

NJDEP Technical Guidance Document: Response to Comments

Document: "Off-site Source Ground Water Technical Guidance Document"

*Comment Period START: Wednesday September 17, 2014
Comment Period End: Wednesday October 29, 2014*

DEP Committee Co-Chairpersons: Christina Page and George Nicholas

Comment	Page	Section	Subsection	COMMENTS	RESPONSES
1	6	2.2		It appears the guidance assumes that an LSRP will be issuing a separate RAO-A for an off-site source in all cases. There should be a note that indicates that if an RAO (either AOCs or Entire site) is being issued for the site, a separate RAO-A for the off-site source would not be necessary. Only the notice paragraph regarding an off-site source would need to be added in the RAO-E.	Agreed, clarification made.
2	6	2.3		Same comment as above.	Agreed, clarification made.
3	7	2.4	7 times in Sec.	Same comment as above.	Agreed, clarification made.
4	9	3.0		Same comment as above.	Agreed, clarification made.
5	7	2.4		The scenario for UHOTs where an off-site source is suspected does not appear to be addressed in the guidance. There should be some mention for this scenario and how the UHOT contractor needs to handle it. I thought this guidance addressed all scenarios both LSRP and UHOT.	Comment considered. Section 2.4.1 was added to guide the reader to SRP's guidance on the administrative process for off-site source investigations related to UHOTs.
6	6	2.2		The wording "observed discharge" should be changed to "contamination". Almost never do we or an LSRP/UHOT contractor witness the discharge, rather we find the impacts in either soil and/or ground water after the fact.	Agreed, change made
7	4	1.2		Since many LSRPs are reluctant to have a client pay for VI systems for receptors if they suspect the RP is not the source, guidance needs to make it clear that for a VI trigger in GW/IEC situation, the RP has to follow all timeframes from the regs/guidance (including all receptor/engineering controls) until such time as they prove through the multiple lines of evidence they are NOT the source.	Considered, no change. Already covered in section 2.3.
9	41-45	Appx C		Case scenario narrative too long to follow/too much info- I found the figures with the data boxes and footnotes on the right much more clear to compare the scenarios.	Considered, no change.

10	31	Appx A		Under the "Sites with an Immediate Environmental Concer" section, the third open circle bullet states "contamination that exceeds the Department's acute human health exposure levels". No such acute exposure levels exist. This need to be deleted and replaced with generic language describing contamination at levels (not defined) that could pose an acute human health exposure risk.	Agreed, changed to "contamination in surface soil where dermal contact, ingestion, or inhalation of the contamination could result in an acute human health exposure"
11	4	1.2		The last paragraph on page 4 mentions "soil contamination resulting from naturally occurring contaminants in soil." Naturally occurring implies not a contaminant so I suggest changing contaminants in soil to constituents in soil.	Agreed, change made
12	5	1.2		The discussion of comingled plumes is a little awkward since it states that it compliments this guidance, that "the investigator should consult the Commingled Plume Technical Guidance document" provides a source for SRP guidance and also states that guidance is under development with no timeframe provided	Agreed, sentence changed to "The Department's Co-mingled Plume Technical Guidance, which is currently under development, will complement this document".
13	7 & 8	2.4/2.5		It is very difficult to tell the difference between "An Off-Site Source of Contamination is Determined" and "Unrelated Off-Site Contamination". Can this be clarified?	2.4 header changed to "An Off-Site Source of Ground Water Contamination is Verified"
14	11 - 13	4.1	4.1 & 4.1.4	The 4th bullet item under 4.1 and the more detail provided in 4.1.4 deal with demonstrating GW contamination from an off-site source with no onsite contribution. Shouldn't there be some mention of potential comingled plumes with both on and off-site sources. Also possible reference to comingled plume guidance under development.	Considered, but no change made
15	8	2.5	para 1	Awkward sentence "...being investigated from the subject site notify the property owner...". I think you mean "If the investigator discovers contamination off-site that is unrelated to Subject site AOCs, the investigator should notify the property owner of the location of the contamination, and the following procedures should be followed:" Also, The problem with the phrase "known discharges being investigated from the subject site" is that it may not really be a discharge from the Subject site, but instead an offsite source. It seems like "UNRELATED" really has to mean "not impacting my site": the source is off-site; but not coming on my site; Otherwise it would be either (a) "VERIFIED OFFSITE SOURCE": source is off-site; coming onto my site, and related to one of my existing AOCs; or (b) source is off-site, coming onto my site, and constitutes a new AOC for my site;	Comment considered, no change made
16	9	3.1	last para	The "offsite investigation" and PA is only being done because of the observed ONSITE contamination (which has to be explained). The question is whether there is an ONSITE SOURCE for the onsite contamination, or only an offsite source, or maybe both.	Considered, no change
17	10	3.2	para 1	"...during review of the site history, throughout the site and/or remedial investigation, and even afterward..." (don't need "continues")	Agreed, change made
18	12	4.1	4.1.4	Might want to use the phrase "ground water contaminant plume" earlier in the document. This is the first occurrence, other than the note about Commingled Piumes.	Agreed, change made

