New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 through 21 (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed new rules, repeals, and amendments to ARRCS, N.J.A.C. 7:26C, do not implement, comply with, or enable the State to participate in any program established pursuant to Federal law, standards, or requirements. The Department has determined that the proposed amendments to the Technical Requirements do not require any specific action that is more stringent than comparable Federal rules. Comparable Federal laws provide only generic procedural requirements on how to investigate and remediate contaminated sites. For example, the National Contingency Plan, 40 CFR Part 300, which contains the implementing regulations for CERCLA, provides possible options for conducting the remedial investigation, but the National Contingency Plan does not detail the minimum steps that must be taken before an area of concern can be considered to have been adequately evaluated. Accordingly, no further analysis is required.

The remaining proposed amendments, which are to the ISRA Rules at N.J.A.C. 7:26B, are not promulgated to comply with any Federal law or standard. Accordingly, no Federal standards analysis is required.

Jobs Impact

The Department anticipates that the proposed new rules, repeals, and amendments should not have an impact on job retention and creation in the State. The proposed rules should not have an impact on the creation or loss of jobs because they do not change the underlying obligations of persons responsible for conducting the remediation to timely remediate contamination.

Agriculture Industry Impact

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

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Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 through 21, small businesses are defined as those that are independently owned and operated, not dominant in their field, and employ fewer than 100 full-time employees. The various compliance requirements, associated costs, and other impacts to small businesses are discussed in the Summary, Economic Impact, and Federal Standards Statement above.

The need to remediate a site is based on the contamination present, regardless of the type of business involved. As a discharge of a hazardous substance endangers public health, safety, and welfare, and cannot be correlated to the size of the business, there is no differentiation in the requirements by the size of a business, and the rules concerning site remediation do not exempt small businesses from any of the reporting, recordkeeping, or other compliance requirements. However, through this rulemaking, the Department is modifying the existing rule language at N.J.A.C. 7:26C-7.10(c)6, which is proposed for recodification and amendment at N.J.A.C. 7:26C-7.6(c)6, expanding it to clarify that a small business is always exempt from financial assurance for site remediation, regardless of whether the small business is located at the site being remediated or it has moved to a different location.

For the most part, the proposed rules do not impose compliance, recordkeeping, and reporting requirements beyond what is already required in the existing rules. For those sites that contain habitat that is suitable for threatened or endangered species, the proposed rules require the person responsible for conducting the remediation to document the presence of suitable or occupied habitat, so that the planning and conduct of remediations can be done without adverse impacts to threatened or endangered species.

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Housing Affordability Impact Analysis

Pursuant to the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated this rulemaking to determine the impact, if any, on the affordability of housing. The proposed rules concern the remediation of sites contaminated by a discharge of a hazardous substance. The Department has determined that the proposed rules will impose an insignificant impact, as there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing or on the affordability of housing.

Growth Development Impact Analysis

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

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

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Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26C-7.7, 7.8, and 7.9.

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

CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.10 Liability for ISRA compliance

(a) (No change.)

(b) An owner or operator shall not transfer ownership or operations of an industrial establishment until:

1. (No change.)

2. A licensed site remediation professional has certified a remedial action workplan for the industrial establishment pursuant to [N.J.A.C. 7:26B-1.7(b)] **the Site Remediation Reform Act at N.J.S.A. 58:10C-14**;

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3. – 4. (No change.)

(c) – (g) (No change.)

CHAPTER 26C

ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION

OF CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.2 General requirements

(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with the following:

1. All applicable New Jersey statutes, including:

i. (No change.)

ii. The indoor air standards adopted by the Department of Health [and Senior Services] pursuant to N.J.S.A. 52:27D-130.4;

2. All applicable New Jersey rules, including, without limitation:

i. (No change.)

ii. The Technical Requirements for Site Remediation [rules at]**,** N.J.A.C. 7:26E;

iii. The Remediation Standards [rules at]**,** N.J.A.C. 7:26D; [and]

iv. The Regulations of the New Jersey Site Remediation Professional Licensing Board, N.J.A.C. 7:26I; and

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

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3. (No change.)

7:26C-1.3 Definitions

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

...

"Hazardous waste" means any hazardous waste as defined in the [Hazardous Waste rules, at N.J.A.C. 7:26G-5] **Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8**.

...

"Remedial action permit" means a permit pursuant to N.J.A.C. 7:26C-7.7(a), which may include a deed notice, a deed notice with an engineering control, natural attenuation for ground water remediation, any other ground water remedial action, or any indoor air remediation system, or a Permit I, Permit II, Permit III, Permit IV, or Permit V pursuant to N.J.A.C. 7:26C-7.7(b).

...

"Retained" means hired, individually or through a firm or other person, by or on behalf of a person responsible for conducting remediation, to perform, manage, or supervise remediation or to periodically review and evaluate a remediation performed by other persons.

...

7:26C-1.4 Applicability and exemptions

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

1. – 4. (No change.)

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

i. The Department rescinds a no further action letter or invalidates **or annuls** a response action outcome; or

ii. (No change.)

6. – 8. (No change.)

(b) – (e) (No change.)

7:26C-1.6 Forms and submissions

(a) (No change.)

(b) The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as follows:

1. [One] **Unless the Department specifically requests a paper submission, one** electronic copy [on compact disk (CD)] in Adobe portable document format (PDF), or in another format determined by the Department, of:

i. All forms, applications, **and** documents [and laboratory data deliverables]; and

ii. All required maps [that are less than or equal to 11 x 17 inches. Maps in excess of this size shall be submitted on paper];

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2. One electronic copy of all [full] laboratory data deliverables [on compact disk (CD)] **and the Full Laboratory Data Deliverables Form (at https://www.nj.gov/dep/srp/srra/forms/)** in Adobe portable document format (PDF) or in another format determined by the Department[, and additionally, one paper copy of all full laboratory deliverables for potable water, vapor intrusion (sub-slab, indoor, and ambient), polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans (PCDDs/PCDFs), and hexavalent chromium soil sample results];

3. – 4. (No change.)

(c) (No change.)

7:26C-1.7 Notification and public outreach

(a) – (c) (No change.)

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

1. – 2. (No change.)

(e) (No change.)

(f) The person responsible for conducting the remediation shall include contact information for the person responsible for conducting the remediation, the name and telephone number for the licensed site remediation professional [hired] **retained** pursuant to N.J.A.C. 7:26C-2.3(a)1, the Department program interest number for the site in the notification and any

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updates thereto, and the fact sheet and any updates required [in] **at** (h), (k), (l), (n), and (o) below.

(g) (No change.)

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

1. Provide site specific information and documents related to the remediation at a site or area of concern when requested by the Department, including information pertaining to field sampling activities; [and]

2. Within 14 days prior to commencing initial field activities associated with the remedial investigation:

i. – iii. (No change.)

iv. Submit one copy of the notification letter and list of recipients required [in] **at** (h)2ii above or a photograph of the notification sign required [in] **at** (h)2iii above, and one copy of the fact sheet required [in] **at** (l)1 below and the display advertisement required [in] **at** (l)3 below, to the local government entities as follows:

(1) (No change.)

(2) The county health department and the local health agency[.]**; and**

3. Respond to any written or email inquiries from the public regarding the status of the remediation that person receives, or that the Department receives and forwards to that person, by providing either:

i. Information or documents that are responsive to the public inquiry; or

ii. A written summary status report form for the remediation, which is available on the Department's website at www.nj.gov/dep/srp/srra/forms.

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(i) – (k) (No change.)

(l) Except as provided [in] **at** (l)4ii and (m) below, if contamination migrates [off site] **off-site** in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute**,** and publish a fact sheet, which shall include a description of the site's industrial history, source(s) of contamination, description of contamination, current remedial status, proposed remedial actions with a schedule, extent of contamination, actions performed to minimize the impact to the public, and a list of online resources for information about the contaminants, as follows:

1. – 4. (No change.)

5. For ground water contamination, conduct the public notification pursuant to the requirements [of] **at** N.J.A.C. 7:26C-[7.3]**7.2** when the Department establishes a ground water classification exception area.

(m) – (q) (No change.)

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

7:26C-2.2 Criteria for determining when a person is required to remediate a site

(a) Unless exempted pursuant to N.J.A.C. 7:26C-1.4(c) or (d), a person shall remediate a site in accordance with this chapter when:

1. – 4. (No change.)

5. A no further action letter is rescinded or a response action outcome is invalidated **or annulled**;

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6. – 7. (No change.)

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

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

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

i. (No change.)

ii. The remediation is being conducted on a site that is listed on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation; [or]

iii. The remediation is being conducted at a Federal facility; **or**

iv. Sampling or an investigation is being conducted to confirm or evaluate a remediation performed or supervised by a retained licensed site remediation professional; provided that such sampling or investigation:

(1) Is not required pursuant to this section or any other law, rule, regulation, or order;

(2) Is not conducted to obtain a response action outcome; and

(3) Is not conducted to investigate, clean up, or respond to any known, suspected, or threatened discharge of a contaminant;

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2. Notify the Department, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional [hired] **retained** to conduct or oversee the remediation and the scope of the remediation, including the number of contaminated areas of concern and impacted media known at the time the form is submitted and determined pursuant to N.J.A.C. 7:26C-4.2, within 45 days after:

i. – ii. (No change.)

3. – 9. (No change.)

(b) – (d) (No change.)

7:26C-2.4 Conducting remediation and all appropriate inquiry

(a) When a person performs remediation as defined at N.J.A.C. 7:26C-1.3, including performing all appropriate inquiry in accordance with N.J.S.A. 58:10-23.11g, and obtains knowledge that a discharge has occurred at any location on a property, that person shall immediately notify the Department by calling the Department's telephone hotline at 1-877-WARNDEP and shall notify the record owner of the property.

(b) If a person who does not own the property is conducting all appropriate inquiry and that person has not discharged a contaminant at the property or is not in any way responsible for a contaminant discharged at the property, then that person shall not be liable for cleanup and removal costs of the discharge unless and until that person acquires the property.

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(c) Notwithstanding (a) or (b) above, whenever a person obtains knowledge that a discharge has occurred at any location on a property, that person shall immediately notify the Department by calling the Department's telephone hotline at 1-877-WARNDEP.

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.1 Scope

(a) (No change.)

(b) Regulatory timeframes, statutory timeframes, mandatory remediation timeframes, and expedited site-specific timeframes run with a site regardless of who owns the property and regardless of whether there is a transfer of ownership.

(c) The Department will not undertake direct oversight of remediation pursuant to N.J.S.A. 58:10C-27 if the person responsible for conducting remediation demonstrates, and the Department finds, that:

1. The person responsible for conducting remediation was unable to meet the applicable timeframe because that person was unable to enter the contaminated site because that person does not own the property and that person took all appropriate and timely action pursuant to N.J.S.A. 58:10B-16 prior to the applicable timeframe; or

2. The contaminated site is subject to Federal oversight, the person responsible for conducting remediation has made timely submissions to the Department, and that

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person was unable to meet the applicable timeframe due to the performance of additional review by the Department pursuant to N.J.S.A. 58:10C-21.

7:26C-3.3 Statutory and mandatory remediation timeframes

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

1. – 4. (No change.)

(b) – (f) (No change.)

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

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

1. The person shall provide a written rationale for the request in a completed form found on the Department's website at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited [site specific] **site-specific** remediation timeframe. The following information shall be included:

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i. – ii. (No change.)

iii. A description of the [cause or causes for the] **reason that the timeframe was not met and the reason for the amount of** extra time needed to complete the work; and

iv. (No change.)

2. (No change.)

(b) – (d) (No change.)

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.5 Remedial action permit fee formula

(a) (No change.)

(b) The Department shall annually calculate the remedial action permit fee for the upcoming State fiscal year, as of the December 1 that precedes the upcoming State fiscal year, for the following remedial action permit types and activities:

1. Remedial action permit types include:

i. A permit with components, pursuant to N.J.A.C. 7:26C-7.7(a):

Recodify existing i.-ii. as **(1)-(2)** (No change in text.)

[iii.] **(3)** Natural attenuation ground water remedial action; [and]

[iv.] **(4)** Any other ground water remedial action; and

(5) Any vapor mitigation system; and

ii. A Permit I, Permit II, Permit III, Permit IV, or Permit V pursuant to N.J.A.C. 7:26C-7.7(b); and

2. Remedial action permit fee activities include:

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i. – ii. (No change.)

iii. [Transferring] **Administrative changes to** the remedial action permit; and

iv. (No change.)

(c) – (e) (No change.)

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

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

[Remedial Action Permit Fees	Soil Remedial Action Permit	Ground Water - Natural Attenuation Remedial Action Permit	Ground Water - Active System Remedial Action Permit
Remedial Action Permit Application Fee	$600.00	$800.00	$1,000.00

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Remedial Action Permit Modification Fee	$400.00	$600.00	$800.00
Remedial Action Permit Transfer Fee	$300.00	$300.00	$300.00
Remedial Action Permit Termination Fee	$600.00	$800.00	$1,000.00]

Remedial Action Permit	**Soil (Engineering Control or No Engineering Control)**	**Ground Water (Natural Attenuation or Active System)**	**Indoor Air**
Initial Remedial Action Permit — One Component, N.J.A.C. 7:26C-7.7(a), Application Fee	**$1,380**	**$805.00**	**$805.00**
Initial Remedial Action Permit – Soil + One Component (either Ground Water or Indoor Air), N.J.A.C. 7:26C-7.7(a), Application Fee	**$1,380 + $805.00 = $2,185**		
Initial Remedial Action Permit — Soil + Two Components (both Ground Water and Indoor Air), N.J.A.C. 7:26C-7.7(a), Application Fee	**$1,380 + $805.00 + $805.00 = $2,990**		
Initial Remedial Action Permit — Ground Water + Indoor Air), N.J.A.C. 7:26C-7.7(a), Application Fee	**N/A**	**$805.00 + $805.00 = $1,610**	
Permit I, N.J.A.C. 7:26C-7.7(b)i, Application Fee	**$1,000**	**N/A**	**N/A**

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Permit II, N.J.A.C. 7:26C-7.7(b)ii, Application Fee	**$1,000**	**N/A**	**N/A**
Permit III, N.J.A.C. 7:26C-7.7(b)iii, Application Fee	**$1,000.00**	**N/A**	**N/A**
Permit IV, N.J.A.C. 7:26C-7.7(b)iv, Application Fee	**$1,000**	**N/A**	**N/A**
Permit V, N.J.A.C. 7:26C-7.7(b)v, Application Fee	**N/A**	**$1,000**	**N/A**
Remedial Action Permit, Fee to Add a Component	**$1,000**	**$1,000**	**$1,000**
Remedial Action Permit Modification Fee - Change to Existing Component	**$1,380**	**$690.00**	**$690.00**
Remedial Action Permit Administrative Fee, N.J.A.C. 7:26C-7.11(b) and (c)	**$345.00**	**$345.00**	**$345.00**
Remedial Action Permit Administrative Fee, N.J.A.C. 7:26C-7.11(d)	**$0.00**	**$0.00**	**$0.00**
Remedial Action Permit Termination Fee - Per Component	**$1,150**	**$575.00**	**$575.00**

(b) Until [the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c) and 4.5(e)] **and including (the day before the first day of the State fiscal year following the effective date of this rulemaking)**, the permittee shall pay an annual remedial action permit fee in response to a Department invoice, on the anniversary date of the Department issuing the remedial action permit, as follows **at (b)1 through 4 below**. [Thereafter] **On and after (the first day of the State fiscal year following the effective date of this rulemaking)**, the permittee shall pay the annual remedial action permit

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fee indicated in the most recently posted Annual Site Remediation Reform Act Program Fee Calculation Report:

[1. The annual soil remedial action permit fee for a remedial action:

i. With a deed notice without engineering controls: $300.00; and

ii. With a deed notice and engineering controls: $320.00.

2. The annual ground water remedial action permit fee:

i. For a natural attenuation remedial action: $550.00; and

ii. For any other ground water remedial action: $650.00.]

1. For a soil remedial action with a deed notice, with or without an engineering control, $575.00;

2. For a ground water remedial action with either monitored natural attenuation or an active treatment system, $690.00;

3. For a vapor intrusion/indoor air remedial action with a vapor mitigation system, $690.00; and

4. For a remedial action, including more than one remedial action listed at (b)1, 2, or 3 above, the sum of the fees for each individual remedial action.

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

7:26C-5.1 Scope **of subchapter**

(a) This subchapter establishes the requirements for:

1. – 5. (No change.)

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6. The disbursement of funds from a remediation funding source or financial assurance[, in] **at** N.J.A.C. 7:26C-5.12; [and]

7. The procedures the Department will use to draw on the funding in the remediation funding source or financial assurance when a person has failed to perform the remediation[, in] **at** N.J.A.C. 7:26C-5.13**; and**

8. The use of a surety bond as a remediation funding source at N.J.A.C. 7:26C-5.14.

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

(a) (No change.)

(b) The following persons are not required to establish a remediation funding source pursuant to this subchapter:

1. – 4. (No change.)

5. A person who [undertakes] **is responsible for performing** a remediation at their **present or former** primary or secondary residence;

6. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who [performs] **is responsible for performing** a remediation at the **present or former location of the** licensed child care center; or

7. (No change.)

(c) (No change.)

(d) The owner or operator of a small business **who is responsible for performing a remediation at the owner's or operator's present or former business property** and the

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persons listed at (b)4 through 7 above [is] **are** not required to establish financial assurance pursuant to this subchapter.

(e) – (g) (No change.)

(h) Except as provided [in] **at** (k) below, the person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter may use any one or any combination of the following financial mechanisms:

1. – 4. (No change.)

[5. A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12; or]

5. A surety bond in accordance with N.J.A.C. 7:26C-5.14;

6. A self-guarantee in accordance with N.J.A.C. 7:26C-5.8[.]**; or**

7. A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12.

(i) (No change.)

