

## **Notes for the Draft Rules Documents**

1. Please note that in the rule text, additions to existing text are noted in bold typeface. Deletions from existing text are shown within [brackets].
2. Please submit your comments to [SRRA@dep.state.nj.us](mailto:SRRA@dep.state.nj.us) by January 14, 2011. To be considered, the email subject line MUST read: Stakeholder Input.

**INDUSTRIAL SITE RECOVERY ACT, N.J.A.C. 7:26B**

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**SUBCHAPTER 1. GENERAL INFORMATION**

7:26B-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Industrial Site Recovery Act, P.L. 1993 c.139 (N.J.S.A. 13:1K-6 et seq.).

7:26B-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act.

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7:26B-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operations to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

7:26B-1.4 Definitions

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

"Act" or "ISRA" means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

"Agricultural commodity" means any plant or part thereof, or animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

"Area of concern" means any area defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

["Authorization letter" means a written statement issued by the Department that authorizes an owner or operator of an industrial establishment to transfer ownership or operations or in the case of a cessation of operations, authorizes the cessation of operations as it relates to the owner and operators obligation to remediate the industrial establishment.]

"Authorized agent" means the person authorized to receive correspondence or communications, on behalf of the person responsible for conducting the remediation of the industrial establishment, for matters covered by this chapter.

"Change in ownership" means, [unless otherwise provided at N.J.A.C. 7:26B-2.2]:

1. The sale or transfer of the business of an industrial establishment;
2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;
3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;

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4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:

i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;

ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or

iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation [pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b)];

5. The sale or transfer of the sole general partner's entire interest in a limited partnership where the limited partnership is one of the following:

i. The limited partnership is the direct owner or operator of the industrial establishment; or

ii. The limited partnership has the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation [pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b)];

6. The reorganization of a general or limited partnership into a corporation, limited liability company, limited liability partnership or other similar business entity;

7. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

8. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment; and

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9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an industrial establishment, where the indirect owner's assets would be available for remediation [pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b), that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment].

"Closing operations" means[, unless otherwise provided at N.J.A.C. 7:26B-2.4]:

1. The cessation of operations which, as measured on a constant, annual date-specific basis, within any five-year period:

i. Results in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment; or

ii. For industrial establishments which product output is undefined:

(1) Results in at least a 90 percent reduction in the number of employees; or

(2) Results in at least a 90 percent reduction in the area of operations of an industrial establishment;

2. Any temporary cessation of operations of an industrial establishment for a period greater than two years;

3. An industrial establishment becomes nonoperational for health or safety reasons as a result of a judicial proceeding or final agency action;

4. The initiation of bankruptcy proceedings pursuant to Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq.;

5. Any change of operations of an industrial establishment that changes the industrial establishment's North American Industry Classification System number to one that is not subject to ISRA;

6. The termination of a lease or sublease, unless there is no disruption in operations of the industrial establishment; and

7. The assignment of a lease or sublease, unless there is no change in the operator of the industrial establishment and there is no disruption in operations of the industrial establishment.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her authorized representative.

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"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity. [based on the criteria in N.J.A.C. 7:26B-2.2(d). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(d), this definition does not require that a person submit an application for an applicability determination in order for a person or transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(d).]

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department's ability to reach those assets, or otherwise hinder the owner's or operator's ability to remediate the industrial establishment. [based on the criteria in N.J.A.C. 7:26B-2.2(c). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(c), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(c).]

"Department" means the New Jersey Department of Environmental Protection.

"Direct owner or operator" means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance or hazardous waste into the waters or onto the lands of the State.

"Engineering controls" means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Final remediation document" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

"GIN" means General Information Notice described at N.J.A.C. 7:26B-3.3(a).

"Hazardous substance" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

"Hazardous waste" means any waste defined as such pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., that is further defined as a hazardous waste pursuant to the Solid Waste Regulations, N.J.A.C. 7:26-1.6.

"Indirect owner" means any person who holds a controlling interest in a direct owner or operator, holds a controlling interest in another indirect owner, or holds an interest in a

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partnership which is the indirect owner or a direct owner or operator, of an industrial establishment.

"Industrial establishment" means any place of business or real property at which such business is conducted, having the North American Industry Classification System (NAICS) codes listed in chapter Appendix C, incorporated herein by reference, dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002-502024, subject to the specified exceptions and limitations and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. Except as provided below for lease properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For [lease] properties **with two or more leased spaces**, the industrial establishment includes the leasehold and any [external] tank, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, **are associated with**, or are utilized for, hazardous substances and wastes to or from the leasehold **regardless of their location**.

"Innovative remedial action technology" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Institutional controls" means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Licensed site remediation professional" means a person defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

"Limited restricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

["Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment, or other person assuming responsibility for the remediation under ISRA and this chapter, to the Department certifying that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with N.J.A.C. 7:26E.]

"No further action letter" means a no further action letter as defined in the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-1.3.

"Operator" means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or

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other security interest in the industrial establishment is not an operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an owner of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Person" means any individual or entity, including without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

"Preliminary assessment" means [the first phase of remediation] **those actions** defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remedial action" means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remedial action workplan" means a plan defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remedial investigation" means those actions **those actions defined as such** [to investigate a discharge defined as such] pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remediation" or "remediate" means [all necessary] **those** actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remediation agreement" means a document the Department issued before November 4, 2009 for the transfer of an industrial establishment prior to the completion of the remediation.

"Remediation certification" means a certification prepared pursuant to N.J.A.C. 7:26B-4.3 which, when submitted to the Department by the owner or operator of an industrial establishment, authorizes the owner or operator to transfer ownership or operations prior to the **issuance of a final remediation document** [approval of a negative declaration] or a **licensed site remediation professional's certification of a remedial action workplan**.

"Remediation standard" means a remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.



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"Response action outcome" means a document defined as such pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.3.

"Restricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Restricted use standard" means a remediation standard as defined in N.J.A.C. 7:26E-1.8.

"SIC" means Standard Industrial Classification.

"Site investigation" means **those actions** [the collection and evaluation of data] defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Transferring ownership or operations" means:

1. Any transaction or proceeding through which an industrial establishment undergoes a change in ownership;
2. The sale or transfer of more than 50 percent of the assets of an industrial establishment, excluding real property within any five-year period as measured on a constant, annual date-specific basis. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery;
3. The execution of a lease for a period of 99 years or longer for an industrial establishment;
4. The dissolution of an entity that is an owner or operator or indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred; or
5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, "family" means any of the relations included at N.J.A.C. 7:26B-2.1(a)5.

"Unrestricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8.

"Unrestricted use standard" means a remediation standard as defined in N.J.A.C. 7:26E.

#### 7:26B-1.5 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter[, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and

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the Industrial Site Recovery Act rules, N.J.A.C. 7:26B,] by downloading it from the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms) or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

New Jersey Department of Environmental Protection  
Bureau of Case Assignment and Initial Notice  
401 East State Street, 5th floor  
PO Box 434  
Trenton, New Jersey 08625-0434  
Telephone: (609) 292-2943

(b) Except as provided at [N.J.A.C. 7:26E-1.9(d)] **N.J.A.C. 7:26C-1.6(b)**, the person responsible for conducting the remediation shall make all submissions to the Department [as follows:

1. On CD in Adobe Portable Document Format (PDF).]; and
2. On paper.]

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

#### 7:26B-1.6 Certifications and signatories

Any person submitting an application, **form**, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include a certification that is executed in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-1.5.

#### 7:26B-1.7 [Department review] (**Reserved**)

[(a) The Department shall review and approve or disapprove all submissions by an owner or operator based on the following criteria:

1. Whether the remediation workplan and report was prepared, implemented or completed in compliance with N.J.A.C. 7:26C, 7:26E and this chapter;
2. Whether all the information and documents required to be submitted to the Department have been submitted; and

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3. Whether the information submitted is sufficient, complete or accurate.

(b) The Department shall inform the owner or operator, in writing, of the results of the Department's review of the submission, including any deficiencies in the submittal or required additional remediation. The owner or operator shall then complete all required additional remediation and address any deficiencies prior to the Department's issuance of a no further action letter or authorization letter.]

7:26B-1.8 [No further action letter and ISRA authorization] **(Reserved)**

[(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

(b) An owner or operator is authorized to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, without, or prior to the issuance of, a final remediation document in the following circumstances:

1. The owner's or operator's submission of a remediation certification pursuant to N.J.A.C. 7:26B-4.3;
2. The Department's approval of a regulated underground storage tank waiver application pursuant to N.J.A.C. 7:26B-5.3(e);
3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d);
4. The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e);
5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d); and
6. The Department's approval of a de minimus quantity exemption pursuant to N.J.A.C. 7:26B-5.9.

(c) The issuance of an authorization letter pursuant to (c) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial establishment pursuant to ISRA, this chapter and any other applicable law.]

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7:26B-1.9 [Right of entry and inspection] **(Reserved)**

(a) The owner or operator shall expressly consent in writing pursuant to ISRA and this chapter to allow entry of the industrial establishment by the Department and its authorized representatives, upon the presentation of credentials, to inspect the site, buildings and records related to environmental issues and to take samples from the site, in which case the owner or operator shall be provided with split samples upon his or her request, photograph the site and the buildings, and to make copies of the records.

(b) The buyer or transferee of the industrial establishment that has been sold subsequent to obtaining an approved remedial action workplan or remediation agreement from the Department, or the owner or operator of the industrial establishment that has submitted a remediation certification, shall:

1. Allow the Department and/or its authorized representatives, upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records related to environmental issues, and to take samples from the site, photograph the site and the buildings and to make copies of the records; where the Department takes samples from the site, the buyer, transferee or owner or operator shall be provided with split samples upon his or her request; and

2. Allow access to the transferred premises by the duly authorized representatives of the seller or transferor to implement a duly approved remedial action workplan, or comply with the conditions of a remediation agreement or remediation certification.

(c) The owner or operator or other person subject to ISRA or who is a party to a remediation agreement shall as necessary:

1. Have appropriate technical, scientific, and engineering representatives, as necessary, accompany the Department and its authorized representative during the inspection; and

2. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection.]

7:26B-1.10 Liability for ISRA compliance

(a) Except as provided in [(d)] (c) below and notwithstanding [(e)] (d), [(f)] (e) and [(g)] (f) below, both the owner and operator are strictly liable without regard to fault, for compliance with ISRA and this chapter.

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

1. The Department has issued a no further action letter **prior to May 7, 2012**, or a licensed site remediation professional has issued a response action outcome, for the industrial establishment pursuant to N.J.A.C. 7:26C-6;

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2. The Department has approved **prior to May 7, 2012** or a licensed site remediation professional has certified a remedial action workplan for the industrial establishment pursuant [to N.J.A.C.] **to N.J.A.C. 7:26B-1.7(b)**;

3. The owner or operator has executed prior to November 4, 2009 a remediation agreement or remediation agreement amendment, or, on or after November 4, 2009, has submitted a remediation certification pursuant to N.J.A.C. 7:26B-4.3; or

4. The Department has:

i. approved a waiver application pursuant to N.J.A.C. 7:26B-5.3 or 5.4;

[ii. Approved a remedial action deferral application pursuant to N.J.A.C. 7:26B-5.8;] or

[iii.] **ii.** (No change in text.) Approved a de minimis quantity exemption application pursuant to N.J.A.C. 7:26B-5.9.

