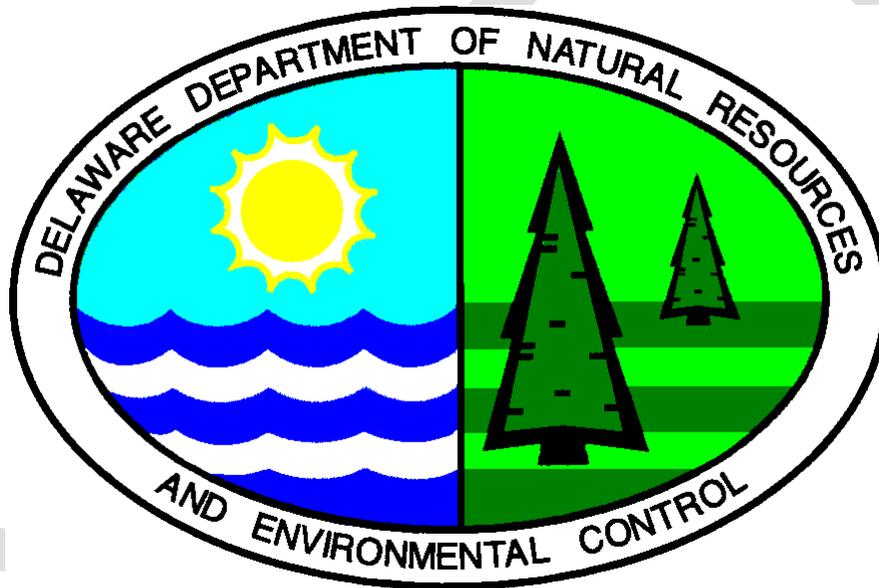


DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Site Investigation & Restoration Section



Delaware Regulations Governing Hazardous Substance Cleanup

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1.0 General Provisions

1.1. Statement of Authority and Purpose

- 1.1.1. The Regulations Governing Hazardous Substance Cleanup (Regulations) are ~~enacted~~promulgated in accordance with Title 7 Del.C. Ch. 91, *Delaware Hazardous Substance Cleanup Act*, ~~and (Act)~~, Title 7 Del.C. Ch. 60, *Environmental Control*, ~~and Title 7 Del.C. Ch. 63, *Hazardous Waste Management*~~. The goal of these Regulations is to implement the purposes declared in Title 7 Del.C. §9102.
- 1.1.2. The Delaware Department of Natural Resources and Environmental Control (~~the~~ Department) is responsible for protecting, preserving and enhancing the environmental quality of the water, air, and land of the State. The *Hazardous Substance Cleanup Act* (~~the Act~~) ~~requires and empowers~~authorizes the Secretary of the Department to promulgate regulations implementing ~~all~~the provisions of the Act. ~~The Regulations Governing Hazardous Substance Cleanup are intended to meet that requirement.~~
- ~~1.1.3. The General Assembly and the Department provide incentives for the cleanup and redevelopment of facilities that enhance economic revitalization through the *Voluntary Cleanup Program* and the *Brownfields Program*. The Department encourages private parties to clean up facilities for which they are responsible, but if they fail to do so, then the Department, under the *HSCA Lead Program*, shall require cleanup by the responsible party, or recover the costs of performing the cleanup from the responsible parties.~~
- ~~1.1.3.1. *Voluntary Cleanup Program* These Regulations afford the opportunity to private parties to voluntarily cleanup facilities under the Department oversight without an admission of liability under HSCA or a consent decree.~~
- ~~1.1.3.2. *Brownfields Program* These Regulations stipulate the requirements and procedures for providing financial incentives for cleanups performed under the *Brownfields Program*.~~
- ~~1.1.3.3. *HSCA Lead Program* These Regulations establish the processes for conducting site activities and recovering costs of cleanup and oversight.~~
- 1.1.3. These Regulations provide a process to accomplish cleanups in order to protect public health or welfare or the environment, and to provide opportunities to encourage remedial activities at facilities to yield economic revitalization and redevelopment within the State.
- 1.1.4. The target risk levels achieved through action pursuant to these Regulations shall be equivalent irrespective of the program (~~*Voluntary Cleanup, Brownfields or HSCA Lead*~~) ~~through~~under the Act pursuant to which the cleanup is conducted.
- 1.1.5. No person shall obstruct, hinder, delay or interfere with, ~~by force or otherwise, the performance by~~ Department personnel in carrying out their duties ~~relating to regulation, order, or issued plan~~under the Act.

1.2. Applicability

1.2.1. The requirements of these Regulations shall apply to ~~all facilities~~any facility with a release or imminent threat of release and any person who conducts an investigation or ~~remediation~~remedial action at a facility with a release or imminent threat of release.

~~1.2.2. Pursuant to 7 Del.C. §9103(20), the following are explicitly excluded from the definition of “release”:~~

~~1.2.2.1. Any release which results in exposure to a person solely within the workplace, with respect to a claim which such person may assert against an employer provided, however, that this exclusion does not apply to any such release which also results in exposure to the environment.~~

~~1.2.2.2. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine.~~

~~1.2.2.3. The appropriate application of fertilizer and pesticide.~~

~~1.2.2.4. Any discharges in compliance with state permits issued in conformance with Title 7 Del.C. and federally permitted releases under CERCLA.~~

~~1.2.3. Pursuant to 7 Del.C. §9104 (a)(3), the requirements of these Regulations shall not apply to the following facilities with releases of hazardous substances:~~

~~1.2.3.1. Facilities contaminated solely by discharges in compliance with state permits issued by DNREC.~~

~~1.2.3.2. Facilities contaminated solely by where the contaminant of concern is lead originating from lead-based paint applied to a structure on the facility and subject to action by the Delaware Lead Poisoning Prevention Program.~~

~~1.2.3.1.2.2. Facilities contaminated solely by, or asbestos containing material originating from asbestos applied to a structure, or both, and where the Department determines the facility is appropriately regulated by another state or federal statute or regulation.~~

1.3. Applicability of Other Laws and Regulations; Variances

1.3.1. Nothing in these regulations shall be construed to limit the authority of the Department to act pursuant to other existing laws and regulations.

1.3.1.1. The Department has the discretion to apply these Regulations to a release of a Hazardous Substance that is subject to regulation under 7 Del.C. Ch. 74 or 7 Del.C. Ch. 74A.

1.3.1.2. The Department has the discretion to apply the requirements of Del.C. Ch. 74 or 7 Del.C. Ch. 74A, and the regulations promulgated pursuant thereto, to a release of a Hazardous Substance that is subject to regulation under these Regulations.

1.3.2. Any action taken under the authority of these regulations shall be in compliance with all applicable federal, state and statelocal laws and regulations.

~~1.3.3. Subject to the provisions of 7 Del.C. §§6011-6012 and 7 Del.C. §6314, the Department may grant a variance or temporary emergency variance waiving specific requirements of any environmental permits for an on-facility activity during remedial action if the selected remedy otherwise meets the substantive requirements of the permit. Any such variances or temporary emergency variances shall expire upon completion of the specific remedial action or upon expiration of statutory limits per 7 Del.C. Ch. 60.~~

~~1.3.4. Any person responsible for operation and maintenance must obtain any necessary permits before initiating activities which require a permit under Delaware laws and regulations. Possession of such permits shall be required for initial and continuing Department approval of the operation and maintenance plan.~~

~~1.3.5. Failure to perform operation and maintenance in compliance with a Department approved plan may result in an enforcement action up to and including rescission of the Certification of Completion of Remedy.~~

1.4. Right of Appeal

~~1.4.1. Any person or party whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with 7 Del.C. §6008.~~

~~1.4.2. Any person or party to an appeal before the Environmental Appeals Board who is substantially affected by a decision of the Environmental Appeals Board may appeal to the Superior Court in accordance with 7 Del.C. §6009.~~

1.5. Public Participation

~~1.5.1. Information and documents obtained by the Department pursuant to these Regulations shall be available to the public, except that the Department may certify that such information is entitled to protection as confidential trade secrets, financial or commercial information, upon request of the party submitting the information, in accordance with 29 Del.C. Ch. 100.~~

~~1.5.2. The Department shall publish notice at various stages of activities at a facility as detailed in Section 8.0 of these regulations.~~

~~1.5.3. At its discretion, the Department may hold informational meetings for the public concerning remedial action at a given facility.~~

~~1.5.4. The Department shall hold public hearings on settlement agreements and remedial actions at a given facility if the Department receives a meritorious request for such a hearing from any person.~~

1.6.1.4. Severability

~~1.6.1.1.4.1.~~ If any ~~provisions~~ provision of these ~~regulations are~~ Regulations is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby.

1.7.1.5. Oversight

1.5.1. Any Concurrent Oversight

~~1.7.1.0.1.5.1.1.~~ 1.5.1.1. A person may obtain the Department's concurrent oversight of work on any aspect of a remedy by entering into a settlement agreement with the Department for that purpose.

~~1.7.1.1.1.5.1.2.~~ 1.5.1.2. By obtaining the Department's concurrent oversight of work, a person will be able to receive the Department's approval that the work which is proposed for a facility satisfies the requirements of HSCA the Act, these Regulations, and all applicable ~~guidances,~~ policies ~~and,~~ procedures, and guidance.