(j) The person responsible for conducting the remediation may use any one or any combination of the financial mechanisms listed [in] **at** (h)1 through 5 above, to satisfy the financial assurance requirement [in] **at** N.J.A.C. 7:26C-5.3. The financial [mechanism] **mechanisms** listed at (h)6 **and 7** above shall not be used to satisfy the financial assurance requirement [in] **at** N.J.A.C. 7:26C-5.3.

(k) Notwithstanding (h) or (j) above, a person responsible for conducting the remediation that is subject to direct oversight pursuant to N.J.S.A. 58:10C-27 shall establish and maintain a remediation [trust fund in accordance with N.J.A.C. 7:26C-5.4] **funding source using any of the mechanisms listed at (h) above except for a self-guarantee**.

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

1. – 3. (No change.)

4. The person responsible for conducting the remediation shall submit evidence of financial assurance as part of a remedial action permit application required pursuant to N.J.A.C. 7:26C-[7.5]**7.8**.

7:26C-5.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source or financial assurance pursuant to this subchapter shall submit to the Department the original insurance policy. The environmental insurance policy [must] **shall**:

1. – 2. (No change.)

3. Be issued for a period of at least one year (12-month period);

[3.] **4.** Indicate that the environmental insurance policy cannot be revoked**,** [or] terminated**, not renewed, or canceled** without the prior written approval of the Department**,** except for failure to pay the premium;

[4.] **5.** [Specify] **Indicate** that the issuer of the environmental insurance policy may revoke**,** [or] terminate**, not renew, or cancel** the policy for failure to pay the premium, but only after notifying **both** the person who established the [remediation funding source]

policy and the Department by certified mail of the decision [to revoke or terminate the policy] at least 120 days [before] **in advance of the revocation,** termination**, non-renewal, or cancelation of the policy**, beginning from the date of receipt by the Department as shown on the signed return receipt;

[5. Indicate that the insurer may only disburse those funds from the environmental insurance policy that the licensed site remediation professional approves in writing may be disbursed pursuant to N.J.A.C. 7:26C-5.12;]

6. Indicate that, in the event that the person who established the environmental insurance policy either cancels the policy or does not renew the policy at the end of the term, the issuer of the policy shall notify both the person who established the policy and the Department of the non-renewal by certified mail within 30 days after the policy end date; the Department will then have 120 days, beginning from the date of receipt by the Department as shown on the signed return receipt, to access the policy pursuant to N.J.A.C. 7:26C-5.13, provided an alternate remediation funding source has not been established;

Recodify existing 6. – 7. as **7. – 8.** (No change in text.)

(b) (No change.)

7:26C-5.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit as a remediation funding source or financial assurance pursuant to this chapter shall submit to the Department an original of a line of credit. The line of credit [must] **shall**:

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1. – 4. (No change.)

5. Indicate that the person providing the line of credit shall only disburse those funds from the line of credit [that the licensed site remediation professional approves in writing to be disbursed pursuant to N.J.A.C. 7:26C- 5.12;] **as follows:**

i. If the remediation of the site is under direct oversight by the Department pursuant to N.J.S.A. 58:26C-27, then the Department will approve, in writing, the amount to be disbursed; or

ii. For all other sites, the licensed site remediation professional shall approve, in writing, the amount to be disbursed;

6. – 7. (No change.)

(b) (No change.)

7:26C-5.9 Remediation funding source surcharge

(a) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter [that] **who** elects to establish the remediation funding source by one or any combination of the following shall submit to the Department a remediation funding source surcharge pursuant to (b) below:

1. – 2. (No change.)

3. A line of credit pursuant to N.J.A.C. 7:26C-5.6; [or]

4. A letter of credit pursuant to N.J.A.C. 7:26C-5.7[.]**; or**

5. A surety bond in accordance with N.J.A.C. 7:26C-5.14.

(b) – (c) (No change.)

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7:26C-5.10 Remediation cost review

(a) (No change.)

(b) The person responsible for conducting the remediation who is subject to a remedial action permit shall submit to the Department, on the same schedule that the person is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-[7.7(a)1]**7.10(b)1**, an estimate of the future costs to operate, maintain, and inspect all engineering controls, on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. – 3. (No change.)

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

(a) – (d) (No change.)

(e) The Department shall return:

1. (No change.)

2. The financial assurance when:

i. – ii. (No change.)

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

iv. (No change.)

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7:26C-5.12 Disbursements from the remediation funding source

(a) Except as provided [in] **at** (b) below, a person who is required to establish and maintain a remediation funding source pursuant to this subchapter, and who has established a remediation trust fund[, an environmental insurance policy, letter of credit] or a line of credit, in satisfaction of the requirements of this subchapter, may submit to the provider, with a copy to the Department, no more frequently than once every three months, a written request to use the remediation funding source to pay for the actual cost of remediation. The request [must] **shall** include the following information:

1. – 3. (No change.)

(b) – (c) (No change.)

7:26C-5.13 Failure to perform the remediation

(a) – (c) (No change.)

(d) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the [moneys] **monies** in the remediation funding source or financial assurance established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the monies to the petitioner.

7:26C-5.14 Surety bond requirements

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

1. Be issued by a certified surety company on the Federal U.S. Treasury List of Approved Sureties (Department Circular 570), which may be found at https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html;

2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

3. Indicate that the surety bond cannot be cancelled by the principal without prior written authorization for termination of the surety bond by the Department; and

4. Specify that the certified surety company may cancel the surety bond by sending notice of cancellation by certified mail or courier to both the principal and the Department, provided that cancellation of the surety bond shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the principal and the Department, as shown on the signed return receipts.

(b) Any person responsible for conducting the remediation using a surety bond to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source or financial assurance, submit to the Department a written statement from the certified surety company confirming the value of the surety bond in an amount that the licensed site remediation professional has certified, and confirming that the certified surety company has renewed the surety bond for the next consecutive 12-month period.

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SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.2 Response action outcomes

(a) – (e) (No change.)

(f) If the licensed site remediation professional issues a response action outcome that is based upon either a preliminary assessment or site investigation, the licensed site remediation professional shall certify that the contaminants at the site or area of concern meet all of the following, as applicable:

1. (No change.)

2. The applicable ground water remediation standards in the Remediation Standards rules, N.J.A.C. 7:26D; [and]

3. The applicable indoor air remediation standards in the Remediation Standards, N.J.A.C. 7:26D; and

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

(g) The licensed site remediation professional shall only issue a response action outcome after the licensed site remediation professional has determined that the remediation has been completed pursuant to (c) above, including, without limitation, the following, as applicable:

1. All contaminated soil has been remediated:

i. (No change.)

ii. The Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; [and]

2. All contaminated [groundwater] **ground water** has been remediated:

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i. (No change.)

ii. The Department has issued a ground water remedial action permit pursuant to N.J.A.C. 7:26C-7[.]**; and**

3. All contaminated indoor air has been remediated:

i. To the applicable indoor air remediation standard; or

ii. The Department has issued an indoor air remedial action permit pursuant to N.J.A.C. 7:26C-7.

(h) (No change.)

7:26C-6.4 Modification, rescission**, annulment,** and invalidation of a final remediation document

(a) – (b) (No change.)

(c) The Department shall:

1. Invalidate a response action outcome when it determines that the licensed site remediation professional has failed to comply with (b) above; [or]

2. Invalidate a response action outcome or rescind a no further action letter when it determines that:

i. (No change.)

ii. The person responsible for conducting the remediation implemented a remedial action that will render the property unusable for future redevelopment or recreational use[.]**; or**

3. Annul a response action outcome when it determines that the licensed site remediation professional has failed to comply with (b) above and the licensed site

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remediation professional cannot rescind the response action outcome due to incapacitation, death, or non-renewal of license.

(d) Upon the Department's rescission of a no further action letter or the invalidation **or annulment** of a response action outcome, the person responsible for conducting the remediation shall perform all additional remediation, according to expedited [site specific] **site-specific** remediation timeframes, as the Department may require.

(e) (No change.)

SUBCHAPTER 7. [DEED NOTICES, GROUND WATER CLASSIFICATION EXCEPTIONS AREAS,] **INSTITUTIONAL CONTROLS** AND REMEDIAL ACTION PERMITS

7:26C-7.1 Purpose and scope

(a) The purpose of this subchapter is to establish the administrative requirements of the [person responsible for conducting the remediation] **permittee** for:

1. Using a deed notice **or a notice in lieu of deed notice** as an institutional control;

2. Using a ground water classification area as an institutional control; [and]

3. Using an indoor air notification area as an institutional control; and

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

(b) More specifically, this subchapter establishes:

1. The [requirements for the use of a deed notice as part of a] **permittees of** remedial action **permits**, pursuant to N.J.A.C. 7:26C-7.2;

2. (No change.)

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3. The [permittees of a remedial action permit] **requirements for the use of a ground water classification area as part of a remedial action**, pursuant to N.J.A.C. 7:26C-7.4;

4. The requirements for [applying for] **the use of an indoor air notification area as part of** a remedial action [permit at]**, pursuant to** N.J.A.C. 7:26C-7.5;

5. The [remedial action permit application schedule] **financial assurance requirements when a remedial action includes an engineering control**, pursuant to N.J.A.C. 7:26C-7.6;

6. The [general conditions that apply to all] **types of** remedial action permits[, pursuant to] **at** N.J.A.C. 7:26C-7.7;

7. The [specific conditions applicable to all soil remedial action permits] **requirements for applying for a remedial action permit**, pursuant to N.J.A.C. 7:26C-7.8;

8. The [specific conditions that apply to all ground water remedial action permits] **remedial action permit application schedule**, pursuant to N.J.A.C. 7:26C-7.9;

9. The [financial assurance requirements when a remedial action includes an engineering control] **requirements and conditions applicable to remedial action permits**, pursuant to N.J.A.C. 7:26C-7.10;

10. The [procedures for the transfer of] **administrative changes for** a remedial action permit, pursuant to N.J.A.C. 7:26C-7.11;

11. – 12. (No change.)

(c) (No change.)

(d) Any person who chooses to redevelop or change the use of real property in a manner inconsistent with a remedial action that includes an engineering or institutional control, or to

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conduct additional remediation or other activities that would result in the need to file a new deed notice**, issue a new notice in lieu of deed notice,** or [to] replace a declaration of environmental restrictions associated with the real property, shall comply with this subchapter.

7:26C-[7.4]**7.2** Permittees of remedial action permits

(a) Each of the following persons shall comply with this section and N.J.A.C. 7:26C-[7.5]**7.6** through 7.13, including any applicable remedial action permit the Department issues pursuant to this section and N.J.A.C. 7:26C-[7.5]**7.6** through 7.13:

1. – 2. (No change.)

(b) If more than one person is responsible for compliance with a remedial action permit pursuant to (a) above, each such person, as a co-permittee, is jointly and severally liable for:

1. – 3. (No change.)

4. Maintenance of financial assurance for engineering controls pursuant to N.J.A.C. 7:26C-[7.10]**7.6**.

7:26C-[7.2]**7.3** [Administrative requirements for using a deed] **Deed** notice **and notice in lieu of deed notice** in a remedial action

(a) The [person responsible for conducting the remediation] **permittee** implementing a remedial action that requires a deed notice pursuant to N.J.A.C. 7:26E-5.2(a)4 shall prepare a deed notice that:

1. – 2. (No change.)

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(b) The [person responsible for conducting the remediation] **permittee** who will use a deed notice **or notice in lieu of deed notice** as part of a remedial action for a contaminated site shall comply with the following, as applicable:

1. If there is a deed for the property to which the deed notice applies, the [person] **permittee** shall cause the owner of the property to record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the property is located; and shall obtain an official copy of the recorded deed, stamped "Filed" for use in satisfying the requirements [of] **at** (b)3 below.

2. If there is no deed for the property to which the notice applies, the documents prepared pursuant to (a) above shall serve as a notice in lieu of a deed notice, and the [person] **permittee** shall:

i. – iii. (No change.)

3. Provide a paper copy of the recorded deed notice, stamped "Filed" pursuant to (b)1 above or notice in lieu of deed notice with proof of submission to the officials to which the notice in lieu of deed notice is to be submitted pursuant to (b)2 above, as applicable, and an electronic copy in a read only format, including all maps, to the following individuals and groups:

i. The Department as part of a remedial action permit application pursuant to **N.J.A.C.** 7:26C-[7.4]**7.2**;

ii. – vi. (No change.)

(c) If the [person responsible for conducting the remediation] **permittee**, who uses a deed notice **or notice in lieu of deed notice** pursuant to (a) and (b) above, is not the property owner

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of the contaminated site, then the [person responsible for conducting the remediation] **permittee** shall:

1. (No change.)

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

i. (No change.)

ii. For a county, the written agreement shall be in the form of a formal resolution by the county [freeholders] **commissioners**; and

iii. (No change.)

(d) The [person responsible for conducting the remediation or the statutory] permittee shall, within [30] **60** days after municipal subdivision approval of such a site that triggers a remedial action permit [termination application] **change** pursuant to N.J.A.C. 7:26C-[7.13(c)]**7.11(d)**:

[1. Terminate the existing deed notice on the site using the form at N.J.A.C. 7:26C Appendix C;]

[2.] **1.** File a new deed notice **or issue a new notice in lieu of deed notice** for each subdivided parcel of the site [using the form at N.J.A.C. 7:26C Appendix B; and] **pursuant to (a), (b), and (c) above;**

2. Terminate the existing deed notice or notice in lieu of deed notice on the site pursuant to (e) below; and

3. Apply for a new remedial action permit pursuant to N.J.A.C. 7:26C-[7.5]**7.8 for each of the newly subdivided parcels, one of which the Department will consider a modification of the original remedial action permit**.

(e) The permittee shall terminate the deed notice or notice in lieu of deed notice as follows, if the site conditions stated in the deed notice or notice in lieu of deed notice are no longer accurate:

1. Terminate the existing deed notice or notice in lieu of deed notice on the site using the Model Termination of Deed Notice at N.J.A.C. 7:26C Appendix C;

2. File a new deed notice or issue a new notice in lieu of deed notice for the site pursuant to (a), (b), and (c) above, as needed; and

3. Apply for a modification or a termination of the original remedial action permit pursuant to N.J.A.C. 7:26C-7.12 or 7.13, respectively.

7:26C-[7.3]**7.4** [Administrative requirements for establishing and removing a ground] **Ground** water classification exception area in a remedial action

(a) The [person responsible for conducting the remediation] **permittee** who is proposing a ground water classification exception area shall complete and submit to the Department for the Department's approval a CEA/Well Restriction Area (WRA) Fact Sheet form available from the Department at www.nj.gov/dep/srp/srra/forms, to which the following shall be attached:

1. – 2. (No change.)

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3. The remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4 **and, if applicable, the revised CEA proposal in the remedial action report submitted pursuant to N.J.A.C. 7:26E-5**; and

4. (No change.)

(b) The [person responsible for conducting the remediation] **permittee** shall include the following information with the CEA/Well Restriction Area (WRA) Fact Sheet form as required pursuant to (a)1 above:

1. Data tables that include for each contaminant:

i. – iv. (No change.)

v. Vapor [Intrusion Ground Water Screening Levels] **intrusion ground water screening levels** as developed by the Department;

2. A description of the fate and transport of the ground water contaminant plume, including a summary and description of all data, information, interpretations, and software used to describe the plume's fate and transport. The fate and transport information shall document:

i. – iii. (No change.)

iv. That the vapor intrusion **exposure** pathway was included in the fate and transport description, if applicable; and

v. (No change.)

3. An estimate of the horizontal and vertical extent that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to the applicable ground water [quality] **remediation** standards; and

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4. (No change.)

(c) The [person responsible for conducting the remediation] **permittee** shall include the following map(s) and cross section(s) as required pursuant to (a)2 above:

1. A map of the ground water classification exception area, in both PDF and GIS-compatible formats. The GIS-compatible format shall be produced in conformance with guidance found at www.nj.gov/dep/srp/guidance/techgis/. The maps shall include the following information:

i. – iii. (No change.)

iv. The locations and identifications of wells and/or sampling points, including, but not limited to, those that represent[:

(1) The] **the** farthest down gradient extent of the ground water contamination[;

(2) The]**, the** greatest width of the ground water contamination[; and

(3) The]**, and the** greatest concentrations of ground water contamination;

v. The location(s) of [all] **ground water contaminant source** area(s) [of concern that caused the ground water contamination]; and

vi. The location(s) and identification(s) of the downgradient well(s) closest to the area(s) of concern identified [in (a)1v] **at (c)1v** above; and

2. A [cross section] **cross-section** figure along the prevailing ground water flow direction that defines the approximate ground water contaminant plume centerline. The cross section shall include identification of:

i. – iv. (No change.)

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v. The proposed upper and lower vertical boundaries of the ground water classification exception area; [and]

vi. The proposed horizontal boundary of the ground water classification exception area along the axis of the cross section[.]**;**

vii. The transect location, as illustrated on an included map; and

viii. The existing soil and ground water engineering control locations.

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

1. (No change.)

2. The local, county**,** and regional health department for each municipality and county in which the ground water classification exception area will be located;

3. – 5. (No change.)

6. Each owner of any real property that will be within the [foot print] **footprint** of the ground water classification exception area.

(e) The Department [shall] **will** establish a ground water classification exception area based upon the actual and projected area and depth of the contaminant plume in the ground water based on the information submitted pursuant to [(b) and (c)] **(a)2 and 3** above by posting the map of the ground water classification exception area and well restriction area on its website at www.nj.gov/dep/gis/geowebsplash.htm and the CEA/Well Restriction Area (WRA) Fact Sheet at

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[http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=Site+Case+sub-category]

https://njems.nj.gov/DataMiner/Search/SearchByCategory?isExternal=y&getCategory=y&catName=Site+Remediation. The Fact Sheet shall include the effective date establishing the CEA and its anticipated expiration date.

(f) The Department may revise or reestablish a ground water classification exception area at any time to more accurately reflect ground water conditions using any relevant data. The Department [shall] **will** post an updated CEA/Well Restriction Area (WRA) Fact Sheet if it has revised the ground water classification exception area.