(c) An owner or operator that is closing operations shall [be required to] amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(a) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to (b)1 or 2 above.

(d) Any person, other than the owner or operator of the industrial establishment, that has obtained title to the industrial establishment by deed of foreclosure, by other deed or transfer, or by court order or other process, shall not be deemed an owner or operator of that industrial establishment where the operator had closed operations prior to the transfer of title and where no new industrial establishment has operated under the person's ownership. Nothing contained herein shall be construed as a waiver or release of liability by the Department of an owner or operator subject to the requirements of this chapter for the industrial establishment.

(e) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of this chapter, the landlord or the tenant may petition the Department to seek ISRA compliance from that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of this chapter. The petitioning party shall submit the following to the Department at the address provided at N.J.A.C. 7:26C-1.5:

1. A written request to the Department to seek ISRA compliance first from that party that has agreed to be responsible pursuant to the provisions of a lease. The written request shall be in the form of a Landlord/Tenant Petition as specified in chapter Appendix B, incorporated herein by reference. The petitioning party shall send a copy of the petition to the other party(s) to the lease, by certified mail, return receipt requested, at the time of the mailing of the petition to the Department; and

2. A copy of the signed lease between the landlord and tenant.

(f) Based on the information submitted pursuant to (e)1 and 2 above, the Department may determine that the lease clearly defines the responsibilities of either person to comply with the provisions of this chapter. The Department shall seek ISRA compliance from the person deemed responsible pursuant to the lease. The Department's determination shall not be construed as a waiver or release of liability by the Department of any other person who may be subject to the requirements of this chapter for the industrial establishment.

(g) The Department may compel compliance by both parties if the Department determines that the lease does not clearly define the responsibilities of the owner or operator of the industrial establishment, or upon the failure by the person responsible pursuant to the lease to comply with the provisions of this chapter.

#### 7:26B-1.11 Civil penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of [not more than \$25,000] **up to \$50,000** for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

(b) The Department may assess a civil administrative penalty, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-9, against any person who violates the requirements of this chapter [to remediate contamination].

(c) Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provision of ISRA or this chapter shall be personally liable for any penalties provided by ISRA or this chapter.

(d) In its discretion, the Department may compromise and settle any claim for a penalty pursuant to ISRA or this chapter.

#### 7:26B-1.12 Confidentiality claims

**(a) Any person required to submit any information pursuant to this chapter which in the person's opinion constitutes trade secrets, proprietary information, specific information regarding an ISRA-subject transaction other than the fact that the ISRA-subject transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in N.J.A.C. 7:26C-15.**

## SUBCHAPTER 2. APPLICABILITY

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7:26B-2.1 Operations and transactions not subject to ISRA

(a) The following transactions shall not be considered closing operations or transferring of operations or ownership:

1. Corporate reorganization not substantially affecting the ownership or control of the industrial establishment [in accordance with N.J.A.C. 7:26B-2.2(c)];

2. A transaction or series of transactions involving the transfer of stock and/or assets among corporations under common ownership if the transaction or transactions will not result in:

i. The diminution of the net worth of the corporation that directly owns or operates the industrial establishment by more than 10 percent; or

ii. A greater or equal amount of assets are available for the remediation of the industrial establishment before and after the transaction or transactions;

3. A transaction or series of transactions involving the transfer of stock and/or assets resulting in the merger or de facto merger or consolidation of the indirect owner with another person, when the indirect owner's assets would have been unavailable for remediation in [accordance with N.J.A.C. 7:26B-2.2(b)] if the transaction or transactions had not occurred;

4. A transaction or series of transactions involving the transfer of stock and/or assets resulting in a change in the person holding the controlling interest of an indirect owner of an industrial establishment, when the indirect owner's assets would have been unavailable for remediation [in accordance with N.J.A.C. 7:26B-2.2(b)] if the transaction or transactions had not occurred;

5. A transfer where the transferor is the sibling, spouse, child, parent, grandparent, spouse of child, child of a sibling, or sibling of a parent, of the transferee;

6. A transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;

7. A transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

8. A transfer of an industrial establishment by devise or intestate succession;

9. The granting or termination of an easement or a license to any portion of an industrial establishment;

10. The sale or transfer of real property or closing operations of an industrial establishment pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," N.J.S.A. 20:3-1 et seq.;

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11. The execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property or refinancing of any debt not including a sale and lease back, by the owner or operator of an industrial establishment;

12. Any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral;

13. A sale or transfer of assets of an industrial establishment that is in the ordinary course of business;

14. The termination of a lease of an industrial establishment where the lease is renewed by the same tenant without a disruption in operations;

15. The execution of a lease for a period of less than 99 years;

16. The sale of a single or multi-family dwelling used primarily for residential purposes;

17. The transfer to a beneficiary pursuant to the terms of a trust;

18. The change, substitution or replacement of a trustee, administrator, executor, guardian, conservator or fiduciary, where the trust, estate or other similar mechanism is an owner or operator of an industrial establishment;

19. Obtaining construction loans by the owner or operator of an industrial establishment;

20. A change in NAICS number as a result of a change in the NAICS manual without a change in the operations of the industrial establishment;

21. The sale or transfer of stock or assets, or both, in a corporation, if the sale or transfer is part of a reorganization of the corporation into a limited liability company, which shall not result in the diminution of the net worth of the corporation and limited liability company, respectively, that directly owns or operates the industrial establishment, before and after the transaction or transactions and does not result in a change in the person or person holding the controlling interest of the entity; and

22. A transaction or series of transactions involving the transfer of stock or assets of a corporation, or the sale or transfer of interests in a limited liability company, that is a direct owner or operator or indirect owner of an industrial establishment, resulting in a merger or consolidation, where the direct owner or operator or indirect owner of an industrial establishment is the surviving or resulting person.

(b) The following operations are not industrial establishments:



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1. Those portions of a solid waste or hazardous waste facility subject to operational closure or post-closure maintenance requirements pursuant to the following:

- i. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;
- ii. The Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq.; or
- iii. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.;

2. Any office, located on a separate tax lot and block from the industrial establishment it serves, in which personnel are engaged primarily in general administrative, personnel, supervisory, accounting, purchasing, engineering and systems planning, advertising, legal, financial, sales or other related management functions provided however this "office" exemption shall not apply where separate lots and blocks are or have been established after December 31, 1983, at the site of an existing industrial establishment; and

3. Undeveloped or vacant land provided that:

- i. No industrial establishment has operated on such vacant land since December 31, 1983; and
- ii. The contiguous land is not an industrial establishment under the same control or ownership as the vacant land in question.

7:26B-2.2 (Reserved)

7:26B-2.3 (Reserved)

7:26B-2.4 Revisions to North American Industry Classification System Codes for purposes of definition of "industrial establishment"

In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of "industrial establishment" at N.J.A.C. 7:26B-1.4 is based, the Department shall modify the NAICS codes in Appendix C, as necessary, to ensure that, as required by N.J.S.A. 13:1D-139, the generally equivalent universe of facilities subject to ISRA continues to be regulated under this chapter. Specifically, the Department shall provide limitations and/or exceptions to the NAICS codes set forth in Appendix C as required to maintain the currently regulated universe as of August 15, 2003. The Department shall publish in the New Jersey Register a notice of the new or revised NAICS code(s) and the corresponding administrative change(s) to Appendix C.

**SUBCHAPTER 3. [GENERAL INFORMATION NOTICE] Notification And Remediation**

## Requirements

7:26B-3.1 (Reserved)

7:26B-3.2 Notification requirements

(a) An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall submit a completed General Information Notice, **in accordance with** [to the Department pursuant to] N.J.A.C. 7:26B-3.[3]2(b), within five calendar days after the occurrence of any of the [transactional] events [provided] **listed** below:

1. The close of operations of an industrial establishment or the owner's or operator's public release of its decision to close operations, whichever occurs first;
2. The execution of an agreement by the owner or operator to transfer ownership or operations of the industrial establishment;
3. The signing of an agreement of sale, or the execution of a lease for a period of 99 years or longer, for the industrial establishment or the real property of the industrial establishment;
4. The effective time of corporate dissolution as specified at N.J.S.A. 14A:12-8, or upon the filing of a certificate of dissolution in the office of the Secretary of State, whichever occurs first;
5. The change in operations sufficient to change the primary NAICS number of an industrial establishment from a primary NAICS number that is subject to ISRA or this chapter to one that is not subject to ISRA or this chapter;
6. The exercise of an option to purchase an industrial establishment or the real property of an industrial establishment;
7. The acceptance of payment for the majority of stock in a corporation involving the direct owner or operator or indirect owner of the industrial establishment pursuant to a tender offer;
8. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;
9. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, of more than 50 percent of the assets of an industrial establishment within any five-year period as measured on a constant, annual date-specific basis;

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10. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, stock in a corporation, of a partnership interest or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment;

11. The sale, transfer or execution of an agreement to sell or transfer, whichever occurs first, a partnership interest in a partnership that owns or operates an industrial establishment that would reduce, by ten percent or more, the assets available for remediation of the industrial establishment;

12. The transfer or execution of a trust to transfer an industrial establishment to a trust, whichever occurs first, except where grantor and beneficiary are identical or are members of the same family. Family includes the spouse, children, parents, siblings, grandparents, siblings of a parent, children of a sibling, or spouse of child of the grantor;

13. Receipt by the owner or operator of notice that the industrial establishment has become non-operational for health or safety reasons or by judicial proceeding or final agency action;

14. The appointment by a court of a receiver or liquidating trustee or execution of a deed of assignment for the benefit of creditors, in connection with dissolution (unless the event at (a)4 above has already occurred), liquidation or insolvency proceedings under statutory or common law as to the direct owner or operator or indirect owner of an industrial establishment; and

15. The following events in any bankruptcy proceeding:

i. The entry of an Order for Relief in bankruptcy pursuant to Chapter 7 of the United States Bankruptcy Code (11 U.S.C. §§ 701 et seq.);

ii. The filing of a plan of liquidation pursuant to Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 1101 et seq.); or

iii. Events covered by (a)1 through 15 above.

[(b) The owner or operator shall remediate the industrial establishment in accordance with ISRA and this chapter, when the written notice in (a) above is required to be submitted.

