

## Standards of Professional Conduct

N.J.A.C. 7:26I-6, Standards of Professional Conduct, articulate the standards of conduct the Legislature established for LSRPs in the Site Remediation Reform Act (“SRRA”). The purpose of this subchapter is to specify the professional priorities, duties and standards of care of an LSRP, which exist separate from and above his or her contractual obligations to his or her clients. The guiding principle is that at all times, in the performance of professional services, an LSRP’s highest priority shall be the protection of public health and safety and the environment.

Subchapter 6 consolidates the priorities, duties and standards of care of LSRPs set forth in SRRA at N.J.S.A. 58:10C-16, N.J.S.A. 58:10C-14, N.J.S.A. 58:10C-20, N.J.S.A. 58:10C-21.d, N.J.S.A. 58:10C-21.e, and N.J.S.A. 58:10C-24. The majority of Subchapter 6 is a reiteration of the text from SRRA, but certain sections were modified for clarity and to elucidate the obligations of LSRPs in specific situations.

Board Rule N.J.A.C.	SRRA N.J.S.A.	Notes
7:26I-6.2	58:10C-16.a.	
7:26I-6.3(a)	58:10C-14.c.(1) and (2)	
7:26I-6.3(b)	58:10C-14.c.(3)	
7:26I-6.3(c)	58:10C-14.c.(4)	
7:26I-6.3(d)	58:10C-16.b.	
7:26I-6.3(e)	58:10C-16.c.	
7:26I-6.4	58:10C-16.c.	
7:26I-6.5	58:10C-16.d.	N.J.A.C. 7:26I-6.5 includes the requirement that an LSRP who decides to terminate his or her position as the LSRP responsible for the remediation of a contaminated site shall notify the Department and person responsible for conducting the remediation within 15 days of terminating. The purpose of this inclusion is to take into account the situation where the person responsible for conducting the remediation does not release the LSRP, but rather the LSRP initiates the termination.
7:26I-6.6	58:10C-16.e.	
7:26I-6.7(a)	58:10C-16.f.	
7:26I-6.7(b)	58:10C-16.g.	N.J.A.C. 7:26I-6.7(b) modifies the statutory language to read “including but not limited to those the Department identified”. This language clarifies that an LSRP is required to correct all deficiencies in a document, even those not identified by the Department. In addition, the term “site remediation professional, licensed or not” replaces the term “licensed site remediation professional”, in order to clarify that LSRPs are obligated to correct deficiencies in documents submitted not just by another LSRP, but by any site remediation professional.
7:26I-6.7(c)	58:10C-16.n.	
7:26I-6.8(a)	58:10C-16.i.	
7:26I-6.8(b) and (c)	58:10C-16.i.	N.J.A.C. 7:26I-6.8 (b) and (c) are based on N.J.S.A. 58:10C-16.i., and add to the requirements of N.J.S.A. 58:10C-16.i. the requirement that the LSRP notify the person responsible

