

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
General Comment				This document does not appear to address many of the concerns raised by NJ Transit and NJDOT at the initial meeting. For example, as a property owner, will NJ Transit and NJDOT be subject to annual remediation permit fees in perpetuity for constructing projects with public benefit? If so, these fees will become financial burdens on the agencies forever, as the land use for major transportation projects rarely changes after they are constructed.	Linear construction entities will not be required to get remedial action permits so will not be required to pay permit fees.
3	1	1	1	<p>This technical guidance is designed to help the person conducting a linear construction project to ensure that contamination encountered during the project is managed in a manner that is protective of human health, safety and the environment. However, the management of contaminated media discovered in the course of conduction a linear construction project is not and should not become a remediation action and therefore, the constructing party should not be required to retain an LSRP. PSEG's linear construction activities are necessary to ensure electric and gas system reliability and public safety. It is critical that when this work occurs that it can commence as needed and continue uninterrupted.</p> <p>The pre-project requirements as stated in the guidance do not adequately contemplate the unique nature of utility work which often must be commenced immediately and without interruption to maintain system reliability and protect the public.</p>	<p>The Department believes it is important that an LSRP be retained to oversee work at linear construction projects (LCPs). While the work at LCPs is not remediation by definition, these projects will need to be overseen by professionals with knowledge and experience to handle the wide range of environmental conditions that are likely to occur. With some preplanning there should be no need for these projects to be interrupted.</p> <p>The Department did not feel it was warranted to detail the pre-project work in the guidance document. Discussions amongst the members of the guidance committee confirmed that the entities conducting this work are experienced and capable of conducting the pre-project work. Therefore, the pre-project guidance was intentionally general.</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
3	1	2		Review of the stakeholder list shows that while NJDOT and utilities were represented on the work group, there were no representatives from the land-owner community. As a result, while this is a good quality work product, the recommendations favor the parties undertaking the construction, at the expense of the property owners. Certain changes in process are recommended in the comments below, to correct this shortcoming.	The LCE will need to work property owners to implement needed remediation. The property owners will still dictate remedies.
3	1	3	And 5.1	It would be helpful to clarify when and why the Spill Act and USHS Act are not applicable to linear construction projects or vice versa.	The Department agrees with the commenter and will edit the guidance document accordingly.
3	1	3		Second sentence suggests that Linear Construction "entities" (shouldn't they be called "investigators" like other guidance?) MAY comply with this guidance OR the Tech Regs. They MUST comply with TR. Should 'or' be 'must'?	There are no rules for LCEs to comply with yet. The guidance will be amended after the ARRCS rules are adopted.
3	1	3		The guidance requires that the site remediation process be followed as a prerequisite for certain construction projects without any triggering event such as an actual discharge of a hazardous substance, the closure of a UST or transfer/closure of an industrial establishment. If NJDEP intends to enforce the provisions of this guidance document as regulation, then it should be promulgated as such.	The only time that a linear construction entity would need to use the linear construction guidance is when contaminated properties are anticipated or found. If no contaminated properties are anticipated then this guidance would not apply. The Department is in the process of adopting basic LCP requirements into subchapter 16 of the ARRCS rules.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
3	1	3		<p>It is unclear from this subsection what the course of action will be if the Spill Act responsible party either cannot be identified or refuses to take responsibility for cleanup. For linear construction projects to remain on schedule, any required cleanup may have to take place before or during construction. In many cases, remediation under a new highway or rail line will not be practical once the project is completed. This entire document appears to address the concerns of utility companies who do not typically take title to a property, but occupy it through licenses or easements. It does not address the needs of NJ Transit or NJDOT, who typically take title to the property they are building on, placing them in the chain of title for Spill Act liability.</p>	<p>The Department will contact the responsible party. The Department does not anticipate that the linear construction project would need to hold up the project schedule. The linear construction entity should make reasonable allowances to give responsible parties access to contaminated areas for the purposes of remediation.</p> <p>The Department's position is that highway and rail line projects should approach these projects in the same manner as other linear construction entities, and recommends that the commenter discuss their responsibility with their legal representative.</p>
3	1	5		<p>As proposed in the draft guidance document "linear construction project" means construction and development to create, maintain, alter a roadway, railroad or utility by a person conducting a linear construction project that: 1. Includes more than one property, that has contamination above a remediation standard; and 2. Will generate more than 200 cubic yards of contaminated soil for fill or disposal during the duration of the linear construction project. The definition should be modified to clarify that it includes maintenance, replacement, and upgrading of existing infrastructure. Further the 200 cubic yards of material as a volumetric limit should be removed from the definition. Establishing such a volumetric</p>	<p>The definition includes the words "maintain" and "alter" which intentionally would include work such as maintenance and replacement and upgrading of existing infrastructure.</p> <p>The Department disagrees that the 200 cubic yard limit be removed from the definition. The guidance includes the recommendation that "smaller" projects (those generating less than 200 cubic yards of material) not be required to contact and file reports with the Department. It is our understanding that there are hundreds of small repair jobs going on throughout the State at any one time. Because these jobs are small in scale the Department does not think that they should be required to notify and file reports with the Department.</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				limitation places the burden of determining the amount of contaminated soil or fill required to be disposed during work and tracking the amount of contaminated soil or fill on the contracting party. While an estimate of the amount of contaminated fill or soil to be disposed during construction may be possible for projects crossing known contaminated properties, determining the amount of contaminated fill or soil that will be generated from properties not known to be contaminated will be difficult. The information on the chemical constituents of soil may not be known until waste characterization analytical data is received.	As to the volumetric part of the definition of LCP, 200 cubic yards seemed a reasonable cut off between large and small projects. It anticipated that entities will be able to estimate this volume limit by using the waste characterization or other sampling information along with commonly used project management calculations. Notification to the Department would only be required after the entity is fairly sure of the amount of contaminated fill that will be involved in the project.