7:26B-3.3 General information notice]

[(a)] **(b)** An owner or operator planning to close operations or transfer ownership or operations of an industrial establishment shall **complete and** submit a [completed] General Information Notice pursuant to N.J.A.C. 7:26B-3.2(a), on a [General Information Notice] form available **on the** [from] the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms), which is certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided on the form, which includes the following:

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1. [The name and location of the site, including street address, city or town, municipality, county, zip code, acreage and geographic boundaries;

2. The tax block and lot numbers of the site;] **Site identification information, including site identification number if known;**

[3.] **2.** [The name, address, and telephone number of the c] **Current property owner identification and contact information;**

[4.] **3.** [The name, address and telephone number of the c] **Current business operator and/or business owner [of the industrial establishment] identification and contact information;**

[5.] **4.** Identification and description of the transaction triggering ISRA;

[6.] **5.** Applicable NAICS number(s) for the industrial establishment;

[7.] **6.** The date of public release of the closure decision and a copy of the appropriate public announcement, if any;

[8.] **7.** The date of execution of the agreement of transfer, sale or option to purchase and the name and address of the other parties to the transfer or sale, as applicable;

[9.] **8.** The proposed date for closing or transferring operations;

[10. A schedule for submission to the Department of the preliminary assessment report, receptor evaluation, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, remedial action report, as applicable, and any other information required by this chapter, as follows:

i. A statement by the owner or operator of the industrial establishment that the owner or operator will comply with the remediation schedules provided at N.J.A.C. 7:26B-6.1, 6.2 and 6.3, and in the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.15; or

ii. The submission of an alternative schedule for completion of remediation activities at the industrial establishment or at any area of concern, including a schedule for the submission of workplans and reports to the Department; except that no schedule may allow for more time than is established in the timeframes set forth in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-3;

[11] **9.** The name, address and telephone number of the authorized agent and the principal whom the authorized agent represents. The owner or operator shall notify the Department in writing, at the address provided at N.J.A.C. 7:26B-1.5, of any change of identity, address, or telephone number of the authorized agent. Where the Department is required by this chapter

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to notify or otherwise communicate with the person conducting the remediation of the site, written notice to or communication with the authorized agent by the Department shall be sufficient;

[12.] **10.** The applicable fees required pursuant to N.J.A.C. 7:26C-4; [B-8.1;

13] **11.** Written authorization [pursuant to N.J.A.C. 7:26B-1.9(a); and] **to allow access;**

[14.] **12.** Any additional information required by the Department from a specific owner or operator.

[(b) Any person submitting a General Information Notice pursuant to (a) above may submit additional information, including any documentation, workplans and reports required pursuant to this chapter or N.J.A.C. 7:26E, along with the General Information Notice.

(c) For a General Information Notice submitted to the Department prior to November 4, 2009, the Department shall review the General Information Notice, and shall respond in writing to the authorized agent as follows:

1. The Department has determined that the General Information Notice, including any specific applications submitted for the purpose of complying with ISRA, is administratively complete and:

i. The Department shall issue either a no further action letter or authorization letter in accordance with this subchapter; or

ii. The owner or operator of the industrial establishment is required to complete additional remediation, as specified prior to the Department's issuance of a no further action letter or authorization letter; or

2. The Department has determined that the General Information Notice is administratively incomplete and the person is required to correct any deficiencies or complete additional remediation activities, as specified.

(d) For a General Information Notice submitted to the Department on or after November 4, 2009, the owner or operator shall comply with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4.

7:26B-3.4 Revisions to the general information notice or withdrawal of required notice by an owner or operator]

[(a)] (c) An owner or operator may withdraw the notice required pursuant to N.J.A.C. 7:26B-3.2(a) if the owner or operator determines that none of the transactional events listed in N.J.A.C. 7:26C-3.2(a) will occur; provided, however, that any such owner or operator may have statutory liability for conducting the remediation pursuant to other statutes, including, without limitation,

the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. The withdrawal of the notice does not alter or affect any statutory liability of the owner or operator for conducting the remediation.

[(b)] **(d)** An owner or operator submitting a general information notice shall notify the Department, in writing, of any changes, amendments or other necessary modifications to the information contained in the general information notice, within 30 calendar days of the person's discovery that the information provided to the Department in the person's original General Information Notice is incorrect, inaccurate or incomplete.

**(e) An owner or operator that is closing operations shall amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(b) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to the issuance of a final remediation document, the Department's approval of a remedial action workplan for the industrial establishment, or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment.**

### **7:26B-3.3 Remediation Requirements**

**(a) An owner or operator shall remediate the industrial establishment in accordance with this chapter and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C when any of the events in N.J.A.C. 7:26B-3.2(a), above, occur.**

## **[SUBCHAPTER 4. REMEDIATION AGREEMENT AND REMEDIATION CERTIFICATION**

7:26B-4.1 Remediation agreement]**(b) An owner or operator or other person who entered into a remediation agreement, or a remediation agreement amendment, with the Department prior to November 4, 2009, or an owner or operator who submitted a remediation certification to the Department after November 4, 2009, shall remediate the industrial establishment in accordance with that agreement or certification, this chapter, and the Administrative Requirements for the Remediation of Contaminated Sites [rules], N.J.A.C. 7:26C.**

### **[7:26B-4.2 Remediation agreement amendment**

An owner or operator of an industrial establishment who, prior to November 4, 2009, entered into an amendment to the remediation agreement shall proceed to remediate the industrial establishment pursuant to the terms of the remediation agreement and the remediation agreement amendment, and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C.

7:26B-4.3 Remediation certification

(a) c. An owner or operator of an industrial establishment who wishes to transfer ownership or operations of the industrial establishment prior to completion of all applicable requirements of ISRA and this chapter shall submit to the Department a completed Remediation Certification form, available at the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms), that includes the following:

1. An estimate of the cost of the remediation prepared and certified by a licensed site remediation professional;
2. A certification by the owner or operator of the industrial establishment describing:
  - i. The statutory liability of the owner or operator pursuant to ISRA to perform and to complete the remediation of the industrial establishment;
  - ii. The liability of the owner or operator for penalties for violating the act, subject to the defenses to liability and limitations thereon;
  - iii. The requirement of the owner or operator to perform the remediation the Department requires;
  - iv. The requirement of the owner or operator to allow the Department access to the industrial establishment pursuant to ISRA at N.J.S.A. 13:1K-10;
  - v. The requirement of the owner or operator to comply with the provisions of the Site Remediation Reform Act, N.J.S.A. 58:10C, and this chapter; and
  - vi. The requirement of the owner or operator to prepare and submit any document the Department requires for the remediation of the industrial establishment;
3. Evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with [N.J.A.C. 7:26B-6.4] **N.J.A.C. 7:26C-5**; and
4. Evidence of the payment of all applicable fees in accordance with N.J.A.C. [7:26B-8] **7:26C-4**.

**7:26B-3.4 Remediation funding source requirements**

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

- 1. Within 30 days of the Department's approval or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment;**

**2. Upon the submittal of a remediation certification pursuant to N.J.A.C. 7:26B-3.2(c), above; or**

**3. In accordance with the terms of a Remediation Agreement or Remediation Agreement Amendment.**

## **SUBCHAPTER 5 ALTERNATE COMPLIANCE OPTIONS**

### **7:26B-5 4.1 [Expedited review] (Reserved)**

[(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an expedited review in accordance with (c) below.

(b) The Department's approval of an expedited review application authorizes the owner or operator of an industrial establishment that was previously remediated to close operations or transfer ownership or operations of the industrial establishment without further remediation when there has been no discharge subsequent to the last remediation or a subsequent discharge occurred and the subsequent discharge has been remediated and approved by the Department.

(c) To apply for an expedited review, the owner or operator shall submit a completed expedited review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A certification by the owner or operator that:

i. A remedial action workplan or equivalent plan, has previously been implemented and the Department has issued a no further action letter or equivalent approval for the industrial establishment;

ii. The Department has approved a negative declaration for the industrial establishment; or

iii. The Department or the United States Environmental Protection Agency has approved an equivalent remediation of the industrial establishment pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable State or Federal law;

3. A certification by the owner or operator that:



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i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, to identify areas of concern that are new or have continued in use since the issuance of a no further action letter, negative declaration approval, or equivalent remediation approval; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, there has been no discharge of a hazardous substance or hazardous waste at the industrial establishment, subsequent to the issuance of the no further action letter or the equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)3i above, a discharge of a hazardous substance or hazardous waste at the industrial establishment has occurred subsequent to the issuance of the no further action letter, or the equivalent approval. The owner or operator shall identify the discharge(s), describe the action taken to remediate the discharge(s) and demonstrate that the remediation was approved by the Department;

4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank system which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent no further action letter, or other equivalent approval, as applicable, for the entire industrial establishment and/or a copy of the document evidencing the Department's approval as referenced in (a)3i(2) above;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6;

7. Any additional information required by the Department from a specific owner or operator; and

8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

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(d) The Department shall review the expedited review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall approve the expedited review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a) or disapprove the expedited review application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.]7:26B-5.2 [Area of concern review]  
**(Reserved)**

[(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for an area of concern review in accordance with (c) below, for any area(s) of concern at the industrial establishment for which a remediation has previously been conducted and approved by the Department.

(b) The Department's approval of an area of concern review application relieves the owner or operator from remediating each area of concern at the industrial establishment that was previously remediated and where there has not been any subsequent discharges at that area of concern.

(c) To apply for an area of concern review, the owner or operator shall submit a completed area of concern review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A site map which identifies the area(s) of concern which is/are the subject of this area of concern review;

3. A certification by the owner or operator that the Department or the United States Environmental Protection Agency has approved an equivalent remediation at an area of concern pursuant to ISRA, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or any other applicable State or Federal law;

4. A copy of the no further action letter or equivalent approval for that area of concern;

5. A certification by the owner or operator that:

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i. The owner or operator has completed a preliminary assessment report and site investigation report in accordance with N.J.A.C. 7:26E, as applicable, at each area of concern identified at (c)1 above; and

(1) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, there has been no discharge of a hazardous substance or hazardous waste at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; or

(2) Based on the preliminary assessment report and site investigation report referenced in (c)5i above, a discharge of a hazardous substance or hazardous waste occurred at each subject area of concern subsequent to the issuance of the no further action letter or equivalent approval; and

6. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the area of concern review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The Department shall either approve the application by the issuance of a no further action letter for each area of concern identified at (c)1 above pursuant to N.J.A.C. 7:26B-1.8, or disapprove the application and require the owner or operator to remediate all areas of concern identified in (c)1 above, in accordance with ISRA and this chapter and N.J.A.C. 7:26E.]

7:26B-[5]4.3 Regulated underground storage tank waiver

(a) The owner or operator may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a regulated underground storage tank waiver in accordance with (c) below.

(b) The Department's approval of a regulated underground storage tank waiver application authorizes the owner or operator to close operations or transfer ownership or operations of an industrial establishment prior to **the issuance of a final remediation document, prior to the Department's approval of a** [obtaining approval of a] remedial action workplan, [or] **prior to a licensed site remediation professional's certification of a remedial action workplan** [a negative declaration or] **and** without the [approval of a] **submittal of a remediation [agreement] certification** if the only areas of concern or the only discharges at the industrial establishment are from an underground storage tank or tanks regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B.