19	13	4.2	para 1	Do you mean "...using ONLY(?) existing data (and not having to do a PA?). Or using existing data (historical site data), and not having to do a new field program simply to achieve the Offsite Inv? If you leave it vague, someone will try an end run.	Sentence changed to "Depending on the circumstances, it may be possible to use existing on-site and off-site data as a line of evidence to support a claim that off-site ground water contamination is causing on-site ground water contamination".
20	27			Table 2 -- doesn't have a spot for the address of the OFFSITE SOURCE property(ies). You need both the Subject site info (the person doing the Offsite Investigation) and the suspected SOURCE property info. (I know it's only for LSRP's use, but still, the whole goal of the exercise is to IDENTIFY THE SOURCE location.).	Considered, however there is no requirement to identify the source of the off-site contamination. The requirement is to demonstrate that it is migrating onto the property. Will make a change to table to note that Offsite information is "checked" if known.
21	42			For the Multi-Scenario, you should make it clear that your intent here is NOT to draw conclusions about this particular data set, but merely to illustrate the various lines of evidence that might come into play. [Why? Because there are some odd things about the hydropunch data that suggest a third TCE source to the east. See HP-1 data in figure "Case 2 (page 3 of 3)". Ground water flow direction is south in the shallow subsurface, but what about at 30 feet?]	Comment considered. The intent of the Case Study is to identify that an off-site source exists and the steps to be taken to document it. While other sources may be present, it is not considered significant to the objective.
22	45			2nd full paragraph -- Why does it say "Case #1" here? Is this paragraph part of CASE 3, or a wrap-up of the Multi-Scenario example? If it's a wrap-up, the paragraph needs a heading. Also, What does this mean?--"represented by the compilation of..."? Some simpler way to say it? Also confusing to be discussing Case 1, Case 2, and Case 3, then use the phrase "in this case,". Also, to be really picky, either refer to "Case 1" or "Case #1" throughout the example, but not both.	Comment considered, changes made.
23	4	1.2	para 1	"... migrate onto the site IN THE GROUND WATER from an off-site property" and "...adequately demonstrate that GROUND WATER contamination..." (This document does not address contaminants migrating onto my site as LNAPL in soil pores, or any other way, except in GW.)	Comment considered, no change made. As noted in Section 1.2, the focus of the document is on contaminated ground water migrating onto a site from an off-site contaminant source.
24	4	1.2	para 1	Somewhere in this guidance you might want to mention a very basic idea: The source is the thing that CREATES the GW plume, not the plume itself. The way we find the Source (eventually) is to delineate the GW contaminant plume, and look toward the upgradient hot spots for materials or activities (perhaps found by doing a PA or OPRA records review) that constitute a source of the plume. "Offsite Source GW investigations" often end before the actual source is found (provided we can demonstrate that it's entirely someone else's problem). But my neighbor's PCE GW plume is not a source, only evidence of a source somewhere (possibly on his property, possibly farther upgradient).	This has been clarified in section 1.2: The term "off-site source" pertains to the ground water contamination migrating on to the subject site and not the actual source.
25	4	1.2		The document uses "person responsible for conducting the remediation" in the first paragraph and then in the following paragraph "responsible entity". Consistency.	Comment considered, the term person responsible for conducting remediation will be used.

26	28	Appx A	Data Miner Tutorial	This Tutorial is inappropriate in a Guidance Document. As the LSRP program continues to evolve, Data Miner may evolve as well. It should not be the intention of this Off-Site Source Guidance to educate or train anyone on how to use Data Miner (would you give instruction or attempt to train in any of the technical methods listed in Table 1?). If anything, there should be a Data Miner Guidance document available from SRP's IT group - not as part of this Guidance document. (Other comments on this section - check acronyms for being defined, especially in the correct order)	Comment considered, acronym issue resolved, no additional changes made.
27				GENERAL COMMENT - This technical guidance document provides no real resolution or insight into the issues that truly of concern to remediating parties and their LSRPs; issues such as being denied access to off-site properties, liability from discovering an off-site source, timeframes that do not provide relief to innocent parties are serious concerns that receive no attention in this document. Overall, the guidance simply restates the Tech Rule requirements and adds references to other guidance documents that discuss investigation methods	Comment considered, no changes made.
28	4	1.2		The guidance document states that "the person responsible for conducting the remediation should conduct the remediation in accordance with all regulatory requirements and applicable timeframes". In cases such as Vapor Intrusion this is not only unfair but also exposes the innocent party to liability from beginning to conduct work and presuming the responsibility. Additional exposure comes when the innocent party demonstrates that it is an off-site source and terminate the work. In many cases, there is also no recourse to recover the cost for the work that was completed.	Comment considered, document modified to reflect that following NJAC: 26E-3.9 is optional.
29	5	2.1		The guidance document states that "Samples must be collected at the property boundary (or further upgradient if necessary)". This is an unrealistic expectation (and an implied requirement by being listed in guidance) that potential off-site source parties will provide access for sampling to prove that their property is the source of contamination.	This language is taken from NJAC 7:26E-3.9. No change made.
30	6	2.1		Comment for NJDEP -- 4th bullet recites the <u>regulatory requirement</u> to conduct a Preliminary Assessment to determine whether a source of contamination exists on site. Recognizing this is a regulatory limitation of this guidance document, my comment is -- there are many situations where the RP no longer owns the property and the existing access agreement (or the current property owner) does/would not allow a PA to be completed on their property. This will be a limitation to certain RPs from fully utilizing this Guidance Document. Would a variance from NJAC 7:26E-3.9(a) be allowable? If yes, this guidance should state it clearly. In many instances, some of which are detailed in the Case Studies, a full blown PA is not required.	According to N.J.A.C. 7:26E-3.9, a PA is always required. Technically, a variance from N.J.A.C. 7:26E-3.9(a), is possible, but adequate justification must be demonstrated using professional judgment. Inability to gain access to a property does not represent adequate justification.
31	6	2.2		The guidance document states "when contamination is identified at a site that is not already known to the Department." Especially in cases where the off-site source is a known contaminated site it would seem that notification requirements do not apply and a RAO-A can be issued. This section requires further clarification.	Text clarified and it would be necessary to report to the Department that the known off-site source is contaminating the downgradient property.