~~1.7.1.2.1.5.1.3.~~ 1.5.1.3. The interim response, remedial action, and operation and maintenance portions of a remedy shall not be performed by any person without the concurrent oversight of the Department except as provided under Section 12.0.

1.5.2. Any Subsequent Oversight

~~1.7.2.1.~~ 1.5.2.1. A person may perform an initial investigation, facility evaluation, remedial investigation, or feasibility study without the concurrent oversight of the Department.

~~1.7.2.0.1.5.2.2.~~ 1.5.2.2. A person may obtain subsequent oversight of work not performed with the Department's concurrent oversight by entering into a settlement agreement with the Department for it to review such prior work and determine whether it can be approved as satisfying the requirements of HSCA the Act, these Regulations, and any applicable ~~guidances,~~ policies ~~and,~~ procedures, and guidance.

~~1.7.2.1.~~ ~~Any person may perform an initial investigation, facility evaluation, remedial investigation, feasibility study, or remedial design without the concurrent oversight of the Department.~~

~~1.7.2.2.1.5.2.3.~~ 1.5.2.3. If the Department determines that any portion of the work does not satisfy the requirements of HSCA the Act, these Regulations, and any applicable ~~guidances,~~ policies ~~and,~~ procedures, and guidance, it may require that additional remedial work be performed prior to approving the person's work, or it may disapprove the work entirely.

1.5.3. Any Emergency Oversight

~~1.7.3.0.1.5.3.1.~~ 1.5.3.1. A person may undertake an emergency response action at a facility after initiation of ~~response actions~~ a remedy pursuant to these Regulations without the Department's oversight provided the person notifies the Department of the details of the action taken, within 48 hours of the initiation of the emergency response

action. This does not limit or relieve anya person's liability under other existing Federal or State laws or regulations for undertaking an emergency response action at a facility.

2.0 Definitions and Usage

- 2.1. **Definitions** - The following words, terms and phrases have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning.

“Acceptable risk” means a probability of one additional lifetime incidence of cancer in 100,000 ~~lifetimes~~ (1×10^{-5}) for carcinogens, and a hazard quotient index of one (1) or less for non-carcinogens. ~~For~~ There are exceptional contaminants, including lead, for which cancer or non-cancer risk does not apply and the Department may approve other methods for determining acceptable risk shall be represented by concentrations of lead in environmental media that do not cause elevated blood levels (greater than 10 ug/dl) in children aged 1 to 5 years old, or 30 ug/dl in everyone else. for these contaminants.

“Act” means 7 Del.C. Ch. 91, the Delaware Hazardous Substance Cleanup Act.

“All Appropriate Inquiry (AAI)” means the requirements for assessing the environmental conditions of a property prior to its acquisition. Detailed requirements for AAI are presented in the EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312) (Nov. 1, 2005), as amended, or ~~ASTM's~~ ASTM International's Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E 1527-05), as amended.

“Allowable Interest Rate” means a rate of interest 5% over the Federal Reserve discount rate.

“Aquifer” means a geologic formation, group of formations, or a part of a formation capable of yielding groundwater to wells or springs.

“Background levelLevel” means the concentration of substances ~~consistently widely~~ present in the soil, sediment, air, surface water, ~~or groundwater, or other environmental media~~ in the region vicinity of a facility, or at a comparable reference area, due to natural causes or human activities other than releases from, or activities on, the facility, as determined by the Department.

“Baseline Conditions” or **“Baseline”** means the condition or conditions that would have existed at the ~~Natural Resource Damage Assessment~~ natural resource damage assessment area had the release of hazardous substances under investigation not occurred.

“Brownfield Developer” means any person as defined in 7 Del. C. §§9123 (1).

“Brownfields Development Agreement” means an agreement between the Secretary and a Brownfields Developer with respect to a certified brownfield that sets forth a scope and schedule of activities to assess and respond to the actual, threatened, or perceived release of hazardous substances at the facility.

“Brownfields Development Program” means the remedial process established by the Department under 7 Del.C. Ch. 91, Subchapter II.

“Brownfields Investigation” means an evaluation under the Brownfields Development Program which ~~combines~~includes the assessment of ~~a release or a potential~~an actual, threatened, or perceived release of a hazardous substance at a facility to determine the nature, extent, and impact of the actual, threatened, or perceived release, and the evaluation of the feasibility of the proposed development plan to serve as all or a portion of the remedial alternative action.

“Carcinogen” means a hazardous substance which causes or induces cancer in humans. ~~“Carcinogen” means a hazardous substance which causes or induces cancer in humans.~~ The term also includes suspected carcinogen, which may cause or induce cancer in humans.

“CERCLA” means the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended.

“Cleanup Level” means the concentration of hazardous substances in soil, surface water, groundwater, air, or sediment that the Departments determines must be remediated (e.g., treatment, containment, institutional controls) in order to be protective of human health and the environment under specified exposure conditions.

“Conditional No Further Action” means that based on the information available following an initial investigation or facility evaluation, the Department determines that: (a) there has been no release or there is no imminent threat of release; (b) a release has occurred which does not pose a threat to public health or welfare or the environment; or (c) action by another authority is appropriate.

“Consultant” means a contractor who is hired to provide professional services for remedies with regard to a facility.

“Contaminant of Concern” means a hazardous substance identified during a remedy where the concentration exceeds the cleanup level.

“Data Quality Objectives” means qualitative and quantitative statements ~~that define the data necessary to support the remedy of the overall level of uncertainty that the Department will accept in results or~~ decisions based on environmental data.

“Day” means calendar days.

“Day” means a calendar day; however when used to determine when a document is due, or an action is required, and the day falls on the weekend or a holiday, the document may be submitted, or the action started, on the first working day after the weekend or holiday.

“Department” means the Delaware Department of Natural Resources and Environmental Control.

"**Disposal**" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous substance into or on any land, water or into the air so that such hazardous substance or any constituent thereof may enter the environment.

"**Emergency Response**" means a ~~response activity~~remedy undertaken to eliminate or control an immediate threat to public health, ~~or~~ welfare, or the environment.

"**Environment**" means the navigable waters, the waters of the contiguous zone, ocean waters, and any other surface water, groundwater, drinking water supply, land surface or subsurface strata or ambient air within the State.

~~"**Environmental Site Assessment (Phase I and II)**" means the evaluation of a property for the presence or potential presence of petroleum products or hazardous material. An ESA may consist of a Phase I or Phase II, as defined by ASTM 1527-05 and ASTM 1903-97, or other equivalent environmental investigations as determined by the Department.~~

~~"**EPA**" means the United States Environmental Protection Agency.~~

"**Facility**" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, aircraft or any site or area where a hazardous substance has been generated, manufactured, refined, transported, stored, treated, handled, recycled, disposed of, released, placed or otherwise come to be located. Where there is or has been a release or threat of release on ~~a parcel of~~ real estate property, a portion of the real estate property may be considered a facility for the purpose of performing a remedy. A facility also includes all properties where hazardous substances may have migrated to or come to be located since being released.

"**Facility Evaluation**" means an investigation to identify ~~any~~ release of a hazardous substance and ~~yield~~generate data to perform a preliminary risk screening and make a decision regarding future action at the facility.

~~"**Feasibility Study**" means an evaluation to identify the potential remedial alternatives that are applicable to satisfy the remedial action objectives for the facility.~~

~~"**Facility Closure Determination**" means that the Department has determined that the facility meets all of the requirements of the Act, and that all requirements of the Final Plan of Remedial Action have been met and no restrictions remain on the facility.~~

"**Final Plan of Remedial Action**" means the Department's written determination of the appropriate remedial action under ~~HSCA~~the Act at a facility for the current or anticipated land use to protect public health, welfare, and the environment.

"**Free Product**" means a hazardous substance which occurs as a non-aqueous phase liquid in surface water, groundwater, the vadose zone, or the ground surface. This term encompasses ~~all potential occurrences including~~ free, mobile, ~~and~~or residual product.

"Groundwater" means water below the land surface in the zone of saturation.

~~"Groundwater" means water below the land surface in the zone of saturation.~~

"Hazard Ranking" means the process of ~~prioritizing facilities by~~ assigning a relative category based on rank or priority to a facility using the Delaware Hazard Ranking Model. In ranking facilities, the Department may group them in categories of relative risk.

"Hazardous Substance" means: (a) any hazardous waste as defined in 7 Del.C. Ch. 63 or any hazardous waste designated by regulation promulgated pursuant to 7 Del.C. Ch. 63; (b) any hazardous substance as defined in CERCLA or regulations promulgated pursuant thereto; (c) Any substance ~~in sufficient concentrations which determined by~~ the Secretary through regulation ~~determines may to~~ present a risk to the public health, ~~or~~ welfare, or the environment; if released into the environment; or (d) petroleum, including crude oil or any fraction thereof; however, any release of hazardous substances from ~~an underground~~ storage tank which is regulated by 7 Del.C. Ch. 74 or 7 Del.C. Ch. 74A or regulations promulgated pursuant thereto is not subject to these ~~regulations~~ Regulations except ~~that such as provided for in Section 1.3. Notwithstanding the Department's determination under Section 1.3 of these Regulations, any~~ release of petroleum, including crude oil or any fraction thereof, is eligible for funding under the Act.

"Hourly Rate Of Wages" means the total annual wages of a State employee divided by 1,650 hours or the monthly wages of an employee divided by the actual number of hours worked by the employee during the month.