		for conducting the remediation when in his or her professional judgment the person responsible for conducting the remediation is unlikely to meet any applicable regulatory timeframe and the requirement that the LSRP notify the person responsible for conducting the remediation and the Department when in his or her professional judgment the person responsible for conducting the remediation is unlikely to meet any mandatory or expedited site-specific timeframe.
7:26I-6.8(d)	58:10C-16.i.	N.J.A.C. 7:26I-6.8(d) is based on N.J.S.A. 58:10C-16.i., and adds "the Department" as a source of relevant and material facts, data, reports and other information evidencing conditions at a contaminated site which the LSRP shall identify and obtain.
7:26I-6.8(e)	58:10C-16.i.	
7:26I-6.9	58:10C-16.j.	
7:26I-6.10	58:10C-16.k.	
7:26I-6.11	58:10C-16.l.	
7:26I-6.12	58:10C-16.m.	
7:26I-6.13	58:10C-16.n.	
7:26I-6.14	58:10C-16.p.	
7:26I-6.15	58:10C-16.q. and 58:10C-24	
7:26I-6.16	58:10C-16.r.	
7:26I-6.17	58:10C-16.s.	
7:26I-6.18	58:10C-16.t.	
7:26I-6.19		N.J.A.C. 7:26I-6.19 articulates the standards that an LSRP shall follow with respect to public communications when the person responsible for conducting the remediation designates the LSRP as the point of contact for the public.
7:26I-6.20	58:10C-16.u.	
7:26I-6.21	58:10C-16.v.	
7:26I-6.22	58:10C-16.w.	
7:26I-6.23(a)	58:10C-16.x	
7:26I-6.23(b)	58:10C-16.y.	
7:26I-6.23(c)	58:10C-16.z.	
7:26I-6.24(a)	58:10C-16.h.	
7:26I-6.24(b)	58:10C-14.a.	
7:26I-6.24(c)	58:10C-14.b.	
7:26I-6.25	58:10C-14.d.	N.J.A.C. 7:26I-6.25 is based on N.J.S.A. 58:10C-14.d., and adds to the statutory provisions the requirements that an LSRP shall not issue an RAO until the person responsible for conducting the remediation has paid to the Department all fees and oversight costs, and an LSRP shall file the RAO with the Department within 30 days of issuing it to the person responsible for conducting the remediation.
7:26I-6.26	58:10C-27.c.(6)	
7:26I-6.27	58:10C-20	N.J.A.C. 7:26I-6.27 includes the minimal period of time that an LSRP shall maintain and preserve all data, documents,

		records and information concerning remediation activities at each contaminated site the LSRP has worked on, which is set at ten years following the date that the LSRP submits a notification of dismissal or last RAO for the site, whichever is later. N.J.A.C. 7:26I-6.27 also incorporates a prohibition against an LSRP's employer or client from restricting the LSRP from personally maintaining and preserving all data, documents, records and information in the format and location that the LSRP chooses.
7:26I-6.28	58:10C-21.d. and e.	

## SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT

### 7:26I-6.1 Purpose

This subchapter sets forth the rules of professional conduct that an individual shall implement in the performance of professional services as an LSRP.

### 7:26I-6.2 Highest priority

An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

### 7:26I-6.3 Professional competency

(a) An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate technical guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:

1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12;
2. The Remediation Standards rules at N.J.A.C. 7:26D;
3. The indoor air standards adopted by the Department of Health pursuant to N.J.S.A. 52:27D-130.4;
4. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
5. The Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C;
6. The mandatory remediation timeframes and expedited site-specific timeframes adopted by the Department pursuant to N.J.S.A. 58:10C-28;
7. The presumptive remedies adopted by the Department pursuant to N.J.S.A. 58:10B-12; and
8. Any other applicable standards, rules, or regulations adopted pursuant to law.

(b) An LSRP shall apply any available and appropriate technical guidance concerning site remediation as issued by the Department.

(c) When there is no specific technical guidance issued by the Department, or in the judgment of the LSRP the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, and justifies the use of the guidance or methods that were utilized:

1. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and
2. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of public health and safety and the environment.

(d) An LSRP shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.

(e) An LSRP shall not provide professional services outside his or her areas of professional competence, unless the LSRP has relied upon the technical assistance of another professional whom the LSRP has reasonably determined to be qualified by education, training, and experience.

#### 7:26I-6.4 Engineering services

An LSRP shall not perform services that constitute the practice of professional engineering, unless the LSRP is a professional engineer licensed in the State of New Jersey.

#### 7:26I-6.5 Notification of retention and release

(a) An LSRP retained by a person responsible for conducting the remediation shall submit an LSRP Notification of Retention or Dismissal as found on the Department website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms) no later than 15 days after:

1. The person responsible for conducting the remediation retains the LSRP; and
2. The person responsible for conducting the remediation releases the LSRP from responsibility for remediation, if the release occurs prior to issuance of the RAO.