32	6	2.2		The guidance document requires that an LSRP be retained. That would be true for a case where a release that was previously entirely unknown has been discovered. For sites already in the Site Remediation Program this would not be necessary. The entire Section 2.2 must be revised to differentiate between sites already in the SRP and entire new discoveries	Comment considered, no change made.
33	6	2.3		The statements in this section must be reconsidered in their entirety. An innocent party cannot be held liable for contamination that is not related to their site and their activities.	Comment was considered and the section was revised.
34	6	2.3		In addition, the Affirmative Obligation to Remediate/Investigate should include some financial relief for work undertaken by the impacted party in response to the unknown/off-site impact. If, as an impacted party, we proceed with delineation and receptor investigation as per the Affirmative Obligation, what recovery mechanism does the guidance provide once it is proven that those actions were completed in response to an unknown/offsite source?	Comment considered, no change made
35	7	2.4		4th sub-bullet, allow caller to indicate that a variance from completing a PA will be submitted.	No change made. N.J.A.C. 7:26E-1.7 outlines the procedure for variances. According to N.J.A.C. 7:26E-3.9, a PA is required. Technically, a variance from N.J.A.C. 7:26E-3.9(a), is possible, but adequate justification must be demonstrated using professional judgment.
36	7	2.4	bullet 5	(hollow bullet 5) "subject site" -- You mean the PI for the site that is RECEIVING the offsite contamination? Also, it seems like a couple terms might be useful in this discussion -- something like "Potential Offsite Source" versus "Verified Offsite Source".	The use of the term "verified" is a scripted phrase used by the Department's Hotline Operators. No change made.
37	7	2.4		Will the Department assign a key contact to the review of off-site source claims? This will allow for consistency in the review and processing on these issues and a clearer understanding for the regulated community. Furthermore, as the issuance of an RAO for an unknown/offsite source removes the Affirmative Obligation for remediation and receptor evaluation from the issuing party, this allows for a prompt and direct transition of these responsibilities to the Department.	The Department's Bureau of Inspection and Review inspects and reviews all off-site source submittals. Processes are already in place to transition responsibility from the PRCR to the Department.
38	8	2.5	Title	I suggest instead "Off-Site Contamination Unrelated to Subject Site AOCs". Or better yet "Offsite Contamination Not Coming Onto Subject Site". (If it were coming onto my site, it would BECOME one of my AOCs).	Comment considered, change made
39	8	2.5		The Unrelated Off-Site Source Contamination section is problematic. The reporting requirements for this section are going to need to be disclosed in all of our access agreements. Fully understanding the Department's position that any identified impact needs to be reported, this isn't going to make the access process any easier for anyone doing site investigation work.	Comment considered; a licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment [C.58:10C-16a (SRRA)]. As such, to remain consistent with current Department policy, notification to the Department is required. No change made.
40	13	4.1.4	para 2	"...proximal TO and hydrologically downgradient OF the on-site AOC..."	Made suggested edits.

41	9	3.0		The statement "Please note that on occasion, solvents such as PCE have been discovered to be associated with tanks that were reportedly only used for the purposes of fuel oil storage." must be deleted. This is a very general statement that serves no technical purpose. A competent investigator is expected to determine past use of infrastructure, to the extent that any amount of relevant documentation is available.	<p>Comment considered, change made. The original concern regarding PCE in fuel oil storage tanks is valid. The articles below provide the basis for the statement included in the first draft of the document. Because the percentages of cases where this condition may occur is low, the statement was removed from the document.</p> <p>http://www.upi.com/Business_News/2013/03/20/Heating-oil-firms-deny-diluting-product/UPI-41041363802996/#ixzz36uOeIT5K</p> <p>http://www.nytimes.com/2013/03/21/nyregion/state-and-federal-inquiry-asks-whether-heating-oil-companies-cheated-customers.html?pagewanted=all&_r=0</p> <p>http://www.crainsnewyork.com/article/20130319/REAL_ESTATE/130319855/related-cos-sues-over-dirty-oil</p> <p>http://www.nytimes.com/1993/05/28/nyregion/12-held-in-trucking-of-untaxed-and-contaminated-oil.html</p> <p>http://www.nytimes.com/1984/05/11/nyregion/jersey-charges-5-companies-with-selling-tainted-heating-oil.html</p>
42	9	3.1		Consider deleting this section as reference to the PA Technical Guidance under 3.0 should suffice.	Comment considered, Some of the information provided is specific to an Off-site Source Investigation and deemed to be of value. No change made
43	11	4.1		4th bullet - see comment to #4 above - variance allowable? May be helpful to identified components of an acceptable variance.	Comment considered, however, according to N.J.A.C. 7:26E-3.9, a PA is required. Technically, a variance from N.J.A.C. 7:26E-3.9(a), is possible, but adequate justification must be demonstrated using professional judgment.
44	11	4.1		The completion of an unknown source investigation may at times be dependent upon access to off-site properties. When this access cannot be obtained in a timely manner does the Affirmative Obligation still stand? Will the Department have a point of contact for these issues?	<p>Remedial timeframes would still apply, but options exist to lengthen applicable regulatory timeframes. N.J.A.C. 7:26E-4.10(b)1i allows for lengthening of a timeframe if access to off-site properties is required.</p> <p>Currently, there is no point of contact for complications regarding meeting remedial timeframes. The Department does have a contact list for Questions on LSRP and FAQs, which can be found on the Department's website at http://www.nj.gov/dep/srp/srra/srra_contacts.htm</p>
45	11	4.1	4.1.1	Replace "comprehensive" with "appropriate". A large, time-consuming investigation that collects a huge amount of information may be no more relevant and necessary than a focused one that collects the information needed to answer the question on hand.	Comment considered, no change made.