"Imminent threat of release" means potential for a release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare or the environment which may result from such a release.

"Indirect Cost" means those costs incurred for a common of joint purpose benefitting more than one cost objective, and which are not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

"Indirect Cost Rate" means the ratio of indirect cost to the projected costs of salaries for facility remediation.

"Initial Investigation" means a process for identifying a suspected release or imminent threat of release. It includes review of existing information, ~~site~~ facility visits, interviews with ~~site~~ facility owner or operator and adjacent property owners, or other persons with knowledge of the facility.

"Initial Risk Screening" means the comparison of the maximum observed concentrations of analytes found in environmental samples to background levels or risk-based values approved by the Department based on the results of the facility evaluation or equivalent investigation.

"**Injury**" means a measurable adverse change, either long- or short-term, in the chemical, biological or physical quality or the viability of a natural resource, including loss thereof, resulting directly or indirectly from exposure to a release, or from attempts to remedy or mitigate a release.

"**Interim action**" means the containment, cleanup, or removal of a release or imminent threat of release of hazardous substances from a facility, or the taking of other actions, prior to the selection of a remedial action, as may be necessary to prevent, minimize, or mitigate threats to public health or welfare or the environment.

"**Long-term Effectiveness**" means the ability of an implemented ~~remedy~~remedial action to maintain the desired level of protection over an extended period of time.

"**Long-term Stewardship**" means the long-term management of contaminated environmental media at sites that is necessary to protect human health and the environment. Long-term stewardship generally includes the establishment and maintenance of physical and legal controls, implementation entities, authorities, accountability mechanisms, information and data management systems, and/or resources that are necessary to ensure that these sites remain protective of public health or welfare or the environment.

"**Maximum Contamination Contaminant Level**" or "**MCL**" means the level of a specific chemical promulgated by EPA pursuant to the Safe Drinking Water Act, 42 U.S.C. Sec 300(f), et seq., as amended.

"**Natural Resources**" means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of Delaware, the United States federal government, other states, any foreign government, any local government, or any Indian tribe.

"**Natural Resource Damages**" or "**Damages**" means the compensation sought by the Department as a result of injury, destruction, or loss of natural resources or services, or the restoration or replacement of such natural resources and services.

"**Natural Resource Damage Assessment**" means the process of collecting, compiling, and analyzing information, statistics, or data to determine natural resource damages.

"**Natural Resource Services**" or "**Services**" means the physical, chemical and biological function performed by the natural resource including the human use or aesthetic value of those functions.

"**Operation And Maintenance**" or "**O&M**" means the activities required by the Department to provide for continued effectiveness and integrity of a ~~response activity~~Remedial Action.

"**Other Employee Costs Rate**" means the sum of State contributions to pension, unemployment insurance, Federal Income Contribution Act, health insurance, and worker's compensation for a State employee per year divided by 1,650 hours, or the sum of State contributions to pension, unemployment insurance, Federal Income Contribution Act, health

insurance, and worker's compensation for a State employee per month divided by the actual number of hours worked by the employee during the month.

"Oversight" means supervision by the Department of a person's work on any aspect of a remedy during the performance of that work, including the Department's review of any work done prior to the Department's supervision that now requires the Department's approval.

"Owner Or Operator" means:

a) Any person owning or operating a facility.

b) Any person who previously owned, operated, or otherwise controlled activities at a facility.

c) The term "owner or operator" does not include an agency of the State or unit of local government that acquired title or control of the facility involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.

d) The term "control" does not include regulation of the activity by a federal, state or local government agency.

e) The term "owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect his security interest in the facility.

f) The term "owner or operator" does not include a person who, without acquiring legal title, conducts or directs activities in connection with the actual or potential acquisition or evaluation of a facility, including due diligence, site inspections, site assessments, all appropriate inquiry or other pre-closing activities in connection with the acquisition of a facility.

"Pathway" means the route or medium through which hazardous substances are or were transported from the source of the release to the injured resource or the exposed human population.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, school district, conservation district, federal government agency, Indian tribe or interstate body.

"Phase I Environmental Site Assessment" or "Phase I" means an investigation performed in accordance with ASTM's Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E 1527), as amended.

"Phase II Environmental Site Assessment" or "Phase II" means an investigation performed in accordance with ASTM's Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process (E 1903), as amended.

~~**"Proposed Plan Of Remedial Action"** means a written plan, issued for public comment, describing the appropriate action under HSCA at a facility for the current or anticipated land use to protect public health, welfare, and the environment.~~

~~**"Potential Contaminant of Concern"** means a hazardous substance identified during a remedy where the concentration exceeds the Department's screening levels.~~

"**Potentially Responsible Party**" or "**PRP**" means any person identified pursuant to 7 Del. C. §§9105 (a)(1) through (6) ~~and these regulations~~ as a person liable with respect to a facility.

~~"**Preliminary Risk Screening**" means the comparison of the maximum observed concentrations of analytes found in environmental samples to background concentrations or risk-based values approved by the Department based on the results of the facility evaluation or equivalent investigation.~~

"**Proposed Plan Of Remedial Action**" means a written plan, issued by the Department for public comment, describing the appropriate remedial action under the Act at a facility for the current or anticipated land use to protect public health or welfare or the environment.

"**Priority List**" means the listing list established by the Department ~~to categorize the using the Delaware Hazard Ranking Model to rate the relative risk of the~~ facilities based on the risk they pose to the public health, ~~welfare, or the environment.~~

~~"**Prospective Purchaser**" means a person (or a tenant of a person) that acquires welfare or intends to acquire ownership of a facility after the date of the enactment of this subdivision and that establishes each of the following: environment. In establishing a priority list, the Department may group facilities in categories of relative risk.~~

~~a. All disposal of hazardous substances at the facility occurred before the person acquired the facility.~~

~~b. Inquiries.~~

~~1. The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with standards and practices in accordance with sub-subparagraphs 2. and 3. of this subparagraph.~~

~~2. The standards and practices referred to in 7 Del. C. § 9105(e)(2)b.1. and 2., shall be considered to satisfy the requirements of this subsection.~~

~~3. In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subsection.~~

~~c. Notices. The person provides all legally required notices with respect to the discovery or release of any hazardous substance(s) at the facility.~~

~~"**Prospective Purchaser Agreement**" means an agreement between the Secretary and a Prospective Purchaser that sets forth the scope and schedule of activities to assess and respond to the actual, threatened, or perceived release(s) of hazardous substances at a facility. A Prospective Purchaser Agreement also delineates the rights and obligations of the Prospective Purchaser in connection with liability protections afforded under section 9105(e)(4).~~

"**RCRA**" means Resource Conservation and Recovery Act, 42 U.S.C Sec. 6901, et seq., as amended.

"**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a hazardous substance, pollutant or contaminant into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

- a) ~~any~~ release which results in exposure to a person solely within his or her workplace, with respect to a claim which such person may assert against his or her employer; provided, however, that this exclusion does not apply to any such release which also results in exposure to the environment;
- b) ~~emissions~~ from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;
- c) ~~the appropriate application of fertilizers and pesticides; and~~
- d) ~~any discharges in compliance with State permits issued in conformance with Title 7 of the Delaware Code and federally permitted releases under CERCLA.~~

"**Remedial Action**" means the containment, contaminant mass or toxicity reduction, isolation, treatment, removal, cleanup, or monitoring of hazardous substances released into the environment, or the taking of such other actions, including natural resource damage restoration and replacement, as may be necessary to prevent, minimize, or mitigate harm or risk of harm to the public health, ~~or~~ welfare, ~~or~~ the environment which may result from a release or an imminent threat of a release of hazardous substances.

~~"Remedial Design" means the technical specifications for cleanup remedies and technologies.~~

"**Remedial Investigation**" means an evaluation of a release or imminent threat of release of a hazardous substance at a facility to determine the nature, extent, and impact of the release and the collection of data necessary to conduct a feasibility study of remedial alternatives.

"**Remedy**" or "Remedial Activity" means any action, response or expenditure consistent with the purposes of the Act, or any regulations or guidance developed pursuant thereto to identify, minimize or eliminate any imminent threat posed by any hazardous substances to public health, ~~or~~ welfare, ~~or~~ the environment including preparation of any plans, conducting of any studies and any investigative, oversight of remedy or monitoring activities with respect to any release or imminent threat of release of a hazardous substance and any health assessments, risk assessments ~~or~~, health effect studies or natural resource damage assessments conducted in order to determine the risk or potential risk to public health or welfare or the environment.

"**Replacement**" or "**Acquisition of the Equivalent**" means the substitution for the injury or loss of a resource with another resource that provides the same or substantially similar services; when such substitutions are in addition to any substitutions made or anticipated as part of ~~responseremedial~~ actions, and when such substitutions exceed the level of ~~responseremedial~~ actions determined appropriate to the facility pursuant to the Hazardous Substance Cleanup Act (~~HSCA~~ the Act) or the National Oil and Hazardous Substances Contingency Plan (NCP), as amended.

“Reporting Levels” means the concentrations of hazardous substances in the environmental media established by the Department that require notification to the Department.

“Restoration” or “Rehabilitation” means actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resource's physical, chemical or biological properties or the services it provided during its baseline conditions, when such actions are in addition to ~~responseremedial~~ actions completed or anticipated, and when such actions exceed the level of ~~responseremedial~~ actions determined appropriate to the facility pursuant to the Hazardous Substance Cleanup Act or the National Oil and Hazardous Substances Contingency Plan (NCP), as amended.