(g) Within 180 calendar days after the anticipated expiration date of the ground water classification exception area posted by the Department on its website pursuant to (e) above, the permittee shall collect at least two rounds of ground water samples that are at least 90 days apart and such that the time between sampling events accounts for seasonal fluctuations in the ground water table and the number of ground water samples collected is representative of the entire horizontal and vertical extent of the ground water classification exception area, and:

1. If ground water samples indicate that contaminant concentrations have decreased to or below the applicable remediation standards throughout the ground water classification exception area, then any person may request that the Department remove the ground water classification exception area pursuant to (h) below or terminate the remedial action permit pursuant to N.J.A.C. 7:26C-7.13; or

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2. If ground water samples indicate that contaminant concentrations have not decreased to or below the applicable remediation standards throughout the ground water classification exception area, then the permittee shall:

i. Modify the remedial action by re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, proposing a revision to the ground water monitoring plan and schedule, and applying for a modification of the remedial action permit; and

ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, perform public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7 and any additional remediation, and apply for a modification of the remedial action permit necessary to address the vapor intrusion risk.

[(g)] **(h)** The Department [shall] **will** remove a ground water classification exception area based upon ground water data, collected pursuant to [N.J.A.C. 7:26C-7.9(f), that] **(g) above, which** indicate that the concentrations of contaminants in the ground water are at or below all of the applicable ground water [quality] **remediation** standards.

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

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(**Agency Note:** Existing N.J.A.C. 7:26C-7.4 and 7.5 are proposed for recodification with amendments as N.J.A.C. 7:26C-7.2 and 7.8, respectively)

7:26C-7.5 Indoor air notification area in a remedial action

(a) The permittee who is proposing an indoor air notification area shall complete and submit to the Department for the Department's approval an Indoor Air Notification Area Fact Sheet form available from the Department at www.nj.gov/dep/srp/srra/forms, to which the following shall be attached:

1. The information required pursuant to (b) below;

2. The map and cross sections required pursuant to (c) below;

3. The remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4 and, if applicable, the revised indoor air notification area proposal in the remedial action report submitted pursuant to N.J.A.C. 7:26E-5; and

4. A list of the names and addresses of those persons who were notified pursuant to (d) below.

(b) The permittee shall include the following information with the Indoor Air Notification Area Fact Sheet form:

1. Data tables, organized by building or location, which include for each contaminant the:

i. Name;

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ii. Maximum concentration in micrograms per liter (µg/L) or micrograms per cubic meter (µg/m^3);

iii. Vapor intrusion ground water screening level as developed by the Department;

iv. Soil gas screening level as developed by the Department;

v. Indoor air remediation standard pursuant to N.J.A.C. 7:26D; and

vi. Sampling date; and

2. A narrative description of the impacted area included in the Indoor Air Notification Area Fact Sheet form, which shall document:

i. That a site-specific evaluation was conducted regarding how changes in property use or conditions affecting the indoor air notification area could impact the migration of vapors emanating from the contaminants;

ii. The horizontal extent of the indoor air notification area that shall include all properties that have results above the Indoor Air Remediation Standards pursuant to N.J.A.C. 7:26D;

iii. Compliance with N.J.A.C. 7:26E-1.15; and

iv. That the duration of the indoor air notification area is indeterminate.

(c) The permittee shall include the following map(s) and cross section(s):

1. A map of the indoor air notification area, in both PDF and GIS-compatible formats. The GIS-compatible format shall be produced in conformance with guidance found at www.nj.gov/dep/srp/guidance/techgis/; and

2. The map at (c)1 above shall include the following information:

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i. The known area of contamination above the Indoor Air Remediation Standards pursuant to N.J.A.C. 7:26D;

ii. The locations and designations of soil gas, indoor air, and ambient air sampling points, including relevant data;

iii. The locations of subsurface utilities as described at N.J.A.C. 7:26E-1.15(b); and

iv. The location(s) of all area(s) of concern that caused the impacts to the vapor intrusion exposure pathway.

(d) The permittee shall notify by either electronic submission or mailing a copy of the Indoor Air Notification Area Fact Sheet form, using certified mail, return receipt requested, the following persons of the intent to establish the indoor air notification area:

1. The municipal and county clerks for each municipality and county in which the indoor air notification area is located;

2. The local, county, and regional health department for each municipality and county in which the indoor air notification area is located;

3. The designated County Environmental Health Act agency for each county in which the indoor air notification area is located;

4. The county planning board for each county in which the indoor air notification area is located;

5. Each owner of any real property that is within the footprint of the indoor air notification area; and

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6. Each tenant or occupant for any building in which the indoor air notification area is located.

(e) The Department will establish an indoor air notification area based upon the information submitted pursuant to (b) and (c) above by posting the map of the indoor air notification area on its website at www.nj.gov/dep/gis/geowebsplash.htm and the Indoor Air Notification Area Fact Sheet at https://njems.nj.gov/DataMiner/Search/SearchByCategory?isExternal=y&getCategory=y&catName=Site+Remediation. The Indoor Air Notification Area Fact Sheet shall include the effective date establishing the indoor air notification area.

(f) The Department may revise or reestablish an indoor air notification area at any time to more accurately reflect indoor air conditions using any relevant data. The Department will post an updated Indoor Air Notification Area Fact Sheet if it has revised the indoor air notification area.

(g) The Department will remove an indoor air notification area based on soil gas data and indoor air data that indicates that the vapor intrusion exposure pathway is no longer a concern and that the concentrations of contaminants in the indoor air are at or below the indoor air remediation standards pursuant to N.J.A.C. 7:26D:

1. The soil gas data and indoor air data shall be collected during two sampling rounds; and

2. The sampling rounds shall be at least four months apart, with at least one round performed during the heating season to determine if the mitigation is no longer necessary.

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7:26C-[7.10]**7.6** Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided [in] **at** (c) below, the permittee implementing a remedial action that includes an engineering control shall:

1. Submit to the Department, biennially on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-[7.7(a)1]**7.10(b)1,** an estimate of the future costs to operate, maintain, and inspect all engineering controls that are part of each remedial action at the site; and

2. Maintain financial assurance in accordance with N.J.A.C. 7:26C-5.2(e):

i. In an amount equal to or greater than the most recent estimated full cost to operate, maintain, **monitor,** and inspect all engineering controls that are part of any remedial action over the life of the **remedial action** permit; and

ii. Until the Department terminates the **remedial action** permit pursuant to N.J.A.C. 7:26C-7.13.

(b) In the event that [more than] one **or more** permittee**s** [is] **are** required to establish financial assurance pursuant to this section and one or more of the permittees is exempt from this requirement pursuant to (c) below, the non-exempt permittee(s) shall establish the full amount of the financial assurance required.

(c) The following persons are not required **to** comply with this section:

1. (No change.)

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2. 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**g.d**, 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. 58:10-23.11[g.d.] **et seq.**;

3. A person who [undertakes] **is responsible for performing a** remediation at that person's **present or former** primary or secondary residence;

4. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who [performs] **is responsible for performing a** remediation at the **present or former location of the** licensed child care center;

5. (No change.)

6. The owner or operator of a small business who is responsible for performing a remediation at [his or her] **the owner or operator's present or former** business property.

(d) – (e) (No change.)

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

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

7:26C-7.7 Remedial action permit types

(a) The permittee shall obtain a remedial action permit pursuant to this subchapter to undertake a remedial action of soil, ground water, or indoor air.

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1. A permittee conducting a remedial action pursuant to a remedial action permit shall comply with the application requirements at N.J.A.C. 7:26C-7.8 and, as applicable:

i. The soil remedial action permit conditions set forth at N.J.A.C. 7:26C-7.10(e);

ii. The ground water remedial action permit conditions set forth at N.J.A.C. 7:26C-7.10(f); and

iii. The indoor air remedial action permit conditions set forth at N.J.A.C. 7:26C-7.10(g).

2. In addition to the conditions that apply to every remedial action permit pursuant to (a)1 above, the Department will establish conditions in the remedial action permit, as required on a case-by-case basis, to ensure the remedial action meets all applicable requirements of this chapter and its enabling statutes. For example, in a case where a proposed remedial action involves soil, ground water, indoor air, or a combination thereof, the Department may include all applicable administrative conditions in one remedial action permit to address the requirements for soil, ground water, indoor air, or a combination thereof.

(b) The permittee:

1. Shall comply with the requirements of this subchapter;

2. Pursuant to N.J.A.C. 7:26E-1.7(b)8, shall not vary from the requirements in this section; and

3. May obtain a Permit I, Permit II, Permit III, Permit IV, or Permit V, as follows:

i. The permittee may apply for a Permit I when:

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(1) The permittee implements a remedial action that requires a deed notice or notice in lieu of deed notice pursuant to N.J.A.C. 7:26E-5.2(a)4 and prepares the deed notice or notice in lieu of deed notice in accordance with the requirements at N.J.A.C. 7:26C-7.3;

(2) The restricted use remedial action does not include an engineering control; and

(3) All soil and all upland sediment sample locations within the restricted area are below the applicable non-residential soil remediation standards and below the applicable soil remediation standards for the migration to ground water exposure pathway;

ii. The permittee may apply for a Permit II when:

(1) The remedy is listed in Table 5-1 at N.J.A.C. 7:26E-5.3, Presumptive Remedies for Soil Contamination at Schools, Child Care Centers, and Residences; and

(2) The presumptive remedy pursuant to N.J.A.C. 7:26E-5.3 is not required;

iii. The permittee may apply for a Permit III when the permittee implements an alternative remedy approved by the Department pursuant to N.J.A.C. 7:26E-5.3;

iv. The property owner may apply for a Permit IV when:

(1) Historic fill material, as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8, is present at the site; and

(2) The property owner certifies that:

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(A) A preliminary assessment for the entire site was performed in accordance with N.J.A.C. 7:26E-3, all areas of concern identified in the preliminary assessment are being or have been remediated, and any other remedial action permit was obtained, if applicable; or

(B) The historic fill material area of concern was sampled in accordance with N.J.A.C. 7:26E-3, confirming the presence of only historic fill material; and

v. The permittee may apply for a Permit V when:

(1) The permittee implements a monitored natural attenuation (MNA) remedy as the ground water remedial action;

(2) The classification exception area is completely located within site boundaries; and

(3) Any receptor, as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8, that is located on the site and is not impacted by any residual contamination.

(c) When applying for a remedial action permit pursuant to (a) or (b) above, the permittee shall submit to the Department the appropriate application form, which is available on the Department's website at www.nj.gov/dep/srp/srra/forms.

(d) If the permittee has obtained a permit pursuant to (b) above, and the remedial action no longer meets the requirements at (b) above, then the permittee shall apply for a remedial action permit modification pursuant to N.J.A.C. 7:26C-7.12.

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7:26C-[7.5]**7.8** Application for a remedial action permit

(a) The [person responsible for conducting the remediation] **permittee** shall apply for a remedial action permit pursuant to this section, according to the schedules [in] **at** N.J.A.C. 7:26C-[7.6]**7.9**, when the remedial action includes any of the following:

1. A deed notice**, notice in lieu of deed notice,** or a declaration of environmental restrictions;

2. (No change.)

3. An indoor air notification area;

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

[4.] **5.** Any obligations for **operation, maintenance,** monitoring, [maintenance] and evaluation of a remedial action.

(b) The [person responsible for conducting the remediation] **permittee** shall apply for a remedial action permit for a soil remedial action that includes an engineering or institutional control by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the [soil] remedial action permit that is to be supplied by filling out the form includes:

i. – iv. (No change.)

v. The deed notice**, notice in lieu of deed notice, or a declaration of environmental restrictions**;

vi. (No change.)

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vii. The use of the [engineering controlled] **engineering-controlled** area(s) and the contaminants that require the use of the [deed notice/engineering control] **engineering control, deed notice, notice in lieu of deed notice, or a declaration of environmental restrictions**; and

viii. The signature and certification of the person(s) responsible for conducting the remediation, **the property owner, and** the [Licensed Site Remediation Professional] **licensed site remediation professional** [or the certified subsurface evaluator (if the site is an unregulated heating oil tank)];

2. A copy of the notice that complies with the requirements [of] **at** N.J.A.C. 7:26C-[7.2(b)]**7.3** concerning deed notices or a declaration of environmental restrictions that has been recorded with the county clerk and stamped "Filed[;]" **or a notice in lieu of deed notice that has been issued;**

3. As-built drawings for each engineering control [for contaminated soil];

4. A copy of each of the following:

i. The [soil] remedial action report that either the Department or a licensed site remediation professional has approved for the area(s) addressed [in the] **by the engineering control(s),** deed notice [and/or by the engineering control(s)]**, notice in lieu of deed notice, and declaration of environmental restrictions, as applicable**; and

ii. Every [no further action letter the Department] **final remediation document** issued for the site or area of concern [prior to May 7, 2012];

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5. An engineering control **operation, maintenance, and** monitoring [and maintenance] plan, if applicable, and schedule to support the biennial certification required pursuant to N.J.A.C. 7:26C-[7.6(b)]**7.10**;

6. An estimate of the future costs to operate, maintain, **monitor,** and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-[7.10]**7.6**; and

7. (No change.)

(c) The [person responsible for conducting the remediation] **permittee** shall apply for a [ground water] remedial action permit for a monitored natural attenuation **ground water** remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the [ground water] remedial action permit to be supplied by filling out the form includes:

i. – v. (No change.)

vi. [Monitoring] **Operation**, maintenance, **monitoring,** and evaluation information concerning the type of remediation;

vii. – viii. (No change.)

ix. The use of the property **or properties** abutting the site;

x. – xi. (No change.)

xii. The signature and certification of the person(s) responsible for conducting the remediation, **the property owner, and** the licensed site remediation professional [or the certified subsurface evaluator (if the site is an unregulated heating oil tank)];

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2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the **remedial action** permit application;

3. A copy of each of the following:

i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates monitored natural attenuation is an effective remedial action; **and**

ii. Every [no further action letter the Department] **final remediation document** issued for the site or area of concern [prior to May 7, 2012]; [and]

4. A ground water monitoring plan [and schedule] to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, [and] to assess the effectiveness of the monitored natural attenuation remedy, including a downgradient sentinel well**(s)**, and any other additional monitoring wells necessary to document natural attenuation processes**, and to determine whether the monitored natural attenuation remedial action is protective or further active remedial action is required for ground water**;

[5. An evaluation plan and schedule to evaluate the effectiveness of the natural attenuation ground water remedial action and to determine whether natural attenuation is protective or further remediation is required for ground water;]

5. An operation, maintenance, and monitoring plan for each point of entry water treatment system, if applicable;

6. An estimate of the future costs to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of

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contaminated ground water, and to assess the effectiveness of the natural attenuation, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-[7.10]**7.6**; and

7. A permit application fee for a [ground water] remedial action permit, pursuant to N.J.A.C. 7:26C-4.6.

(d) The [person responsible for conducting the remediation] **permittee** shall apply for a [ground water] remedial action permit for an active ground water remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms [, as described in (c)1 above];

2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the **remedial action** permit application;

3. (No change.)

4. A copy of each of the following:

i. The remedial action report that either the Department **has approved** or a licensed site remediation professional has [approved] **submitted and certified**, which demonstrates that the active ground water **remedial action, including any** treatment system**,** is operating and functioning as designed; and

ii. Every [no further action letter the Department] **final remediation document** issued for the site or area of concern [prior to May 7, 2012];

5. A ground water monitoring plan [and schedule] designed to evaluate the active ground water remedial action in order to:

i. Optimize the system's performance as the remediation progresses; [and]

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ii. Determine whether:

(1) (No change.)

(2) The plume of contaminated ground water is contained and therefore not reaching [a] **any** sentinel well, and the ground water remedial action is performing as designed; **and**

iii. Confirm the protectiveness of the active ground water remedial action;

[6. An evaluation plan and schedule to evaluate the effectiveness of the active ground water remedial action and to determine whether the active ground water remedial system is protective or further remediation is required for ground water;]

6. An operation, maintenance, and monitoring plan for the active ground water remedial action and a schedule for all engineering controls associated with the ground water contamination, including point of entry water treatment systems, if applicable, to confirm the protectiveness of the engineering controls;

7. An estimate of the future costs to operate, maintain, **monitor,** and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-[7.10]**7.6**; and

8. A permit application fee for a [ground water] remedial action permit, pursuant to N.J.A.C. 7:26C-4.6.

(e) The permittee shall apply for a remedial action permit for an indoor air remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms;

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2. An Indoor Air Notification Area Fact Sheet form for each indoor air notification area included in the permit application;

3. As-built drawings and operations manual, if applicable, for any engineering control for the impacted vapor intrusion exposure pathway;

4. A copy of each of the following:

i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates that the active vapor intrusion mitigation system and engineering control is operating and functioning as designed; and

ii. Every final remediation document issued for the site or area of concern;

5. An operation, maintenance, and monitoring plan and schedule to evaluate the indoor air remedial action and the most recent annual monitoring and maintenance report in order to:

i. Determine the effectiveness of the performance of the vapor intrusion mitigation system and engineering control as the remediation progresses;

ii. Determine whether:

(1) There has been a change in use of the building; and

(2) The construction of the building has been modified, impacting the effectiveness of the vapor intrusion mitigation system and engineering control; and

iii. Confirm the protectiveness of the indoor air remedial action;

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6. A vapor intrusion long-term monitoring plan, a change-in-use evaluation plan, and an indeterminate vapor intrusion pathway building status for all soil gas contamination remaining beneath a building, to confirm the protectiveness of the engineering controls;

7. An estimate of the future costs to operate, maintain, monitor, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.6; and

8. A permit application fee for a remedial action permit, pursuant to N.J.A.C. 7:26C-4.6.

[(e)] **(f)** The permittee shall, within [30] **60** days after municipal subdivision approval for the site that triggers a remedial action permit [termination application] **modification** pursuant to N.J.A.C. 7:26C-[7.13(c)]**7.12**, simultaneously apply for:

1. A remedial action permit [termination] **modification** of the existing remedial action permit (including paying the applicable remedial action permit [termination] **modification** fee); and

2. A new remedial action permit (including paying the applicable remedial action permit application fee) for each [site] **additional subdivided parcel** created by the subdivision [upon]**:**

i. Upon which an engineering or institutional control **for soil or indoor air contamination** exists**; or**

ii. Upon which the source of the ground water contamination originated.