(b) When an LSRP decides to terminate his or her position as the LSRP responsible for the remediation of a contaminated site prior to issuing an RAO, the LSRP shall, within 15 days after terminating his or her position:

1. Communicate this directly in writing to the person responsible for conducting the remediation; and
2. Submit a Notification of Dismissal as found on the Department website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms).

#### 7:26I-6.6 Correcting deficiencies

An LSRP shall, in accordance with timeframes the Department establishes, correct any deficiency the Department identifies and resubmit the document to the Department.

#### 7:26I-6.7 Responsibility of successor LSRP

(a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, licensed or not, provided that the LSRP:

1. Reviews all available documentation on which he or she relies;
2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and
3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

(b) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, shall correct all material deficiencies in a document submitted by the

previous site remediation professional including, but not limited to, those the Department identifies, in accordance with timeframes the Department establishes.

(c) An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, before the issuance of a final remediation document, and who learns of material facts, data, or other information concerning any phase of the remediation for which a report was submitted to the Department and the material facts, data, or other information were not disclosed in the report, shall promptly notify the LSRP's client and the Department in writing of those material facts, data, or other information and circumstances.

#### 7:26I-6.8 Exercise of independent professional judgment

(a) An LSRP shall exercise independent professional judgment and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, and order adopted or issued pursuant thereto.

(b) An LSRP shall notify the person responsible for conducting the remediation in writing when in his or her professional judgment based on site history any one or more applicable regulatory timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.

(c) An LSRP shall notify the person responsible for conducting the remediation and the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.

(d) An LSRP shall make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports, and other information evidencing conditions at a contaminated site for which he or she is responsible that are in the possession of the owner of the property, the Department, or that are otherwise available, and identify and obtain whatever additional data and other information as the LSRP deems necessary.

(e) An LSRP shall disclose and explain in any document submitted to the Department any facts, data, information, qualifications, or limitations the LSRP knows that do not support the conclusions reached in the document.

#### 7:26I-6.9 Responsibility to report an immediate environmental concern

(a) If an LSRP identifies a previously unreported condition at a contaminated site that in his or her independent professional judgment is an immediate environmental concern, the LSRP shall:

1. Immediately verbally advise the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition; and

2. Immediately notify the Department of the condition by calling the Department's telephone hotline at 1-877-WARNDEP.

#### 7:26I-6.10 Responsibility to report a discharge

(a) If an LSRP obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred on a contaminated site for which he or she is responsible, the LSRP shall:

1. Immediately notify the person responsible for conducting the remediation of the discharge and of that person's duty to notify the Department of the discharge;

2. Immediately notify the Department of the discharge by calling the Department's telephone hotline at 1-877-WARNDEP; and

3. Immediately notify any other LSRP that is working on the contaminated site of the discharge.

#### 7:26I-6.11 Deviation from workplan by client

If an LSRP learns of a client's action or decision that results in a deviation from the remedial action workplan or other report concerning the remediation, the LSRP shall promptly notify the client and the Department, in writing, of the deviation.

#### 7:26I-6.12 Client confidentiality

An LSRP shall not reveal information obtained in a professional capacity, except as may be authorized or required by law, without the prior consent of the client, if the client has notified the LSRP, in writing, that the information is confidential. The provisions of this section shall not apply to information that is in the public domain.

#### 7:26I-6.13 New information after submitting report

An LSRP who learns of material facts, data, or other information subsequent to the completion of a report concerning any phase of remediation, which would result in a report with material differences from the report submitted, shall promptly notify the client and the Department in writing of those facts, data, information, and circumstances.

#### 7:26I-6.14 Responsibility to disassociate from unscrupulous persons

An LSRP shall not allow the use of his or her name by a person, and shall not associate with a person in a business venture, if the LSRP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP.