46	11	4.1	4.1.2	The guidance document states that samples be collected " further upgradient if necessary ". This is an unrealistic expectation (and an implied requirement by being listed in guidance) that potential off-site source parties will provide access for sampling to prove that their property is the source of contamination. The statement "(or further upgradient if necessary)" should be removed.	<p>Comment considered, no change made. The language used in the Guidance document is consistent with the rule as noted below:</p> <p>As required in N.J.A.C. 7:26E-3.9 (a):</p> <p>If during the site investigation, a contaminant is found in soil or ground water in excess of any remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the contamination in soil or ground water is due to migration to the site from an off-site source. This investigation shall be conducted by:</p> <p>1. Collecting and analyzing a sufficient number of samples in appropriate locations, both horizontally and vertically, <u>at the property boundary or off site, if needed, in order to be upgradient of any on-site area of concern</u> to adequately determine that there is an off-site source of the contaminant;</p>
47	12	4.1	4.1.2	The guidance document states that "Evaluation of such conditions requires knowledge of the nature and timing of off-site remedial activities or discharges, and the performance of flow and solute transport ground water modeling to substantiate observed conditions." This is an excessive and unrealistic requirement. It must be replaced with a statement directing the investigator to use appropriate technical tools such as environmental forensics and means, as recommended by their technical experts, to prove the off-site source hypothesis.	Comment considered, section modified to allow for a range of forensic options.
48	12	4.1	4.1.3	The guidance document directs the investigator to evaluate preferential pathways for migration of on-site contaminants. It is expected that the investigator will have already evaluated such pathways. More important and relevant would be to determine how off-site preferential pathways may control migration to adjacent properties	Comment considered, no change made.
49	12	4.1	4.1.4	We must reiterate that there are many situations where the demonstration that there is no Contribution from any On-Site Area of Concern can be fulfilled without conducting a PA. Again, recognizing the current regulatory limitations currently in place.	Comment considered.No change made. According to N.J.A.C. 7:26E-3.9, a PA is required. Technically, a variance from N.J.A.C. 7:26E-3.9(a), is possible, but adequate justification must be demonstrated using professional judgment. N.J.A.C. 7:26E-1.7 outlines the procedure for variances.
50	13	4.2		Was it the intention of section 4.2 to indicate that with sufficient Existing Data, a PA may not be required? If so, please state.	No, no change made.
51	13	4.2		Under the bullet "sample quality" the guidance, effectively, directs the investigator to discard third party data. This is inappropriate guidance. Instead, the investigator must use appropriate professional knowledge and judgment to determine whether existing data is usable and how.	Comment considered, text revised.
52	13	4.2		Under the bullet "Sample Location" the guidance document discusses collection of data with respect to the presumed flow path and warns that data collected from points not along a flowpath may be inappropriate. This statement must be deleted or modified. The remediating party has the option to use any data that contributes to development of the site conceptual model and proves the hypothesis of the off-site, as long as it is done using sound technical judgment.	Comment considered, text revised.

53	14	4.4		The paragraph after the first 3 bullets could be perceived as contradictory. "Ultimately, the investigator must use his or her professional judgement to decide if enough information has been collected to confidently report the off-site source determination. A successfully off-site source determination <u>will</u> combine collected data on GW flow, GW quality, <u>and</u> the findings of the PA to develop multiple lines of evidence to support conclusions. Consider replace "will" with "may" and "and" with "and/or".	Comment considered, section modified to reflect the appropriate use of Professional Judgement.
54	17	Fig 1		Flow chart - Consider illustrating variance from Regulations/Guidance in flow chart.	N.J.A.C. 7:26E 1.7 outlines the requirements for obtaining a variance. No change made.
55	19			Table 1 - Many of the drawbacks listed, such as cost or need for specialized technical skills are not well founded and would discourage the use of certain state-of-the-art tools. Such comments must be removed.	Comment considered, while we understand the concern, the table was primarily developed by Stakeholders who identified the limitations with each tool. Therefore, the table reflects "real-world" concerns that may be of value. No change made.
56	34	Appx B	6th para	Do you need a full PA to reach this conclusion?	Yes. A PA is required in accordance with N.J.A.C. 7:26E-3.9(a).
57	35	Appx B	7th para	One challenge of managing a multi-site portfolio is the receiving and tracking the Annual Fees for sites with multiple case numbers. Can the NJDEP indicate how the Annual Fees will be processed for cases that are ultimately closed via RAO-A for offsite sources. Will notifying RP be responsible for all invoices until RAO-A identifying offsite source is submitted. Will NJDEP void or reassign the Annual Fee to proper RP? Will reporting RP be responsible. Will there be a lapse in creating invoices, until some determination is made? Will making this call add a second or potential third or fourth Incident Number to a site, therefore adding an additional invoice to manage/track.	It is the LSRPs responsibility to modify the number of CAOCs within the NJDEP online service to update the calculated fee basis for the LSRP annual fee.
58	42	Appx C	2nd para	Consider adding a footnote to Total Organic Contaminant (TOC) explaining that at the time of this investigation (2000) this was the Cleanup Criteria, but was replaced by EPH Protocol in August 2010.	Comment considered; footnote added
59	42	Appx C	2nd para	Last sentence - would be helpful if document was specific that field surveying was used or temporary wells were surveyed by a licensed surveyor. Field surveying is more typical for temporary well sampling events.	Comment considered; text added to address comment.
60	42	Appx C	4th para	3rd sentence - consider inserting "and reform to NJ Site Remediation Program" after acquisitions, for investigators (particularly RPs) that may not be as familiar with NJDEP SRP history.	Comment considered; text added to address comment.
61	43	Appx C	Case 1	Consider changing name to "Resolution Scenario 1"	Comment considered, no change made.
62	43	Appx C	Case 1	1st paragraph, 3rd sentence - consider inserting "upgradient" in parentheses after north to remind reader of flow direction discussed in introduction.	Comment considered; text added to address comment.