“Risk Assessment” means the analysis of the potential for adverse human health effects or adverse effects on ecological receptors caused by contamination.

“Screening Levels” means the concentrations of analytes in soil, sediment, air, surface water, or groundwater which are lower than the cleanup levels, and which the Department uses to determine whether further evaluation of a facility is necessary based on its current and potential future use.

“Secretary” means Secretary of the Department or his or her designee.

“Settlement Agreement” means a written agreement between one or more persons and the Department in which the terms and conditions are embodied in a consent decree, ~~VCP agreement, Brownfield Development agreement,~~ administrative order on consent, memorandum of agreement, or any other type of agreement approved by the Department.

“Short-term Effectiveness” means the ability of the selected remedy to maintain the desired level of protection during the implementation phase of the remedy.

“Site Assessment” means the assessment of a facility ~~and/or~~ property to determine whether hazardous substances have entered the environment.

“Site” means ~~“Facility”~~facility.

“Site Specific Risk” means the risk of a potential adverse effect to public health or welfare or the environment resulting from exposure to a release of hazardous substances at the site based on its current and potential future use.

“Surface Water” means the waters of the State of Delaware, occurring on the surface of the earth.

“Trustee” or “Natural Resource Trustee” means any Federal natural resources management agency designated in the National Oil and Hazardous Substances Contingency Plan (NCP), as amended, and any State agency designated by the Governor of each State, pursuant to section 107(f)(2)(B) of CERCLA, ~~and applicable State statute~~ that may prosecute claims for damages under ~~HSCAthe Act~~, Clean Water Act, or section 107(f) or 111(b) of

CERCLA, or an Indian tribe, that may commence an action under ~~HSCA~~the Act or section 126(d) of CERCLA.

"**Voluntary Cleanup Program**" or "**VCP**" means the remedial process established by the Department under 7 Del.C. Ch. 91, ~~that~~into which a party ~~willingly~~voluntarily enters into, provided the application is approved by the Department, for the purpose of conducting a remedy at a facility.

"**VCP Agreement**" means a legal and administrative document entered into between ~~DNREC~~the Department and the VCP applicant that provides for the performance of a remedy at a facility, and the reimbursement of ~~DNREC~~the Department's oversight costs, by the applicant.

2.2. **Usage** - For the purpose of these ~~regulations~~Regulations, the following usages shall apply:

- 2.2.1. Unless the context clearly requires otherwise, the use of the singular shall include the plural and conversely;
- 2.2.2. "Include" or "including" means including, but not limited to;
- 2.2.3. "May" means the provision is optional, at the discretion of the Department; and
- 2.2.4. "Shall" and "will" means the provision is mandatory.

3.0 Facility Identification & Prioritization

~~3.1. Mechanisms to Identify Facilities~~

3.1. An owner or operator of a facility, or any person performing an investigation at a facility, who has received information of a release of a hazardous substance into the environment at concentrations at or above the reporting levels must notify the Department of the release within 60 days of receiving the information.

3.2. The Department shall establish an inventory of hazardous substance release facilities.

~~3.1.1.~~3.2.1. Facilities with a release or imminent threat of release of hazardous substances may be identified by the Department through a variety of mechanisms including any of the following:

~~3.1.1.1.~~3.2.1.1. Reports to or from, or investigations by, the Department, including the Site Investigation and Restoration ~~Branch~~Section, Tank Management ~~Branch~~Section, Solid and Hazardous Waste Management ~~Branch~~Section, Emergency Prevention and Response Branch, or Division of Water Resources ~~or~~or from information provided in a Brownfield Certification application by a developer, a prospective purchaser, or a ~~site~~facility owner.

~~3.1.1.2.~~3.2.1.2. Reports to or from, or investigations by, local, state and federal government agencies including the Delaware Department of Health and Social

Services, Delaware Department of Transportation, Delaware Emergency Management Agency, State Police or other law enforcement agencies, State Fire Marshal's Office or any Fire Department, United States Environmental Protection Agency, Department of Defense or other Federal agencies, ~~Delaware Emergency Management Agency.~~

3.1.1.3.3.2.1.3. Reports to the Department from real estate transaction-related environmental assessments as part of ~~All Appropriate Inquiry~~ all appropriate inquiry (AAI) requirements.

3.1.1.4.3.2.1.4. Other reporting sources including potentially responsible parties, impacted public, neighboring facilities, ~~public~~ contractors, consultants and other persons with sources of information about the existing releases.

3.2.2. A facility may be removed from the inventory of hazardous substance release facilities list and the priority list of facilities after the Department has determined that no further action is required at the facility.

3.2.3.3. Priority List

3.2.1.3.3.1. Applicability

3.2.1.1.3.3.1.1. The Department shall establish a priority list of facilities from the inventory of hazardous substance release ~~sites~~ facilities where a further ~~responsere~~ remedy has been determined to be necessary, based on the relative hazard ~~category~~ ranking of the facility into categories using the Delaware Hazard Ranking Model. The relative priorities established in the priority list may be considered in the preparation of funding recommendations, and in determining the priority for remedies among facilities. The Department may conduct or require a ~~responsere~~ remedy at a facility even if it is not included on the list.

3.2.2.3.3.2. Criteria for Placement of Facilities on Priority List

3.2.2.1.3.3.2.1. Facilities may be placed on the priority list if, after the completion of an initial investigation, the Department has determined that further remedy is required at the facility. ~~The priority list will be updated at least once every year.~~ Placement of a facility on the priority list does not, by itself, ~~imply~~ constitute a determination that persons associated with the facility are liable under the Act or these ~~regulations~~ Regulations.

3.2.2.2.3.3.2.2. Facilities placed on the priority list will be given a hazard ranking. The purpose of the hazard ranking is to estimate the relative potential risk posed by the facility to public health, or welfare, or the environment based on the information compiled during the initial investigation and subsequent investigations.

3.2.2.3.3.3.2.3. The Department will objectively assess the relative degree of risk of each facility which is to be placed on the priority list using the Delaware Hazard Ranking Model established by the Department. Information obtained in the initial

investigation, and any subsequent investigations and any additional data specified by the Department, will be included in the hazard ranking evaluation.

~~3.2.2.4.3.3.2.4.~~ The Department will, upon request, make available to the facility owner and operator and any potentially responsible party known to the Department, the final hazard ranking results for a facility to be placed on the priority list.

~~3.2.2.5.~~ A facility may be removed from the inventory of hazardous substance release sites list and the priority list of facilities after the Department has determined that no further action is required at the facility.

~~3.2.2.6.~~ The Department will address facilities, to the maximum extent practicable, based upon their ranking on the priority list of facilities. A person may conduct a remedy at a facility, regardless of its priority listing, by entering into a settlement agreement through the Department's Voluntary Cleanup Program or Brownfield Development Program or as determined by the Department.

~~3.3.3.4.~~ Brownfield ~~Brownfields~~ Certification and Funding

~~3.3.1.3.4.1.~~ In order to qualify for the Brownfields Development Program, the property must be certified as a Brownfield. To receive a ~~Brownfield~~ Brownfields Certification, the Brownfield ~~Applicant~~ applicant shall submit a ~~Brownfield~~ Brownfields Certification Application (BCA) to the Department seeking Brownfield Certification: for the property. The property certification request can be initiated by a ~~Brownfield~~ Brownfields Developer, the current property owner, ~~or~~ the Department, or any public agency.

~~3.3.2.~~ ~~Brownfields Developer Designation.~~ In order to avail themselves of the rights and protections of the Brownfields Developer status a person, who is otherwise not liable pursuant to 7 ~~Del.C. §9105(a)(1) (6)~~ must first submit an application for a Brownfield Development Agreement (BDA).

~~3.3.3.~~ ~~Brownfield~~ Property Certification

~~3.3.3.1.~~ ~~Brownfield Criteria Determination~~ The Department shall certify all or part of a parcel of real property as a Brownfield if the property meets the following criteria:

~~3.3.3.1.1.~~ All or part of the property is abandoned, vacant, or underutilized, and;

~~3.3.3.1.2.~~ All or part of the property is subject to either a current or prospective development or redevelopment plan; and

~~3.3.3.1.3.~~ The property meets any one (1) of the following conditions:

~~3.3.3.1.3.1.~~ The development or redevelopment of the property may be hindered by the reasonably held belief that a *recognized environmental condition* exists there;

~~3.3.3.1.3.2. The property is currently or historically demonstrated or identified as one of the following:~~

~~3.3.3.1.3.2.1. Salvage yard;~~

~~3.3.3.1.3.2.2. A regulated Tank facility pursuant to 7 Del.C. Ch. 74 and 7 Del.C. Ch. 74A;~~

~~3.3.3.1.3.2.3. Dry cleaner with a plant onsite;~~

~~3.3.3.1.3.2.4. RCRA (Subtitle C) treatment, storage, or disposal facility that has been formally released by the US EPA or the State RCRA program.~~

~~3.3.3.1.3.2.5. Permitted or non-permitted landfill and dump;~~

~~3.3.3.1.3.2.6. Land that has been subject to filling with potentially contaminated material.~~

~~3.3.3.1.3.2.7. Known hazardous substance release site that has not been remediated to the standard applicable to the intended land use, including those previously identified by the Department.~~