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7:26C-[7.6]**7.9** Remedial action permit application schedule

(a) The [person responsible for conducting the remediation] **permittee** shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-[7.4]**7.2** within two years after the last [biennial] **remedial action protectiveness/biennial** certification **form** was due to the Department, but in no case later than May 7, 2014, when both of the following apply:

1. – 2. (No change.)

(b) For all other situations not included [in] **at** (a), above, the [person responsible for conducting the remediation] **permittee** shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-[7.4]**7.2** according to the following schedule:

1. For a soil remedial action that includes an engineering or institutional control, within 30 days after the owner complies with the requirements [of] **at** N.J.A.C. 7:26C-[7.2(b)]**7.3(b)** concerning deed notices**, notices in lieu of deed notices, or declarations of environmental restriction,** or June 7, 2012, whichever is later;

2. For a **monitored** natural attenuation ground water remedial action, when the [person responsible for conducting the remediation] **permittee** is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that the **monitored** natural attenuation remedial action is effective; [and]

3. For an active ground water remedial action, when the [person responsible for conducting the remediation] **permittee** is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that an active ground water remedial action for the site or area of concern is operational and functioning as designed[.]**; and**

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4. For an indoor air remedial action, when the permittee is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that an indoor air remedial action for the site or area of concern is operational and functioning as designed.

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

(d) The Department [shall] **will** issue a modified remedial action permit if the [person responsible for conducting the remediation] **permittee** does not submit an application for a remedial action permit modification pursuant to N.J.A.C. 7:26C-7.12.

(e) (No change.)

(**Agency Note:** N.J.A.C. 7:26C-7.10 is proposed for recodification with amendments as N.J.A.C. 7:26C-7.6.)

7:26C-7.10 Requirements and conditions applicable to remedial action permits

(a) The permittee of a remedial action permit shall comply with the following:

1. For a soil remedial action:

i. The general conditions applicable to all remedial action permits at this subsection and (b), (c), and (d) below;

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ii. The requirements at N.J.A.C. 7:26C-7.3 concerning deed notices, notices in lieu of deed notice, and declarations of environmental restrictions;

iii. The operation, maintenance, and monitoring plan and schedule for all engineering controls as required at N.J.A.C. 7:26C-7.8(b)5;

iv. The biennial certification requirements pursuant to this section; and

v. All other conditions that the Department includes in the remedial action permit;

2. For a ground water remedial action:

i. The general conditions applicable to all remedial action permits at this subsection and (b), (c), and (d) below;

ii. The ground water monitoring plan and schedule as required for a monitored natural attenuation ground water remedial action at N.J.A.C. 7:26C-7.8(c)4 and for an active ground water remedial action at N.J.A.C. 7:26C-7.8(d)5;

iii. The well restrictions associated with each ground water classification exception area for the site;

iv. The operation, maintenance, and monitoring plan and schedule for all engineering controls, including ground water and point of entry water treatment systems, as required for a monitored natural attenuation ground water remedial action at N.J.A.C. 7:26C-7.8(c)5 and for an active ground water remedial action at N.J.A.C. 7:26C-7.8(d)6;

v. The biennial certification requirements pursuant to this section; and

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vi. All other conditions that the Department includes in the remedial action permit; and

3. For an indoor air remedial action:

i. The general conditions applicable to all remedial action permits at this subsection and (b), (c), and (d) below;

ii. The operation, maintenance, and monitoring plan and schedule for all vapor intrusion engineering controls, including vapor intrusion mitigation systems, as required at N.J.A.C. 7:26C-7.8(e)5;

iii. The vapor intrusion long-term monitoring plan, or change in use evaluation plan, and indeterminate vapor intrusion pathway building status for all soil gas contamination remaining beneath any building as required at N.J.A.C. 7:26C-7.8(e)6;

iv. The biennial certification requirements pursuant to this section; and

v. All other conditions that the Department includes in the remedial action permit.

(b) The permittee shall:

1. Prepare and submit to the Department biennially, in an electronic copy, a remedial action protectiveness/biennial certification form for the remedial action available on the Department's website at www.nj.gov/dep/srp/srra/forms, as required pursuant to this subchapter and the remedial action permit. Information on the form shall concern the protectiveness of the remedial action, including:

i. The site name and location;

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ii. The current person(s) responsible for conducting remediation at the site;

iii. The current owner and operator of the site;

iv. The current lessee of the site, if applicable;

v. Any areas of immediate environmental concern at the site;

vi. The results of the analysis of statutory and regulatory changes subsequent to the establishment of the deed notice, notice in lieu of deed notice, declaration of environmental restrictions, classification exception area, indoor air notification area, or the last submittal of the remedial action protectiveness/biennial certification form;

vii. The use of the site;

viii. Any land use disturbances at the site;

ix. If any additional sampling or remediation was conducted at the site;

x. The results of any sampling that was conducted at the site;

xi. A description of all inspections conducted at the site;

xii. The results of each inspection conducted at the site; and

xiii. The signature and certification of a permittee and the licensed site remediation professional;

2. If there is more than one remediation permit for a site, submit a separate biennial certification form for each remedial action permit;

3. Maintain financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.6;

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

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5. Perform the remedial action protectiveness determination requirements at (c) below.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (e), (f), and (g) below in a certification to the Department biennially, according to the schedule in the permit, on the appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, as well as to the following:

1. The municipal and county clerks for each municipality and county in which any property included in the deed notice, notice in lieu of deed notice, declaration of environmental restrictions, ground water classification exception area, or indoor air notification area is located;

2. The local, county, and regional health department for each municipality and county in which any property included in the deed notice, notice in lieu of deed notice, declaration of environmental restrictions, ground water classification exception area, or indoor air notification area is located;

3. The county planning board for each county in which:

i. The property included in the deed notice, notice in lieu of deed notice, or declaration of environmental restrictions is located;

ii. The ground water classification exception area will be located; or

iii. The indoor air notification area is located;

4. Each owner of any real property that:

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i. Is included in the deed notice, notice in lieu of deed notice, or declaration of environmental restrictions;

ii. Is within the footprint of the ground water classification exception area; or

iii. Is within the indoor air notification area;

5. The Pinelands Commission if:

i. The deed notice, notice in lieu of deed notice, or declaration of environmental restrictions is recorded within the jurisdiction of the Pinelands Commission;

ii. The ground water classification exception area will be located within the jurisdiction of the Pinelands Commission; or

iii. The indoor air notification area will be located within the jurisdiction of the Pinelands Commission; and

6. Each permittee listed on the remedial action permit.

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

1. Certify to the Department that:

i. The remedial action continues to be protective of the public health and safety and the environment;

ii. For a soil remedial action, that the deed notice, notice in lieu of deed notice, or declaration of environmental restrictions, including all engineering controls, is being properly maintained;

iii. For a ground water remedial action, that the ground water classification exception area is being properly maintained; and

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iv. For an indoor air remedial action, that the indoor air notification area is being properly maintained; or

2. If the permittee cannot provide the certification required at (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary:

i. For a soil remedial action, modifying the remedial action, proposing a revision to the deed notice, notice in lieu of deed notice, or declaration of environmental restrictions, and applying for a modification of the remedial action permit;

ii. For a ground water remedial action:

(1) Modifying the remedial action, re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, proposing a revision to the ground water monitoring plan and schedule, and applying for a modification of the remedial action permit; and

(2) If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants present in the ground water such that the remedial action is no longer protective of public health and safety, conducting public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the remedial action permit necessary to address the vapor intrusion risk; and

iii. For an indoor air remedial action:

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(1) Modifying the remedial action, proposing a revision to the indoor air notification area, proposing a revision to the operation, maintenance, and monitoring plan and schedule for all vapor intrusion engineering controls, proposing a revision to the vapor intrusion long-term monitoring plan, change in use evaluation plan, and indeterminate vapor intrusion pathway building status for all soil gas contamination remaining beneath any building, and applying for a modification of the remedial action permit; and

(2) Taking corrective action as needed to ensure the protectiveness of the vapor intrusion engineering controls, including vapor intrusion mitigation systems, and the vapor intrusion institutional controls and monitoring for all soil gas contamination remaining beneath any building.

(e) Each permittee of a remedial action permit shall determine the protectiveness of the soil remedial action in preparation for submitting a remedial action protectiveness/biennial certification form by:

1. Determining whether any actual or pending zoning or land-use change is consistent with the use restrictions in the deed notice, notice in lieu of deed notice, and declaration of environmental restrictions and whether it could undermine the protectiveness of the remedial action in a manner that could prevent the remedial action from:

i. Meeting the applicable health risk standard pursuant to N.J.S.A. 58:10B-12.g(3)(b); and

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ii. Continuing to be protective of public health, safety, and of the environment pursuant to N.J.S.A. 58:10B-12.g;

2. Periodically inspecting the site to identify whether:

i. Any excavation or other disturbance activities have taken place within the restricted areas;

ii. Any disturbances of the soil within the restricted area have resulted in unacceptable human exposure to the soil contamination; and

iii. All engineering and institutional controls that are part of the remedial action continue to function as designed to limit human exposure to contamination above the unrestricted use remediation standard;

3. Comparing New Jersey laws, remediation standards, and other rules applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, rules, or remediation standards to determine whether:

i. Any subsequently promulgated or modified laws, rules, or remediation standards apply to the site; and

ii. Each engineering and institutional control is consistent with the requirements of the subsequently promulgated or modified laws, rules, and remediation standards;

4. Keeping records, including a detailed log, completed for the time since the implementation of the remedial action, or the last remedial action protectiveness/biennial certification form that was submitted to the Department,

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whichever is more recent, of how the permittee has maintained and evaluated the engineering control in compliance with this section;

5. Determining whether the current fate and transport analysis for volatile soil contaminants remains accurate regarding the risk of vapor intrusion; and

6. Determining whether there are any changes in property use, including building conditions, that increase the risk of vapor intrusion from volatile soil contaminants and require the evaluation of the vapor intrusion exposure pathway.

(f) Each permittee of a remedial action permit shall determine the protectiveness of the ground water remedial action in preparation for submitting a remedial action protectiveness/biennial certification form by:

1. Determining the effectiveness of the remediation by evaluating the data gathered by the monitoring program required pursuant to this section;

2. Comparing New Jersey laws, remediation standards, and other rules applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws, rules, or remediation standards to determine whether:

i. Any subsequently promulgated or modified laws, rules, or remediation standards apply to the site; and

ii. Each ground water classification exception area is consistent with the requirements of the subsequently promulgated or modified laws, rules, and remediation standards;

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3. Determining whether there are any planned changes within a 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located since the Department established the ground water classification exception area or the last remedial action protectiveness/biennial certification form that was submitted to the Department;

4. Identifying whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last remedial action protectiveness/biennial certification form that was submitted to the Department;

5. Inspecting all ground water monitoring wells associated with the ground water classification exception area and maintaining a log for each monitoring well;

6. Identifying any land use disturbance, such as the installation of a detention basin, that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water. If any such disturbance is identified, sample the ground water and surface water downgradient and proximate to the land use disturbance to determine whether the ground water meets the more stringent of either:

i. The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; or

ii. The Federal Surface Water Quality Criteria, 40 CFR Part 131; and

7. Determining whether:

i. The current fate and transport analysis for volatile ground water contaminants remains accurate with regard to the risk of vapor intrusion; and

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ii. There are any changes in property use, including building conditions, which increase the risk of vapor intrusion from volatile ground water contaminants and require the evaluation of the vapor intrusion exposure pathway;

8. Determining whether any changes in ground water flow direction have occurred, which may impact the protectiveness of the ground water remedial action through:

i. The collection of depth-to-water data; and

ii. The generation of contour maps from a well network that accounts for triangulation in each impacted ground water zone.

(g) Each permittee of a remedial action permit shall determine the protectiveness of the indoor air remedial action in preparation for submitting a remedial action protectiveness/biennial certification form by:

1. Determining whether any actual or pending zoning or land-use change is consistent with the indoor air notification area and whether it could undermine the protectiveness of the remedial action in a manner that could prevent the remedial action from:

i. Meeting the applicable health risk standard pursuant to N.J.S.A. 58:10B-12.g(3)(b); and

ii. Continuing to be protective of public health, safety, and of the environment pursuant to N.J.S.A. 58:10B-12.g;

2. Periodically inspecting the site or area of concern to identify whether:

i. Any change in use of an existing building or new building construction has taken place within the restricted area;

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ii. Any disturbances to the existing building(s) within the restricted area have resulted in unacceptable human exposure to the contamination; and

iii. The indoor air notification area that is part of the remedial action continues to function as designed to limit human exposure to contamination above the remediation standards;

3. Comparing New Jersey laws, remediation standards, and other rules applicable at the time the indoor air notification area was established with any relevant subsequently promulgated or modified laws, rules, or remediation standards to determine whether:

i. Any subsequently promulgated or modified laws, rules, or remediation standards apply to the site; and

ii. Each indoor air notification area is consistent with the requirements of the subsequently promulgated or modified laws, rules, and remediation standards;

4. Keeping records, including a detailed log, completed for the time since the implementation of the remedial action, or the last remedial action protectiveness/biennial certification form that was submitted to the Department, whichever is more recent, of how the permittee has maintained and evaluated the indoor air notification area in compliance with this section;

5. Determining whether the current fate and transport analysis for volatile soil or ground water contaminants remains accurate regarding the risk of vapor intrusion; and

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6. Determining whether there are any changes in property use, including building conditions, that increase the risk of vapor intrusion from volatile soil or ground water contaminants and require further evaluation of the vapor intrusion exposure pathway.

7:26C-7.11 [Transfer of] **Administrative changes for** a remedial action permit [by a statutory permittee]

[(a) A statutory permittee whose status as a statutory permittee has changed shall, pursuant to (b) below, request that the Department transfer the remedial action permit to a new owner, operator, or tenant. The existing statutory permittee shall pay the remedial action permit transfer fee pursuant to N.J.A.C. 7:26C-4.6 and has the burden of showing that its status as a statutory permittee is so limited by law.

(b) No later than 60 calendar days after the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, a statutory permittee shall apply for the remedial action permit transfer pursuant to (c) below.

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

1. Contact information of the current permittee intending to transfer the permit;

2. Contact information of the prospective permittee, if any;

3. Site identification;

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4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and

5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:

i. Is the new owner, operator, or tenant of or at the contaminated site;

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

iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.10, if applicable.

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

1. The statutory permittee requesting transfer of the remedial action permit complies with the notice requirements in (b) above;

2. The statutory permittee requesting transfer of the remedial action permit actually terminates its status as subsequent owner, operator, or tenant; and

3. A permittee, other than the one requesting that the Department rescind its status as a statutory permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.10.]

(a) No later than 60 calendar days after an administrative change to a remedial action permit, the permittee shall submit the updated information for the remedial action permit pursuant to (b), (c), and (d) below, as applicable.

(b) The permittee shall submit updated administrative information on the appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms for the following changes and in accordance with (c) and (d) below:

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1. Adding an additional permittee to the remedial action permit;

2. Removing a permittee that is legally dissolved or deceased; or

3. Changing the permittee's name or address.

(c) A statutory permittee whose status as a statutory permittee has changed due to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, or a permittee who is not a statutory permittee whose status as a permittee has changed due to a transfer of assets shall request that the Department transfer the remedial action permit to a new owner, operator, or tenant. The existing permittee shall pay the remedial action permit transfer fee pursuant to N.J.A.C. 7:26C-4.6, and show that its status as a permittee is so limited by law.

1. To apply for an administrative change to a remedial action permit, the permittee shall submit a completed form appropriate for the specific remedial action permit, which contains the following information, found on the Department's website at www.nj.gov/dep/srp/srra/forms:

i. Contact information of the existing permittee intending to transfer the remedial action permit;

ii. Contact information of the prospective permittee, if any;

iii. Site identification;

iv. Confirmation that the existing permittee(s) do not have any outstanding remedial action permit fees; and

v. Confirmation that the prospective permittee requesting an administrative change of the remedial action permit:

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(1) Is the new owner, operator, or tenant of or at the contaminated site;

(2) Has acknowledged, in writing, that it accepts its responsibility as a permittee; and

(3) Is in compliance with the financial assurance requirements at N.J.A.C. 7:26C-7.6, if applicable.

2. The Department will not rescind a person's status as a statutory permittee until the following occurs:

i. The statutory permittee requesting transfer of the remedial action permit complies with the notice requirements at (c) above;

ii. The statutory permittee requesting transfer of the remedial action permit actually terminates its status as subsequent owner, operator, or tenant; and

iii. A permittee, other than the one requesting that the Department rescind its status as a statutory permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.6.

(d) The permittee shall submit updated administrative information on the appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms for a change in the:

1. Contact information for the existing permittee (such as the contact person name, address, phone number, and email address) or the fee billing contact person; and

2. Block and lot designations when the municipality has revised the designations of the property.

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

(a) (No change.)

(b) A permittee**(s)** shall apply to have the Department modify a remedial action permit [after the person responsible for conducting the remediation modifies the remedial action, including, but not limited to, the occurrence of any of the following,] by submitting a completed form appropriate for the specific remedial action permit, as described [in] **at** (c) below, available at www.nj.gov/dep/srp/srra/forms **after the permittee(s) modify the remedial action, including, but not limited to, the occurrence of any of the following**:

1. (No change.)

2. A modification of the engineering or institutional controls, [which will result in changes to the exhibits in the deed notice or in the notice in N.J.A.C. 7:26C-7.2(c)2 concerning deed notices] **including, but not limited to, changes to exhibits in the deed notice or in the notice in lieu of deed notice(s), classification exception area(s), ground water monitoring plan(s), and vapor intrusion monitoring plan(s)**; or

[3. The permittee changes its address.]