63	43	Appx C	Case 1	2nd Paragraph - NJDEP should consider the timing of completing an investigation of this nature and impacts from statutory/regulatory timeframes and the costs incurred from Annual Fees until final conclusion can be made. As acknowledgement that significant delays can be expected from complex data interpretation, confirmatory sampling, further analysis/possibly forensics, and, most common, gaining access to third party properties.	comment considered; no change made.
64	44	Appx C	Case 2	3rd paragraph, 1st sentence - check reference to Case #2. Should be Case #1.	Comment considered. Reference is correct, but changed to reflect page 1 of 3.
65	44	Appx C	Case 3	1st paragraph - This is an example of how a RP who no longer controls its access to a property would be limited by the current regulations and this guidance. Would the land owner now be required to investigate the AOCs uncovered (Machine Shop, Auto Storage, etc.) identified during RPs determination of an offsite source of contamination.	comment considered; For the scenario described in the comment, the RP would not be required to investigate. No change made to the document.
66	45	Appx C	Case 3	last para, last sentence - in the scenario (property was a bank since 1917), does the completion of the remaining requirements of the PA add any more value?	Comment considered. As per N.J.A.C. 7:26E-3.9, a PA is required.
67				<p>GENERAL COMMENT - This document should be merged with the co-mingled plume document; the issues are similar and it is unclear what the benefit is to separate the documents.</p> <p>Most of the time when I see a claim of up-gradient off-site contamination, the subject site has a potential source for the same contaminant, so some of my comments may seem hard.</p> <p>Case studies are an excellent touch.</p>	Comment considered. No change made.
68	5	2.1		<p>Second bullet - to eliminate any questions regarding an off-site conclusion, the following wording should be added: "Ideally, samples should be collected up-gradient of any current or past on-site activity and preferably in an undeveloped portion of the site. If that is not possible, samples should be collected immediately up-gradient and an off-site, beyond the influence of any area of on-site activity.</p> <p>This may fit better in section 4.1.2.</p>	Comment considered. No change made.
69	5	2.1		<p>Third bullet - to clarify, add the sentence "Samples must be taken up-gradient of of each AOC that on off-site souce is claimed."</p> <p>If the two guidance documents are combined, it is suggested to use "Samples must be taken up-gradient of each AOC that an off-site source or contribution is claimed".</p>	Comment considered. No change made.
70	6	2.1		In the fourth bullet, the term "If necessary" is used -isn't it pretty much always needed and only in a very small universe of cases that a SI would not be needed? You are probably only doing a ground water investigation because you have your own potential sources.	Comment considered. No change made.

71	6	2.2		First paragraph "immediately call the NJDEP Hotline" is there a timeframe? Does a person have to rush to call or can it be done at the end of the day?	Pursuant to N.J.A.C. 7:1E-5.3, the call is to be made within 15 minutes
72	6	2.2		Middle of first paragraph add to the sentence ".. Migrating onto the site from an off-site source." the following "..in which case no call needs to be made."	If an off-site source is suspected, a call to the NJDEP Hotline should be made. This would apply even if it is an ISRA site.
73	6	2.3		First paragraph - add something to the effect: "or if measurable LNAPL, submit a form with supporting documentation, i.e., PA/SI and up-gradient ground water investigation, indicating LNAPL is from an off-site source to suspend LNAPL timeframe requirements."	Comment considered. The scope of the document focuses on contaminated ground water and not separate phase product. No change made.
74	7	2.3		Add "It also includes establishment of a CEA that includes the suspected off-site contamination. The CEA may be revised once the off-site contamination has been documented and the RAO-A issued."	Comment considered. A CEA is required to be established at the completion of the RI. The existence of the off-site source of contamination on the the subject site would have been addressed in the SI. A CEA would not be required for the off-site source of contamination. No change made.
75	7	2.4		Second bullet - address and land use of the property where the off-site investigation is performed - is that referencing the site being investigated the up-gradient property or both?	Comment considered. Changes made.
76	8	2.4		Last paragraph - use of "request" - this should be a requirement. If someone claims an off-site source, the Department should be provided with all of the data used to make that determination. It is all part of the investigation/characterization of the site.	Comment considered. Change made.
77	9	3.0		Second paragraph - instead of "indeed from an off-site property", "indeed from an an off-site source."	Comment considered. Change made.
78	10	3.2		Middle of first paragraph between "continues throughout" insert "to be developed, refined, and modified"	Comment considered. Change made.
79	11	4.1	4.1.1	Add something like: "The investigator is reminded of the 3D nature of ground water flow. The investigator is also reminded of the typically complex nature of bedrock flow regimes. Good subsurface characterization is critical to understanding what is occurring at a site. It is possible that contamination on-site is upwelling from below.	Comment considered. No change made. References made in the section to the Department's Ground Water SI/RI/RA Technical Guidance and Appendix D of the Department's Monitored Natural Attenuation Technical Guidance.
80	11	4.1	4.1.2	See comment 2 - end of first sentence add ".. or area of on-site activity." Have seen cases where an AOC was not identified in a developed portion of a site, yet there is an obvious source of ground water contamination nearby.	Comment considered. Change made.
81	12	4.1	4.1.2	End of partial sentence at beginning of page 12, between "the off-site", insert suspected	Comment considered. Change made.
82	12	4.1	4.1.2	last paragraph - isn't this paragraph more critical for commingled plumes?	Comment considered. No change made. The concept being discussed in this section relates to truncated plumes, not commingled.