4	1	3		In first paragraph, add a statement that if the person conducting a linear construction project is also a person responsible for the remediation as defined in ARRCs, then they must comply with the Tech Rule and delineate and remediate outside the limit of the construction corridor.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
4	1	5		Def of "person conducting a lc project": shouldn't this be "investigator", again, as in other guidance documents?	This guidance is somewhat different than other technical guidance documents since it is not directed at responsible parties, thus it is not necessary for it to reference the "investigator."
4	1	5		In most cases, a utility, as the constructing party, encounters contaminated media within rights-of-way for which it is not the responsible party. Based on the guidance, the constructing party, already burdened with the cost and responsibility of waste management, is then also subject to payment of fees, notification requirements and reporting requirements	The Department would prefer that the person that caused the discharge be the one that remediates the resulting contamination, however sometimes that is not possible. The goal of linear construction guidance is to make sure that contaminated material that is encountered during these projects is dealt with in a way that will be protective of human health and the environment. The

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				related to contamination it did not cause. A constructing party, if not the responsible party, should not be required to bear these additional responsibilities the cost of which eventually gets passed on to the ratepayer or taxpayer. If a constructing party discovers a discharge, it is already required to be reported to the NJDEP Spill Hotline providing adequate notice to the agency. The program fees, notification requirements and reporting requirements as proposed in the guidance should be eliminated.	Department believes that the use of this guidance will benefit constructing parties by providing a clear and consistent approach to managing contaminated soil and ground water when a responsible party is not willing or able to do the work that is needed within the time frame that the construction is being conducted.
4	1	5		In the event, linear construction definition remains as is, PSEG is requesting clarity on the definition of a "property". Does the right-of-way constitute a property? The definition of a "property" is not defined in the Administrative Requirements for the Remediation of Contaminated Sites (AARCS) NJAC 7:26C.	The document assumes the common English meaning of property (i.e., land). The Department intentionally did not bring in the concept of right-of-way and does not think it is necessary to do so.
4	1	5		In the event, linear construction definition remains as is, PSEG is requesting clarity on what is meant by "generate more than 200 cubic yards of contaminated soil for fill or disposal". Does this calculation include the amount of excavated contaminated material that is backfilled into the excavation area as defined in Section 3.3.4.2?	Yes, further explanation for the volume is provided at 3.3.4.2. This volume refers to the total amount of soil being excavated, whether it will be backfilled, reused or disposed.
4	1	3		The last paragraph should be clarified to, "with an opportunity to access and remediate existing or known contaminated sites or areas of contamination located within the linear construction project area".	The Department agrees with the suggested change. The guidance will be changed accordingly.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
4	1	3		Replace "...chooses to comply with this technical guidance..." with the phrase "...is not the person responsible for conducting the remediation..."	The Department does not believe the suggested change is needed.
4	1	3		The person conducting a linear construction project should provide Spill Act responsible parties with the opportunity to access and remediate contamination located within the project area. This requirement could result in long project delays and additional costs to the person conducting the LCP due to RPs or suspected RPs reluctance to take ownership/responsibility for impact encountered.	The Department agrees that linear construction entities allow responsible parties access to contaminated areas in order to conduct remediation. Responsible parties are required to comply with new regulatory and mandatory time frames that will effectively move these cleanups forward in a timely manner.
4	1	5		Should "Due Diligence" be included and reference corridor studies in accordance with ASTM/AAI Standards?	The Department intentionally did not dictate how due diligence should be conducted for these projects. Discussions amongst the members of the guidance committee confirmed that the entities conducting this work are experienced and capable of conducting the pre-project work. Therefore, the pre-project guidance was intentionally general.
4	1	5		The definition of "Person conducting a linear construction project" must have language added that clearly states that the property or project owner are the "person or entity." The contractor cannot be responsible for preconstruction sampling nor can they get many of the preconstruction permits that are required during the planning sections of this guidance document. These must be done by the "owner" be it a utility laying pipe or a state agency. The definition should read: "Person conducting a linear construction project" is a person or entity,	The Department will not edit the definition but will add clarification that this guidance does not apply to a contractor per se. However it should be understood that linear construction entities will often hire contractors to implement these recommendations as part of the LCP.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				who is the project `owner` or the property `owner,' that conducts a linear construction project and is not subject to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3 the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq	
5	2	1		PSEG proposes the elimination of the payment of the Site Remediation Program of contaminated media management, & the elimination of reporting to the Site Remediation Program. To the extent that PSEG discovers a discharge for which the company is not responsible, PSEG already reports that discharge to the NJDEP Spill Hotline.	The Department is proposing a minimal fee that will cover its inspection and review costs associated with these projects. Responsible parties will pay fees as established in ARRCS rules.
5	2	1		Consider revising 4th bullet item to: Submit a final report to the Department 180 days after the completion of a construction of a linear construction project only if remediation or similar regulatory action was completed within the limits of construction.	The Department would like a final report to be submitted so that the initial “notice” of the project could be closed out of its tracking system.
5	2	2		If contamination is encountered, the party doing the construction notifies the DEP and then, later, informs the property owner of the notification. Arguably, this procedure is not consistent with the provisions of ARRCS. If contamination is encountered, (unless it is an IEC condition) the property owner must be contacted and the notification made jointly by the property owner and the party doing the construction	The Department agrees with the suggested change. The guidance will be changed accordingly.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
5	2	2		The guidance requires that during the construction project when contamination above a remediation standard is discovered that is not already known to the Department, the constructing party should immediately notify the Department via the DEP hotline. How often will the Department to update their online databases?	After the Department evaluates each hotline call and determines that a new case should be established, the case data is put into its tracking system. This information is “live” and available to the public via data miner.