~~3.3.3.1.3.2.8. National Priority List (NPL) or Federal CERCLIS site that has a “No Further Interest” designation from the US EPA.~~

~~3.3.3.1.3.2.9. Land adjacent to a property described in Section 3.3.3.1.3.2.1 through Section 3.3.3.1.3.2.8 that shows evidence of having been impacted by the operations of a contiguous property.~~

~~3.3.3.2. Sites in the HSCA Enforcement Program are not prohibited from being certified as a Brownfield.~~

~~3.3.3.3. Notwithstanding the above, sites for which an administrative order, judicial order, or enforcement action from any State or Federal environmental agency is in effect, or is proposed may not be eligible for Brownfield Certification on a site specific basis.~~

~~3.3.3.4. Any Brownfield Certification decision is at the sole discretion of the Secretary, or his designee.~~

~~3.3.4. Criteria for Brownfield Developer (BD) Eligibility~~

~~3.3.4.1. The applicant, including the employees or agents thereof, must not, in the opinion of the Department, have intentionally caused the contamination of the property in violation of applicable laws, or be a chronic violator of state or federal environmental laws.~~

~~3.3.4.2. Prior to approval, the application must be complete and must contain all of the information required by the Department, including the information required by Section 3.3.6 of these regulations.~~

~~3.3.5. Application for Funding under Brownfield Certification~~

~~3.3.5.1. Upon the filing of a Brownfield Certification Application (BCA), the applicant may also choose to request financial assistance. Completion of the financial section of the BCA does not guarantee a commitment for funding, nor does it obligate the State of Delaware or any State agency to provide any form of financial assistance.~~

~~3.3.5.2. Submission of a funding request is optional and the decision to approve funding is at the discretion of the Department.~~

3.3.6.3.4.2. Application for Brownfield Certification

3.3.6.1.3.4.2.1. Brownfield Certification shall be provided only to those persons who apply for a certification from the Department. Such application shall contain, at a minimum, the following information:

3.3.6.1.1.3.4.2.1.1. Name and address of the person seeking the certification, and their relationship to the property;

3.3.6.1.2.3.4.2.1.2. Address of the property including tax parcel designation;

3.3.6.1.3.3.4.2.1.3. Current use of the property and its zoning classification;

3.3.6.1.4.3.4.2.1.4. ~~Intended or~~The proposed development or redevelopment plan;

3.3.6.1.5.3.4.2.1.5. Reason to believe that the property may be contaminated; and why such contamination may hinder development or redevelopment.

3.4.2.2. Upon request by the Department, the applicant shall provide ~~any~~:

3.3.6.2.0.3.4.2.2.1. Any and all documentation regarding all environmental investigations of the property, or chronic violator status of the applicant pursuant to 7 Del.C. §7904.

3.3.6.3.0.3.4.2.2.2. The factual basis for concluding that the property ~~must be~~ abandoned, vacant or underutilized;

3.3.6.4.0.3.4.2.2.3. ~~There must be a reasonably held belief~~The factual basis for concluding that the site/facility is contaminated;

3.3.6.5.0.3.4.2.2.4. Certify~~Certification~~ that the Brownfield ~~Party~~ will comply with all applicable procedural requirements.

~~3.3.6.6.3.4.2.3.~~ All items contained in the application ~~form~~ shall be addressed by either providing the required information or stating that the item is not applicable. In the event that an item is considered not applicable, the Brownfield Party must include a written justification in the application that demonstrates to the satisfaction of the Department that the item is not applicable to the application.

~~3.3.6.7.3.4.2.4.~~ ~~Within thirty (30) days after the date~~ After a Brownfield Certification Application is submitted to the Department, the Department shall review the application to determine whether the application is complete ~~and forward.~~ After its review, the Department shall issue a letter to the applicant advising either (1) that the ~~application~~ property is ~~complete or certified and/or the developer is approved.~~ (2) that the application is incomplete and listing identifying the specific ~~sections~~ information that must be submitted or supplemented to make the application complete, or (3) that the certification is denied.

~~3.3.6.8.3.4.2.5.~~ The applicant shall promptly update and/or correct information previously submitted as part of the application whenever the Applicant discovers that this information is incomplete or inaccurate.

~~3.3.7.3.4.3.~~ Results of Brownfield ~~Criteria for Brownfields Property~~ Certification

3.4.3.1. The Department may certify all or part of a parcel of real property as a Brownfield if the property meets the following criteria:

3.4.3.1.1. All or part of the property is abandoned, vacant, or underutilized, and;

3.4.3.1.2. All or part of the property is subject to either a current or prospective development or redevelopment plan; and

3.4.3.1.3. All or part of the property meets any one (1) of the following conditions:

3.4.3.1.3.1. The development or redevelopment of the property may be hindered by the reasonably held belief that it may be environmentally contaminated; or

3.4.3.1.3.2. The property is or has been used in whole or part as:

3.4.3.1.3.2.1. A salvage yard;

3.4.3.1.3.2.2. A regulated Tank facility pursuant to 7 Del.C. Ch. 74 or 7 Del.C. Ch. 74A;

3.4.3.1.3.2.3. A drycleaner where any dry cleaning is performed onsite;

3.4.3.1.3.2.4. A RCRA (Subtitle C) treatment, storage, or disposal facility for which the US EPA or the State RCRA program has expressed in writing no further interest in remediating under these programs.

3.4.3.1.3.2.5. A permitted or non-permitted landfill or dump;

3.4.3.1.3.2.6. The land contains potentially contaminated material.

3.4.3.1.3.2.7. A known hazardous substance release site that has not been remediated to the standard applicable to the intended land use, including those facilities previously identified by the Department.

3.4.3.1.3.2.8. A National Priority List (NPL) or Federal CERCLIS site that has a “No Further Interest” designation from the US EPA.

3.4.3.2. Sites which are subject to an enforcement action from any State or Federal environmental agency, and for which an administrative or judicial order is in effect or is proposed, may not be eligible for Brownfield Certification, unless the enforcement action is resolved to the satisfaction of the Secretary.

3.4.3.3. Brownfields Developer shall be required, at a minimum, to perform a FE of the facility, as approved by DNREC, within 24 months of entering into a BDA.

3.4.3.4. Any Brownfield Certification decision is at the sole discretion of the Secretary.

3.3.7.1.3.4.3.5. An inventory of Certified Brownfield ~~Sites~~ sites will be made publicly available.

3.4.4. Criteria for Brownfields Developer Eligibility

3.4.4.1. In order for a person to obtain the rights and protections and assume the obligations of the status of Brownfields Developer, the person must submit an application to the Department for approval of Brownfields Developer status. At the time of application for the Brownfields Development Agreement, an applicant cannot be a potentially responsible party at the facility pursuant to 7 Del.C. §9105(a)(1)-(6), and is not affiliated with any other person that is liable for a release or imminent threat of release at the facility pursuant to 7 Del.C. §9105(c)(4)5.

3.4.4.2. The Secretary has the discretion to deny Brownfields Developer status to an applicant if the applicant, including any employees or agents thereof, or any entity affiliated with or controlled by the applicant, has been determined to have violated any federal, state, or local environmental law.

3.4.4.3. Prior to approval, the application must be complete and must contain all of the information required by the Department, including the information required by Section 3.4.2. of these Regulations.

3.4.5. Funding under Brownfield Certification

3.4.5.1. Upon the filing of a Brownfield Certification Application (BCA), the applicant may also choose to request financial assistance. Completion of the financial section of the BCA does not guarantee a commitment for funding, nor does it

obligate the State of Delaware or any State agency to provide any form of financial assistance.

3.4.5.2. Submission of a funding request is optional and the decision to approve funding is at the discretion of the Department.

3.4.3.5. Facility Tracking

~~3.4.1. Facilities that have a release, a potential release or are identified by the Department will be tracked for administrative purposes.~~

~~3.4.2.3.5.1. The Department ~~will~~may maintain a database ~~of recording~~ the actions taken at facilities that have been identified with a release, an imminent threat of release, or an identified potential release of hazardous substances. ~~Facilities within the database of hazardous substance release sites will be ranked and placed on a priority list. At the Department's discretion, a facility may be removed from the current database of hazardous substance release sites to the archive of closed sites after the Department has determined that no further action is required.~~~~

3.5.3.6. Record Keeping

~~3.5.1.3.6.1.~~ The Department shall require the following record keeping procedures:

~~3.5.1.1.3.6.1.1.~~ Any ~~response actions~~remedial activities at a facility must be documented ~~by the party performing the action.~~ Such records include factual information or data, relevant decision documents, and any other relevant, facility-specific documents or information. The formats of the documents may include, paper, audio, video, photographs, and electronic files.

~~3.5.1.2.3.6.1.2.~~ Records shall be retained for at least ten (10) years from the date of completion of remedial action, site closure, or No Further Action letter.

~~3.5.1.3.3.6.1.3.~~ Records shall be retained by the potentially responsible party taking remedial action, unless the Department ~~demands possession~~requires that they be submitted.

~~3.5.1.4.3.6.1.4.~~ The Department shall become the repository of any remedial records if the potentially responsible party files for bankruptcy ~~under Chapter 7.~~

~~3.5.1.5.3.6.1.5.~~ The Department shall maintain its records in accordance with these ~~regulations~~Regulations.