#### 7:26I-6.15 Responsibility in Board and Department investigations

(a) An LSRP shall cooperate in an investigation by the Board or the Department by furnishing, in response to requests, orders, or subpoenas, any information the Board or the Department, or persons duly authorized by the Board or the Department, deems necessary to perform its duties, by the date the Board or the Department specifies.

(b) An LSRP shall, in the time and manner the Board or the Department prescribes, provide all information the Board or the Department requests including, but not limited to:

1. The LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto,
2. A description of and the status of any remediation the LSRP has participated in including, but not limited to:
  - i. Investigative and remedial activities completed to date;
  - ii. Investigative and remedial activities required or planned to be completed in the future;
  - iii. The LSRP's role in the remediation;
  - iv. Any other person's role in the remediation;
  - v. Each natural resource or environmental media included in the investigation or remediation;
  - vi. Data and information collected or available concerning the remediation;
  - vii. A projection of the cost for investigative and remediation activities required or planned to be completed in the future; and
  - viii. Any information that an LSRP may have that any person has violated (c) below.

(c) In response to a Board or Department investigation an LSRP shall not:

1. Knowingly make a false statement of material fact;
2. Fail to disclose a fact necessary to correct a material misunderstanding known by the LSRP to have arisen in the matter;
3. Knowingly and materially falsify, tamper with, alter, conceal, or destroy any data, documents, records, remedial systems, or monitoring devices that are relevant to the investigation, without obtaining the prior approval of the Department; or
4. Knowingly allow or tolerate any employee, agent, or contractor of the LSRP to engage in any of the foregoing activities.

7:26I-6.16 Circumstances under which an LSRP is held responsible for subordinate LSRP

(a) An LSRP shall be jointly responsible for a violation of any provision of this subchapter committed by another LSRP whose work he or she supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another LSRP under his or her supervision;
2. The LSRP knows that the professional services constitute a violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; and
3. The LSRP fails to take reasonable steps to avoid or mitigate the violation.

7:26I-6.17 Duty to comply with Board directives regarding disciplinary matters

An LSRP shall comply with all conditions the Board imposes as a result of a license suspension, revocation, or other Board disciplinary proceeding.

7:26I-6.18 Duty regarding client communications

(a) An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by promptly providing the client or prospective client with written documentation of these assumptions, limitations, or qualifications.

(b) An LSRP shall inform a client of:

1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which the client has hired the LSRP;
2. The dates by which each component of the remediation shall be completed in order to meet the timeframes in (b)1 above; and
3. The penalties and consequences set forth in applicable statutes and regulations, if the timeframes in (b)1 above are not met.

7:26I-6.19 Duty regarding public communications

(a) An LSRP shall respond to public inquiries for information when the person responsible for conducting the remediation designates the LSRP as the point of contact for public inquiries pursuant to N.J.A.C. 7:26C-1.7(o).

(b) Information that the LSRP shall provide, when his or her client has designated the LSRP as the point of contact for the public pursuant to (a) above, shall include:

1. Information that is required to be provided to the public pursuant to N.J.A.C. 7:26C-1.7;
2. Information that has been submitted to the Department; and
3. Any additional information that is important for the public to know in order to protect their health and safety.

(c) An LSRP shall not communicate to the public information that he or she knows is false, inaccurate, misleading, or incomplete. An LSRP shall be deemed to have provided incomplete information when he or she withholds information that is encompassed within (b) above.

(d) The client confidentiality requirements of N.J.A.C. 7:26I-6.12 apply to this section.

7:26I-6.20 LSRP shall not induce or threaten based on connection to agency or official

An LSRP shall not state or imply, as an inducement or a threat to a client or prospective client, an ability to improperly influence a government agency or official.

7:26I-6.21 Prohibition against misrepresentation

(a) In any description of qualifications, experience, or ability to provide services, an LSRP shall not knowingly:

1. Make a material misrepresentation of fact;
2. Omit a fact when the omission results in a materially misleading description; or
3. Make a statement that, in the Board's opinion, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules, or regulations, including the SRRA and any rule, regulation, or order adopted or issued pursuant thereto.