5	2	2		The sequence of notifications should be reversed. The property owners should first be notified that contamination was encountered, informed that the hotline will be notified and then make the notification. Especially in the case of home-owners this is basic courtesy. Any Case Tracking number that is assigned to a discharge should be associated with the property owner and not the person conducting a linear construction project.	The Department agrees with the commenter.
5	2	2		Other than an IEC condition, would it not be the responsibility of the property owner to make the hotline notification if a discharge is identified, since the LSRP for the linear construction project is not the LSRP “of record” for the discharge associated with the property that is intersected by the project?	Any LSRP that becomes aware of an IEC condition is responsible for notifying the Department’s hotline.
5	2	2		References notifying the Department of name of LSRP. Is this completed via the "Retention and/or Dismissal of an LSRP" form?	No. This information will be part of the LCP notification form.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
6	2	2		<p>The person conducting a linear construction project is required to notify the property owner of the discharge, in writing and include a copy of that notification to the Department in the linear construction project final report. Utilities frequently install and maintain facilities within the right of way of local, state, and county roads; therefore, in the event contamination is discovered, it would be required to notify the appropriate local, state, or county authority. PSEG proposes that the Department notify the local, state, or county governmental agencies, not the constructing company. Further, linear construction projects may occur within easements located on private properties, including residential properties. The constructing party should not be required to notice private property owners regarding contamination as it is not the appropriate entity to answer property owner questions or concerns regarding the findings.</p>	<p>The Department does, as part of its administrative process, notify local governments of discharges in their jurisdiction. The Department does not believe that it needs to modify this long standing process.</p> <p>The Department believes that LCEs and property owners need to have ongoing communication, and the identification of contamination should be part of that.</p>
5	2	2		<p>Requirements to notify are vague. The words "suspected" and "assumed" are used in the description of knowledge of contamination. These words should be deleted and the requirements to notify should be simplified to 1.) prior to construction if contaminants were identified during due diligence or 2.) encountered during the construction project.</p>	<p>The Department clarified the language in this section.</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
5	2	2		<p>As a property owner and person conducting LCP, the requirement to immediately notify the Department via the hotline when contamination above a remediation standard is discovered that is not already known to the Department and identify the name of the property owner who is responsible for the discharge is very concerning. Determining the responsible party based on the discovery of impact in a linear trench in many cases in NJ will prove to be a difficult task. It is well understood that utility corridors act as migration pathways, so while the adjacent property owner is the most likely party to be identified, the real RP may be located further upgradient. The notification requirement is also putting a lot of responsibility on field personnel to make a decision with potential legal ramifications (incorrectly identifying a RP) based on limited information (elevated PID readings in a utility trench).</p> <p>It should not be the responsibility of the person conducting a linear construction project to identify responsible parties (see comment above) nor notify the property owner of the discharge. This responsibility should remain with the NJDEP, especially in situations where multiple (potential) sources of the impacts exist.</p>	<p>The Department recognizes that it may be difficult to determine likely responsible parties in some cases. The LC entity can only report this information if it is known to them.</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
5	2	2		Notification requirements are confusing. There is the 45 day requirement for LCPs known or suspected to have contamination or after contamination is encountered at a LCP assumed not to have contamination, but also an immediate notification via the hotline for contaminants not already known to the Department. Clarification on the notification requirements is warranted.	The first notification is based on preliminary work that is conducted before the project is started. If during the project other contamination is discovered (and so would by definition not be already known to the Department) a call to the hotline would be warranted.
5	2	2		A person cannot be conducting a linear construction project and assume a project did not have contamination as is described in the second bullet point because by your definition of a 'Linear Construction Project' is a construction project with contamination present.	The second bullet refers to situations when contamination is not anticipated but is found during the course of the project.
5	2	2		May be better to state in the second bullet to identify the name of the property owner on which a discharge has been identified rather than stating the property owner is responsible for the discharge as there may be other RPs that are not the property owner.	The guidance was modified since there will be many instances when the LCE will not be able to determine responsibility for the contamination.
5	2	2		Here again, the language appears only to address the needs of utilities constructing on property they do not own, but are occupying through easement or license. NJDOT and NJ Transit typically take title in fee for property they construct on, so they are, in effect, the property owner. If the discharge occurred during prior ownership, or migrated onto State property from a neighboring property, how is NJDOT or NJ Transit supposed to handle their	The Department will contact the responsible party. The Department does not anticipate that the linear construction project would need to hold up the project schedule. The linear construction entity should make reasonable allowances to give responsible parties access to contaminated areas for the purposes of remediation.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				obligations and satisfy NJDEP requirements without delaying or cancelling the construction project until a responsible party can be identified and complete the remediation?	
6	2	2		In second paragraph, 3rd bullet to revise indicate "Discovery of any regulated UST or non regulated UST exhibiting contamination issues." This would exclude residential heating USTs with no concerns and thus reduce unneeded paperwork i.e., hotline notification.	The Department disagrees. The key factor is not whether a tank is "regulated" or not – it is the fact that it is leaking. Any discharge of hazardous material requires a call to the Department's hotline.
6	2	2		Should add a definition of what is "immediately dangerous to life and health" so it is clear what this as.	The Department deleted the phrase from the document. The term environmental emergency is sufficient to describe that the hotline must be called when it is determined that a call to 911 is warranted.
6	2	2		Should include bullets for drums and free product as conditions to call the DEP hotline.	The LCE should be allowed to use their discretion when drums or free product is identified. Drums could be empty or contain solid material and the amount of free product might be small not warrant a hotline call.