(c) To apply for a regulated underground storage tank waiver, the owner or operator shall submit a completed **ISRA Alternate Compliance Option Application, available on the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms)** [regulated underground storage tank waiver application], certified in accordance with N.J.A.C. 7:26B-1.6, to the Department, at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

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1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A preliminary assessment report that demonstrates that the only area of concern at the industrial establishment is an underground storage tank or tanks as defined pursuant to N.J.S.A. 58:10A-22 and N.J.A.C. 7:14B or a preliminary assessment and site investigation report which demonstrates that the only discharged hazardous substances or hazardous wastes at the industrial establishment or that has migrated offsite, above the applicable remediation standards, are from a discharge from that underground storage tank or tanks;
3. A certification by the owner or operator of the industrial establishment that the owner or operator is in compliance[, pursuant to N.J.A.C. 7:26B-5.3(d),] with the provisions of N.J.S.A. 58:10A-21 et seq., [and] N.J.A.C. 7:14B, **N.J.A.C. 7:26E, and N.J.A.C. 7:26C** for all underground storage tanks at the industrial establishment that are covered by that act;
4. A copy of proof of financial responsibility pursuant to N.J.A.C. 7:14B-15; and
5. Payment of all applicable fees required pursuant to [ N.J.A.C. 7:26B-8.1]. **7:26C-4.**

[(d) The owner or operator shall be deemed in compliance with the provisions of N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B as it relates to the subject discharge of a hazardous substance or hazardous waste from an underground storage tank, if the owner or operator has been issued an order by, or has entered into an agreement with the Department to remediate that discharge and the owner or operator is in compliance with that order or agreement.]

(e) **The owner or operator:**

**1. may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the regulated underground storage tank waiver application; or**

**2. shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the regulated underground storage tank waiver application.**

[The Department shall review the regulated underground storage tank waiver application in accordance with N.J.A.C. 7:26B-1.7, and shall either approve the application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E].

7:26B-5. Remediation in progress waiver

(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remediation in progress waiver in accordance with (c) below.

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(b) The Department's approval of a remediation in progress waiver application authorizes the owner or operator to close operations or transfer ownership or operations of the industrial establishment prior **the issuance of a final remediation document, prior to the Department's approval of a remedial action workplan, prior to a licensed site remediation professional's certification of a remedial action workplan and without the submittal of a remediation certification.** [to obtaining approval from the Department of a remedial action workplan, a negative declaration and without the approval of a remediation agreement.]

(c) To apply for a remediation in progress waiver, the owner or operator shall submit a completed **ISRA Alternate Compliance Option Application, available on the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms)** [remediation in progress waiver application,] certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

**2. A preliminary assessment report and, as applicable, a site investigation report that demonstrates that:**

**i. there have been no discharged hazardous substances or hazardous wastes at the industrial establishment during the applicant's period of ownership or operation, or;**

**ii. any discharged hazardous substances or hazardous wastes that occurred at the industrial establishment during the applicant period of ownership or operation has been remediated. This shall include identification of the spill incident numbers and evidence that a final remediation document was issued approving the remediation of the discharges;**

[2] **3. Evidence that establishes that the property occupied by the industrial establishment seeking the waiver is already in the process of a remediation by a prior owner or operator pursuant to ISRA, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or other applicable state laws and regulations, or the industrial establishment is currently in the process of an equivalent remediation pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable Federal law;**

[3. A certification by the owner or operator which includes the following:

i. The owner or operator has completed a preliminary assessment report and site investigation report, as applicable, to identify areas of concern in accordance with N.J.A.C. 7:26E and based on the preliminary assessment report and site investigation report:

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(1) There has been no discharge of any hazardous substance or hazardous waste during the owner's or operator's period of ownership or operation;

(2) A discharge of a hazardous substance or hazardous waste occurred during the owner's or operator's period of ownership or operation and the Department approved the remediation;]

4. A certification by the owner or operator that any transferee of the industrial establishment has been notified that the industrial establishment is the subject of a remediation;

5. A certification by the owner or operator that **a remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-5; and[**:

i. A remediation funding source for the cost of the remediation at the industrial establishment has been established as required pursuant to N.J.A.C. 7:26C-7; or

ii. A financial assurance was established prior to June 16, 1993 and the amount of the financial assurance is consistent with the current cost estimate developed in accordance with N.J.A.C. 7:26E, for the remediation or the implementation of the remedial action workplan at the industrial establishment; and]

6. Payment of all applicable fees required pursuant to [N.J.A.C. 7:26B-8.1] **N.J.A.C. 7:26C-4.**

(d) [The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing. The Department shall either approve the remediation in progress waiver application by the issuance of an authorization letter pursuant to N.J.A.C. 7:26B-1.8(c) or disapprove the application and require the owner or operator to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.] **The owner or operator:**

**1. may close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the remediation in progress waiver application; or**

**2. shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the remediation in progress waiver application.**

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7:26B-5.5 [Limited site review] **(Reserved)**

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) and the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a limited site review in accordance with (c) below.

(b) The Department's approval of a limited site review application authorizes the owner or operator to remediate only those area(s) of concern at an industrial establishment where a discharge, subsequent to a prior remediation, has occurred.

(c) To apply for a limited site review, the owner or operator shall submit a completed limited site review application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;

2. A certification by the owner or operator that:

i. A remedial action has been previously implemented and the Department has issued a no further action letter;

ii. The Department has approved a negative declaration; or

iii. The Department or the United States Environmental Protection Agency has previously approved an equivalent remediation of the industrial establishment pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. or any other applicable law;

3. A certification by the owner or operator of the industrial establishment that the owner or operator has completed a preliminary assessment report and site investigation report, as applicable, at the industrial establishment in accordance with N.J.A.C. 7:26E, and that no other discharge of a hazardous substance or hazardous waste, that was not identified in (c)3i or ii below, has occurred at the industrial establishment; and

i. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval, and was not remediated in accordance with the procedures established by the Department; or

ii. Based on the preliminary assessment report and site investigation report, a discharge has occurred at the industrial establishment subsequent to the issuance of the no further action letter or equivalent approval and that any remediation performed by the owner or operator has not been approved by the Department; and

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4. A certification by the owner or operator of the industrial establishment, that for any underground storage tank which is covered by the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B, the owner or operator is in compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and N.J.A.C. 7:14B;

5. A copy of the most recent negative declaration, no further action letter, or other approval, as applicable, issued by the Department or federal agency for the industrial establishment;

6. A completed negative declaration in accordance with N.J.A.C. 7:26B-6.6, if applicable; and

7. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the limited site review application in accordance with N.J.A.C. 7:26B-1.7, and may perform a site inspection or require the owner or operator to submit the preliminary assessment report and/or site investigation report, if necessary. The owner or operator is not required to submit the preliminary assessment report and site investigation report unless the Department requests the submission of the reports in writing.

(e) The Department shall either approve or disapprove a limited site review application by the following actions:

1. Approve the limit site review application by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a);

2. Approve the limited site review application and require the owner or operator of the industrial establishment to remediate each area of concern identified in (c)<sup>3</sup> above, in accordance with ISRA and this chapter; or

3. Disapprove the limited site review application and require the owner or operator of the industrial establishment to remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.]

7:26B-5.6 [Minimal environmental concern review] **(Reserved)**

[(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a determination that a discharge at an industrial establishment is a minimal environmental concern in accordance with (c) below.

(b) The Department's approval of a minimal environmental concern application authorizes the owner or operator to close operations or transfer ownership or operations at an industrial establishment prior to obtaining approval of a remedial action workplan or without the approval of a remediation agreement by the Department. This section shall not be construed to allow an owner or operator to implement a remedial action involving the remediation of groundwater or surface water prior to the Department's approval of a remedial action workplan for the site.



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(c) To apply for a minimal environmental concern determination, the owner or operator shall submit a completed minimal environmental concern application, certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A preliminary assessment report, site investigation report and remedial investigation report for the industrial establishment;
3. A certification by the owner or operator that based on the remediation completed, there are no more than two areas of concern at the industrial establishment that are contaminated at levels above the applicable remediation standards and the remedial action at those areas of concern can be completed pursuant to N.J.A.C. 7:26E and the applicable remediation standards within six months after the owner's or operator's receipt of the approval of the application by the Department;
4. Documentation establishing that the discharged hazardous substances or hazardous wastes at the industrial establishment do not pose an immediate threat to human health because of the proximity of an area of concern to a drinking water source or because of the location, complexity, or the nature of the discharge;
5. A certification by the owner or operator that a remedial action workplan shall be prepared pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E and the remediation shall meet either the restricted use or unrestricted use soil remediation standards and the applicable surface water and groundwater remediation standards;
6. A certification, by the owner or operator that the remedial action workplan will be prepared, implemented and completed pursuant to standards and criteria established by the Department at N.J.A.C. 7:26E within six months after the owner's or operator's receipt of the approval of the application by the Department;
7. Evidence that a remediation funding source has been established in accordance with N.J.A.C. 7:26C-7; and
8. Payment of all applicable fees required pursuant to N.J.A.C. 7:26B-8.1.

(d) The Department shall review the minimal environmental concern application in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment, if necessary.

(e) Within 30 calendar days after the receipt of a complete application the Department shall either approve the minimal environmental concern application by the issuance of an

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authorization letter or disapprove the application and require the owner or operator to remediate the industrial establishment pursuant to ISRA and this chapter.

(f) Within six months after receipt of the Department's approval of the minimal environmental concern application, the owner or operator shall implement the remedial action at the industrial establishment and submit the remedial action report to the Department.

(g) The owner or operator shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5 prior to the expiration of the schedule established in (f) above, that the owner or operator can not implement the remedial action at the industrial establishment and submit the remedial action report to the Department. The owner or operator shall have no more than 120 calendar days in addition to the schedule established in (f) above, to implement the requirements of the remedial action and submit the remedial action report required by (f) above.

(h) The Department shall review the remedial action report above in accordance with N.J.A.C. 7:26B-1.7 and may perform a site inspection of the industrial establishment or at any area offsite.

(i) The Department shall either approve or disapprove the remediation of the industrial establishment and notify the owner or operator of its determination within 45 calendar days after receipt of the remedial action report. The Department shall approve the remediation by the issuance of a no further action letter in accordance with N.J.A.C. 7:26B-1.8(a), or may disapprove the remediation and require the owner or operator remediate the industrial establishment in accordance with ISRA, this chapter and N.J.A.C. 7:26E.

(j) The Department may rescind its determination that the industrial establishment is a minimal environmental concern and rescind any letters issued pursuant to (e) above upon the failure of an owner or operator of the industrial establishment to implement the requirements of a remedial action workplan within the additional time provided (g) above, and require that a new remedial action workplan be submitted and implemented by the owner or operator in accordance with ISRA, this chapter and N.J.A.C. 7:26E]

7:26B-5.7 Limited conveyance

(a) The owner of an industrial establishment may, upon submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a certificate of limited conveyance in accordance with (c) below.

(b) The Department's approval of a certificate of limited conveyance **shall be valid for three years from the date of issuance and** authorizes the owner of an industrial establishment to remediate only the portion of the industrial establishment that is to be conveyed. [transfer a portion of an industrial establishment upon the Department's issuance of a no further action letter or approval of a remedial action workplan or remediation agreement for the subject portion of the industrial establishment without the owner or operator conducting a remediation of the entire industrial establishment. The certificate of limited conveyance shall be valid for three years from the date of issuance.]