4.0 Potentially Responsible Parties

4.1. Identification

4.1.1. The Department ~~shall~~may initiate identification of potentially responsible parties associated with the facility, as soon as practicable.

4.1.2. The Department may use existing information-gathering authorities and coordinate such investigation with other state, local, and federal agencies.

4.2. Notification

4.2.1. The Department may issue a ~~potentially responsible party~~ notice letter to any person or entity it believes to be a potentially responsible party with respect to a facility as provided for in 7 Del.C. §9105. The notice letter shall be sent ~~by certified mail, return receipt requested,~~ to the last known address of the potentially responsible party. A copy of the notice letter may be provided to the local unit of government in which the facility is located. The notice letter shall provide the following:

4.2.1.1. The name of the person or entity the Department believes to be potentially liable;

4.2.1.2. A general description of the location of the facility;

4.2.1.3. The basis for the Department's position that the person has a relationship to the facility;

4.2.1.4. The basis for the Department's position that a release or imminent threat of a release of a hazardous substance ~~poses~~may pose a threat to public health or welfare or the environment; and

4.2.1.5. The names of other persons or entities to which the Department has sent such a notice letter with respect to the facility.

4.2.2. The Department reserves the right to notify additional potentially responsible parties at any time, and to facilitate efforts by potentially responsible parties to identify additional potentially responsible parties.

4.3. ~~Public~~-Notice of Potential Liability

4.3.1. In the event that a potentially responsible party for a facility cannot be located, the Department ~~shall~~may publish in accordance with Section 8.0 of these Regulations, a public notice regarding a potentially responsible party which shall provide the following:

4.3.1.1. The names and last known addresses of a person that the Department believes to be a potentially responsible party for the facility;

4.3.1.2. ~~A~~The address or a general description of the location of the facility;

4.3.1.3. The basis for the Department's position that a release or imminent threat of a release of a hazardous substance at the facility ~~poses~~may pose a threat to public health, ~~or~~ welfare, or the environment;

4.3.1.4. The basis for the Department's position that the person or entity ~~has~~is a potentially ~~caused or contributed to the release or imminent threat of a release of a hazardous substance at~~responsible party under 7 Del.C. §9105 for the facility; and

- 4.3.1.5. The name and contact information of the person within the Department who the potentially responsible party can contact in order to obtain further information about the ~~site and indicate a willingness to proceed with negotiations~~facility, and to enter into negotiations for a settlement agreement to address the release or imminent threat of release of hazardous substances at the facility .

4.4. Information Request

- 4.4.1. If the Department determines that there is a reasonable basis to believe that there has been a release or an imminent threat of a release of a hazardous substance, the Secretary may require information or documentation relevant to the release from any person who may have pertinent information as described in 7 Del.C. §9106.

5.0 Settlement Agreements & Cost Recovery~~Brownfields Development Agreements~~

- 5.1. ~~AH~~Settlement agreements ~~shall contain and~~ Brownfields Development Agreements shall include the following:

- 5.1.1. The name and address of the ~~Brownfield Developer, Potentially Responsible Party,~~ the Prospective Purchaser, or the ~~Potentially Responsible Party, Brownfield Developer,~~ and any ~~corporate other affiliated corporation, entity, or organization affiliation, other person that will perform or pay for remedial activity at the facility;~~

- 5.1.2. The address and tax parcel number of the ~~site~~facility in question;

- 5.1.3. The name of the current owner of record and/or operator of the ~~site~~facility; and

- 5.1.4. For agreements which require the performance of a remedy at a facility, the Department may include a description of:

- 5.1.4.1. The areas of the facility where the remedy is to be conducted;

- 5.1.4.2. The type of remedy to be performed; and

- 5.1.4.0.5.1.4.3. Any financial or oversight resources to be provided by the Department.

- ~~5.1.5. A description of all remedies to be conducted at the site, or operable unit thereof, shall include:~~

- ~~5.1.5.1. A description of specific areas where investigation/remediation is to be conducted;~~

- ~~5.1.5.2. The investigation and remediation method or methods to be employed;~~

- ~~5.1.5.3. The proposed uses of the site after all investigation and remediation required by the Department is complete;~~

5.2. Cost Recovery

- ~~5.1.5.4. The Brownfield Developer, Prospective Purchaser, or Potentially Responsible Party must notify the Department prior to remedial activities being performed at the site;~~
- ~~5.1.5.5. Any other provisions deemed necessary by the Department.~~
- ~~5.2. Voluntary Cleanup Program (VCP) Agreement—The Voluntary Cleanup Program agreement sets forth the scope and schedule of activities to assess and respond to the actual, threatened, or perceived release of hazardous substances at a site that has been identified by the Department. The VCP agreement establishes the responsibility of the voluntary party to pay oversight costs:~~
 - ~~5.2.1. A voluntary party can terminate their participation at any point by written notification to DNREC within twenty (20) days before termination.~~
 - ~~5.2.2. Voluntary parties who elect to discontinue participation in the VCP at a facility must ensure that no additional environmental hazards exist at the site as a result of actions taken by the party.~~
 - ~~5.2.3. If a voluntary party decides to terminate their participation in the VCP and the voluntary party is not otherwise a responsible party, as defined in the Act, the Department will not take further action to mandate future investigation or cleanup by the voluntary party. However, if the voluntary party is determined to be liable pursuant to the Act, the Department will pursue an enforcement action.~~
- ~~5.3. Brownfield Development Agreement—The Brownfield Development Agreement (BDA) sets forth the scope and schedule of activities to assess and respond to the actual, threatened, or perceived release of hazardous substances at the certified Brownfield site. Once the Department has completed its review of the Statement of Intent and any other information required to be submitted by the Brownfield Developer (BD), the Department shall prepare a proposed BDA.~~
 - ~~5.3.1. The BDA provides protection from liability for existing conditions at the time of application for a BDA. The liability protections include any release or imminent threat of a release of a hazardous substance existing on the Brownfield site at the time of application for certification~~
 - ~~5.3.2. The Department certifies that the BD is entitled to protection from contribution actions or claims as provided in 7 Del.C. §9105(e) for matters addressed in the BDA. The matters addressed in the BDA include, without limitation, any remedy taken and response costs incurred, or to be incurred, by the Department or any other person with respect to the existing contamination.~~
 - ~~5.3.3. In order to establish and maintain the protections of the BDA, the BD shall conduct at a minimum an AAI assessment of the Brownfield site within twenty four (24) months of signing the BDA.~~

- ~~5.3.4. Prior to execution of the BDA, and with at least thirty (30) days written prior notice to the Department, the applicant may unilaterally withdraw from the BDA application. If the BD elects to withdraw, then it would be considered a potentially responsible party upon taking title to the certified Brownfield property in question. The applicant shall be required to pay all costs associated with the processing of the BDA application prior to the effective date of withdrawal.~~
- ~~5.3.5. Once all available funding has been utilized, the Brownfield Developer shall reimburse the Department for oversight of the implementation of all remedies contained in the BDA.~~
- ~~5.3.6. All investigative, remedial, or development work at a site shall be conducted in accordance with these Regulations.~~
- ~~5.3.7. If the BD elects not to proceed with the development of the Property, the BD continues to receive the liability protections afforded by 7 Del.C. §9125 under the conditions specified therein.~~
- ~~5.3.8. If the BD has proceeded with a portion of the development of the property, and then decides to temporarily or permanently halt some or all development activities, with the consent of the Department, the BD will continue to receive liability protections afforded by 7 Del.C. §9125 under the conditions specified therein.~~
- ~~5.3.9. The BD must not exacerbate the environmental conditions at the certified Brownfield site.~~
- ~~5.3.10. The BD must notify the Department upon filing of any necessary documents as defined in the Final Plan of Remedial Action for the certified Brownfield site, in addition to the filing of the Certification of Completion of Remedy (COCR).~~
- ~~5.4. Prospective Purchaser Agreement—The Prospective Purchaser Agreement (PPA) sets forth the scope and schedule of activities to assess and respond to the actual, threatened, or perceived release of hazardous substances at a facility. The PPA provides protection from liability for existing conditions at the time of execution of the agreement. The liability protections include any release or imminent threat of a release of a hazardous substance existing at the facility.~~
- ~~5.4.1. In order to establish and maintain the protections of the PPA, the Prospective Purchaser shall perform all environmental and administrative activities required by the Department in order to obtain a Certificate of Completion of Remedy.~~
- ~~5.4.2. Prior to execution of the PPA, and with at least thirty (30) days written prior notice to the Department, the applicant may unilaterally withdraw from the PPA application. If the Prospective Purchaser elects to withdraw, it will be a potentially responsible party upon taking title to the property in question. The applicant shall pay all costs associated with the processing of the PPA application prior to the effective date of withdrawal.~~

~~5.4.3. All investigative, remedial, or development work at a site shall be conducted in accordance with these Regulations.~~

~~5.4.4. If the Prospective Purchaser has proceeded with a portion of the development of the Property, and then decides to temporarily or permanently halt some or all development activities, with the consent of the Department, the Prospective Purchaser will continue to receive liability protections afforded by 7 Del. C. § 9125 under the conditions specified therein.~~

~~5.4.5. The Prospective Purchaser must not exacerbate the environmental conditions at the site.~~

~~5.4.6. The Prospective Purchaser must notify the Department upon filing of any necessary documents as defined in the Final Plan of Remedial Action for the site, in addition to the filing of the Certification of Completion of Remedy (COCR).~~