6	2	3		Update term of "Alternate Fill Technical Guidance" to be in line with new guidance procedures	The Department agrees with the commenter and will edit the guidance document accordingly.
6	2	3		Generic reference to N.J.A.C. 7:26C-7 should be made more specific, i.e., N.J.A.C 7:26C-7.9: Modification of specific requirements in a remedial action permit.	The Department agrees with the suggested change. The guidance will be changed accordingly.
6	3	1	2	Consider revising first sentence to include: There are numerous readily available sources of information relative to the operational history and environmental conditions of real property in New Jersey such as	The Department agrees with the suggested change. The guidance will be changed accordingly.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				regulatory database vendors, historical aerial photographs, historical topographic maps, Sanborn Fire Insurance Maps, City Directories, etc.	
6	3	1	2	Should "Due Diligence" be included and reference corridor studies in accordance with ASTM/AAI Standards?	The Department intentionally did not dictate how due diligence should be conducted for these projects. Discussions amongst the members of the guidance committee confirmed that the entities conducting this work are experienced and capable of conducting the pre-project work. Therefore, the pre-project guidance was intentionally general.
6	3	1	2	The guidance directs the person conducting the linear construction to report to the NJDEP any contamination that may be encountered and take appropriate measures for the disturbance of any engineering controls that may be in place. Therefore, this section should outline the types of information that may be necessary to obtain, such as investigation reports, deed notices and remediation permits, etc.	The referenced rules sufficiently describe the process and content of such reports, therefore it is not necessary to provide that information in this guidance.
6	2	2		Why are UHOT be considered for NJDEP hotline action, since they are unregulated by NJDEP unless a release is present?	LCEs must only call the hotline when a discharge occurred from an unregulated heating oil tank.
6	2	2		Consider revising 3rd bullet item to: Discovery of any underground storage tank that has a confirmed release in accordance of NJAC 7:14B-7.1.	The Department intentionally did not reference its UST rules at N.J.A.C. 7:14B because the Department should be called even if an unregulated tank is found.
6	3	1	2	The Department needs to clarify what it means by "sufficient" due diligence and properties that will be "transected" by the proposed linear construction project. What activities does the Department consider sufficient for due diligence purposes? What	The Department thinks that this section is self explanatory. The stated goal of due diligence is to get information about contamination at properties where the LCP will occur. Pre-project work has been, and will continue to be conducted by entities involved in LCPs.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				does transected mean? Does it mean adjacent to the property or actually crossing the right of way containing the utility line?	This technical guidance is not meant to replace processes that entities have in place.
6	3	1		Clarify in first sentence what conditions should be characterized and state these should be done rather than can be helpful. Too vague as written. Similar thought applies to next sentence (is advisable vs should be done).	This section is being left intentionally vague. The purpose of this document is not establish guidance for how LCEs must conduct due diligence. LCEs have existing internal procedures for this purpose. The focus of the guidance is to provide direction regarding what must be done when they identify contamination within the project area.
6	3	1	3	The guidance should mention that the person conducting the linear construction can rely on previous investigation data, if they exist. The discussion on sampling must also address background and DAP.	The Department agrees with the commenter and will and will edit the guidance document accordingly regarding the use of previous data. However, the Department does not believe it is necessary to include a discussion on background and DAP because there is nothing unique to linear construction projects regarding how to address background or DAP.
7	3	1	2	Include Fill Use Plan in list of things to be developed at end of the last sentence	The Department agrees with the commenter and will and will edit the guidance document accordingly.
7	3	1	3	Vertical delineation within construction/project limits is required per Tech Rule and should be added to text as after construction it will be difficult if not impossible to get access to complete vertical delineation after construction is complete.	The LCE would be required to delineate contamination when they do not allow the responsible party access to the site or when they assume responsibility for the remediation from the responsible party.
7	3	1	3	The questions that come up most frequently on Linear Construction Projects I have worked on have dealt with handling and disposing of excess soil and surcharge material. Subsequently, the required number of samples to determine clean fill and off-site placement is often debated.	This section refers to the Department's Alternative and Clean Fill Guidance for SRP Sites which is available on the web page as the LCP guidance. Reduced sampling frequencies for large quantities are available and may be used based on the Licensed Site Remediation Professional's judgment.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				<p>Since the Guidance Document indicates that linear construction projects are not site remediation projects, the Guidance Document should provide clear guidance to the number of samples, the type of samples, and types of analysis required to determine if soils are hazardous, non-hazardous (ID-27 waste), clean fill, and/or guidance for Beneficial Use. Reference to regulations or guidance documents, hyperlinks, or new sampling protocol for Linear Construction Projects should be provided detailing the required frequency and types of samples required to determine soils for off-site disposal/placement and/or for clean fill determination and/or whether hazardous classification sampling analysis is required. If it's intended to be in line with the protocol outlined in Table 1 and Table 2 of the Alternative Fill Protocol, then those guidelines, links, and/or rationale should be highlighted.</p> <p>Linear Construction Projects such as roadways, railroads and other infrastructure projects have the potential to generate large quantities of soil. As such, the sampling protocol to determine the quantities should be reduced to be more practical and economical feasible.</p>	<p>The Department wants to emphasize the importance of using clean fill to cap contaminated soil in order to prevent exposure. It is not the Department's intention to apply the "requirements" of the Alternative and Clean Fill Guidance to every aspect of construction projects.</p>
7	3	1	3	<p>Requiring pre-construction sampling is a safety hazard when drilling around utility lines for the sole purpose of defining the level of contamination in the excavation area. There are set back requirements</p>	<p>The guidance includes recommendations developed by Department staff and stakeholders from a broad range of linear construction entities. The recommended sampling is not a requirement. The Department assumes that each</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				(NJSA Title 48, Public Utilities Chapter 2-82, Board of Public Utilities Commissioners) for drilling around utility lines. Pre-construction sampling (soil and groundwater) is burdensome and not necessary. Therefore the pre-construction sampling requirement should be eliminated.	linear construction entity will use its judgment and due caution when conducting pre-construction investigations. Many entities believe such sampling is advisable.