7:26I-6.22 Duty to notify even if no longer employed by client

An LSRP shall provide any notification to the Board and the Department required pursuant to the SRRA or any rule, regulation, or order adopted or issued pursuant thereto if the notification requirement arises during the LSRP's retention, even if the client discharges the LSRP, or the LSRP discharges himself or herself, prior to providing the notification.

7:26I-6.23 Conflict of interest

(a) An LSRP shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting, unless the circumstances are fully disclosed and agreed to by all persons engaging the LSRP.

(b) An LSRP shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the LSRP is providing remediation services.

(c) An LSRP shall not allow any ownership interest, compensation, or promise of continued employment, of the LSRP or any immediate family member, to affect the professional services the LSRP provides.

7:26I-6.24 Certification

(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP has:

1. Managed, supervised, or performed the work that is the basis of the submission;
2. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or



3. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable, pursuant to N.J.A.C. 7:26I-6.7.

(b) For documents that the person responsible for conducting the remediation submits to the Department that require LSRP certification, the LSRP shall certify that:

1. The work was performed;

2. The LSRP has:

i. Managed, supervised, or performed the work that is the basis of the submission;

ii. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or

iii. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable pursuant to N.J.A.C. 7:26I-6.7; and

3. The work and the submitted documents conform to, and are consistent with, the remediation requirements in N.J.A.C. 7:26I-6.3(a).

(c) An LSRP shall certify electronic submissions he or she makes to the Department concerning the remediation of a contaminated site. The LSRP shall attest that no other person is authorized or able to use any password, encryption method, or electronic signature that the Board or the Department has provided to the LSRP.

#### 7:26I-6.25 Response action outcome

(a) Upon completion of the remediation, the LSRP shall not issue an RAO to the person responsible for conducting the remediation until:

1. In the LSRP's opinion, the contaminated site or area of concern has been remediated so that it is in compliance with all applicable statutes, rules, and regulations protective of public health and safety and the environment; and

2. The person responsible for conducting the remediation has paid to the Department all fees and oversight costs.

(b) The LSRP shall file the RAO with the Department no later than 30 days after issuing it to the person responsible for conducting the remediation.

#### 7:26I-6.26 Direct oversight

For any contaminated site subject to direct oversight pursuant to the SRRA and N.J.A.C. 7:26C-14, the LSRP shall provide all submissions concerning the remediation that the Department requires simultaneously to the Department and the person responsible for conducting the remediation.

#### 7:26I-6.27 Maintenance of data, documents, records, and information

(a) An LSRP shall maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on including, but not limited to, technical records, contractual documents, raw sampling data, and monitoring data. This obligation exists whether or not the data, documents, records, and information concerning remediation activities at the contaminated site were developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors, or attorneys.

1. The period of time during which an LSRP shall maintain all data, documents, records, and information concerning remediation activities at a contaminated site shall be a minimum of 10 years following the later of the following dates:

- i. The date that the LSRP submits a notification of dismissal to the Department; or
- ii. The date that the LSRP issues his or her last area of concern specific or entire site RAO for the site.

(b) No one, including without limitation an LSRP's employer and/or clients, shall restrict the LSRP from personally maintaining and preserving all data, documents, records, and information specified in (a) above in the format and location that the LSRP chooses.

#### 7:26I-6.28 Cooperation with Department review of remediation

(a) An LSRP shall provide any data, documents, records, and information the Department requests to conduct a review of the remediation of a contaminated site pursuant to N.J.S.A. 58:10C-21, by the date the Department specifies.

(b) Unless the Department directs otherwise, the LSRP may continue to remediate the contaminated site on behalf of the person responsible for conducting the remediation while the Department conducts any inspection or additional review of documents pursuant to N.J.S.A. 58:10C-21.