~~5.5. Cost Recovery~~

~~5.5.1.5.2.1. The Department shall may seek to recover costs from the potentially responsible parties and/or any person requiring oversight or review.~~

~~5.2.1.1. Recoverable costs from a potential responsible party shall include oversight, review, technical assistance, include all remedial costs incurred by the Department, natural resource damages, oversight, indirect and administrative costs, and costs associated with long-term stewardship activities.~~

~~5.5.1.1.5.2.1.2. Recoverable costs from a Brownfield developer include remedial costs incurred by the Department, oversight, indirect and administrative costs, and all response costs costs associated with long-term stewardship activities.~~

~~5.5.1.2. Recoverable costs from a Brownfield developer shall be limited to oversight, review, technical assistance, administrative costs, and costs associated with long term stewardship activities.~~

~~5.5.2. Whenever a potential responsible party requests the Department's assistance in reviewing the results of a remedy or when a person participates in the Voluntary Cleanup Program, the Department shall require that the person pay the estimated cost of review or oversight at the time a settlement agreement is signed.~~

~~5.5.3.5.2.2. Remedial costs with regard to a specific facility shall be are calculated to reflect the actual costs incurred by the Department. Such costs shall be are calculated for each facility as follows: set forth below.~~

~~5.5.3.1.5.2.2.1. The total number of direct hours expended by each employee of the Department with regard to a specific facility shall be is multiplied by the employee's hourly rate of wages and then the figures derived for each employee shall be are added together;.~~

~~5.5.3.2.5.2.2.2.~~ The figure derived from Subsection 5.4.32.2.1. ~~shall be~~ added to a figure derived by multiplying the total figure from Subsection 5.4.32.2.1. by the current indirect cost rate~~;~~.

~~5.5.3.3.5.2.2.3.~~ The figure derived from Subsection 5.4.3.2. ~~shall be~~ added to a figure derived by multiplying the number of hours worked by each employee of the Department with regard to the specific facility by the "other employee costs" rate for the employee~~;~~ ~~and~~.

~~5.5.3.4.5.2.2.4.~~ All payments made by the Department to its contractors, consultants or vendors for the procurement of services, supplies or equipment for the specific facility ~~shall be~~ added to the figure derived from Subsection 5.4.32.2.3.

~~5.5.4.5.2.3.~~ ~~Interest shall accrue~~ Recoverable costs include interest at the ~~prime~~ allowable interest rate ~~as published in~~ upon all costs of the ~~previous days Wall Street Journal plus one point.~~ Interest accrues Department associated with a release or threat of release from ~~date due to date~~ the time they were incurred until the time they are paid.

6.0 Consultant Certification

~~6.1. The Department shall not approve any remedies unless they have been performed by certified consultants who meet the professional qualifications listed in the following subsections. Consultant Certification is required for business entities any person performing, supervising, or designing Hazardous Substance Cleanup the following remedies under the Act (HSCA) remedies which include the following:~~

~~6.1.1. Investigative work including Facility Evaluations, Remedial Investigations, and Brownfield Investigations~~

~~6.1.2.6.1.1. Remedial remedial action work including Feasibility Studies, Remedial Design facility evaluations, site inspections, remedial investigations, Brownfields investigations, human health risk assessment, feasibility studies, oversight, and Remedial Action Oversight long-term stewardship.~~

~~6.1.3.6.1.2. Ecological work including Ecological Risk Assessments, Ecological Restoration ecological risk assessments, and Ecological Enhancements natural resource damage assessments, restorations, and enhancements.~~

~~6.2. Consultant certification is not required for persons performing visual inspections or other non-technical long-term stewardship activities as approved by the Department.~~

~~6.3. The Department may disapprove any remedy not performed by a certified consultant under the Act.~~

~~6.4. Any certified consultant shall notify the Department in writing of any change of name or address of the business, or any change of personnel who were identified in the application for certification or recertification, within thirty (30) days of such change.~~

6.5. A certified consultant shall notify the Department, in writing, of litigation or administrative enforcement action involving the consultant or any employee thereof which concerns environmental activities or regulatory matters related thereto. The certified consultant shall provide such notice within ten (10) days of commencing, or receiving notice of, such action.

6.2.6.6. Qualification Requirements for Certification

6.2.1.6.6.1. A consultant may apply for certification to be able to perform investigative work, and remedial action work, ecological work or any combination of the three these.

6.2.2. All consultants shall meet the following requirements for seeking certification:

6.2.2.1. Submit to the Site Investigation and Restoration Branch shall submit a complete application form with appropriate documentation to the satisfaction of experience the Department, and training.

6.2.2.6.6.2. Provide provide proof of a valid Delaware Business License business license.

6.3.6.7. Application for Certification Requirements for Certification for first time applicant

6.3.1.6.7.1. All applications Applications shall be submitted in writing on forms supplied by the Department. Copies of such forms are available online or may be obtained from the DNREC Site Investigation and Restoration Branch.

6.3.2.6.7.2. Each application Applications shall contain a verified statement by the applicant for certification, or its duly authorized representative, that they the applicant, and any person employed by the applicant to perform work on any remedy, will be required to abide by all applicable rules and laws, regulations promulgated by, guidance, policies, and directives of the Department.

6.3.3.6.7.3. Application Applications shall contain the appropriate documentation of experience and training as part of the submittal of a qualified consultant/team seeking certification to perform remedies.

6.3.3.1.6.7.3.1. For Investigative investigative or remedial action work, an applicant must employ a Delaware Professional Engineer professional engineer (PE) and a Delaware Professional Geologist professional geologist (PG) are required for a qualified consultant to be certified.

6.3.3.2.6.7.3.2. For Ecological work For ecological work, an applicant must demonstrate, to the satisfaction of the Department, competence in biology, wetland delineation and restoration, ecology, eco-toxicology, and environmental economics are required for a qualified consultant to be certified.

6.3.4. The completed application shall be sent to the address specified in the application package.

6.3.5.6.7.4. The Department shall notify the applicant in writing no later than thirty (30) days from receipt of the certification application of the issuance or denial of the certification,

or the need for further information in order to process the application. ~~Denial of certification for cause shall be explained by the Department, in writing, at the time of denial.~~

~~6.3.6.6.7.5.~~ Any applicant denied ~~for cause certification~~ may ~~appeal~~request a public hearing in writing to the Department within ~~ten (10)~~twenty (20) days of receipt of denial ~~of certification pursuant to the provisions in Section 6.10.~~

~~6.3.7.6.7.6.~~ Certification shall be valid for a period of two (2) years from the date of issuance, unless suspended or revoked in accordance with these Regulations.

~~6.3.8.6.7.7.~~ The application fee for certification ~~and/or~~ recertification is ~~\$250~~\$500.

~~6.4.6.8.~~Standards of Performance for Certified Consultants

~~6.4.1.6.8.1.~~ All certified consultants are required to meet the following ~~Standards~~standards of ~~Performance~~performance:

~~6.4.1.1.6.8.1.1.~~ A minimum of one (1) ~~appropriate~~qualified individual, representing the certified consultant, shall be present during ~~work being performed under these Regulations~~the performance of any remedial activities on a site.

~~6.4.1.2.6.8.1.2.~~ A certified consultant shall perform ~~HSCA work~~remedial activities according to accepted ~~engineering~~ practices and procedures ~~and applicable OSHA safety procedures contained in 29 CFR 1910.~~

~~6.4.1.3.6.8.1.3.~~ All required notifications and applications shall be submitted to the Department as specified in the Regulations.

~~6.4.1.4.6.8.1.4.~~ Any ~~deviation~~request to deviate from ~~standard practices and procedures~~these Standards of Performance shall be submitted in writing to, and approved by, the Department prior to implementation.

~~6.5.6.9.~~Requirements for Renewal of Certification

~~6.5.1.6.9.1.~~ ~~The~~At least thirty (30) days prior to expiration of the certification, the certified consultant shall submit a letter to the Department requesting renewal of certification and verifying that the application on file is still accurate ~~to the Department at least thirty (30) days prior to expiration of the certification,~~ or submitting a new application with updated information. The cost of renewal of certification is due at the same time as the request letter.

~~6.5.2.6.9.2.~~ The Department shall notify the ~~applicant~~certified consultant in writing ~~no later than thirty (30) days from receipt~~ of the certification renewal letter of the ~~issuance~~approval or denial of the ~~certification request,~~ or the need for further information in order to process the renewal ~~application.~~ Denial of certification request. The reasons for ~~cause a~~ denial of certification shall be explained by the Department, in writing, at the time of denial. The Department, at its discretion, may allow an

extension of the original certification until all the requirements for renewal are satisfied.

~~6.5.3.~~6.9.3. Any ~~applicant~~certified consultant denied renewal of certification ~~for cause~~ may ~~appeal~~request a public hearing, in writing, within ~~ten (10)~~twenty (20) days of receipt of denial.

~~6.5.4.~~6.9.4. ~~Certification~~Re-certification shall be valid for a period of two (2) years from the date of issuance, unless suspended or revoked in accordance with these Regulations.

~~6.5.5.~~6.9.5. In the event the ~~qualified~~certified consultant fails to renew the certification before the expiration date, the certification will expire. ~~Any qualified at the end of the original two year period.~~ Any certified consultant whose certification has expired shall be required to reapply for certification. If the ~~expiration period~~certification has ~~been lapsed for~~ two years or more, the applicant shall apply as a first-time applicant.