7	3	1	3	Consider revising first sentence to include: Based on the review of available data (see 3.1.2.), the person conducting a linear construction project should develop a sampling plan for potentially contaminated areas identified within the proposed limits to assess the presence of contamination within the limits of the proposed excavation in order to develop a pre-construction sampling plan.	The Department does not agree with this suggested change. Recommendations about project planning was left intentionally broad so that linear construction entities can apply their existing procedures on a site-specific basis.
7	3	1	3	Consider including as 2nd sentence or incorporating into paragraph: Sampling locations should be limited to the limits of construction (i.e., depth and width). Additional sampling considerations should be given to deeper-seated excavations associated with trenches, footers, foundations, drilled pile locations, etc., as applicable.	The Department agrees with the suggested change. The guidance will be changed accordingly.
7	3	1	3	The party doing the construction is encouraged to conduct sampling along the alignment. However, there is no mention of reliance on any investigations that the site owner might have conducted. Sampling without the context of any previous investigations at the site will likely result in data that is not representative of site conditions, or results in erroneous interpretations.	The Department agrees with the commenter and will and will edit the guidance document accordingly.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
7	3	1	3	While the guidance acknowledges historic fill, it does not acknowledge background and Diffuse Anthropogenic Pollution (DAP). The natural occurrence of certain metals (arsenic) is well documented and the site owner cannot be held responsible because an incomplete investigation failed to identify it as background. DAP is also ubiquitous, particularly along existing ROWs and must be properly accounted for in sample collection and data interpretation.	The LSRP should use their professional judgment when evaluating issues related to background concentration and DAP consistent with existing Department guidance.
7	3	3		In the first sentence, delete "...in order to develop a pre-construction sampling plan", as this language is redundant to that in the beginning of the sentence. Why would you develop a sampling plan to develop a sampling plan? It is unclear what the intent of the guidance document is with respect to this language.	The Department agrees with the suggested change. The guidance will be changed for clarification.
7	3	1	3	First sentence refers to available data "(see 3.1.2)", but 3.1.2 does not reference data. Remove reference to 3.1.2 or correct it.	The Department agrees with the commenter and will edit the guidance document accordingly.
7	3	2	2	PSEG proposes the elimination of the pre-construction sampling requirement as part of the Materials Management Plan.	This is a very general discussion of the procedures that are widely used in linear construction, so will remain as a recommendation.
7	3	2	1	Consider adding 6th bullet item: Or other In-situ remediation (if applicable)	The Department does not believe the suggested change is needed. The use of in situ remediation is rarely used in these projects.
7	3	2	1	Only the first paragraph appears to belong in this section. All of the remaining paragraphs in 3.2.1 look like they would be better if placed in Section 3.2 - Materials Management Plan, since they do not directly refer to soil management.	The Department does not believe the suggested change is needed.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
8	3	2	1	1st bullet: Change "depiction" to "description", unless you want a drawing.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
8	3	2	1	Second set of bullets: Consider adding bullet(s) detailing protection of public including dedicated roadway usage and following the local soil erosion control plan requirements.	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.
8	3	2	1	Second set of bullets: Consider adding bullet(s) including requirements for spill response and containment plans, and/or communication plans.	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.
8	3	2	1	Last Paragraph of section 3.2.1: Consider adding hyperlink for the Department's Clean and Alternative Fill Guidance.	Hyperlinks may be added to the Department's guidance in the future as resources allow.
8	3	2	1	Last Paragraph of section 3.2.1: Consider adding contingency requirements to follow local soil erosion and sediment control plan requirements.	The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.
8	3	2	1	The draft Linear Construction Guidance Document indicates that a Materials Management Plan is needed which is consistent with the Department's Clean and Alternative Fill Guidance document. Utilizing the Clean and Alternative Fill Guidance, it would appear that stripped top soil that is generated during the construction of a linear project could not be reused as clean fill for "capping material" (as part of an engineered control), unless rigorous analytical testing is conducted and the testing results are all below the most stringent Soil Remediation Standards including the Impact to	The Department did not mean to imply that the use of stripped topsoil cannot be used as fill – the Alternative Fill Guidance document only applies to SRP sites (i.e., contaminated sites).

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				<p>Groundwater Screening Levels. The increased cost to linear projects that are associated with the management of top soil could be cost prohibitive. Not only would there be the added costs for sampling the top soil, but there would also be the added off-site disposal costs for top soil which does not achieve the rigorous Impact to Groundwater Screening Levels and the increased importation of "clean fill" that would be needed to offset the stripped soil which may not be reused within the project. For linear projects which can be aerially extensive, e.g., roadway projects, the overall cost increase could easily range on the order of \$100,000s to \$1,000,000s. This guidance policy also seems to be counterproductive to the Department's goal of reducing the amount of materials entering landfills, since there may be limited off-site disposal/recycling options for the top soil.</p>	
8	3	2	1	<p>Applying the Alternative Fill guidance (like-on-like requirement and 75% percentile requirement) are above and beyond the management of re-use of soil in a linear construction project. It is critical that when this work occurs that it be uninterrupted to ensure the reliability of the electric and gas systems, since PSEG's activities necessary to protect the public health, safety, and welfare.</p>	<p>The Department feels that it is important to ensure that contaminated soil is not moved to formerly clean areas thereby creating now contaminated sites. The movement of contaminated soil must be conducted in a thoughtful and responsible way. The need to follow the Department's Alternative Fill guidance when managing contaminated soil will not be removed from the guidance.</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
8	3	2	1	The Material management Plan should include the content of, or include a separate Fill Use Plan, not "and be consistent with" it.	The Department does not believe the suggested change is needed.