3. The addition or removal of a remedial action permit component pursuant to N.J.A.C. 7:26C-7.7.

(c) To request modification of any remedial action permit pursuant to (b) above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit pursuant to N.J.A.C. 7:26C-[7.5]**7.8**, and pay the applicable remedial action permit modification fee in accordance with N.J.A.C. 7:26C-4.6.

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(d) If a permittee requests modification of a Permit IV pursuant to N.J.A.C. 7:26C-7.7(b)3iv to add a remedial action permit component pursuant to N.J.A.C. 7:26C-7.7, then the permittee shall add the person responsible for conducting the remediation as a permittee.

(e) If the Department directs the modification of any remedial action permit pursuant to (a) above, or for any other reason, then the permittee shall submit to the Department an application for a remedial action permit pursuant to N.J.A.C. 7:26C-7.8 and pay the applicable remedial action permit modification fee in accordance with N.J.A.C. 7:26C-4.6.

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

(a) (No change.)

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

1. The name, address**,** and telephone number of the permittee requesting termination of the **remedial action** permit;

[2. The name, address and telephone number of the prospective permittee;]

Recodify existing 3. – 4. as **2. – 3.** (No change in text.)

[5.] **4.** If the permit is for a deed notice, **notice in lieu of deed notice, or a declaration of environmental restrictions,** a draft copy of a termination [of deed notice in accordance

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with N.J.A.C. 7:26C Appendix C, incorporated herein by reference] **document using the Model Termination of Deed Notice at N.J.A.C. 7:26C Appendix C**; and

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

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

[(d)] **(c)** (No change in text.)

(d) The Department may revoke a remedial action permit that is no longer protective of the public health and safety and of the environment.

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.5 Civil administrative penalty determination

(a) (No change.)

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

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Subchapter and Violation		Citation	Type of Violation	Grace Period Days	Base Penalty
. . .					
Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C					
. . .					
7	[Deed notices, ground water classification exception areas] **Institutional controls** and remedial action permits				
	Failure to comply with requirements related to the redevelopment or change in use of real property.	7:26C-7.1[(d)]**(c)**	NM		$15,000
	Failure to comply with the requirements of a remedial action permit, including the submittal of a biennial certification, maintenance of financial assurance, if applicable, and payment of applicable fees.	**7:26C-7.2(a)**	**NM**		**$15,000**
	Failure to properly prepare and follow procedures for filing a deed notice.	7:26C-[7.2]**7.3**	NM		$15,000
	Failure to properly prepare, submit and file information related to a classification exception area.	7:26C-[7.3]**7.4**	NM		$15,000
	[Failure to comply with the requirements of a remedial action permit including the submittal of a biennial certification, maintenance of financial assurance, if applicable, and payment of applicable fees.	7:26C-7.4(a)	NM		$15,000]
	Failure to properly prepare, submit, and file information related to an indoor air notification area.	**7:26C-7.5**	**NM**		**$15,000**
	Failure to submit to the Department, on the same schedule as a biennial certification submittal, an estimate of the future costs to operate, maintain, and inspect all engineering controls and to maintain financial assurance in an amount equal to the estimate.	**7:26C-7.6**	**NM**		**$15,000**
	Failure to apply for a remedial action permit when required.	7:26C-[7.5(a)] **7.8(a)**	NM		$15,000

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	Failure to submit the required information when applying for a soil remedial action permit for a remedial action that includes an engineering or institutional control.	7:26C-[7.5(b)] **7.8(b)**	M	30	$10,000
	Failure to submit the required information when applying for a ground water remedial action permit for a monitored natural attenuation remedial action.	7:26C-[7.5(c)] **7.8(c)**	M	30	$10,000
	Failure to submit the required information when applying for a ground water remedial action permit for an active ground water remedial action.	7:26C-[7.5(d)] **7.8(d)**	M	30	$10,000
	Failure to apply for a remedial action permit in accordance with the required schedule.	7:26C-[7.6]**7.9**	NM		$15,000
	Failure to comply with the requirements of a remedial action permit, including the requirement to submit a remedial action protectiveness certification.	7:26C-[7.7]**7.10**	NM		$15,000
	Failure to comply with specific conditions applicable to a soil remedial action permit.	7:26C-[7.8]**7.10**	NM		$15,000
	Failure to comply with specific conditions applicable to a ground water remedial action permit.	7:26C-[7.9]**7.10**	NM		$15,000
	[Failure to submit to the Department, on the same schedule as biennial certification submittal, an estimate of the future costs to operate, maintain, and inspect all engineering controls and to maintain financial assurance in an amount equal to the estimate.	7:26C-7.10	NM		$15,000]
	Failure to comply with specific conditions applicable to an indoor air remedial action permit.	**7:26C-7.10**	**NM**		**$15,000**
	. . .				
. . .					
Technical Requirements for Site Remediation N.J.A.C. 7:26E					
1	General Information				
	. . .				

	Failure to make submissions or provide notifications to the New Jersey Department of Health [and Senior Services], Consumer and Environmental Health Services[, Indoor Environments Program].	7:26E-1.15(g)[2, (h) and (i)3]	NM		$25,000
	. . .				
. . .					

7:26C-9.10 Adjudicatory hearings

(a) A person may request a hearing to contest **any of the following Department-initiated actions**:

1. (No change.)

2. An invalidation **or annulment** of a response action outcome pursuant to N.J.A.C. 7:26C-6;

3. A new or modified remedial action permit**,** [or] a denial of an application to transfer a remedial action permit**, or a revocation of a remedial action permit** pursuant to N.J.A.C. 7:26C-7;

4. – 7. (No change.)

(b) – (d) (No change.)

(e) The person shall send the request for an adjudicatory hearing pursuant to this section to both the:

1. (No change.)

2. New Jersey Department of Environmental Protection

Contaminated Site Remediation and [Waste Management Program] **Redevelopment**

Bureau of Enforcement and Investigation

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Mail Code 401-06U

PO Box 420

Trenton, NJ 08625-0420

Attention: Hearing Request.

7:26C-9.12 Procedures for assessment, payment, and settlement of assessment of cleanup and removal costs in notices of administrative assessment of State costs

(a) [The] **In accordance with the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11u.c(4), the** Department may assess State costs by issuing a notice of administrative assessment of State costs pursuant to the procedure in this section.

(b) – (d) (No change.)

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.6 Eligible technical assistance grant activities

(a) The community group shall use the technical assistance grant to [hire] **retain** a licensed site remediation professional that is not associated with any person responsible for conducting the remediation of the contaminated site.

(b) – (e) (No change.)

SUBCHAPTER 14. DIRECT OVERSIGHT

7:26C-14.2 Compulsory direct oversight

(a) (No change.)

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(b) The person responsible for conducting the remediation that is in direct oversight as described [in] **at** (a) above shall:

1. Proceed with the remediation as the Department directs, and [hire] **retain** a licensed site remediation professional within 14 days after the applicable event [in] **at** (a) above, if one has not yet been retained;

2. Submit to the Department within 90 days after the applicable event [in] **at** (a) above:

i. (No change.)

ii. Proof that the person has established and maintains a remediation [trust fund] **funding source** pursuant to N.J.A.C. 7:26C-[5.4]**5.2(k)** in an amount at least equal to the estimated cost of the remediation;

iii. – v. (No change.)

3. – 5. (No change.)

6. Obtain the Department's prior approval before making any disbursements from the remediation [trust fund] **funding source**;

7. – 8. (No change.)

SUBCHAPTER 16. LINEAR CONSTRUCTION PROJECTS

7:26C-16.2 Requirements for a person engaged in a linear construction project

(a) Any person who initiates a linear construction project shall:

1. [Hire] **Retain** a licensed site remediation professional to oversee the management of contamination encountered during the linear construction project;

2. – 7. (No change.)

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(**Agency Note:** The text of N.J.A.C. 7:26C Appendices B, C, and D below follow with permanent italicized text and brackets in the existing appendices; proposed new text is indicated in boldface **thus**; deletions indicated in italicized braces *{*thus*}*.)

APPENDIX B

MODEL DEED NOTICE

_____

Instrument Number

DEED NOTICE

*{*This shell document contains blanks and matter in brackets [ ]. These blanks shall be replaced with the required site information prior to recording.

Matter bracketed [ ] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.*}*

Instructions for completing a Deed Notice using this model document:

- ***Italics is used to designate instructions, guidance, and explanatory material. All text in italics shall be deleted or replaced, as appropriate, in the prepared Deed Notice;***
- ***Blanks "___" indicate information to be entered by the person preparing the Deed Notice or places where signatures are required; and***
- ***Brackets "[ ]" are used to indicate information with instructive or descriptive information. Replace the brackets and any italicized text with the requested information.***

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IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

*{*Prepared by: _____

[Signature]

_____

[Print name below signature]

Recorded by: _____

[Signature, Officer of County Recording Office]

_____

[Print name below signature]

DEED NOTICE*}*

This Deed Notice is made as of the _____ day of _____, ____, by [*Insert the full legal name and address of each current property owner*] (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. [*Insert the full legal name and address of each current property owner*] [*Insert as appropriate: "is", or "are"*] the owner *{*in fee simple*}* of certain real property designated as Block(s) _____ Lot(s) _____, on the tax map of the [*Insert, as appropriate: 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

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(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. (No change.)

3. SOIL CONTAMINATION. [*Insert the full legal name of the person {that was} responsible for conducting the remediation*] has remediated contaminated soil at the Property, such that soil contamination remains 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 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*}* **includes** 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 Deed Notice and required by law, as set forth herein.

5A. (No change.)

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

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i. (No change.)

ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to a single-family residence or a child care facility.

[*Insert {the following paragraph when}* ***Paragraph 5C only if*** *engineering controls are also implemented at the site****, otherwise delete this instruction and Paragraph 5C.****{:}*

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. (No change.)

ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at *{*www.nj.gov/srp/forms*}* **www.nj.gov/dep/srp/srra/forms** within *{*30*}* **60** 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 *{*www.nj.gov/srp/forms*}* **www.nj.gov/dep/srp/srra/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. (No change.)

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7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. – iii. (No change.)

iv. No owner, lessor, lessee**,** or operator shall be required to obtain a Remedial Action Permit Modification for any temporary alteration, improvement, or disturbance, provided that the site is restored to the condition described in the Exhibits to this Deed Notice, and the owner, lessee, or operator complies with the following:

(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) – (D) (No change.)

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. (No change.)

ii. *{*Hires*}* **Retains** a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;

iii. – vii. (No change.)

8. (No change.)

9. ACCESS. The Owner, and the subsequent owners, lessors, lessees, and operators agree to allow the Department, its agents and representatives**,** access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and *{*of*}*

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the environment if the subsequent owners, lessors, lessees, and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners, lessors, and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

10. – 12A. (No change.)

12B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map -- A separate map for each restricted area that includes:

(A) As-built diagrams of each engineering control*{*, including caps, fences, slurry walls, (and, if any) ground water monitoring wells, extent of the ground water classification exception area, pumping and treatment systems that may be required as part of a ground water engineering control in addition to the deed notice*}*;

(B) – (C) (No change.)

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes either (A) or (B) through (F):

(A) – (F) (No change.)

12C. (No change.)

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

[If Owner is an individual]

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WITNESS: _____

[Signature]

_____

[Print name below signature]

STATE OF [State where document is executed] SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed**,** and delivered this document as his or her act and deed.

_____

_____, Notary Public

[Print Name and Title]

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

[*If Owner is a general or limited partnership*]

WITNESS: [*Name of partnership*]

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_____ By:_____, General Partner

[*Signature*] [*Signature*]

_____ _____

[*Print name and title*] [*Print name*]

STATE OF [*State where document is executed*] SS.:

COUNTY OF [*County where document is executed*]

I certify that on _____, 20___, [*Name of person executing document on behalf of owner partnership*] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is a general partner of [*Owner*], the partnership named in this document;

(b) Signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [*Owner*]; and

(c) This document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public

[*Signature*]

_____

[*Print name*]

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

[If Owner is a corporation]

ATTEST: [Name of corporation]

_____ By_____

_____ _____

[Print name and title] [Signature]

STATE OF [State where document is executed] SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

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(e) this person signed this proof to attest to the truth of these facts.

_____

[Signature]

_____

[Print name and title of attesting witness]

Signed and sworn before me on _____, 20__

_____, Notary Public

_____

[Print name and title]*}*

13. SIGNATURE, OWNER.

Owner has executed this Deed Notice as of the date first written above.

By: _____

[*Print name and, if appropriate, title*]

[*Print company name*]

14. ACKNOWLEDGMENT AND PROOF.

**[*The Deed Notice must be acknowledged and proved in accordance with N.J.S.A. 46:14-2.1.*

This means that the Deed Notice must be signed by the Owner in front of a witness.

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1) If the witness is a Notary Public, NJ Attorney, or other officer of the State pursuant to N.J.S.A. 46:14-6.1 ("Officer"):

- ***Include only the appropriate form of the ACKNOWLEDGMENT, provided at the end of this section, in the Deed Notice and delete the ACKNOWLEDGMENT OF SUBSCRIBING WITNESS and the PROOF OF EXECUTION;***
- ***The Owner or Owner's Authorized Representative, as appropriate, shall sign the Deed Notice in front of the Officer; and***
- ***The Owner will then complete and execute the ACKNOWLEDGMENT.***

2) If the witness is NOT a Notary Public, NJ Attorney, or other officer of the State pursuant to N.J.S.A. 46:14-6.1:

- ***Include only the appropriate form of both the ACKNOWLEDGMENT OF SUBSCRIBING WITNESS and the PROOF OF EXECUTION, provided at the end of this section, in the Deed Notice and delete the ACKNOWLEDGMENT;***
- ***The Owner or Owner's Authorized Representative, as appropriate, shall sign the Deed Notice in front of the witness (i.e. the "subscribing witness");***
- ***The subscribing witness shall then complete and execute the ACKNOWLEDGMENT OF SUBSCRIBING WITNESS;***
- ***The subscribing witness shall then appear before an Officer, with the executed Deed Notice and the executed Acknowledgement of Subscribing Witness; and***
- ***The Officer shall complete the appropriate form of the PROOF OF EXECUTION and have the subscribing witness attest to the required information and sign the Proof of Execution where indicated. The Officer shall then execute the Proof of Execution.*** **]**

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[*Include the following Acknowledgment if the witness is an Officer and the Owner is an Individual or Sole Proprietor, delete otherwise.*]

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

COUNTY OF [*COUNTY WHERE SIGNED*]) SS.

On _____, [*Name of Owner/Sole Proprietor*] personally came before me and acknowledged under oath, to my satisfaction, the following:

1) that this person is the maker of this instrument; and

2) this person signed this instrument on their own behalf.

_____

[*PRINT NAME OF NOTARY PUBLIC/ NJ ATTORNEY*]

☐ **Notary Public, State of New Jersey**

My commission expires on _____

☐ **Attorney-At-Law, State of New Jersey**

Attorney ID #: _____

[*Include the following Acknowledgment if the witness is an Officer and the Owner is a Corporation, Limited Liability Corporation, Partnership, etc., delete otherwise.*]

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

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COUNTY OF [*COUNTY WHERE SIGNED*]) SS.

On _____, [*Name of Owner's Authorized Representative*] personally came before me and acknowledged under oath, to my satisfaction, the following:

1) that this person is the [*Title or Role of Authorized Representative*] of [*Name of Owner*] (the "Owner"), the entity named in this instrument; and

2) this person signed this instrument on behalf of the Owner; and

3) this person was authorized to execute this instrument on behalf of the Owner and this person executed this instrument as the true and voluntary act of the Owner duly authorized by all necessary action by the Owner.

_____

[*PRINT NAME OF NOTARY PUBLIC/ NJ ATTORNEY*]

☐ **Notary Public, State of New Jersey**

My commission expires on _____

☐ **Attorney-At-Law, State of New Jersey**

Attorney ID #: _____

**[*Include the following Acknowledgment of Subscribing Witness and Proof of Execution if:*

1) The Owner is an Individual or Sole Proprietor;

2) The witness is NOT an Officer (Notary Public, NJ Attorney, or other officer of the State); and

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3) The Owner is not signing the acknowledgement in front of an Officer, but instead is signing before a witness who will then take the acknowledgment to an Officer.

***Otherwise, delete this acknowledgment.*]**

ACKNOWLEDGMENT OF SUBSCRIBING WITNESS

On _____, [*Name of Owner*] personally came before me and stated to my satisfaction the following:

1) that this person is the maker of this instrument; and

2) this person signed this instrument on their own behalf.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____ By: _____

[*PRINT NAME OF SUBSCRIBING WITNESS*]

[*Include the following Acknowledgment of Subscribing Witness and Proof of Execution if the witness is NOT an Officer and the Owner is a Corporation, Limited Liability Corporation, Partnership, etc., delete otherwise*.]

ACKNOWLEDGMENT OF SUBSCRIBING WITNESS

On _____, [*Name of Owner's Authorized Representative*] personally came before me and stated to my satisfaction that this person:

1) was the maker of this instrument; and

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2) was authorized and did execute this instrument as the [*Title or Role of the Owner's Representative*] for [*Name of Owner*] (the "Owner"), the entity named in this instrument, and who was fully authorized to, and did, execute this instrument on behalf of the Owner; and

3) was fully authorized to, and did, execute this instrument on the Owner's behalf.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____ By: _____

[*PRINT NAME OF SUBSCRIBING WITNESS*]

PROOF OF EXECUTION

STATE OF NEW JERSEY)

COUNTY OF [*COUNTY WHERE SIGNED*]) SS.

On _____, [*Name of Subscribing Witness*] personally came before me and acknowledged under oath, to my satisfaction, that:

1) this person was the subscribing witness to the signing of this instrument; and

2) this instrument was signed by [*Name of Owner's Representative that signed the Deed Notice*], who is the [*Title or Role of the Owner's Representative*] for [*Name of Owner*] (the "Owner"), the entity named in this instrument, and who was fully authorized to, and did, execute this instrument on behalf of the Owner; and

3) this person signed this proof under oath to attest to the truth of these facts.