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(c) To apply for a certificate of limited conveyance, the owner or operator shall submit a completed **ISRA Alternate Compliance Option Application, available on the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms)** [limited conveyance application], certified in accordance with N.J.A.C. 7:26B-1.6; to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot numbers of the site and the ISRA case number;
2. A site map of the industrial establishment that identifies the real property on which the industrial establishment is situated, and the portion of the real property subject to the proposed transfer and any areas conveyed pursuant to a prior certificate of limited conveyance;
3. A description of the real property to be transferred;
4. An appraisal of the entire industrial establishment, an appraisal of the real property to be transferred and an appraisal of the remaining real property if the certificate of limited conveyance were issued. The appraisals required by this section shall not be made more than one year prior to the submission of the application for a certificate of limited conveyance and shall be conducted by a designated Member, Appraisal Institute (American Institute of Real Estate Appraisers), Senior Real Estate Analyst (Society of Real Estate Appraisers), or Senior Member (American Society of Appraisers);
5. The sale price or fair market value of the real property to be transferred;
6. Any additional information the Department requests from a specific owner or operator;
7. Copies of all prior certificate(s) of limited conveyance if any, issued for the subject industrial establishment;
8. A copy of the sales agreement specifying the agreed upon price for the real property presently proposed for conveyance or, in the case of an acquisition by a condemning authority where no agreement has been reached, an affidavit from the owner specifying the compensation, including any damages, sought by the owner and the current appraised value; and
9. Payment of [all applicable] a fee [required pursuant to N.J.A.C. 7:26B-8.1] of **\$600**.

(d) The Department shall review the information submitted pursuant to (c) above in accordance with N.J.A.C. 7:26B-1.7 and shall issue a certificate of limited conveyance for the real property on which an industrial establishment is situated after the Department deems the following criteria to be satisfied:

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1. The sale price or fair market value of the real property to be conveyed, together with any additional diminution in value of the remaining property as a result of this transfer, is not more than one-third of the total appraised value of the real property of the industrial establishment prior to the transfer;

2. The remaining real property is an industrial establishment subject to the provisions of this chapter; and

3. Transfers or conveyances made pursuant to this section shall not exceed one-third of the value of the industrial establishment during the period of ownership of the applicant.

(e) Upon the Department's issuance of the certificate of limited conveyance, the owner or operator shall remediate the portion of the real property certified for transfer or conveyance prior to the transfer or conveyance. The remediation of the real property subject to the certificate of limited conveyance shall include any discharges from the remaining portion of the industrial establishment that have migrated or are migrating to the real property certified for conveyance.

(f) Upon the Department's disapproval of the limited conveyance application, the owner or operator shall remediate the industrial establishment in accordance with [ISRA and] this chapter **and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.**

(g) The owner or operator shall remediate the remaining portion of the industrial establishment, or otherwise comply with this chapter, upon the subsequent closing of operations or transferring of ownership or operations of the industrial establishment.

(h) An owner may, concurrent with or subsequent to a transfer or conveyance executed pursuant to this section, transfer additional portions of the industrial establishment in excess of the permissible conveyance limitation provided at (d)3 above, if the proposed transfer does not constitute a closing of operations or transfer of ownership or operations of an industrial establishment as defined at N.J.A.C. 7:26B-1.4.

(i) An owner who transfers additional portions pursuant to (h) above shall use the funds paid for those additional portions exclusively for remediating the additional portion(s) transferred pursuant to (h) above. The owner shall deposit any portion of the amount paid that remains unexpended **for remediation** in a remediation trust fund that shall be established pursuant to [N.J.A.C. 7:26C-7 ] **N.J.A.C. 7:26C-5** and N.J.S.A. 13:1K-11.8(g)

(j) Nothing in this section shall be construed to allow an owner to transfer any of the real property of an industrial establishment without complying with ISRA and this chapter for those portions subject to the transfer.

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7:26B-5.8 [Remedial action deferral] **(Reserved)**

[(a) The owner or operator may, upon the submittal of the notice required pursuant to N.J.A.C. 7:26B-3.2(a), apply to the Department for a remedial action deferral in accordance with (c) below.

(b) The Department's approval of a remedial action deferral application authorizes the owner or operator to transfer ownership or operations of the industrial establishment without the implementation of a remedial action.

(c) To apply for a remedial action deferral, the owner or operator shall submit a completed ISRA Alternate Compliance Option Application, available on the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms), certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, which includes the following information:

1. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer as established by the following criteria:

i. Substantially the same use means that the industrial establishment shall retain the same four digit industry group number, as designated in the NAICS Manual; or

ii. An owner or operator may submit a written request to the Department at the address provided at N.J.A.C. 7:26B-1.5, for a determination that the industrial establishment be deemed subject to substantially the same use based upon its retention of the same three digit subsector number, as designated in the NAICS Manual. The owner or operator shall include the following information: the industrial establishment's current six digit NAICS number, a description of the current operations of the industrial establishment, the proposed six digit NAICS number for the industrial establishment after the proposed transfer and a description of the proposed operations at the industrial establishment after the proposed transfer;

2. The completed preliminary assessment report, site investigation report, and remedial investigation report for the industrial establishment;

3. A cost estimate for the remedial action necessary at the industrial establishment based upon the information collected in the preliminary assessment, site investigation, and remedial investigation and developed in accordance with guidance available on the Department's web site at [www.nj.gov/dep/srp/srra/guidance](http://www.nj.gov/dep/srp/srra/guidance);

4. A certification signed by the purchaser, transferee, mortgagee or other party to the transfer that the purchaser, transferee, mortgagee or other party to the transfer has reviewed preliminary assessment report, site investigation report, and remedial investigation report and the cost estimate for the remedial action necessary at the industrial establishment and that the

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purchaser, transferee, mortgagee or other party to the transfer has the financial ability to pay for the implementation of the necessary remedial action; and

5. Payment of all applicable fees required pursuant to N.J.A.C. 7:26C-4.

(d) The Department shall review the remedial action deferral application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator:

1. may defer implementation of a remedial action for the industrial establishment for that transfer provided in the notice required by (a) above, until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes operations, at which time remediation must be completed in accordance with N.J.A.C. 7:26C upon receipt of the Department's written approval of the remedial action deferral application; or

2. shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the remedial action deferral application.]

7:26B-5.[9] **10** De minimis quantity exemption

(a) An owner or operator to whom the Department grants a de minimis quantity exemption is exempt from the [provisions] **requirements** of this chapter[, except as provided at N.J.A.C. 7:26B-8.1, based on de minimis quantities of hazardous substances or hazardous waste generated, manufactured, refined, transported, treated, stored, handled or disposed of at an industrial establishment.]

(b) [The] **An** owner or operator can obtain a de minimis quantity exemption if the following criteria are satisfied:

1. The total quantity of hazardous substances or hazardous wastes generated, manufactured, refined, transported, treated, stored, handled or disposed of at the subject industrial establishment at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

2. If the hazardous substances or hazardous wastes are mixed with nonhazardous substances, then the total quantity of hazardous substances or hazardous wastes in the mixture at any one time during the owner's or operator's period of ownership or operation, does not exceed 500 pounds or 55 gallons;

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

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

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(c) The total quantity of hazardous substances or hazardous wastes at an industrial establishment may be a combination of both (b)1 and 2 above; however, in the aggregate, the total quantity shall not exceed 500 pounds or 55 gallons.

(d) The total quantity of hazardous substances at an industrial establishment having the NAICS number of 424210, 446110, 446120, or 446191 as qualified by the limitations noted in Appendix C shall not include any mixture containing hazardous substances if the mixture is in final product form for wholesale or retail distribution.

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

1. **A form available from the Department on its website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms)** [completed de minimis quantity exemption application form], certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided [at N.J.A.C. 7:26B-1.5] **on the form;** and

2. [Submit the applicable] **A fee [in accordance with N.J.A.C. 7:26B-8] of \$300.**

(f) The Department shall review the application in accordance with N.J.A.C. 7:26B-1.7. The owner or operator:

1. [may] **May** close operations or transfer ownership or operation of an industrial establishment upon receipt of the Department's written approval of the de minimis quantity exemption application[.] ; **or**

2. **Shall remediate the industrial establishment in accordance with this chapter and the Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, if the Department disapproves the application.**

## **SUBCHAPTER 6. [REMEDICATION PROCEDURES] Reserved**

### **[7:26B-6.1 Preliminary assessment, site investigation and remedial investigation**

(a) Unless otherwise established pursuant to N.J.A.C. 7:26B-6.5, the owner or operator shall complete the remediation required by ISRA and this chapter and submit the reports certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5, within the time schedules listed in (b) through (e) below, N.J.A.C. 7:26B-6.2 and 6.3.

(b) The owner or operator shall complete the preliminary assessment in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3 and submit a preliminary assessment report and a negative declaration, if applicable, within the timeframe indicated at N.J.A.C. 7:26E-3.1(e).

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(c) The owner or operator shall complete a site investigation, if applicable, in accordance with the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-3 and submit a site investigation report and a negative declaration, if applicable, within the timeframe indicated at N.J.A.C. 7:26E-3.3(e).

(d) The owner or operator shall complete a remedial investigation workplan, if applicable, in accordance with N.J.A.C. 7:26E-4.2 within 270 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

(e) The owner or operator shall complete the remedial investigation report in accordance with N.J.A.C. 7:26E-4.8 and submit a negative declaration, if applicable, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

#### 7:26B-6.2 Soil remedial action and remedial action workplan

(a) Except as provided in (h) below, the owner or operator required to conduct a soil remedial action at the industrial establishment or at any area of concern shall not implement a remedial action prior to the Department's approval of a remedial action workplan for the site unless:

1. The owner or operator is remediating the industrial establishment pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4; or
2. The soil remedial action satisfies the criteria established in (b) below.

(b) The owner or operator may implement a soil remedial action at an industrial establishment without prior Department approval of a remedial action workplan if the following criteria are satisfied:

1. The soil remedial action is reasonably expected to be completed, in compliance with N.J.A.C. 7:26E, within the time schedules established by the Department. Such remedial action shall not exceed the five years from the commencement of the implementation of the remedial action; and
2. The owner or operator is implementing a soil remedial action which achieves the established minimum unrestricted or restricted use soil remediation standards without the use of engineering controls, as applicable.

(c) The owner or operator planning to implement a soil remedial action in accordance with (b) above shall notify the Department, in writing, at the address provided at N.J.A.C. 7:26B-1.5, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) that includes the following information:

1. A certification that based on the remediation completed, there are no areas of concern at the industrial establishment or at any location where hazardous substances or hazardous



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wastes have migrated or are migrating from the industrial establishment involving the remediation of groundwater or surface water; and

2. A detailed schedule of implementation for the remedial action which includes a summary of the remediation performed to date, the status of the remediation of each area of concern, the proposed remedial actions to be conducted at each area of concern and the time schedules for the completion of proposed activities. This information may include both narrative and/or graphic descriptions and shall only be used for the purposes of establishing a time schedule pursuant to this subsection.

(d) The notification required by (c) above shall be certified in accordance with N.J.A.C. 7:26B-1.6.

(e) The notification required by (c) above shall satisfy the requirement of N.J.A.C. 7:26E-1.4 to notify the Department. The owner or operator shall notify any other person as required pursuant to N.J.A.C. 7:26E-1.4.

(f) The Department may require an owner or operator planning to implement a soil remedial action in accordance with (b) above to submit progress reports on a quarterly, semi-annual or annual basis. The owner or operator is not required to submit the progress reports unless the Department requests the submission of the reports in writing.