83	13	4.2		Additional point - there are likely to be less questions and a smaller line of evidence needed when off-site, up gradient samples are collected. Then there is no question of off-site contamination when samples collected are up-gradient and off-site (assuming gw flow direction correct).	Comment considered, but it's not a requirement. As per N.J.A.C 7-26E-3.9 (a)1, the person responsible for conducting remediation is required to collect and analyze a sufficient number of samples in appropriate locations, both horizontally and vertically, at the property boundary or off site, if needed, in order to be upgradient of any on-site area of concern to adequately determine that there is an off-site source of the contaminant. No change made.
84	17			Figure - 1) maybe make title more generic. 2) First balloon -if you find contamination it needs to be called in. If you already called it in and now you think that it is suspected to be from an off-site source, you do not need to call it in again. 3) No reference to an SI 4) Diamond in middle of page - reword "Is there sufficient information to verify unknown off-site source. Ditto for bottom diamond.	Figure-1) Suggestion not understood. Title reflects the name of the figure. 2) Comment considered, change made. 3) Comment considered, change made. 4) Comment considered, change made.
85	19			Talk to old employees.	Comment considered, recommendation is covered in PA Technical Guidance..
86	21			Suggest use of well clusters rather than nested wells. Nested wells are more subject to cross-contamination issues.	Comment considered. No change made.
87	6 & 8	2.2 and 2.5		Regarding the notification requirements in Section 2.2, the language directs the 'person responsible' to make the notification to the Spill Hotline. However under subsequent sections of the document, the reporting/notification obligation is not clear. For example: In Section "2.5 Unrelated Off-Site Contamination" - <i>If the investigator discovers contamination on an off-site property that is unrelated to the known discharges being investigated from the subject site, notify the property owner where the contamination was detected and the following procedures should be followed: Call the DEP Hotline (1-877-WARNDEP) and report the unknown off-site source of contamination: "I have identified an unknown, off-site source of ground water contamination".</i> It is not stated specifically who (LSRP, PRCR, other?) has the obligation to call the property owner and call the Spill Hotline. It is the LSRPA's position that any such notification should be the obligation of the Responsible Party pursuant to the Spill Act, not the LSRP, especially given the potential legal ramifications that may result in this type of notification to the NJDEP.	Comment considered; The section was deleted because it is not pertinent to the verification of an off-site source. However, a licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment [C.58:10C-16a (SRRA)]. As such, to remain consistent with current Department policy, notification to the Department is required.
88	6	2.2		The requirement for two calls to the NJDEP Hotline (one when the "suspected" off-site source contamination is identified, and then a second call once the required lines of evidence are obtained/the off-site source is verified or confirmed) seems unnecessary for a site that has an existing spill number. If there is already an existing Spill Notification number for the site, the "suspected off-site source" notification to the Spill Hotline should not occur, and the Hotline should only be notified once the necessary lines of evidence to support the presence of an off-site are confirmed.	For sites that have been addressed as part of an existing case prior to issuance of this guidance, and where contamination on the subject site was identified and is undergoing remediation, the PRCR or LSRP are not required to report the historic discharge. This clarification has been added to Section 2.2.
89	7	2.4		There should be language included in this section to clarify that the LSRP does not have to issue an RAO-A for the confirmed off-site contamination; rather, it is also possible to simply included this as part of the RAO-E (by including the necessary insert language and reference to the Spill Number for the off-site contamination issue).	Comment considered. Change made.

90	8	2.5		<p>The Unrelated Off-Site Source section requires someone (either the LSRP or the PRCR - not clear in the document as noted in the above comment) to notify the Spill Hotline for the situation presented in this section. This implied reporting obligation for this scenario (by either the LSRP or PRCR) is not supported by the language in the NJ Spill Act or other regulatory language. It is recognized that the Department should be made aware of this situation, however this should be done through some other mechanism than a notification to the Spill Hotline/normal NJ Spill Act reporting process.</p>	<p>Comment considered; The section was deleted because it is not pertinent to the verification of an off-site source. However, a licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment [C.58:10C-16a (SRRA)]. As such, to remain consistent with current Department policy, notification to the Department is required.</p>
91	9	3.0		<p>The last sentence in this section ("<i>Please note that on occasion, solvents such as PCE have been discovered to be associated with tanks reportedly only used for the purposes of fuel oil storage.</i>") should be removed because it is overly generic and no technical justification is provided to support this statement. If there is a specific circumstance/scenario where this is occurring, then a Case Study example may be the appropriate manner to address this issue/concern so that the typical fact pattern can be more clearly explained.</p>	<p>Comment considered, change made. The original concern regarding PCE in fuel oil storage tanks is valid. The articles below provide the basis for the statement included in the first draft of the document. Because the percentages of cases where this condition may occur is low, the statement was removed from the document.</p> <p>http://www.upi.com/Business_News/2013/03/20/Heating-oil-firms-deny-diluting-product/UPI-41041363802996/#ixzz36uOeIT5K</p> <p>http://www.nytimes.com/2013/03/21/nyregion/state-and-federal-inquiry-asks-whether-heating-oil-companies-cheated-customers.html?pagewanted=all&_r=0</p> <p>http://www.crainsnewyork.com/article/20130319/REAL_ESTATE/130319855/related-cos-sues-over-dirty-oil</p> <p>http://www.nytimes.com/1993/05/28/nyregion/12-held-in-trucking-of-untaxed-and-contaminated-oil.html</p> <p>http://www.nytimes.com/1984/05/11/nyregion/jersey-charges-5-companies-with-selling-tainted-heating-oil.html</p>
92	11	4.1	4.1.2	<p>The statement that the investigator should collect a sample "<i>further upgradient if necessary</i>" should be explained further. Use of a Case Study example may be the appropriate manner to address this issue/concern so that the typical fact pattern can be more clearly explained regarding when this may be a necessary or appropriate measure.</p>	<p>Comment considered. Appendix B contains a series of Case Studies to help understand the use of upgradient off-site data. In addition, the language used in the Guidance document is consistent with the rule as noted below:</p> <p>As required in N.J.A.C. 7:26E-3.9 (a): If during the site investigation, a contaminant is found in soil or ground water in excess of any remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the contamination in soil or ground water is due to migration to the site from an off-site source. This investigation shall be conducted by:</p> <ol style="list-style-type: none"> 1. Collecting and analyzing a sufficient number of samples in appropriate locations, both horizontally and vertically, at the property boundary or off site, if needed, in order to be upgradient of any on-site area of concern to adequately determine that there is an off-site source of the contaminant;