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_____

[*PRINT NAME OF SUBSCRIBING WITNESS*]

Sworn and subscribed before me on the date written above:

_____

[*PRINT NAME OF NOTARY PUBLIC/ NJ ATTORNEY*]

☐ **Notary Public, State of New Jersey**

My commission expires on _____

☐ **Attorney-At-Law, State of New Jersey**

Attorney ID #: _____

APPENDIX C

MODEL TERMINATION OF DEED NOTICE

TERMINATION OF DEED NOTICE

{FILED AT THE OFFICE OF THE

REGISTER OF

[*county*] COUNTY

IN DEED BOOK [*volume*], Pages [*pages*]

AS TO

BLOCK(S) , LOT(S) , TAX MAP OF THE [*county*] County}

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IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS **ARE** DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

*{*Prepared by: _____

Recorded by: _____

[*Signature, Officer of County Recording Office*]

[*Print name below signature*]*}*

This Termination of Deed Notice is made as of [*month day, year*] by [*{name of property owner}* ***Insert the full legal name and address of each current property owner***] **(together with his/her/its/their successors and assigns, collectively "Owner")**.

1. DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [*county*] COUNTY, AT BOOK [*book number/vol*.], PAGES [*page numbers*]. By way of a Declaration of Environmental Restriction (DER) or Deed Notice (hereinafter collectively Deed Notice) dated [*month day, year*], [*name of the original responsible party(s) that filed the DER or Deed Notice*] advised of: (a) the existence of soil contamination in concentrations at the real property situated in the [*{city/town/borough name}****City/Borough/Township/Town***] and designated as *{*Block(s) [*see example above for multiples*] , Lot(s) [*see example above for multiples*]*}* **Block(s) _____ Lot(s) _____,** ("the Property") on the Tax Map of *{*[*city/town/borough name*]*}* **the [*Insert, as appropriate: City/Borough/Township/Town*] of [*Insert the name of municipality*], [*Insert the name of county*] County** that do not allow for the unrestricted use of the Property; (b) the

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existence of institutional and/or engineering controls selected as part of the remedial action for the Property; and (c) the continuing obligation of [*name of original responsible party(s) that filed the DER or Deed Notice*], subsequent owners, and others to monitor and maintain those institutional and/or engineering controls. The Deed Notice was part of the remediation of contamination at the Property and was recorded in the Office of the Register of [*county*] County on [*month day, year*] in Deed Book [*book number/volume*], Pages [*page numbers*] by [*name of original responsible party(s) that filed the DER or Deed Notice*], the then owner of the Property. Pursuant to Paragraph 10, the Deed Notice was to remain in effect until such time as the Department approved the termination of the Deed Notice by executing a document expressly terminating the Deed Notice.

2. – 5. (No change.)

[Note: The language of the following two (2) consecutive paragraphs shall be substituted for the language of paragraphs 3 and 4 above where the subject property is proposed to be subdivided]

{Appropriate consecutive paragraph number}. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF AT BOOK , PAGE AS TO BLOCK(S)_____, LOT(S) _____. By way of letter dated **[*month day, year*]**, [*name of person/corporation etc.*] requested approval from the Department to terminate the Deed Notice as to Block(s) _____, Lot(s) _____ because Block(s) _____, Lot(s) _____, has been subdivided from the Property, and the conditions that required the execution and recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated *{_____}***[*month day, year*]**. Accordingly, the Department hereby

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executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed Notice recorded in the Office of the Register of **[*county*] COUNTY** in Deed Book _____, Page _____ shall be terminated and discharged as it applies to Block(s) _____, Lot(s) _____. Such termination, however, is limited to Block(s) _____, Lot(s) _____, and the Deed Notice remains in full force and effect as to such other portions of the Property for which the Department has not approved termination of the Deed Notice. A metes and bounds description of Block(s) _____, Lot(s)_____ and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

{Appropriate consecutive paragraph number}. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s) _____, soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by [*name of person or corporation etc. filing new deed notice*].

[*Note: The language of the following paragraph shall be substituted for that of paragraph number 5 above where no new Deed Notice would be filed for the subject property*]

{Appropriate consecutive paragraph number*}*. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice is recorded in the Office of the Register of [*county*].

[*Note: The following paragraph is required for all versions of this form*]

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*{*Appropriate consecutive paragraph number*}*. SIGNATURES IN WITNESS WHEREOF, [*name of person/corporation etc. executing the Termination of Deed Notice*] and the New Jersey Department of Environmental Protection have executed this Termination of Deed Notice, as of the date first written above.

*{*A. [*If Owner is an individual*]

WITNESS: _____ _____

[*Signature*] [*Signature*]

_____ _____

[*Print name*] [*Print name*]

STATE OF [*State where document is executed*]

SS.: COUNTY OF [*County where document is executed*]

I certify that on [*month day, year*], [*name of owner*] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public

[*Signature*]

_____

[*Print name*]

B. [*If owner is a corporation*]

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WITNESS: [*Name of corporation*]

_____ By_____

[*Signature*] [*Signature*]

_____ _____

[*Print name and title*] [*Print name*]

_____

[*Print title*]

STATE OF [*State where document is executed*] SS.:

COUNTY OF [*County where document is executed*]

I certify that on [*month day, year*], [*name of witness*] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [*secretary/assistant secretary*] of [*name of corporate owner*], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [*president/vice president*] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

_____

[*Signature*]

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_____

[*Print Name and Title of Attesting Witness*]

_____, Notary Public

[*Signature*]

_____

[*Print Name*]

C. [*If owner is a general or limited partnership*]

WITNESS: [*name of partnership*]

_____ By:_____, General Partner

[*Signature*] [*Signature*]

_____ _____

[*Print name and title*] [*Print name*]

STATE OF [*State where document is executed*] SS.:

COUNTY OF [*County where document is executed*]

I certify that on [*month day, year*], [*name of person executing document on behalf of owner partnership*] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [*name of partnership owner*], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [*name of partnership owner*]; and

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(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public

[*Signature*]

_____

[*Print name*]

D. [*If Owner is a Limited Liability Company*]

WITNESS: [*Name of Limited Liability Company*]

_____ By:_____

[*Signature*] [*Signature*]

_____ _____

[*Print name and title of witness*] [*Print name and title*]

STATE OF [*State where document is executed*] SS.:

COUNTY OF [*County where document is executed*]

I certify that on [month day, year], [Name of Witness] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

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(a) This person is the [insert either secretary/assistant secretary of the owner limited liability company] of [insert full name of limited liability company];

(b) This person is the attesting witness to the signing of this document by the proper officer who is the [insert title of person signing on behalf of limited liability company] of the [insert name of owner limited liability company];

(c) This document was signed and delivered by the limited liability company as its voluntary act and was duly authorized;

(d) This person knows the proper seal of the limited liability company which was affixed to this document; and

(e) This person signed this proof to attest to the truth of these facts.

_____

[*Signature*]

_____

[*Print Name and Title of Attesting Witness*]

_____, Notary Public

[*Signature*]

_____

[*Print name*]

[Note: In situations where the person signing the document on behalf of the owner limited liability company is a member of the limited liability company, the attesting witness shall certify under oath that he/she knows that the document was signed and delivered by the owner limited liability company as its voluntary act, that the member is authorized to execute the document on

behalf of the owner limited liability company, and that the person signing the document is authorized to sign the document on behalf of the member. Where the member is a partnership, corporation or other limited liability company, the attesting witness shall also certify that the person signing the document is authorized to sign on behalf of the corporation, partnership or limited liability company, as the case may be. To the extent that such corporation, partnership, or limited liability company, in turn, is directly or indirectly controlled by another corporation, limited liability company, or partnership, and the person signing the document is an officer of that corporation or limited liability company or a partner of that partnership, the attesting witness shall also certify under oath that such person is authorized to sign on behalf of the corporation, limited liability company, or partnership, as the case may be.]*}*

A. Owner has executed this Termination of Deed Notice as of the date first written above.

By: _____

[*Print name and, if appropriate, title*]

[*Print company name*]

B. ACKNOWLEDGMENT AND PROOF.

[*The Termination of Deed Notice must be acknowledged and proved in accordance with N.J.S.A. 46:14-2.1. This means that the Termination of Deed Notice must be signed by the Owner in front of a witness.*

1) If the witness is a Notary Public, NJ Attorney, or other officer of the State pursuant to N.J.S.A. 46:14-6.1 ("Officer"):

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- ***Include only the appropriate form of the ACKNOWLEDGMENT, provided at the end of this section, in the Termination of Deed Notice and delete the ACKNOWLEDGMENT OF SUBSCRIBING WITNESS and the PROOF OF EXECUTION;***
- ***The Owner or Owner's Authorized Representative, as appropriate, shall sign the Termination of Deed Notice in front of the Officer; and***
- ***The Owner will then complete and execute the ACKNOWLEDGMENT.***

2) If the witness is NOT a Notary Public, NJ Attorney, or other officer of the State pursuant to N.J.S.A. 46:14-6.1:

- ***Include only the appropriate form of both the ACKNOWLEDGMENT OF SUBSCRIBING WITNESS and the PROOF OF EXECUTION, provided at the end of this section, in the Termination of Deed Notice and delete the ACKNOWLEDGMENT;***
- ***The Owner or Owner's Authorized Representative, as appropriate, shall sign the Termination of Deed Notice in front of the witness (i.e. the "subscribing witness");***
- ***The subscribing witness shall then complete and execute the ACKNOWLEDGMENT OF SUBSCRIBING WITNESS;***
- ***The subscribing witness shall the appear before an Officer, with the executed Termination of Deed Notice and the executed Acknowledgement of Subscribing Witness; and***
- ***The Officer shall complete the appropriate form of the PROOF OF EXECUTION and have the subscribing witness attest to the required information and sign the Proof of Execution where indicated. The Officer shall then execute the Proof of Execution.*]**

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[*Include the following Acknowledgment if the witness is an Officer and the Owner is an Individual or Sole Proprietor, delete otherwise.*]

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

COUNTY OF [*COUNTY WHERE SIGNED*]) SS.

On _____, [*Name of Owner/Sole Proprietor*] personally came before me and acknowledged under oath, to my satisfaction, the following:

1) that this person is the maker of this instrument; and

2) this person signed this instrument on their own behalf.

_____

[*PRINT NAME OF NOTARY PUBLIC/ NJ ATTORNEY*]

☐ **Notary Public, State of New Jersey**

My commission expires on _____

☐ **Attorney-At-Law, State of New Jersey**

Attorney ID #: _____

[*Include the following Acknowledgment if the witness is an Officer and the Owner is a Corporation, Limited Liability Corporation, Partnership, etc., delete otherwise.*]

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

COUNTY OF [*COUNTY WHERE SIGNED*]) SS.

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On _____, [*Name of Owner's Authorized Representative*] personally came before me and acknowledged under oath, to my satisfaction, the following:

1) that this person is the [*Title or Role of Authorized Representative*] of [*Name of Owner*] (the "Owner"), the entity named in this instrument; and

2) this person signed this instrument on behalf of the Owner; and

3) this person was authorized to execute this instrument on behalf of the Owner and this person executed this instrument as the true and voluntary act of the Owner duly authorized by all necessary action by the Owner.

_____

[*PRINT NAME OF NOTARY PUBLIC/ NJ ATTORNEY*]

☐ **Notary Public, State of New Jersey**

My commission expires on _____

☐ **Attorney-At-Law, State of New Jersey**

Attorney ID #: _____

**[*Include the following Acknowledgment of Subscribing Witness and Proof of Execution if:*

1) The Owner is an Individual or Sole Proprietor;

2) The witness is NOT an Officer (Notary Public, NJ Attorney, or other officer of the State); and

3) The Owner is not signing the acknowledgement in front of an Officer, but instead is signing before a witness who will then take the acknowledgment to an Officer.

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***Otherwise, delete this acknowledgment.*]**

ACKNOWLEDGMENT OF SUBSCRIBING WITNESS

On _____, [*Name of Owner*] personally came before me and stated to my satisfaction the following:

1) that this person is the maker of this instrument; and

2) this person signed this instrument on their own behalf.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____ By: _____

[*PRINT NAME OF SUBSCRIBING WITNESS*]

[*Include the following Acknowledgment of Subscribing Witness and Proof of Execution if the witness is NOT an Officer and the Owner is a Corporation, Limited Liability Corporation, Partnership, etc., delete otherwise*.]

ACKNOWLEDGMENT OF SUBSCRIBING WITNESS

On _____, [*Name of Owner's Authorized Representative*] personally came before me and stated to my satisfaction that this person:

1) was the maker of this instrument; and

2) was authorized and did execute this instrument as the [*Title or Role of the Owner's Representative*] for [*Name of Owner*] (the "Owner"), the entity named in this instrument,

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and who was fully authorized to, and did, execute this instrument on behalf of the Owner; and

3) was fully authorized to, and did, execute this instrument on the Owner's behalf.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____ By: _____

[*PRINT NAME OF SUBSCRIBING WITNESS*]

PROOF OF EXECUTION

STATE OF NEW JERSEY)

COUNTY OF [*COUNTY WHERE SIGNED*]) SS.

On _____, [*Name of Subscribing Witness*] personally came before me and acknowledged under oath, to my satisfaction, that:

1) this person was the subscribing witness to the signing of this instrument; and

2) this instrument was signed by [*Name of Owner's Representative that signed the Deed Notice*], who is the [*Title or Role of the Owner's Representative*] for [*Name of Owner*] (the "Owner"), the entity named in this instrument, and who was fully authorized to, and did, execute this instrument on behalf of the Owner; and

3) this person signed this proof under oath to attest to the truth of these facts.

_____

[*PRINT NAME OF SUBSCRIBING WITNESS*]

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Sworn and subscribed before me on the date written above:

_____

[*PRINT NAME OF NOTARY PUBLIC/ NJ ATTORNEY*]

☐ **Notary Public, State of New Jersey**

My commission expires on _____

☐ **Attorney-At-Law, State of New Jersey**

Attorney ID #: _____

. . .

APPENDIX D

MODEL RESPONSE ACTION OUTCOME DOCUMENT

. . .

NOTICES

[Insert each of the following notices that is applicable to this remediation. Do not insert a notice that is not applicable].

. . .

Well Decommissioning

(No change.)

Transfer of Monitoring Well Use (Redesignated Use)

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The following monitoring wells (Well Permit #'s [Insert well permit numbers]) will remain open as part of an unrelated ground water investigation. Pursuant to N.J.A.C. 7:9D, these wells are now Redesignated and permitted for use under the Department's Incident Number(s) [00-00-00-0000-00] and Department Program Interest # [Insert Program Interest number of the unrelated site that will be utilizing the Redesignated monitoring wells].

...

Contamination Remains On-Site due to Off-Site Contamination

(No change.)

Indeterminate Vapor Intrusion (VI) Pathway Not Yet Evaluated

Be advised on [Enter most recent sampling date] the following site related contaminants of concern, [List contaminant(s)], exceeding the Department's Soil Gas Screening Levels (SGSLs) were detected in the soil gas near/under the [Identify the building/structure] located at [Enter street address and Block/Lot]. Operational use, handling, and storage of these same contaminants of concern or other technical reasons prevented collection of indoor air (IA) samples. Therefore, the VI pathway is considered indeterminate at this time. If site use or conditions change such that these same contaminants of concern are no longer used on the property, then the VI pathway will be evaluated, including resampling soil gas and sampling of indoor air, as necessary, in accordance with N.J.A.C. 7:26E-1.15. [NOTE: When this notice is used, one electronic copy of a GIS-compatible map of the currently known extent of the vapor intrusion area identified in this notice shall be submitted to the Department at the same time as the response action outcome.]

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Long-Term Vapor Intrusion Monitoring

Be advised on [Enter most recent sampling date] the following site related contaminants of concern, [List contaminant(s)], exceeding the Department's Soil Gas Screening Levels (SGSLs) were detected in the soil gas near/under the [Identify the building/structure] located at [Enter street address and Block/Lot]. Ongoing indoor air monitoring is the appropriate mitigative action and a vapor intrusion system is not required and has not been installed because the applicable Indoor Air Remediation Standards (IARS) were not exceeded. [NOTE: When this notice is used, one electronic copy of a GIS-compatible map of the currently known extent of the vapor intrusion area identified in this notice shall be submitted to the Department at the same time as the response action outcome.]

. . .

Regional Natural Background Levels of Materials in Soil

Please be advised that concentrations of [Insert specific materials] were detected in the soil at this site above the Department's (Select: Residential OR Non-residential) Direct Contact Remediation Standards. However, these concentrations are associated with natural background levels of these material(s) in the soil. Pursuant to N.J.S.A. 58:10B, remediation beyond natural background levels is not required. [Select for Response Action Outcomes involving Child Care Facilities Only: However, to minimize potential direct contact at this Child Care Center an impermeable barrier should be installed over the surface of the outdoor play area in its entirety in accordance with Department guidance for presumptive remedies found at *{*www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance_DRAFT.pdf*}* **www.nj.gov/dep/srp/guidance**. The Department recommends that any such barrier consists of

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impermeable materials, such as hard surfacing, poured rubber, or rubber matting, etc. Finally, the Department recommends that the Child Care Center maintain documentation that provides proof of installation and proper maintenance of the integrity of the barrier.]

. . .

Child Care Building Interiors Not Addressed

Please be advised that this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos**,** and lead. [Select one: As a result, any risks to human health presented by any building interior or equipment remains. The requirements in the Department of Children and Families licensing regulation requires you to contact the Department of Health, *{*Indoor Environments*}* **Environmental and Occupational Health Assessment** Program to determine what steps, if any, are necessary to address the risks posed by the prior historical use **pursuant to the requirements at N.J.A.C. 8:50**. The Department of Health, {Indoor Environments*}* **Environmental and Occupational Health Assessment** Program can be reached at (609) 826-4950 **or iep.program@doh.nj.gov**. Department of Health guidance can be found at *{*www.nj.gov/health/eoh/tsrp*}* **www.nj.gov/health/ceohs**. OR However, these issues were evaluated as part of an Indoor Environmental Health Assessment conducted pursuant to N.J.A.C. 8:50. Documentation related to the Indoor Environmental Health Assessment [Select one: has been OR will be] submitted to the Department of Health**,** *{*- Indoor Environments*}* **Environmental and Occupational Health Assessment** Program under separate cover.]