(g) The owner or operator required to conduct a soil remedial action that does not satisfy the criteria established in (b) above shall submit a remedial action workplan to the Department for review and approval within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

(h) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

#### 7:26B-6.3 Groundwater or surface water remedial action workplan

(a) Except as provided in (b) below, the owner or operator shall submit the remedial action workplan for any remedial action involving the remediation of groundwater or surface water for review and approval by the Department within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a) or within 120 calendar days after receipt of the Department's written approval of the remedial investigation report submitted pursuant to N.J.A.C. 7:26B-6.1(d), whichever occurs last.

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(b) If the owner or operator is conducting the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, the owner or operator shall submit a remedial action workplan, prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6, within 420 calendar days after the date the submission of written notice is required pursuant to N.J.A.C. 7:26B-3.2(a).

7:26B-6.4 Remediation funding source requirement

The owner or operator shall submit a remediation funding source in accordance with N.J.A.C. 7:26C-5 upon the Department's approval or a licensed site remediation professional's certification of a remedial action workplan for the industrial establishment.

7:26B-6.5 Compliance with remediation schedules

(a) The owner or operator required to remediate an industrial establishment or any area of concern shall comply with:

1. The schedules established at N.J.A.C. 7:26B-6.1, 6.2 and 6.3;
2. The alternative schedule of implementation submitted with the General Information Notice as provided at N.J.A.C. 7:26B-3.3(a)10; or
3. The schedule established in a remediation agreement in accordance with N.J.A.C. 7:26B-4.

7:26B-6.6 Completion of remediation

Upon completion of the remediation, the owner or operator shall submit to the Department the workplans for and reports of the preliminary assessment, site investigation, remedial investigation and remedial action, as applicable, and any additional information required by the Department that has not been previously submitted to the Department for review and approval.

7:26B-6.7 Submission and review of a negative declaration

(a) In the case of a transactional event listed at N.J.A.C. 7:26B-3.2(a) for which the Department received the general information notice required pursuant to N.J.A.C. 7:26B-3 prior to November 4, 2009, the owner or operator, subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment, shall submit a negative declaration, executed and certified in accordance with N.J.A.C. 7:26B-1.6, to the Department at the address provided at N.J.A.C. 7:26B-1.5. The Department shall approve a negative declaration by the issuing a no further action letter.

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(b) The owner or operator shall submit a negative declaration pursuant to (c) below upon the occurrence of any of the following events:

1. The submission of a preliminary assessment report, site investigation report, remedial investigation report or remedial action report, as applicable, which demonstrates the following:

i. There are no discharged hazardous substances or hazardous wastes at the industrial establishment; or

ii. Any discharged hazardous substances or hazardous wastes at the industrial establishment above the applicable remediation standards have been remediated in accordance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department; and any discharged hazardous substances or hazardous wastes that have migrated or are migrating from the industrial establishment above the applicable remediation standards have been remediated in compliance with N.J.A.C. 7:26E, and any applicable remediation standards and the remediation has been approved by the Department;

2. The receipt by the owner or operator of notification from the Department that based on the Department's review of the information submitted, the owner or operator shall submit a negative declaration; or

3. The owner or operator is required pursuant to N.J.A.C. 7:26B-5 to submit a negative declaration.

(c) The owner or operator required to submit a negative declaration pursuant to this chapter shall submit the negative declaration on forms available from the Department at the address provided at N.J.A.C. 7:26B-1.5. The owner or operator shall include the following information in the negative declaration:

1. Identification of the subject industrial establishment including:

i. The name and location of the industrial establishment, including street address, city or town, municipality, county, zip code and telephone number;

ii. The tax block and lot numbers of the industrial establishment;

iii. The applicable NAICS number of the subject industrial establishment;

iv. The current real property owner, including name, address, and telephone number; and

v. The current business operator and/or business owner, if different from (c)1i above, of the industrial establishment including name, address and telephone number;

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2. The preliminary assessment report, site investigation report, remedial investigation workplan, remedial investigation report, remedial action workplan, as applicable, and any other information required by the Department if not previously submitted, to review the proposed negative declaration; and

3. A certification by the owner or operator that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated or is migrating from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with any applicable remediation standards.

(d) The owner or operator shall certify the negative declaration in accordance with the provisions at N.J.A.C. 7:26B-1.6.

(e) The owner or operator shall pay all applicable fees required pursuant to N.J.A.C. 7:26B-8.

(f) The Department shall review a negative declaration within 45 calendar days after the completion of the Department's review of all the information submitted pursuant to this chapter and shall:

1. Approve the remediation for that industrial establishment by the issuance of a no further action letter pursuant to N.J.A.C. 7:26B-1.8(a); or

2. Inform the owner or operator that additional remediation at the industrial establishment or at an offsite location is required.

(g) An owner or operator who initiates remediation on or after November 4, 2009 and conducts remediation pursuant to N.J.A.C. 7:26C-2.4 is not required to comply with this section.]

**SUBCHAPTER 7. [PROTECTION OF CONFIDENTIAL INFORMATION] (Reserved)**  
*moved to ARRCs rule*

[7:26B-7.1 Confidentiality claims

(a) Any person required to submit any information pursuant to this chapter which in the person's opinion constitutes trade secrets, proprietary information, specific information regarding an ISRA-subject transaction other than the fact that the ISRA-subject transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the appropriate fee pursuant to N.J.A.C. 7:26B-8.1.

(b) Any person asserting a confidentiality claim pursuant to (a) above shall submit two documents to the Department. One document shall be intact including any information which

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the person alleges to be entitled to confidential treatment. The second document shall be identical to the first and may be a copy of the first except that the alleged confidential material shall be redacted.

(c) The top of each page of the first submission containing the information which the person alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the person alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the person alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, redacted submission (which may or may not be enclosed in a separate envelope, at the option of the person), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, a person shall send the complete package by certified mail, return receipt requested and if necessary hand delivery, at the address specified at N.J.A.C. 7:26B-1.5. The Department will assume no responsibility for packages until they are received.

#### 7:26B-7.2 Access to information; nondisclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made shall be limited to Department employees, representatives, and contractors, whose activities necessitate such access and as provided by N.J.A.C. 7:26B-7.5 and 7.6.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other person except as provided in this subchapter or as otherwise required by law.

#### 7:26B-7.3 Confidentiality determinations

(a) The Department shall determine that documents, in whole or in part, are subject to confidential treatment based on the following criteria:

1. Whether a person has asserted a confidentiality claim pursuant to this subchapter which has not expired by its terms, been waived or withdrawn;

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2. Whether a person has shown that reasonable measures were been taken to protect the confidentiality of the information and that the person intends to continue to take such measures;

3. Whether the information is not, and has not been, available or otherwise disclosed to any other person without the consent of the person asserting a confidentiality claim (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute or regulation specifically requires disclosure of the information; and

5. Except for information related to national security, whether the person has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

(b) The Department shall treat documents for which a confidentiality claim has been asserted as entitled to confidential treatment until the Department acts upon a confidentiality claim and determines otherwise. The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq., to inspect or copy such information;

2. Deems it necessary to determine whether information in its possession is entitled to confidential treatment; or

3. Determines for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the determination whether information is or is not entitled to confidential treatment. Within 30 calendar days after its determination that the information is not entitled to confidential treatment, the Department shall send written notification outlining the reasons for its determination, by certified mail, return receipt requested, to the person who submitted the information and the information shall become part of the Department's public files unless contested pursuant to (d) below.

(d) A person who wishes to contest a determination by the Department that the information submitted is not entitled to confidential treatment shall, within 30 calendar days after receipt of the Department's written notification, submit evidence to support the person's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

1. The period of time for which confidential treatment is desired by the person (for example, until a certain date, until the occurrence of a specified event, or permanently);

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2. The measures taken by the person to guard against undesired disclosure of the information to others;

3. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

4. The extent to which disclosure of the information would result in substantial damage to the person, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the nexus between disclosure and the damage;

(e) Failure of the person to furnish timely comments or exceptions pursuant to (d) above waives the person's confidentiality claim.

(f) A person may submit a written request for an extension to contest the Department's determination pursuant to (d) above. The Department may extend the time limit for submitting comments pursuant to (d) above for good cause.

(g) The Department shall review the evidence and:

1. To the extent that the Department determines that the information submitted is not entitled to confidential treatment, the Department shall send written notification of this determination to the person by certified mail, return receipt requested. The notice shall state the basis for the determination and that the Department shall make the information available to the public on the 14 calendar days after receipt by the person of the written notice; or

2. To the extent that the Department determines that the information submitted is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The Department shall send written notification of this determination to the person by certified mail, return receipt requested.

7:26B-7.4 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in (b) below or N.J.A.C. 7:26B-7.6.

(b) The Department may disclose confidential information to another state agency or to a Federal agency if:

1. The Department is required by law to disclose the information;

2. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

3. The request sets forth the official purpose for which the information is needed;

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4. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

5. The other state or Federal agency has first furnished to the Department a written legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

6. The other agency has obtained the written consent of the affected person to the proposed disclosure; and

7. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

7:26B-7.5 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department if the contract in question provides that the contractor and the contractor's employees, agents and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to anyone the Department has not authorized in writing, shall store the information in locked cabinets in secure rooms, and shall return to the Department all copies of the information, and any abstracts or extracts therefrom, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(b) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure to its contractors;
2. The date on which disclosure was made;
3. The name of the contractor to which disclosure was made; and
4. A description of the information disclosed.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1D-2, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.



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7:26B-7.6 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure;
2. The date on which disclosure was made;
3. The name of the person to which disclosure was made; and
4. A description of the information disclosed.

7:26B-7.7 Security procedures

(a) Submissions to the Department pursuant to this chapter will be opened only by persons authorized by the Department engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:26B-1.5.

(c) The Department shall store all submissions entitled to confidential treatment as determined at N.J.A.C. 7:26B-7.3 in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.]

**SUBCHAPTER 8. PROGRAM FEES AND OVERSIGHT COSTS**

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7:26B-8.1 Fee schedule

**(a) The owner or operator shall pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4 and this chapter.**

[(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance with N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

1.	Area of concern waiver application	\$150.00
2.	Confidentiality claim	\$375.00
3.	De minimis quantity exemption application	\$300.00
4.	Expedited review application	\$225.00
5.	General Information Notice	\$150.00
6.	Limited site review application	\$525.00
7.	Limited conveyance application	\$600.00
8.	Negative declaration review	\$150.00
9.	Preliminary assessment report	\$375.00
10.	Regulated underground storage tank waiver application	\$600.00
11.	Remedial action workplan deferral application	\$975.00
12.	Remediation in progress waiver application	\$225.00
13.	Site investigation report	\$750.00

(b) The cost for the Department review of any remediation document not listed in (a) above shall be assessed pursuant to N.J.A.C. 7:26C-4.5.

(c) The applicable fees required by (a) above are nonrefundable.

(d) The fees required by (a) above are not one time fees but rather the fees required to perform the review of each specific submittal to the Department.

(e) Any fees required pursuant to (a) above that are subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

7:26B-8.2 Oversight costs

The owner or operator conducting the remediation of an industrial establishment pursuant to ISRA and this chapter shall submit payment to the Department pursuant to the provisions found in the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4.

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7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-4.7, the contester shall follow the procedures found in N.J.A.C. 7:26C-4.8.