93	13	4.2		The last sentence in the first bullet (Sample Quality - <i>"Even if appropriate sampling and analytical procedures are employed, differences in sampling technique or analytical methodologies may affect results."</i>) could result in an investigator concluding that using existing data not collected by the investigator can never be relied upon. It is recognized that there is inherent variability in any environmental sampling, however, that should not result in such data being eliminated from consideration. The following additional language is recommended to be added to this paragraph in the guidance document: "However, if the investigator has reviewed the basic sampling methodology and analytical data, and identifies no obvious reason to reject this data, then it is acceptable for the investigator to rely upon this data in their overall assessment and development of appropriate lines of evidence."	Comment considered, text revised.
94	7	2.4		The level of interpretation and complexity required of the Hot Line operator seems well beyond what is typically expected. There should be discussion with the appropriate managers to be sure this issue is considered.	Comment considered. The Department's manager of the Hotline Operators developed the language that is included in this section. No change was made to the document.
95	7	2.4		Add the following to the end of the final bullet. "The IEC Technical Guidance on this issue should be followed to ensure proper transition of the IEC to the Department." (The IEC Technical Guidance provides greater detail on how the on-site IEC will be picked up by the Department)	Comment considered, no change made.
96	8	2.5		Add the following to the end of the final bullet "The LSRP must submit a copy of the data, an IEC Spreadsheet and an IEC Map using the IEC Response Action form prior to the Department taking over the IEC." (Without this information the ICU group will have no formal way of being notified that an IEC exists at this off-site location and no way of obtaining the existing information required to pick up the IEC from where it is left off.)	Comment considered; The section was deleted because it is not pertinent to the verification of an off-site source. However, a licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment [C.58:10C-16a (SRRA)]. As such, to remain consistent with current Department policy, notification to the Department is required.
97	7	2.4		For clarity change the title of Section 2.4 from "Off-Site Source of Contamination is Determined" to "On-Site Contamination from an Off-Site Source"	Comment considered, change made.
98	7	2.4		Section 2.4, 2nd Bullet Item – change "property" to "properties".	Comment considered, change made.
99	7	2.4		Section 2.4 5th Bullet Item – define "subject site". This could be interpreted as either the off-site property or on-site property.	Comment considered, change made. Subject site defined as "the site that is receiving the contamination from an off-site source".
100	7	2.4		Section 2.4 6th Bullet Item - for clarity change "All receptors that may be affected" to "List all receptors that are or may be affected...."	Comment considered, no change made.
101	8	2.5		For clarity change the title of Section 2.5 from "Unrelated off-Site Contamination" to "Off-Site Contamination from an Off-Site Source."	Comment considered; The section was deleted because it is not pertinent to the verification of an off-site source. However, a licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment [C.58:10C-16a (SRRA)]. As such, to remain consistent with current Department policy, notification to the Department is required.

102	6	2.2		In Paragraph 2, it is unclear who the Person Responsible for conducting the remediation is. It should be clearly defined.	The term, "Person responsible for conducting the remediation" is defined in N.J.A.C. 7:26C ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES. As defined, this term means: 1. Any person who executes or is otherwise subject to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order to remediate a contaminated site; 2. The owner or operator of an industrial establishment subject to N.J.S.A. 13:1K-6 et seq. for the remediation of a discharge; 3. The owner or operator of an underground storage tank subject to N.J.S.A. 58:10A-21 et seq. for the remediation of a discharge; 4. Any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance, pursuant to N.J.S.A. 58:10-23.11g, that was discharged at a contaminated site, or 5. Any other person who is remediating a site. A Citation for this has been added to the document.
103	6 & 7	2.3		This Section implies that is the responsibility of the RP for the impacted property to do the work that is incumbent on the RP for the upgradient property where the release has occurred. This is inconsistent with the statute that you are not responsible for contamination migrating onto your property.	Comment considered. Section 2.3 has been revised.
104	7	2.4		4th Bullet should read "Identify if a preliminary assessment/site investigation was conducted on the subject site to confirm that contaminant migrating onto the site is from a unknown off-site source."	comment considered; change made.
105	7	2.4		5th Bullet. We agree with this but it is not clearly consistent with Section 2.3.	Comment considered. Section 2.3 has been revised.
106	8	2.4		Clarify who the "person responsible for conducting the remediation" is.	The term, "Person responsible for conducting the remediation" is defined in N.J.A.C. 7:26C ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES. As defined, this term means: 1. Any person who executes or is otherwise subject to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order to remediate a contaminated site; 2. The owner or operator of an industrial establishment subject to N.J.S.A. 13:1K-6 et seq. for the remediation of a discharge; 3. The owner or operator of an underground storage tank subject to N.J.S.A. 58:10A-21 et seq. for the remediation of a discharge; 4. Any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance, pursuant to N.J.S.A. 58:10-23.11g, that was discharged at a contaminated site, or 5. Any other person who is remediating a site. A Citation for this has been added to the document.
108	11	4.1	4.1.1	First sentence should read "an understanding". Comprehensive implies an extensive groundwater evaluation, which may not be necessary depending upon the site.	Comment considered, change made.
109	12	4.1	4.1.3	The second bullet should indicate that this does not imply the use of computer models.	Comment considered. Change made.