8	3	2	2	In the first sentence after the bullets state that free product must also be disposed properly, not just removed so this is clear to all guidance users.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
8	3	2	2	Again, this section appears to be directed only to utilities that construct within easements that they do not own. Is it the Department's intent to allow NJDOT or NJ Transit to only address free product in the construction area on properties they do own, if the free product is from an off-site source?	The guidance recommends that the linear construction entity remove free product when it is encountered or let the responsible party access to do so regardless of the source of the free product.
8	3	2	2	Add bullet item: Groundwater re-injection;	The Department does not believe the suggested change is needed because ground water re-injection would be covered under dewatering management procedures.
9	3	2	3	What is meaning of "and other" within the 2nd paragraph, last sentence?	This phrase refers to any other site-specific factor that would be considered when selecting a method of fluid disposal such as cost and local ordinances.
9	3	2	3	Consider revising 3rd paragraph: New Jersey Pollution Discharge Elimination System (NJPDES) Discharge to Surface Water (DSW) Permits are issued by the NJDEP-Division of Water Quality. A separate permit may be required for each discharge	The Department does not believe the suggested change is needed. The inclusion of more details regarding the options and procedures established in the NJPDES program is not appropriate in the LCP guidance.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				<p>occurrence (i.e., each discharge with a discrete discharge location) within the linear construction project; alternatively, several discharge locations within one drainage basin may be combined in one permit. It also should be noted that many linear construction projects may have existing NJPDES permits in place. The person conducting the linear construction project should follow the applicable discharge requirements which may be included as part of permit stipulations.</p> <p>When applying for a Discharge to Surface Water Permit, the person conducting a linear construction project must document that the municipality or utility responsible for the maintenance of the storm sewers has been notified of the requested permit. The permit checklists and forms can be accessed at the following NJDEP links:</p>	
10	3	3	1	<p>Consider adding to first paragraph: ...which may include the posting of signs and the placement of barriers, using dedicated roadways, closure of roads to restrict access to portions of the project area so that construction may occur without endangering the public, and complying with all soil erosion and sediment control plan stipulations.</p>	<p>The Department does not believe the suggested change is needed because the intent of this guidance is not to address all aspects of LCPs but focus on best management practices for contaminated properties.</p>
10	3	3	1	<p>...and placement barriers, "as well as" closure... ADD "AS WELL AS" to sentence.</p>	<p>The Department agrees with the commenter and will and will edit the guidance document accordingly.</p>

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
10	3	3	2	3rd paragraph, consider referencing the Department's 1998 Revised Guidance Document for the Remediation of Contaminated Soils and add hyperlink.	The Department does not believe the suggested change is needed because document referenced is dated and is being replaced with other technical guidance.
10	3	3	3	Consider revising last paragraph to: Stockpiled contaminated material intended for offsite disposal should be removed from the site as soon as possible,	The Department agrees with the suggested change. The guidance will be changed accordingly.
10	3	3	3	Occasionally, excavated soils must be stockpiled in an area designated as flood zone, especially when space constrains limit the options for locating a staging pad. Typically, the excavated soils are stockpiled for a very short duration (a few days) before they are loaded out for disposal. Relief from land use permits should be provided for these limited and specific circumstances.	It is important that linear construction projects follow the Department's requirements for land use permits.
11	3	4	1	Last sentence states: "In accordance with regulatory requirements, the person conducting a linear construction project must keep a copy of the original manifest for the files and sign the bills of lading and the hazardous waste manifests as the generator." It should be noted that the person conducting the linear construction project may or may not be the generator or acting on behalf of the generator. For example, waste associated with a linear construction project that crosses a known contaminated site may be generated by the owner of the site rather than the person conducting the linear construction project. In that case, bills of lading and hazardous waste manifests should not be signed by the person conducting the linear construction	The generator of waste in this context is the person or entity that digs up contaminated soil. The Department agrees that all waste and associated documentation should be managed in accordance with applicable rules and regulations.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				project. All waste and associated documentation should be managed in accordance with applicable rules and regulations.	
11	3	3	4.2 and.6	Six inches of clean fill is unlikely to be protective as it is easily disturbed. Should state that an appropriate thickness of clean fill is needed to be protective of future disturbance and as needed for landscaping purposes so future disturbance of clean fill will not disturb underlying contaminated material with 1-foot of clean fill recommended for this purpose.	Six inches of clean fill will be appropriate in the majority of cases because linear construction projects usually include cement or asphalt cover and controlled access as a matter of course.
11	3	3	4.2	Is the 200 cubic yards of contaminated soil for fill included in the amount of excavated contaminated material that can be backfilled into the excavation area as defined in Section 3.3.4.2?	Yes.
12	3	3	4	If a previously unknown UST is found and removed, are the typical NJDEP "back" registration fees applicable?	The "back" registration fees are applicable to the owner or operator of the regulated UST.
12	3	3		Should recommend that all abandoned tanks be removed unless they will not affect the structural or other engineering requirements of the construction project.	This section of the guidance is in line with existing rule requirements, so will not be changes as recommended.