7:26B-8.4 Payment of fees

All fees required by this subchapter shall be made by certified check, attorney check, money order, or by personal check shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all fees shall be mailed to New Jersey Department of Environmental Protection, Division of Responsible Party Site Remediation, 401 E. State Street, PO Box 432, Trenton, New Jersey 08625-0432. Courier and hand deliveries may be made to 401 East State Street, 5th Floor, Trenton, New Jersey.]

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**APPENDIX A - (RESERVED)**

**APPENDIX B - STANDARD LANDLORD/TENANT PETITION**

Landlord/Tenant Petition, Pursuant to N.J.S.A. 13:1K-11.9, Requesting the Department of Environmental Protection to First Compel the Other Responsible Person to Comply With the Industrial Site Recovery Act ("ISRA") Based Upon the Parties' Prior Agreement Pursuant to Their Lease.

Both the owner and operator of an industrial establishment are responsible for remediation of any industrial establishment pursuant to N.J.S.A. 13:1K-6 et seq. However, pursuant to N.J.S.A. 13:1K-11.9, where owner is the Landlord and operator is the Tenant and there has been a failure to comply with ISRA, either of those parties may petition the Department of Environmental Protection to request that the Department first compel the other party to comply with ISRA pursuant to a clearly articulated Lease between the parties concerning the subject industrial establishment. This Petition follows:

PETITION

["Name of Landlord or Tenant"] is the [Landlord or Tenant] for ISRA Case No. [] pursuant to a Lease entered into on [Date] with [Name of Landlord or Tenant], [Landlord or Tenant].

[Name of Landlord or Tenant] states that it desires the Department to exercise its discretion to first require [Name of Landlord or Tenant], who is the [Landlord or Tenant], to comply with ISRA with respect to the following property [Lot(s)/Block(s) and Leasehold unit number] the ("industrial establishment").

[Name of Landlord or Tenant] desires that if the Department is satisfied that the Lease clearly reflects an agreement by the parties to the Lease that [Name of Landlord or Tenant] is to be responsible for the ISRA obligations, the Department will agree to first pursue [Landlord/Tenant] to compel compliance with ISRA.

Attached for the Department's review are the following documents in support of this Petition.

1. Landlord's and Tenant's full names and current addresses;
2. A true and correct copy of the fully executed and dated subject Lease, together with any and all Addenda and Riders to that Lease;
3. A copy of the General Information Notice for the ISRA case referenced above;
4. True and correct copies of any and all contracts, agreements, orders and remediation agreements which [Name of Landlord or Tenant] believes may affect the interpretation of the subject lease and the parties' respective responsibilities and remediation obligations pursuant to ISRA and that Lease;

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5. A narrative, which identifies, in [Name of Landlord or Tenant's] view, the pertinent sections in the lease, and interpretation of the those sections;

6. A separate, notarized Affidavit, executed by [Name of Landlord or Tenant], that articulates all relevant facts which, in [Name of Landlord's or Tenant's] view, support and explain any non-compliance with ISRA and the Lease;

7. Copies of any pleadings and discovery documents generated in any lawsuit involving the subject industrial establishment and/or the subject Lease;

8. Copies of any writings issued by the Department of Environmental Protection, to either ISRA responsible party or to any ISRA agent, concerning the subject Lease or the subject industrial establishment and the respective responsibilities of each such party concerning this ISRA transaction; and

9. Any other documents which [Name of Landlord or Tenant] believes may assist the Department in its determination.

Within thirty (30) calendar days after the Department determines that it has received a complete Petition, the Department will advise all parties to the lease of its determination as to whether the Lease is clear in identifying [Name of Landlord or Tenant] as responsible for complying with ISRA under the Lease. [Name of Landlord or Tenant] understands that the Department may require further information, clarification or additional documentation in order to complete this Petition.

The information contained within this Petition, including any documents submitted to the Department in support of this Petition, is complete and accurate to the best of [Name of Landlord or Tenant's] knowledge, information and belief, and, by executing this Petition below, [Name of Landlord or Tenant] hereby certifies to its completeness and accuracy, and also, that [Name of Landlord or Tenant] will notify the Department immediately should new or additional information come to light which may have a bearing upon interpretations of the subject Lease, or the parties' respective ISRA responsibilities, under the lease.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_  
[Landlord or Tenant]  
For ISRA Case No. [ ]

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

**APPENDIX C - ISRA SUBJECT NAICS CODES**

<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[113310	Logging	No exceptions or limitations
115210	Support Activities for Animal Production	Limited to farriers]
211112	Natural Gas Liquid Extraction	Limited to recovering sulfur from natural gas
212324	Kaolin and Ball Clay Mining	Limited to grinding, washing, separating, etc. of kaolin and ball clay not in conjunction with mining operations
212325	Clay and Ceramic and Refractory Minerals Mining	Limited to grinding, washing, separating, etc. of clay, ceramic and refractory minerals not in conjunction with mining operations
212393	Other Chemical and Fertilizer Mineral Mining	Limited to grinding, washing, separating, etc. of chemical and fertilizer minerals not in conjunction with mining operations
212399	All Other Nonmetallic Mineral Mining	Limited to grinding, washing, separating, etc. of nonmetallic minerals not in conjunction with mining operations
221	Utilities	Except Water Supply, Irrigation Systems (NAICS Industry 221310) and Sewerage Systems (NAICS Industry 221320)
238220	Plumbing, Heating, and Air-Conditioning Contractors	Limited to businesses involved with boiler cleaning, chipping and scaling
[311942	Spice and Extract Manufacturing	Limited to producing table salt by the evaporation of sea water or brine]
313111	Yarn Spinning Mills	No exceptions or limitations

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
313112	Yarn Texturing, Throwing, and Twisting Mills	No exceptions or limitations
313113	Thread Mills	No exceptions or limitations
313210	Broadwoven Fabric Mills	No exceptions or limitations
313221	Narrow Fabric Mills	No exceptions or limitations
313222	Schiffli Machine Embroidery	No exceptions or limitations
313230	Nonwoven Fabric Mills	No exceptions or limitations
313241	Weft Knit Fabric Mills	No exceptions or limitations
313249	Other Knit Fabric and Lace Mills	No exceptions or limitations
313311	Broadwoven Fabric Finishing Mills	Except for broadwoven converters, who buy fabric goods (except knit goods) in the grey, have them finished on contract, and sell them at wholesale and operations involved in sponging, shrinking, etc. fabric for tailors and dress makers and performing batik work as a business service.
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	Except <b><u>dyeing gloves, woven or knit, for the trade and</u></b> [for] converters (except broadwoven), who buy fabric goods (except knit goods) in the grey, have them finished on contract, and sell them at wholesale
313320	Fabric Coating Mills	No exceptions or limitations
314110	Carpet and Rug Mills	No exceptions or limitations
[314121	Curtain and Drapery Mills	Except operations involved with the production of custom drapes

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
314129	Other Household Textile Product Mills	Except operations involved with the production of custom slipcovers]
314911	Textile Bag Mills	[Except operations involved with the production of textile bags] <b><u>Limited to operations involved with the manufacture of bags, rubberized fabric.</u></b>
[314912	Canvas and Related Product Mills	No exceptions or limitations]
314991	Rope, Cordage, and Twine Mills	No exceptions or limitations
314992	Tire Cord and Tire Fabric Mills	No exceptions or limitations

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
314999	All Other Miscellaneous Textile Product Mills	<p>[Except operations involved with embroidering advertising on shirts for the trade and operations doing rug binding for the trade]  <b>Limited to miscellaneous textile product mills involved with the following operations; apparel fillings (e.g., cotton mill waste, kapok) manufacturing, appliqueing on textile products (except apparel), art needlework for the trade, batts and batting (except nonwoven fabrics) manufacturing, beading on textile products (except apparel) for the trade, burnt-out laces manufacturing, cotton battings (except nonwoven batting) manufacturing, crochet ware made from purchased materials, decorative stitching on textile articles and apparel, embroidering contractors on men's, boys', women's, misses', girls', and infants' apparel, fiber, textile recovery from textile mill waste and rags, filling (except nonwoven textile), upholstery, manufacturing, fire hose, textile, made from purchased materials, garnetting of textile waste and rags, padding and wadding (except nonwoven fabric) manufacturing, processing of textile mill waste and recovering fibers, quilting of textiles, reclaimed wool processing, recovered fibers processing, stitching, decorative and novelty, on textile articles and apparel, textile fire hose made from purchased material, upholstering filling (except nonwoven fabric) manufacturing, weatherstripping made from</b></p>

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315111	Sheer Hosiery Mills	No exceptions or limitations
315119	Other Hosiery and Sock Mills	No exceptions or limitations
315191	Outerwear Knitting Mills	No exceptions or limitations
315192	Underwear and Nightwear Knitting Mills	No exceptions or limitations
315211	Men's and Boys' Cut and Sew Apparel Contractors	[Except men's and boys' apparel contractors producing men's and boys' shirts, except work shirts, fur goods, robes and dressing gowns, waterproof outerwear, leather and sheep-lined clothing, and apparel belts] <b>Limited to the following men's and boys' cut and sew apparel contractors; appliqueing, art needlework, buttonhole making, buttonholing and button covering, decorative stitching, dress and semidress gloves, leather, eyelet making, leather gloves or mittens (except athletic), hemstitching, novelty stitching, pleating, stitching decorative and novelty and work leather gloves.</b>

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Subsector or Industry #Code	NAICS Description	Exceptions or Limitations
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	[Except women's, girls' and infants' apparel contractors producing brassieres, girdles, and allied garments, fur goods, robes and dressing gowns, waterproof outerwear, leather and sheep- lined clothing, and apparel belts] <b>Limited to the following women's girl's and infant's, cut and sew apparel contractors; appliqueing, art needlework, buttonhole making, buttonholing and button covering, decorative stitching, dress and semidress gloves, leather, eyelet making, leather gloves or mittens (except athletic), hemstitching, novelty stitching, pleating, stitching decorative and novelty and work leather gloves.</b>
[315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	Except operations, other than contract operations, involved in the production of robes and dressing gowns
315222	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing	Except custom tailors and operations, other than those working under contract, involved in the production of waterproof outerwear (men's and boys' water resistant or water repellent tailored overcoats, except made from rubberized fabric, plastics, etc.
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	Except custom tailors and operations, other than those working under contract, involved in the production of men's and boys' shirts, except work shirts

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315224	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing	No exceptions or limitations
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing	No exceptions or limitations
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (men's and boys' water resistant or water repellent nontailored outerwear, except made from rubberized fabric, plastics, etc.)
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing	Except for operations, other than those working under contract, involved in the production of brassieres, girdles, and allied garments, and robes and dressing gowns
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing	No exceptions or limitations
315233	Women's and Girls' Cut and Sew Dress Manufacturing	Except for retail custom dressmakers
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (women's and girls' water resistant or water repellent tailored coats, except made from rubberized fabric, plastics, etc.)