[Select if applicable: The only exception to this building interior exclusion is the release of [specify contaminant] from [specify the AOC] that discharged outside the building.]

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. . .

[End APPLICABLE Notices]

. . .

c: . . .

NJ Department of Health *{*and Senior Services (NJDHSS)*}* **(NJDOH)** (Child Care Center applicable)

. . .

CHAPTER 26E

TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.1 Scope

(a) (No change.)

(b) The remediation performed pursuant to this chapter does not relieve any person from:

1. Complying with more stringent requirements or provisions imposed by any other Federal, State**,** or local applicable statutes or regulations**, including the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., and its implementing rules**; or

2. (No change.)

(c) (No change.)

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7:26E-1.5 General remediation requirements

(a) – (i) (No change.)

(j) The person responsible for conducting the remediation shall comply with the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., and shall document that the remediation will not destroy, jeopardize, or adversely affect the habitat of threatened or endangered species and shall not jeopardize the continued existence of a local population of a threatened or endangered species. For purposes of this subsection, "threatened species" and "endangered species" shall have the meanings as the terms are defined at N.J.A.C. 7:25-4.1.

7:26E-1.6 General reporting requirements

(a) (No change.)

(b) The person responsible for conducting the remediation shall include, in each remedial phase workplan and report, the following information:

1. – 6. (No change.)

7. For soil borings, test pits**,** and monitoring wells:

i. – ii. (No change.)

iii. Monitoring well certification forms A (the well construction as built certification) and B (the well location certification) available on the Department's website at [www.nj.gov/dep/srp/regs/guidance.htm] **www.nj.gov/dep/srp/srra/forms**. Form A requests such information as well owner and permit information, site identification information, and a summary of specific well construction information, and Form B

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requests such information as well location and elevation information and a land surveyor's certification;

8. (No change.)

9. A discussion of the usability of laboratory analytical data; [and]

10. A description of the significance of information generated in the library search of tentatively identified compounds and unknown compounds[.]**; and**

11. A description of the threatened and endangered species habitat including GPS coordinates, a description of proposed modifications to such habitat, and when such modifications are anticipated to be made.

7:26E-1.7 Variance from the technical requirements

(a) Except as provided [in] **at** (b) below, the person responsible for conducting the remediation may vary from the technical requirements [in] **at** N.J.A.C. 7:26E-1 through 5 provided that person submits the following technical information[, and a variance form found on the Department's website at www.nj.gov/dep/srp/srra/forms,] prior to varying from any technical requirement:

1. – 3. (No change.)

(b) The person responsible for conducting the remediation shall not vary from any of the following applicable requirements:

1. – 6. (No change.)

7. The requirements [of] **at** N.J.A.C. 7:26E-5.2(b) **through (j)**; or

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[8. The requirement to not import hazardous waste as fill material, pursuant to N.J.A.C. 7:26E-5.2(f)]

8. The requirements of Permit I, Permit II, Permit III, Permit IV, or Permit V pursuant to N.J.A.C. 7:26C-7.7(b).

7:26E-1.8 Definitions

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

. . .

"Contaminated site" means all [portions of] **locations and all** environmental media [and any location where contamination is emanating, or which has emanated there from, that contain] **impacted by a discharge at which** one or more contaminants **have been or are detected** at a concentration above any remediation standard or screening criterion[.]**, including the location where the discharge originated, and all other locations or environmental media impacted by the migration of the discharge.**

. . .

"Direct contact," as used in this chapter, means soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways.

. . .

"Donor site" or "donor area of concern" means property (in-State or out-of-State) or an area of concern from which fill is obtained for use in the remediation of a contaminated site.

. . .

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"Immediate environmental concern" or "IEC" means a condition where any of the following types of contamination, or any of the following conditions related to a discharge, are found:

1. – 2. (No change.)

3. Contamination that has migrated into an occupied **structure, unoccupied structure,** or confined space producing a toxic or harmful atmosphere resulting in an unacceptable human health exposure, or producing an oxygen-deficient atmosphere, or resulting in demonstrated physical damage to essential underground services;

4. – 5. (No change.)

For the purpose of this definition, an "unacceptable human health exposure" is based on an evaluation of site specific conditions and the toxicity of the contaminant present. An oxygen-deficient atmosphere is defined as any atmosphere containing oxygen at a concentration below 19.5 percent at sea level and an acute health exposure means that an adverse human health impact could result from an exposure of less than two weeks to a contaminant. The potential for exposure is based on site-specific conditions, and therefore, the person responsible for conducting the remediation shall evaluate the reasonable likelihood of exposure.

. . .

"Receiving area of concern" means an area of concern at a contaminated site that is being remediated and for which fill will be imported for use in the remediation.

. . .

"Remediation" or "remediate" means all [necessary] actions to investigate [and]**,** cleanup**,** or respond to any known, suspected, or threatened discharge, including[, as necessary,] the preliminary assessment, site investigation, remedial investigation**,** and remedial action[;]**, or any**

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portion thereof, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

. . .

"Vapor concern" means a condition where contamination in indoor air exists at a level greater than the Department's [vapor intrusion] indoor air [screening level] **remediation standards,** but less than or equal to the Department's [vapor intrusion] **indoor air** rapid action level. [Vapor intrusion indoor air screening levels] **Indoor air remediation standards** and [vapor intrusion] **indoor air** rapid action levels may be found at: http://www.nj.gov/dep/srp/guidance/vaporintrusion/vig_tables.pdf**.**

. . .

7:26E-1.11 Immediate environmental concern requirements

(a) The person responsible for conducting the remediation shall, upon the identification of any immediate environmental concern (IEC):

1. – 6. (No change.)

7. Within 120 days after identifying any IEC, submit to the Department an IEC engineered response action report that includes the following:

i. An updated form found on the Department's website at www.nj.gov/dep/srp/srra/forms**, including a summary and status of the receptor investigation, identifying potential contaminant source areas contributing to the IEC**;

ii. – vi. (No change.)

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8. – 9. (No change.)

(b) If a licensed site remediation professional obtains specific knowledge of a condition in an unoccupied structure, that, in the licensed site remediation professional's independent professional judgment, constitutes an immediate environmental concern, and the person responsible for conducting the remediation provides to the Department a written certification from the property owner that the building: (i) is not occupied, (ii) will not be occupied, and (iii) will be demolished, then no further remediation relative to the immediate environmental concern in the unoccupied structure shall be required, provided the conditions of the certification are maintained.

7:26E-1.12 Receptor evaluation - general and reporting requirements

(a) – (b) (No change.)

(c) The person responsible for conducting the remediation shall submit an initial receptor evaluation [for a contaminated site], on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, one year after the earliest applicable requirement to remediate listed at N.J.A.C. 7:26C-2.2. The person responsible for conducting the remediation shall include in the initial receptor evaluation the information that is known by that person at the time the report is submitted. Information to be supplied by filling out the form includes:

1. – 5. (No change.)

(d) – (f) (No change.)

7:26E-1.14 Receptor evaluation - ground water

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(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of ground water when any contaminant is detected in ground water in excess of any Class II ground water quality standard, as follows:

1. Within 90 days after ground water contamination is detected, conduct a well search to identify wells that may be impacted by contamination from the site as follows:

i. (No change.)

ii. If there are any potable or irrigation wells within one-half mile of each point of ground water contamination, conduct a [door-to-door] survey to determine the existence of any unpermitted potable or irrigation wells within a 500-foot radius of each known point of ground water contamination when the ground water flow direction is not known and within 250 feet up gradient, 500 feet side gradient**,** and 500 feet down gradient and of each known point of ground water contamination when the ground water flow direction is known;

iii. – vi. (No change.)

2. – 3. (No change.)

(b) – (c) (No change.)

7:26E-1.15 Receptor evaluation - vapor intrusion

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of the vapor intrusion pathway pursuant to this section when any of the following conditions exist:

1. – 2. (No change.)

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3. When any of the following conditions is identified:

i. Soil gas [or indoor air] contamination is detected at concentrations that exceed the soil gas [or indoor air] screening levels available on the Department's website at www.nj.gov/dep/srp/srra/guidance;

ii. Indoor air contamination is detected at concentrations that exceed the indoor air remediation standards;

Recodify existing ii. – iv. as **iii. – v.** (No change in text.)

(b) (No change.)

(c) Within 150 days after determining the need to conduct a vapor intrusion investigation pursuant to (a) above, the person responsible for conducting the remediation shall:

[1. Notify the Department on a form and spreadsheet found on the Department's website at www.nj.gov/dep/srp/srra/forms at the time that person contacts property owners and occupants for the purpose of gaining access to conduct sampling, but no later than seven days prior to the scheduled sampling date to conduct a vapor intrusion investigation. Information to be supplied by filling out the form and spreadsheet includes:

i. Site identification information;

ii. A description, location and date of the planned sampling activities;

iii. The name of the responsible entity and a certification statement; and

iv. The name of the licensed site remediation professional and a certification statement;]

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[2.] **1.** Conduct a vapor intrusion investigation by collecting an appropriate number of samples in appropriate locations **and in soil, ground water, soil gas, indoor air, or a combination thereof, as appropriate**;

[3.] **2.** Evaluate the results of the vapor intrusion investigation by assessing the multiple lines of evidence, including a comparison of the analytical results to the Department's screening levels **and the indoor air remediation standards**; and

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

(d) (No change.)

(e) When any indoor air results are greater than the Department's [vapor intrusion indoor air screening levels] **indoor air remediation standards**, but less than or equal to the Department's vapor intrusion rapid action level (that is, a vapor concern), and are determined to be related to a discharge, the person responsible for conducting the remediation shall:

1. Within 14 days after receipt of the analytical results:

i. Submit notification of the exceedance of the [vapor intrusion indoor air screening levels] **indoor air remediation standards** on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;

ii. – iii. (No change.)

2. – 3. (No change.)

4. Within 180 days after receipt of the analytical data, submit a vapor intrusion response action report to the Department, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, which includes:

i. – iii. (No change.)

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iv. A GIS compatible map of the currently known extent of ground water contamination**, the soil source area,** or [a map of] the vapor intrusion area;

5. – 6. (No change.)

(f) (No change.)

[(g) When any indoor air results are greater than the Department of Health notification levels for indoor air available on the Department's website at www.nj.gov/dep/srp/srra/guidance, the person responsible for conducting the remediation shall:

1. Immediately notify the Department of the immediate environmental concern;

2. Immediately notify the New Jersey Department of Health, Consumer, Environmental and Occupational Health Service, Indoor Environments Program at 609-826-4950; and

3. Conduct all actions required pursuant to N.J.A.C. 7:26E-1.11.]

[(h)] **(g)** Within 14 days of receipt of the **indoor air** analytical results **at any child care facility (CCF) or educational facility (EF) pursuant to N.J.A.C. 8:50**, the person responsible for conducting the remediation shall submit [on a CD] **electronically** in Adobe Portable Document Format (PDF), all indoor and ambient air analytical results, including all maps and figures related to the indoor air sampling, and a sample location spreadsheet to the New Jersey Department of Health, Consumer, Environmental and Occupational Health Service, [ATTN: Childcare Unit, PO Box 369, Trenton, NJ 08625-0369] **through email at iep.program@doh.nj.gov**.

[(i)] **(h)** If the person responsible for conducting the remediation identifies potentially explosive conditions in a building or subsurface utility, the person responsible for conducting remediation shall immediately:

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1. Call 911 and report potentially explosive conditions to the local emergency response agency; **and**

2. Notify the Department of the emergency condition at 1-877-WARNDEP or 1-877-972-6337[; and]**.**

[3. Notify the New Jersey Department of Health and Senior Services, Consumer and Environmental Health Services, Indoor Environments Program at 609-826-4950.]

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that all sampling and laboratory analysis are conducted, and results are reported, as follows:

1. – 14. (No change.)

15. Submit to the Department laboratory data deliverables, as listed [in] **at** N.J.A.C. 7:26E Appendix A, with the applicable data deliverable form found on the Department's website at www.nj.gov/dep/srp/srra/forms, consistent with the following unless otherwise specifically required pursuant to an NJPDES permit **or remedial action permit**:

i. – iv. (No change.)

(b) – (e) (No change.)

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.7 Site investigation - building interiors

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(a) (No change.)

(b) If the concentration of any contaminant identified during this part of the site investigation exceeds **either** any remediation standard outside the building **or the indoor air remediation standard inside the building**, then the person responsible for conducting the remediation shall conduct a remedial investigation necessary for the impacted media pursuant to N.J.A.C. 7:26E-4.

(c) If any condition listed at N.J.A.C. 7:26E-1.15(a) is identified during this part of the site investigation, then the person responsible for conducting the remediation shall conduct a vapor intrusion investigation.

7:26E-3.12 Site investigation - historic fill material

(a) (No change.)

(b) If historic fill material is present, then the person responsible for conducting the remediation shall either:

1. Assume that the historic fill material is contaminated above the residential direct contact soil remediation standards **and the applicable soil remediation standards for the migration to ground water exposure pathway** and ground water is contaminated above the ground water remediation standards and conduct a remedial investigation pursuant to N.J.A.C. 7:26E-4.7; or

2. Sample the historic fill material **pursuant to N.J.A.C. 7:26E-3.4** to determine if it is contaminated above the residential direct contact soil remediation standards [pursuant to N.J.A.C. 7:26E-3.4] **and the applicable soil remediation standards for the migration**

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to ground water exposure pathway and sample ground water pursuant to N.J.A.C. 7:26E-3.5 to determine if contamination is present above any ground water remediation standard.

(c) – (d) (No change.)

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) The purpose of a remedial investigation is to:

1. Delineate the horizontal and vertical extent of contamination to the remediation standard, **ensuring that all receptors are fully evaluated,** in each environmental medium at a contaminated site;

2. – 6. (No change.)

(b) – (d) (No change.)

7:26E-4.2 Remedial investigation of soil

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of contaminated soil as follows:

1. – 2. (No change.)

3. For soil contamination associated with a site-related area of concern, delineate the horizontal and vertical extent of all soil contamination in the unsaturated zone which contains contaminants above the [impact to ground water] soil remediation standard **for**

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the migration to ground water exposure pathway without regard to the property boundary;

4. – 5. (No change.)

(b) The person responsible for conducting the remediation shall conduct a remedial investigation of soil by:

[1. Collecting a sufficient number of soil samples to delineate the horizontal and vertical extent of all soil contamination;]

1. Delineating the horizontal and vertical extent of contamination to the remediation standard, ensuring that all receptors are fully evaluated:

i. By demonstrating compliance with a remediation standard pursuant to N.J.A.C. 7:26E-5.2(a)3; or

ii. By delineating soil contamination by any of the following methods:

(1) Extrapolation or modeling, based on existing data;

(2) Application of conceptual site models; or

(3) Other means for determining the extent of the contamination;

2. – 3. (No change.)

(c) (No change.)

7:26E-4.3 Remedial investigation of ground water

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of contaminated ground water by:

1. – 3. (No change.)

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4. Delineating the horizontal and vertical extent of [all ground water contamination to the ground water] **contamination to the** remediation standard[;]**, ensuring that all receptors are fully evaluated:**

i. By demonstrating compliance with a remediation standard pursuant to N.J.A.C. 7:26E-5.2(a)3; or

ii. By delineating ground water contamination by any of the following methods:

(1) Extrapolation or modeling, based on existing data;

(2) Application of conceptual site models; or

(3) Other means for determining the extent of the contamination;

5. – 7. (No change.)

(b) (No change.)

7:26E-4.5 Remedial investigation of building interiors

(a) (No change.)

(b) If any condition listed at N.J.A.C. 7:26E-1.15(a) is identified during the remedial investigation of building interiors, then the person responsible for conducting the remediation shall conduct a vapor intrusion investigation.

7:26E-4.7 Remedial investigation of historic fill material

(a) (No change.)

(b) The person responsible for conducting the remediation shall establish the extent of ground water contamination from the historic fill material as follows:

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1. For sites where the historic fill material extends beyond the property boundary, submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-[7.3]**7.4**, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, using the footprint of the property as the boundaries of the ground water classification exception area; or

2. For sites where the extent of historic fill material is contained within the property boundaries, either:

i. Conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26E-[7.3]**7.4** to identify the extent of the contaminant plume and submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, identifying the known extent of the ground water contamination associated with the historic fill; or

ii. Submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-[7.3]**7.4**, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, using the footprint of the property as the boundaries of the ground water classification exception area.

(c) – (d) (No change.)

7:26E-4.9 Remedial investigation report

(a) The person responsible for conducting the remediation shall prepare a remedial investigation report that presents and discusses all of the information required to be identified or collected pursuant to N.J.A.C. 7:26E-4.1 through 4.8, and shall include the following:

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1. – 6. (No change.)

7. A proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-[7.3]**7.4**, for the area of the ground water contaminated by discharges at the site; and

8. (No change.)

(b) (No change.)

SUBCHAPTER 5. REMEDIAL ACTION

7:26E-5.1 Remedial action requirements

(a) (No change.)

(b) The person responsible for conducting the remediation shall implement a remedial action when:

1. The concentration of any contaminant exceeds any applicable remediation standard **or ecological risk-based remediation goal**;

2. – 3. (No change.)

(c) – (f) (No change.)

7:26E-5.2 Specific remedial action requirements

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

1. – 2. (No change.)

3. Demonstrate compliance with the remediation standard **pursuant to N.J.A.C. 7:26E-3.3** or ecological risk-based remediation goal established pursuant to N.J.A.C. 7:26E-4.8

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at each sampling location based on existing data, not by using extrapolation or modeling, by:

i. – iii. (No change)

4. File a deed notice pursuant to N.J.A.C. 7:26C-[7.2]**7.3** when [implementing]**:**

i. Implementing a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards[;] and **the applicable soil remediation standards for the migration to ground water exposure pathway; or**

ii. Implementing an alternative remediation standard pursuant to N.J.A.C. 7:26D Appendices 6 and 7 requiring the use of an institutional control and a remedial action permit; and

5. Obtain and comply with a remedial action permit**, including retaining a licensed site remediation professional for the duration of the permit,** pursuant to N.J.A.C. 7:26C-7 for a restricted use or limited restricted use remedial action.