110	17	Fig 1		3rd flow box should state "Conduct a PA on the subject site property pursuant ..."	Comment considered. Change made.
111	27	Table 2		This table implies that is the responsibility of the RP for the impacted property to do the work that is incumbent on the RP for the upgradient property where the release has occurred. This is clearly inconsistent with the statute that you are not responsible for contamination migrating onto your property. Offsite column should read "Offsite- Information should Be included if Available."	Comment considered. No change made.
112	45	Appx C	Case 3	The reference to Case Study #1 in the last paragraph should say Case Study #3.	Comment considered. Change made.
113	6	2.1		The PA Guidance document should be listed in this section. Strictly speaking, the Preliminary Assessment regulations do not include provisions for identifying an off-site source. They only require identification of on-site source(s), and do not require using the record review to look at off-site properties. The Guidance does, however, state that the records can be used to look at off-site properties if they are suspected to be the source of contamination.	Comment considered. Change made.
114	6	2.2		First sentence should be changed to "when contamination that is not already known to the Department is identified at a site."	Comment considered. Change made.
115	6	2.3		The investigators are "required" to remediate the contamination pursuant to N.J.S.A. 58:10B-1.3 as it stated in the guidance. It shall be sated as they are "not relieved" to remediate the contamination pursuant to N.J.S.A. 58:10B-1.3. How will NJDEP enforce receptor evaluation, public notification, VI, and other RI and/or RA requirements for three case studies included in the guidance while they are completing the PA/SI? For all three cases, offsite GW source(s) were responsible for the detected PCE onsite.	Comment considered. Section 2.3 has been revised.
116	7	2.4		Section heading reads "An Off-Site Source of Contamination is Determined". First sentence states that the investigation supports "the conclusion that the contamination is migrating onto the site from an off-site source". This seems slightly inconsistent. The heading suggests that an actual source has been determined (i.e. identified), when the SI does not actually have to identify the off-site source, only establish that contamination exists upgradient of the subject site. As a global comment, this document should specify that it is not necessary to positively identify the actual off-site source(s) responsible for the on-site contamination, only demonstrate that contamination is migrating from off-site and no on-site sources exist; unless this is not the committee's position.	Section 2.4 heading has been changed to "On-Site Ground Water Contamination from an Off-Site Source is Verified" Comment considered. This sentence added to Section 1.2 "It is not necessary to identify the actual off-site source(s) responsible for the on-site contamination, only to demonstrate that contamination is migrating onto the subject site from an off-site source and no on-site sources exist".
117	7	2.4		The bullets uses the term "verified unknown off-site source". Is there a definition of this term? Does it mean that you have verified that there is an unknown off-site source or that you have verified the identity of the off-site source? If you have actually verified a source, then it is not unknown.	The term "verified, unknown off-site source" is referenced in the Department's "Administrative Guidance for Licensed Site Remediation Professionals and Subsurface Evaluators when Encountering Contamination that is Suspected to be Unrelated to a Known Discharge Undergoing Remediation" located at: http://www.nj.gov/dep/srp/guidance/#lsrp_eval_admin_guidance

118	7	2.4		The last paragraph states that the "LSRP can the issue a RAO-A for the off-site source of contamination. This does not seem accurate. The RAO-A is issued for the portion of the site which has been affected by the off-site contamination, but did not contribute to that contamination. The LSRP will not issue a RAO for contamination not on his/her site.	The RAO-A is being written to address the contamination on your site that has migrated from an unknown,offsite source. Consequently, you are not writing an RAO to address the contamination located on the upgradient/sidegradient off-site property. No change made.
119	9	3.0		The first sentence states that the goal of a PA is to evaluate whether the observed contamination is from an on-site source <u>or the result of contamination migrating onto the site from and on-site source</u> . This may be what the investigation wishes to determine, but the underlined portion is not included in the purpose of the PA established at NJAC 7:26E-3.1(a). See first comment.	Comment considered. Change made.
120	11	4.1		One of the data objectives is to demonstrate that there is a migration pathway between the off-site source and the on-site AOC. This implies that one or more off-site sources has been positively identified. Is this considered a requirement of an off-site source demonstration? Isn't it sufficient to identify contamination upgradient of the site which the PA/SI has confirmed could not have originated on the site? In this cases, a migration pathway would not be necessary.	It is not necessary to identify the actual off-site source(s) responsible for the on-site contamination, only to demonstrate that contamination is migrating onto the subject site from an off-site source and no on-site sources exist. However, N.J.A.C.7:26E-3.9(a)2 requires that a sufficient number of samples be collected to demonstrate that a contaminant migration pathway exists between the off-site source and the on-site AOC. No change made.
121	34	Appx B		Benzene concentrations would have triggered a VI investigation. For active gasoline service station, IA samples should not be collected from site-related buildings according to Vapor Intrusion Technical Guidance.	Comment considered, change made to reflect the 30-foot VI investigation trigger distance for petroleum hydrocarbons is based on the limits of groundwater contamination, not necessarily the location of the monitoring wells.