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (other women's and girls' water resistant or water repellent nontailored outerwear, except made from rubberized fabric, plastics, etc.)
315291	Infants' Cut and Sew Apparel Manufacturing	Except for operations, other than those working under contract, involved in the production of waterproof outerwear (infants' waterproof outerwear made from rubberized fabric, plastics, etc.)]
315299	All Other Cut and Sew Apparel Manufacturing	[Except for operations, other than those working under contract, involved in the production of waterproof outerwear (men's, boys', women's, and girls' waterproof outerwear made from rubberized fabric, plastics, etc.)] <b><u>Limited to the following cut and sew apparel manufacturing; pants, rubber and rubberized fabric, made in the same establishment as the basic materials, pants, vulcanized rubber, manufacturing, raincoats, rubber or rubberized fabric, manufacturing</u></b>
[315991	Hat, Cap, and Millinery Manufacturing	No exceptions or limitations]

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
315992	Glove and Mitten Manufacturing	[No exceptions or limitations] <b>Limited to the following glove and mitten manufacturing; gloves, leather (except athletic, cut and sewn apparel contractors), manufacturing, leather gloves or mittens (except athletic, cut and sewn apparel contractors) manufacturing, mittens, leather (except apparel contractors), manufacturing, and work gloves, leather (except apparel contractors), manufacturing</b>
[315993	Men's and Boys' Neckwear Manufacturing	No exceptions or limitations]
315999	Other Apparel Accessories and Other Apparel Manufacturing	[Except for operations, other than those working under contract, involved in the production of apparel belts and waterproof outerwear (accessories, such as aprons, bibs, and other miscellaneous waterproof items, made from rubberized fabric, plastics, etc.)] <b>Limited to the following other apparel accessories and other apparel manufacturing; bathing caps, rubber, manufacturing</b>
316110	Leather and Hide Tanning and Finishing	No exceptions or limitations
316211	Rubber and Plastics Footwear Manufacturing	No exceptions or limitations
316213	Men's Footwear (except Athletic) Manufacturing	No exceptions or limitations
316991	Luggage Manufacturing	No exceptions or limitations
316992	Women's Handbag and Purse Manufacturing	No exceptions or limitations

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing	No exceptions or limitations
321113	Sawmills	No exceptions or limitations
321114	Wood Preservation	No exceptions or limitations
321211	Hardwood Veneer and Plywood Manufacturing	No exceptions or limitations
321213	Engineered Wood Member (except Truss) Manufacturing	No exceptions or limitations
321214	Truss Manufacturing	No exceptions or limitations
321219	Reconstituted Wood Product Manufacturing	No exceptions or limitations
321911	Wood Window and Door Manufacturing	No exceptions or limitations
321912	Cut Stock, Resawing Lumber, and Planing	No exceptions or limitations
321918	Other Millwork (including Flooring)	No exceptions or limitations
321920	Wood Container and Pallet Manufacturing	Except for operations involved in the production of nailed and lock corner wood boxes and shook
321992	Prefabricated Wood Building Manufacturing	No exceptions or limitations
321999	All Other Miscellaneous Wood Product Manufacturing	Except for operations involved in the production of boot and shoe cut stock and findings (wood heels)
322	Paper Manufacturing	No exceptions or limitations
323	Printing and Related Support Activities	Except for operations involved in photocopying and duplicating services [(quick printing)] <b>other than printing.</b>

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
324	Petroleum and Coal Products Manufacturing	No exceptions or limitations
325	Chemical Manufacturing	Except for operations involved in providing the following business services on a contract or fee basis: aerosol packaging and solvent recovery service
326	Plastics and Rubber Products Manufacturing	Except for operations involved in Tire Retreading and Repair Shops (rebuilding tires and retreaded tire Manufacturing) (NAICS Industry 326212)
327	Nonmetallic mineral product Manufacturing	Except for retail operations involved in Manufacturing and selling pottery on site
331	Primary metal Manufacturing	No exceptions or limitations
332	Fabricated Metal Product Manufacturing	No exceptions or limitations
333	Machinery Manufacturing	No exceptions or limitations
334	Computer and Electronic Product Manufacturing	Except for operations involved in the mass reproduction of prepackaged software and the reproduction of video in connection with motion picture production
335	Electrical Equipment, Appliance, and Component Manufacturing	No exceptions or limitations
336	Transportation Equipment Manufacturing	No exceptions or limitations



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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
337	Furniture and Related Product Manufacturing	Except for retail operations involved in the production and sale of custom wood cabinets, custom made upholstered household furniture and custom made nonupholstered wood household furniture
339	Miscellaneous Manufacturing	Except for operations involved in the production of orthopedic devices to prescription in a retail environment, optical goods stores and laboratories grinding lenses to prescription, dental laboratories and in operations involved with the production of boot and shoe cut stock and findings (metal buckles)
424210	Drugs and Druggists' Sundries Merchant Wholesalers	No exceptions or limitations
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	Except for merchant wholesalers of plastics foam
424690	Other Chemical and Allied Products Merchant Wholesalers	No exceptions or limitations
424710	Petroleum Bulk Stations and Terminals	No exceptions or limitations
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	No exceptions or limitations
424910	Farm Supplies Merchant Wholesalers	No exceptions or limitations
[424940	Tobacco and Tobacco Product Merchant Wholesalers	No exceptions or limitations]
424950	Paint, Varnish, and Supplies Merchant Wholesalers	No exceptions or limitations

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
[425110	Business to Business Electronic Markets	Limited to industries serving as agents and brokers of goods using the internet or other electronic means to bring buyers and sellers together and dealing with the following goods: drugs, drug proprietaries, and druggists' sundries, plastics materials and basic forms and shapes, chemicals and allied products, not elsewhere classified, petroleum and petroleum products wholesalers, except bulk stations and terminals, farm supplies, tobacco and tobacco products and paints, varnishes, and supplies
425120	Wholesale Trade Agents and Brokers	Limited to industries serving as agents and brokers of goods dealing with the following goods: drugs, drug proprietaries, and druggists' sundries, plastics materials and basic forms and shapes, chemicals and allied products, not elsewhere classified, petroleum and petroleum products wholesalers, except bulk stations and terminals, farm supplies, tobacco and tobacco products, paints, varnishes, and supplies
442	Furniture and Home Furnishings	Limited to custom picture framing shops
443	Electronic and Appliance Stores	Limited to operations involved with both the retail sales of new refrigeration and air-conditioning and electrical and electronic equipment, not elsewhere classified and the repair of same where repair services is the major source of receipts

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
444130	Hardware Stores	Limited to operations involved with both the retail sales of new power tools and the repair of same where repair services is the major source of receipts]
444220	Nurseries, Garden Centers, and Farm Supply Stores	Limited to operations selling <b>farm supplies</b> [goods] primarily to industrial, commercial, institutional or farm customers (business customers), and not to members of the general public
[446110	Pharmacies and Drug Stores	Limited to operations selling drugs, drug proprietaries, and druggists' sundries primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
446120	Cosmetics, Beauty Supplies, and Perfume Stores	Limited to operations selling cosmetics and beauty supplies primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
446191	Food (Health) Supplement Stores	Limited to operations selling vitamins primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
453991	Tobacco Stores	Limited to operations selling tobacco products primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	Limited to operations selling plastic materials and basic forms and shapes primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public]
454311	Heating Oil Dealers	Limited to operations selling heating oil primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	Limited to operations selling goods primarily to industrial, commercial or institutional customers (business customers), and not to members of the general public
486	Pipeline Transportation	No exceptions or limitations
[488119	Other Airport Operations	Limited to the vacuuming of runways
488210	Support Activities for Rail Transportation	Limited to operations involved with the rental of railroad cars including grain leveling in railroad cars, grain trimming for railroad equipment, precooling of fruits and vegetables in connection with transportation, and railroad car cleaning, icing, ventilating, and heating]
488390	Other Support Activities for Water Transportation	Limited to operations involved with ship building and repair services provided by floating drydocks and ship scaling
[488490	Other Support Activities for Road Transportation	Limited to sanitary services, specifically snow plowing and sweeping streets and highways

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
488991	Packing and Crating	No exceptions or limitations]
511	Publishing Industries	Except direct mail advertising services[specifically], mailing list compilers, [and] publishing of prepackaged software <b>and publishing locations where no printing operations have ever been conducted</b>
512	Motion Picture and Sound Recording Industries	Limited to the production of phonograph records and prerecorded audio tapes and disks by integrated record companies (except duplication only) and the publishing or publishing and printing of music books and sheet music
[516	Internet Publishing and Broadcasting	Except internet broadcasting of special interest web sites, entertainment sites, and interactive game sites)
532	Rental and Leasing	Limited to the rental of railroad cars]
541710	Research and Development in the Physical, Engineering, and Life Sciences	Except for commercial physical, <b>engineering</b> and biological research <b>and development on a contract or fee basis</b> and noncommercial research organizations (physical, engineering, and life sciences) [performed on a contract or fee basis]
551114	Corporate, Subsidiary, and Regional Managing Offices	Limited to offices located on the same lot and block as the industry they serve when that industry has a regulated NAICS number.
[561710	Exterminating and Pest Control Services	Limited to mosquito eradication

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
561790	Other Services to Buildings and Dwellings	Limited to the cleaning of parking lots and driveways and furnace, duct, gutter, and drain cleaning services]
562211	Hazardous Waste Treatment and Disposal	No exceptions or limitations
562213	Solid Waste Combustors and Incinerators	No exceptions or limitations
[562219	Other Nonhazardous Waste Treatment and Disposal	No exceptions or limitations]
562910	Remediation Services	Except special trade contractors performing asbestos abatement and lead paint removal
[562920	Materials Recovery Facilities	No exceptions or limitations]
562991	Septic Tank and Related Services	Except equipment rental and leasing specifically portable toilet rental
562998	All Other Miscellaneous Waste Management Services	[No exceptions or limitations] <b>Limited to tank cleaning and disposal services, commercial or industrial</b>
711	Performing Arts, Spectator Sports and Related Industries	Limited to taxidermists and antique repair and restoration, except antique car restoration
[811211	Consumer Electronics Repair and Maintenance	Except radio and television repair shops (stereo, tv, vcr, and radio repair) and camera repair]
811212	Computer and Office Machine Repair and Maintenance	Limited to [business and office machine repair, electrical and]refilling or recycling ink jet cartridges
[811213	Communication Equipment Repair and Maintenance	Limited to electrical and electronic repair shops not elsewhere classified, specifically telephone set repair

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<u>Subsector or Industry #Code</u>	<u>NAICS Description</u>	<u>Exceptions or Limitations</u>
811219	Other Electronic and Precision Equipment Repair and Maintenance	Except precision equipment repair shops]
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	[No exceptions or limitations] <b>Except repair and maintenance service of the following; commercial refrigeration, and freezer equipment, truck refrigeration equipment and welding repair service.</b>
[811411	Home and Garden Equipment Repair and Maintenance	Except lawnmower repair shops
811412	Appliance Repair and Maintenance	Except repair shops and related services not elsewhere classified specifically gas appliance repair services, stove repair shops, and other non-electrical appliance repair]
811420	Reupholstery and Furniture Repair	Except airports, flying fields, and airport terminal services specifically performing aircraft upholstery repair
811490	Other Personal and Household Goods Repair and Maintenance	Limited to[boat building and repairing (pleasure boat repair and repair shops and related services, not elsewhere classified (except industrial, electronic, home and garden, appliance, and leather goods repair)] <b>pleasure boat, repair and maintenance services without retailing new boats.</b>