[(b) Except as provided in (c) below, the person responsible for conducting the remediation may incorporate alternative fill from an off-site source into a remedial action without prior written approval from the Department provided that no alternative fill:

1. Contains any contaminant that is not already present at the receiving area of concern above the applicable soil remediation standard in order to ensure that no new contaminant above the applicable soil remediation standard is brought to the receiving area of concern;

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2. Contains a concentration of any individual contaminant above the 75th percentile of that contaminant's concentrations at the receiving area of concern in order to ensure that the existing concentration of that contaminant is not exceeded; and

3. Is imported in excess of the volume required to restore the pre-remediation topography and elevation of the receiving area of concern in order to ensure that the volume of alternative fill used in the remedy for the receiving area of concern only includes the volume of alternative fill necessary to achieve this objective.

(c) For alternative fill from an off-site source that does not meet any of the requirements of (b)1, 2, or 3 above, the person responsible for conducting the remediation shall obtain prior written approval from the Department before bringing that alternative fill to the site. The person responsible for conducting the remediation shall include the technical information outlined in N.J.A.C. 7:26E-1.7(a) as part of the request.

(d) The person responsible for conducting the remediation may use alternative fill from an on-site source as part of a remedial action at an area of concern:

1. Without prior written approval from the Department, provided that the individual contaminants present in the alternative fill are also present at the receiving area of concern at concentrations above applicable remediation standards; or

2. Only after obtaining prior written approval from the Department before incorporating that alternative fill at the receiving area of concern, if the concentrations of the individual contaminants at the receiving area of concern are not above applicable remediation standards. The person responsible for conducting the remediation shall include the

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technical information outlined in N.J.A.C. 7:26E-1.7(a) as part of the request for written approval from the Department.

(e) The person responsible for conducting the remediation shall ensure that all clean fill material meets the definition of clean fill pursuant to N.J.A.C. 7:26E-1.8.

(f) The person responsible for conducting the remediation shall not import hazardous waste as fill material.

(g) The person responsible for conducting the remediation shall not use any fill containing free liquid.

(h) The person responsible for conducting the remediation shall prepare a fill use plan whenever alternative fill or clean fill is proposed as part of a remedial action and shall submit the fill use plan to the Department as part of the remedial action workplan required pursuant to N.J.A.C. 7:26E-5.5.]

(b) The person responsible for conducting the remediation shall prepare a fill use plan whenever alternative fill or clean fill is proposed as part of a remedial action and shall submit the fill use plan to the Department as part of the remedial action workplan required pursuant to N.J.A.C. 7:26E-5.5.

(c) The person responsible for conducting the remediation shall ensure that all clean fill meets the definition of clean fill pursuant to N.J.A.C. 7:26E-1.8.

(d) The person responsible for conducting the remediation shall not import hazardous waste as fill material.

(e) The person responsible for conducting the remediation shall not use any fill material containing free liquid.

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(f) Alternative fill from either an off-site or on-site source shall not be placed on any area of a site at which concentrations of all contaminants in soil are at or below:

1. The most stringent soil remediation standards as found at N.J.A.C. 7:26D;

2. Any site-specific alternative remediation standard;

3. Any interim remediation standard available on the Department's website at https://www.nj.gov/dep/srp/guidance/rs/interim_soil_ia_rl_rs.html; and

4. All criteria for contaminants without soil remediation standards available on the Department's website at https://www.nj.gov/dep/srp/guidance/rs/ and https://www.nj.gov/dep/srp/guidance/ecoscreening/.

(g) The person responsible for conducting the remediation may incorporate alternative fill from an off-site source into a remedial action without prior written approval from the Department; provided that no alternative fill:

1. Contains any contaminant that is not already present at the receiving area of concern above the applicable soil remediation standard in order to ensure that no new contaminant above the applicable soil remediation standard is brought to the receiving area of concern;

2. Contains a concentration of any individual contaminant above the 75th percentile of that contaminant's concentrations at the receiving area of concern in order to ensure that the existing concentration of that contaminant is not exceeded; and

3. Is imported in excess of the volume required to restore the pre-remediation topography and elevation of the receiving area of concern in order to ensure that the

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volume of alternative fill used in the remedy for the receiving area of concern only includes the volume of alternative fill necessary to achieve this objective.

(h) For alternative fill from an off-site source that does not meet any of the requirements at (g) above, the person responsible for conducting the remediation shall obtain prior written approval from the Department for the fill use plan before bringing that alternative fill to the site. The person responsible for conducting the remediation shall include the technical information set forth at N.J.A.C. 7:26E-1.7(a) as part of the request for written approval.

(i) The person responsible for conducting the remediation may use alternative fill from an on-site donor area of concern as part of a remedial action at a receiving area of concern:

1. Without prior written approval from the Department, provided that the individual contaminants present in the alternative fill are also present at the receiving area of concern at concentrations above applicable remediation standards and the soil concentration of any individual contaminant does not exceed the 75th percentile of that contaminant's concentrations at the receiving area of concern;

2. With prior written approval of the Department if:

i. The individual contaminants present in the alternative fill are also present at the receiving area of concern at concentrations above applicable remediation standards; and

ii. The soil concentration of any individual contaminant exceeds the 75th percentile of that contaminant's concentrations at the receiving area of concern.

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The person responsible for conducting the remediation shall include the technical information set forth at N.J.A.C. 7:26E-1.7(a) as part of the request for written approval from the Department; or

3. With prior written approval of the Department if the individual contaminants present in the alternative fill and the receiving area of concern are not the same and all of the following conditions are met:

i. The movement of alternative fill results in the creation of a clean area at the donor area of concern. For the purposes of this subparagraph, this means an area of the site at which concentrations of all contaminants in soil are at or below:

(1) The most stringent soil remediation standards as found at N.J.A.C. 7:26D;

(2) Any site-specific alternative remediation standard;

(3) Any interim remediation standard available on the Department's website at https://www.nj.gov/dep/srp/guidance/rs/interim_soil_ia_rl_rs.html; and

(4) All criteria for contaminants without soil remediation standards, available on the Department's website at https://www.nj.gov/dep/srp/guidance/rs/ and https://www.nj.gov/dep/srp/guidance/ecoscreening/; and

ii. The movement of alternative fill from the donor area of concern results in at least a 25 percent reduction of the original (pre-movement) areal extent of the donor area of concern.

(j) The person responsible for conducting the remediation shall include the technical information set forth at N.J.A.C. 7:26E-1.7(a) as part of the request for written approval from the Department.

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7:26E-5.7 Remedial action report requirements

(a) (No change.)

(b) The person responsible for conducting the remediation shall present and discuss in the remedial action report all of the information identified or collected pursuant to N.J.A.C. 7:26E-5.1 through 5.6, along with all of the following:

1. – 11. (No change.)

12. Documentation of the source, type, quantities, and location of each alternative fill and clean fill used as part of the remedial action at the site; [and]

13. A description of each permit required and obtained to implement the remedial action[.]**;**

14. The existing ground water classification exception area established pursuant to N.J.A.C. 7:26C-7.4 and 7:26E-4 and, which has been updated to reflect current site conditions for the areal extent of the ground water contaminated by a discharge at the site, if applicable; and

15. The indoor air notification area established pursuant to N.J.A.C. 7:26C-7.5, which has been updated to reflect current site conditions for the areal extent of the indoor air contaminated by a discharge at the site, if applicable.

APPENDIX A

LABORATORY DATA DELIVERABLES FORMATS

I. Full Laboratory Data Deliverables are required for the following analytical data:

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(a) (No change.)

(b) Air (including sub-slab, indoor**,** and ambient) analyzed by NJDEP Method LLTO-15 or USEPA Method TO-15.

Data are to be submitted according to the most recent update of the NJDEP-SRWM Low Level USEPA Method TO-15 (NJDEP-LL TO-15-3/2007 for Ambient Air, NJDEP Regulatory Data Report Format - Appendix 1 March 2007) in effect as of the date of sample analysis by the laboratory with the following exceptions and additions:

1. Additional deliverables for NJDEP Method LLTO-15 or USEPA Method TO-15:

i. (No change.)

[ii. The paper copies contained in the extended data report (deliverable package) must not be reduced in size from its original format (Appendix 1, Section 2.4.6);]

Recodify existing iii. – vii. as **ii. – vi.** (No change in text.)

2. (No change.)

(c) (No change.)

(d) Polychlorinated dibenzo-p-dioxins/Polychlorinated dibenzofurans (PCDDs/PCDFs)

Data are to be submitted according to the data deliverables defined in Section 2 - Reporting Requirements and Deliverables for each of the following method specific USEPA Region 2 Standard Operating Procedures (SOPs), incorporated herein by reference**, as supplemented or amended** (www.epa.gov/region02/qa/documents.htm):

1. – 2. (No change.)

3. USEPA SW-846 Method 8280 Region 2 SOP HW-11 Revision [2] **3**.

(e) Hexavalent Chromium

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The following information shall be provided. If data are contained in a laboratory notebook, instrument print out**,** and/or chromatogram, then a copy of the pertinent laboratory [note book] **notebook** page, instrument print out**,** and/or chromatogram is to be submitted.

1. – 19. (No change.)

(f) – (h) (No change.)

II. (No change.)

CHAPTER 26F

HEATING OIL TANK SYSTEM REMEDIATION RULES

SUBCHAPTER 3. SOIL AND FREE PRODUCT REMEDIATION REQUIREMENTS

7:26F-3.7 Residual contamination

(a) (No change.)

(b) An owner shall implement one of the following:

1. A limited restricted or restricted use soil remedial action, as applicable, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, which shall include, without limitation:

i. (No change.)

ii. Recording, or having the person who owns the property record, a deed notice, pursuant to N.J.A.C. 7:26C-[7.2]**7.3**, for the area where residual contamination remains on the property or containment is the remedy for free product;

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iii. – iv. (No change.)

2. – 3. (No change.)

(c) – (d) (No change.)

SUBCHAPTER 4. GROUND WATER REMEDIATION REQUIREMENTS

7:26F-4.3 Ground water remedial action requirements

(a) – (e) (No change.)

(f) If the owner implements a ground water remedial action that will not be completed prior to submitting the remedial action report to the Department, then the owner shall:

1. (No change.)

2. Propose a ground water classification exception area pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-[7.3]**7.4**, as part of the ground water remedial action permit application required [in] **at** (f)3 below;

3. – 4. (No change.)

(g) When the concentrations of contaminants in ground water are at or below the applicable ground water quality standards, the owner may request that the classification exception area be removed and the ground water remedial action permit be terminated in accordance with the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-[7.3]**7.4** and 7.13, respectively.

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Rutgers University

About

In my career as a commercial lawyer in law firms and in-house counsel, my job has been to lead teams delivering impactful legal services to business enterprises. Over the years, those enterprises ranged over a broad span in an exciting period of technological evolution and challenges. I have embraced and employed new technologies in legal services and performed my functions from the

premise that lawyers' work must always address risk identification and mitigation actively conscious of broader enterprise strategy.

Experience

General Counsel
Advance Realty - Development, Investment, Management
Apr 2015 - Present · 10 years 1 month
Greater New York City Area

Partner
Windels Marx Lane & Mittendorf, LLP
Dec 2010 - Apr 2015 · 4 years 5 months
Greater New York City Area
Commercial litigation and transactions.

Founder and Partner
Cuyler Burk, P.C.
Nov 1987 - Dec 2010 · 23 years 2 months
Greater New York City Area
Commercial litigation and transactions.

General Counsel
International Risk Group LLC
2003 - 2008 · 5 years
Greater Denver Area

Education

Rutgers University
Doctor of Law - JD

University of Notre Dame
AB · Government

Michele J. Glass

Director, Environmental

mglass@gibbonslaw.com

Newark
T 973 596 4423 F 973 639 6481

This attorney has been selected for the recognitions mentioned herein, which have been conferred by the corresponding publications and/or organizations noted. An overview of the award selection methodologies for these recognitions can be found at https://www.gibbonslaw.com/awards. Links to certain specific methodologies are embedded in individual entries. Results may vary depending on your particular facts and legal circumstances. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

Ms. Glass brings to Gibbons nearly two decades of experience in all aspects of environmental law. From litigation to corporate and real estate transactions, regulatory matters, insurance, sustainability, and environmental justice considerations, her practice has focused on providing timely, pragmatic, and thoughtful counsel to a diverse, sophisticated clientele. She possesses

extensive knowledge of state and federal environmental statutes and regulations, including remediation standards and reporting obligations. Ms. Glass's expertise also extends to health and safety considerations.

Her experience has involved sustaining compliance with domestic and international environmental, health, safety, and sustainability (EHS&S) and emerging obligations. She has also advised on and managed legacy remediation sites; assessed settlement options and developed strategy for ongoing, complex remediations; cultivated relationships with site and above-site EHS leadership; and advised and assisted on environmental considerations relevant to all phases of corporate and real estate transactions. Her work has entailed utilizing and managing outside counsel as well.

Ms. Glass is a founding member of the New Jersey State Bar Association's (NJSBA) Renewable Energy, Cleantech & Climate Change Sub-Committee and former Chair of the Environmental Law Section of the NJSBA. Ms. Glass has been active in the American Bar Association's (ABA) Section of Environment, Energy and Resources (SEER), serving three consecutive terms as Co-Chair of the In-House Counsel Committee, followed by a year as the Committee's Membership Vice-Chair; she is currently serving in an At-Large Vice-Chair capacity on that Committee and as an Additional (Energy Justice) Vice Chair for ABA SEER's Energy Committee. She was included on the Thomson Reuters *New Jersey Super Lawyers "Rising Star"* list from 2009 to 2013 and 2016 to 2019.

CREDENTIALS

Education

Elisabeth Haub School of Law at Pace University (J.D., *magna cum laude*)

- Certificate in Environmental Law
- Articles Editor, *Pace Environmental Law Review*

Cornell University (B.S., *magna cum laude*, Applied Economics and Management)

Professional Admissions

State of New Jersey

State of New York

United States District Court for the District of New Jersey

Professional Activities

American Bar Association's Section of Environment, Energy and Resources (SEER)

- Additional (Energy Justice) Vice Chair, Energy Committee, July 2023 – present
- At-Large Vice-Chair, In-House Counsel Committee, July 2023 – present
- Membership Vice-Chair, In-House Counsel Committee, July 2022 – June 2023
- Co-Chair, In-House Counsel Committee, July 2019 – June 2022

New Jersey State Bar Association's Environmental Law Section

- Chair, May 2018 – May 2019
- Vice Chair, May 2017 – April 2018
- Secretary, May 2016 – April 2017
- Treasurer, May 2015 – April 2016
- Director, June 2013 – June 2018
- Environmental Law Forum Co-Chair, approximately 2013* – 2023

New Jersey State Bar Association

- Founding Member, Renewable Energy, CleanTech & Climate Change Committee, Sept. 2010 – Present

NAIOP, 2014-2015

Legal Employment

Corporate Counsel, Environmental Law Group, Pfizer, March 2019 – October 2023

Associate, Cole Schotz P.C., Hackensack, NJ, October 2015 – February 2019

Associate, Riker Danzig Scherer Hyland & Perretti LLP, February 2006 – September 2015

Brendan J. Kelly

Associate, Real Property

bkelly@gibbonslaw.com

Newark
T 973 596 4771 F 973 639 6289

This attorney has been selected for the recognitions mentioned herein, which have been conferred by the corresponding publications and/or organizations noted. An overview of the award selection methodologies for these recognitions can be found at https://www.gibbonslaw.com/awards. Links to certain specific methodologies are embedded in individual entries. Results may vary depending on your particular facts and legal circumstances. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

Mr. Kelly has experience representing real estate developers and other corporations in the preparation and filing of development applications to local development boards throughout the State of New Jersey. These applications primarily involve the request for site plan approval and variances in connection with residential, retail, medical, industrial and mixed use

projects. He also has experience performing due diligence on commercial real estate purchase and sale transactions, as well as commercial leases, and has drafted contracts and other related closing documents in connection with these transactions.

Mr. Kelly's practice also includes the representation of redevelopers in connection with redevelopment projects throughout the State. He has experience advising clients on the redevelopment process, including the drafting and review of redevelopment agreements and redevelopment plans. Mr. Kelly additionally has experience drafting pleadings, discovery documents, and motions in real estate related litigation, as well as preparing submissions to appellate courts in New Jersey. Finally, he has also assisted with the preparation of applications for the purchase or transfer of plenary retail consumption liquor licenses in New Jersey, and has provided guidance on regulatory compliance and other types of liquor permits.

CREDENTIALS

Education

Seton Hall University School of Law (J.D., *cum laude*)

- Submissions Editor, *Seton Hall Law Review*
- Senator, Student Bar Association

The College of New Jersey (B.A., *cum laude*)

- Dean's List
- Captain, Varsity Baseball

Professional Admissions

State of New Jersey

State of New York

Judicial Clerkship(s)

Judicial clerk to the Honorable Jose L. Fuentes, P.J.A.D., Superior Court of New Jersey, Appellate Division, Morristown, NJ, 2017-2018

Judicial intern to the Honorable Steven C. Mannion, United States District Court for the District of New Jersey, Newark, NJ, 2015

Legal Employment

Student Attorney, Seton Hall University School of Law, Center for Social Justice – Impact Litigation Clinic, 2016-2017

Blog Post

New Jersey Adopts Private Construction Inspection Bill

Gibbons Law Alert

By: Howard D. Geneslaw, Michael D. DeLoreto and Brendan J. Kelly
February 8, 2023

Blog Post

New Jersey Adopts 2021 International Building Code and Grace Period for Permit Applications

Gibbons Law Alert

By: Howard D. Geneslaw and Brendan J. Kelly
January 26, 2023

Blog Post

NJABC Extends Time Period for COVID-19 Expansion Permit

Gibbons Law Alert

By: Brendan J. Kelly