12	3	3	5	Isn't the statement "Any material excavated from other portions of the project exhibiting potential contamination (staining, odors, etc.) may not be used as clean backfill..." inconsistent with Section 3.3.4.2, which states that "Excavated contaminated material can be replaced directly back into the excavation as backfill except when it contains free or residual product."? Please clarify.	The basic tenant of the guidance is that highly contaminated soil be removed from excavations, and that remaining contamination be capped with clean fill.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
13	3	3	6	Site Restoration/Capping - It should be noted that many linear construction projects are conducted on roadways where state and federal highway construction standards will dictate the requirements for backfill and surface materials.	The Department understands that different backfill materials will be used depending on the ultimate use of the site. The Department is primarily concerned with people being exposed to soil contamination. The LSRP for the project will be authorized to use other types and quantity of backfill based on site-specific need.
13	3	5		Some concerns were noted with how this applies to historic fill areas on the Turnpike. We know a large part of the Turnpike was constructed on either historic fill or fill brought in specifically for construction of the Turnpike (throughout Essex and Hudson Counties and other places). It appears you can reuse the historic fill, which is good, but it does not address whether a deed notice needs to be put in place if you are the owner of the linear property. Also, if you own the linear property, does the presence of historic fill trigger a comparison of soil sample results to IGW SSLs and potential evaluation of groundwater quality?	The Department will not require LCEs to place deed notices within the project area. The Department believes that access to these areas will be adequately controlled by the linear construction entity and that these sites rarely, if ever, will convert to another site use.
13	3	5		PSEG agrees that the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or groundwater classification exception area) for contamination that is left within the construction corridor.	That is correct.
13	3	5	1	PSEG agrees that the person conducting a linear construction project is not required to conduct public notification or outreach pursuant to NJAC 7:26E-1.4 because linear construction projects are remediation projects conducted pursuant to the Technical Rules, NJAC 7:26E.	That is correct.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
13	3	5	2	Historical fill - PSEG agrees that the person conducting a linear construction project may assume that historic fill material contains the contaminants at concentrations listed in NJAC 7:26E-4.6 without sampling. PSEG understands that historic fill can be re-used in the project.	That is correct.
13	3	5	2	PSEG agrees a person conducting a linear construction project is not required to call the Department's hotline to report the presence of historical fill and ground water investigation is not required to be assessed.	The first part of the comment is correct. Ground water needs to be addressed as described in the Department's Historic Fill Guidance. It is not necessary to evaluate historic fill with the impact to ground water screening levels since there is an assumption that the ground water is contaminated with common historic fill contaminants.
				The GD makes reference to " the person conducting a linear construction project" were "the project" will be appropriate various locations since this GD is directed to the person conducting a linear construction project.	Thank you for editorial comments. The Department will be making editorial changes to the guidance.
13	3	5		Should this paragraph be title 3.5.1 Institutional Controls? Also, the following may be considered " Generally, six inches of clean fill, or other suitable capping material (asphalt or concrete material), should be placed at the surface to prevent direct contact exposure." If so, the other subsection numbering will change.	Thank you for editorial comments. The Department will be making editorial changes to the guidance.
11	3	3	4.1	Last Sentence: clarify regulatory requirements (e.g., Federal Resource Conservation and Recovery Act (40 CFR Subpart B Parts 262.20 to 262.23) and N.J.A.C 7:26G).	The Department does not believe the suggested change is needed.
11	3	3	4.2	Is the 200 cubic yards of contaminated soil for fill included in the amount of excavated contaminated material that can be backfilled into the excavation	Yes.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				area as defined in Section 3.3.4.2?	
11	3	3	4.2	Allowing only six inches of clean fill, will set a new policy standard for SRP.	The Department has the authority to establish different remediation requirements based on site conditions.
11	3	3	.4.3	2nd paragraph: First sentence: Change "soil reuse plan" to "Fill Use Plan" as per Alt and Clean Fill Guidance doc. Second sentence is awkward. Suggest using the following language: The Fill Use plan should be based on sufficient characterization of soils in the donor and receiving areas, and comply with the DEP's technical guidance entitled Alternative and Clean Fill at SRP Sites. This guidance describes the like-on-like and 75th percentile requirements, which state that the use of fill can not make a receiving site worse by either introducing new contaminants, or increasing the contaminant concentrations.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
12	3	4		typo Last line of first paragraph. ("...unless it can be documented that the tank...	The Department agrees with the suggested change and will edit the document accordingly.
12	3	3	5	Clarify that contaminated material must be capped with clean fill or other suitable capping material. Use of may in the first sentence implies that contaminated material left behind does have to be capped.	The Department disagrees. This section only applies to the use of clean fill and does not make any implication regarding the need to cap contamination.
13	3	4		I would not recite or excerpt regulations due to potential misinterpretation or transcription errors. Consider revising last paragraph of the section to include: The person conducting a linear construction project must remove soil containing free or residual product that is present within the construction corridor during the removal of the tank to the extent	The Department does not believe the suggested change is needed. This paragraph reflect the actions that are recommended and are not intended to reflect any Technical Rule requirements.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				practical. As required, a groundwater investigation should be completed in accordance with N.J.A.C. 7:26E-4.4.	
13	3	4		How does a linear construction project respond to a previously unidentified UST? The time frames detailed in this section are not conducive to the construction schedule and would result in delay claims by the contractor and result in potential work stoppages on the project. Emergency notification or post-notification processes should be included.	The Department is aware that UST removal may need to be conducted quickly. The Department will be glad to work with people that are removing tanks that are unable to implement the procedures outlined in this section.
13	3	4		Last paragraph of section. In a situation with groundwater that intersects the UST excavation, would it be permissible to collect a grab sample for analytical purposes?	Samples should be conducted following the Field Sampling Procedures Manual
13	3	4	3	Last paragraph states: "The person conducting a linear construction project... should collect a ground water sample from a temporary well point when an underground storage tank has discharged..." The ground water sample procedure should not be restricted to a temporary well point. The guidance should reference any appropriate groundwater sampling method pursuant to the FSPM.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
13	3	3	5	Here again, the guidance document appears to be oriented towards entities that construct within an easement on property they do not own. If NJ Transit or NJDOT condemned property to construct a roadway or rail line, would the condemned be considered the "responsible party", freeing NJDOT or NJ Transit from having to perform the remedial action for the property?	This guidance is directed at the linear construction entity, they are by definition not responsible parties. The Department does not intend to draw any conclusions about who the responsible party is in any given situation. Each party should obtain legal counsel regarding their responsibility under the Spill Act or other remediation statutes.
13	3	3	6	Site Restoration/Capping - It should be noted that	The Department agrees with the commenter and will and

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				many linear construction projects are frequently conducted on roadways where state and federal highway construction standards will dictate the requirements for backfill and surface materials.	will edit the guidance document accordingly.
13	3	4		In last paragraph, "free or residual" should be "free and/or residual".	The Department agrees with the commenter and will and will edit the guidance document accordingly.
13	3	4	and 5.3	In last paragraph, removal of free and/or residual product should extend beyond the project limits where necessary to prevent recontamination of the soil under the project or require appropriate engineering controls to prevent recontamination or allow for future remedial actions by the responsible party.	As stated previously, LCEs are not required to conduct remediation pursuant to the Technical Rules. The guidance states that...The person conducting a linear construction project should provide Spill Act responsible parties with an opportunity to access and remediate contamination existing or known contaminated sites or areas of contamination located within the linear construction project area.
13	3	5		Considering replacing paragraph to read: Should the linear construction project encounter a pre-existing and permitted contaminated site, the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or ground water classification exception area) for contamination from that site that is left within the construction corridor.	The Department believes that the suggested change is not the intended point of this section.
13	3	5		Consider reiterating reporting process detailed in Section 2.2 detailing previously unidentified/unknown releases. "The person conducting a linear construction project should notify the DEP hotline and indicate that a discharge has been identified at a linear construction project and name of the property owner who is responsible for the discharge. The person conducting a linear	The Department does not believe the suggested change is needed.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
				construction project should then notify the property owner of the discharge, in writing and include a copy of that notification to the Department in the linear construction project final report.	
13	3	5		Shouldn't they record the contamination within their easement paperwork? It may not be a formal deed notice, but it would still be recorded with the easement in the deed file.	The property owner, not the LCE, would be responsible for establishing a deed notice if one is warranted.
13	3	5		We agree that the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or ground water classification exception area) for contamination that is left within the construction corridor.	This statement is correct.
13	3	5	1	We agree that the person conducting a linear construction project is not required to conduct public notification or outreach pursuant to NJAC 7:26E-1.4 because linear construction projects are remediation projects conducted pursuant to the Technical Rules, NJAC 7:26E.	This statement is correct.
13	3	5	2	Historical fill - We agree that the person conducting a linear construction project may assume that historic fill material contains the contaminants at concentrations listed in NJAC 7:26E-4.6 without sampling. We understand that historic fill can be re-used in the project.	This statement is correct.
13	3	5	2	We agree a person conducting a linear construction project is not required to call the Department's hotline to report the presence of historical fill and ground water investigation is not required to be assessed.	This statement is correct.

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
13	3	5		The guidance states that the person conducting a linear construction project is not required to obtain remedial action permits (deed notice or ground water classification exception area) for contamination that is left within the construction corridor. These permits and controls are the responsibility of the person responsible for conducting the remediation. This provision completely ignores the property owner. This section must be revised to recommend that any remedial actions and subsequent institutional controls must be developed with the consent of the property owner. Such provision is in accordance with the requirements of the TRSR.	This statement is correct.
13	3	5	2	Consider revising the 2nd sentence of the last paragraph to: Historic fill may be reused in other areas where historic fill occurs within the linear construction project area....	The Department does not believe the suggested change is needed.
13	3	5	2	This section needs to reference the Historic Fill Technical Guidance.	The Department agrees with the commenter and will and will edit the guidance document accordingly.
13	3	5	2	The list of historic fill contaminants in current rule are proposed to be removed in the new Tech Rule	The guidance will be amended when the Technical Rules are adopted.
14	4	2		Did not see copy of the LCP Notification Form on the website. Would like to review before finalized.	A copy of this draft form is available at www ...draft forms

PAGE	CHAPTER	SECTION	SUB-SECTION	COMMENTS	RESPONSES
14	4	3		If a RAO is wanted should also state that N.J.A.C 7:26 E must also be followed in addition to ARRCS	The Department agrees with the commenter and will edit the guidance document accordingly.
14	5			Consider revising first sentence/paragraph to be: The person conducting a linear construction project should pay a one-time fee of \$450 pursuant to N.J.A.C. 7:26C-4.2(a)2ii when the initial notification of the linear construction project is submitted to the Department.	The Department does not believe the suggested change is needed.
16	Appendix 2			Appendix 2, Final Linear Construction Report - Example Table of Contents: Section III requires extensive documentation “for each contaminated property” that is encountered during the linear construction project. The person conducting the linear construction project may or may not have access to all of the information specified for each site. Furthermore, assuming that the contaminated sites are being addressed, such information would be reported to NJDEP. The information required in the final construction report should be limited to the area of the linear construction project and sampling, if any, specifically associated with the project. The primary goals of the report should be 1) to document environmental conditions, if any, identified within the linear construction project and 2) to document proper management of any waste material encountered. Additional reporting on the contaminated properties crossed by the linear construction project is not reasonable.	The Department agrees.