~~6.5.6.~~ ~~A person whose certification renewal is denied for cause may not reapply for certification for a period of one (1) year from the date of denial.~~

~~6.6.~~6.10. Denial of Certification

~~6.6.1.~~6.10.1. The Department ~~shall~~may deny certification or recertification if it determines that the applicant has not demonstrated the ability to comply fully with applicable requirements or ~~a standard~~standards of performance. The Department also may deny any request for certification or recertification for ~~cause including the following causes:~~

~~6.6.1.1.~~6.10.1.1. ~~Fraudulent or deceptive information in the application for certification~~or recertification, or in any report or other submission, written or verbal, to the Department;

~~6.6.1.2.~~6.10.1.2. ~~Failure at any time to meet the qualifications for certification or failure to comply with any provision or requirement of any rule or regulation, policy, or guidance adopted by the Department,~~ or any directive issued by the Department;

~~6.6.1.3.~~6.10.1.3. ~~Denial of certification or decertification for cause in by any other State. A review panel shall evaluate each State's regulations and state or the reason for denial or decertification.~~federal government;

~~6.6.1.4.~~6.10.1.4. ~~Failure to provide all required information.~~ required by the Department;

~~6.6.1.5.~~6.10.1.5. ~~Has demonstrated repeated~~Repeated deficiencies in performing HSCA Remedies~~remedial activities under the Act;~~

~~6.6.1.6.~~6.10.1.6. ~~A court has found that the applicant has violated any law~~ Failure to comply with any federal, state, or local law or regulation intended for the protection of the environment, ~~or that the applicant breached any duty owed in the performance of HSCA related work;~~ or

6.10.1.7. Any other circumstances that the Department determines justify denial of certification or recertification.

6.7.6.11. Suspension or Revocation of Certification or Denial of Recertification

~~6.7.1.6.11.1. The Secretary~~Department may, ~~for cause or for violation of this Regulation or applicable Department regulations,~~ suspend and/or revoke any certification issued under ~~this regulation. Further, in any circumstances where any certified consultant has demonstrated the inability or reluctance to follow safety precautions or project specifications~~these Regulations, or ~~has violated a standard of performance, the certification may be suspended or revoked.~~deny recertification.

~~6.7.2.6.11.2. A certified consultant whose certification has been suspended or revoked,~~ or whose recertification has been denied shall not bid, ~~on, enter into a contract to,~~ or directly perform, or engage in any work involving ~~HSCA projects~~remedial activities within the State of Delaware during the period of suspension or revocation.

~~6.7.3.6.11.3. Any responsible person of any~~ Any employee of a certified consultant whose actions have caused or contributed to the suspension or revocation of the consultant's certification shall not perform remedial activities for any other certified consultant ~~whose certification has been suspended or revoked shall not serve as a responsible person for another~~ for a period equivalent to the suspension or revocation. No certified consultant certified or applying for certification in Delaware shall knowingly employ such a person to perform remedial activities during the period of suspension or revocation. ~~Violation of the foregoing may result in suspension or revocation of the latter qualified consultant's certification.~~his or her former employer.

~~6.7.4.6.11.4. In addition to the above, causes for suspension or revocation~~ of certification, or denial of recertification may include the following actions by the consultant or any employee or any entity affiliated with or controlled by the consultant:

~~6.7.4.1.6.11.4.1. Providing false~~fraudulent or deceptive information in any report or other submission, written or verbal, to the Department.

~~6.7.4.2. Knowingly or recklessly disregarding safe work practices while performing HSCA Remedies.~~

~~6.11.4.2. Failing~~Failure at any time to meet the qualifications for certification.

~~6.11.4.3. Failure to comply with any federal, state, or local law or regulation, policy, or guidance;~~

~~6.7.4.3.6.11.4.4. Failure~~ to comply with any applicable ~~DNREC~~Department, Occupational Safety & Health Administration (OSHA) or Environmental Protection Agency (EPA) regulations or procedures.

~~6.7.4.4.6.11.4.5.~~ ~~Failing~~Failure to ~~meet the standards~~follow project specifications or any directive issued by the Department, or comply with a standard of performance in Section 6.6. of these Regulations.

~~6.7.4.5.6.11.4.6.~~ ~~Failing~~Failure to comply with the terms of a ~~Secretarial~~Secretary's Order issued by the Department.

~~6.7.4.6.6.11.4.7.~~ ~~Any acts~~Committing any act of fraud or conviction ~~of for~~ an act of fraud.

~~6.7.4.7.~~ Judgment against any certified consultant for gross negligence, incompetence, dishonest dealing or misconduct in the practice of contracting for HSCA related work.

~~6.7.4.8.6.11.4.8.~~ Suspension or revocation ~~for cause~~of certification, or denial of recertification in any other State or municipality ~~of certification-related~~ to ~~perform~~ equivalent HSCA related the performance of any environmental work.

~~6.7.4.9.6.11.4.9.~~ ~~Barred~~Disqualification from bidding on any Federal, State, or local government project.

~~6.7.4.10.6.11.4.10.~~ Any ~~action deemed by other circumstances that~~ the Department as ~~worthy of~~ determines justify suspension or revocation of certification, or denial of recertification.

~~6.7.5.6.11.5.~~ If the Department suspends or revokes any certification, or denies certification or recertification, under the provisions of this Section, the Department shall promptly notify the certificate holder in writing, by certified mail, of the reason for suspension or revocation. ~~The notice of suspension or revocation will provide necessary information concerning the right to appeal.~~

~~6.7.6.6.11.6.~~ A person whose certification is suspended or revoked under this Section shall surrender the Certificate to the Department within the time period specified in the notice.

~~6.7.7.6.11.7.~~ A person whose certification is revoked may not reapply for certification for two (2) years from the date of revocation.

~~6.8.~~ Appeals

~~6.8.1.~~ Appeal Procedures

6.12. Public Hearings

6.12.1. Request for Hearing

~~6.8.1.1.6.12.1.1.~~ Any ~~qualified~~consultant who is ~~initially~~denied certification, ~~denied~~or renewal of certification, or whose certification is suspended or revoked may request ~~an evidentiary~~a public hearing before ~~an impartial a~~ hearing officer appointed by the Secretary.

~~6.8.1.2-6.12.1.2.~~ This request shall be made in writing to the Department within ~~ten~~ (10)twenty (20) days of receipt of the ~~initial~~ notification of denial, suspension or revocation.

~~6.8.1.3-6.12.1.3.~~ The ~~evidentiary hearing shall be scheduled by the~~ Department ~~within fourteen (14) days of~~ shall provide a party requesting a public hearing written request notice of the scheduled hearing at least twenty (20) days prior to the hearing.

~~6.8.2-6.12.2.~~ EvidentiaryPublic Hearing Procedures

~~6.12.2.1.~~ The ~~Hearing~~hearing shall be ~~audio recorded~~conducted by the ~~Hearing Officer, but no transcript is necessary.~~ The ~~audio recording~~Secretary.

~~6.12.2.2.~~ In connection with such hearings, the Secretary shall be keptempowered to:

~~6.12.2.2.1.~~ Issue orders for at least 90 days from the date thatwitnesses and other sources of evidence, either at the request of the affected person or on behalf of the Department ~~makes its final decision in the matter. Respondents are entitled to have legal counsel present. Witnesses are sworn in before testifying. The Hearing Officer decides all objections;~~

~~6.8.2.1.0-6.12.2.2.2.~~ Administer oaths to evidence-witnesses;

~~6.8.2.2.~~ The Hearing shall proceed in the following order:

~~6.12.2.2.3.~~ Exclude plainly irrelevant, immaterial, insubstantial, cumulative or privileged evidence;

~~6.12.2.2.4.~~ Limit unduly repetitive proof, rebuttal and cross-examination; or

~~6.12.2.2.5.~~ Hold pre-hearing conferences for the settlement or simplification of issues, for the disposal of procedural issues or disputes or to regulate and expedite the course of the hearing.

~~6.12.2.3.~~ At all such hearings, the burden of proof shall always be upon the person challenging the initial decision of the Department to deny certification or recertification or to suspend or revoke certification. In addition, as to each hearing, all notices, relevant correspondence between the Department and the person challenging the Department's decision, documents admitted into evidence, and all other documentation relied upon by the Secretary, shall be included in the Department's record of the case and retained by it for a period of 10 years.

~~6.12.2.4.~~ A record of all testimony from which a verbatim transcript can be prepared shall be made of each hearing. Transcripts shall be made at the request and expense of any party to the hearing.

~~6.12.2.5.~~ The Secretary shall make his decision based upon the entire record of the case.

6.12.2.6. Every decision of the Department shall be incorporated in a final order which may include, where appropriate, the following:

6.12.2.6.1. A brief opening summary of the evidence;

6.12.2.6.2. Findings of fact based upon the evidence;

6.12.2.6.3. Conclusions of law;

~~6.8.2.2.1.~~6.12.2.6.4. A concise statement is made by of the prosecution, then the Department's determination or action on the Respondent, if they so choose. case; and

~~6.8.2.2.2. The prosecution presents witnesses. After the prosecution is finished with the direct examination of a witness, the Respondent may cross-examine the witness.~~

~~6.8.2.2.3. The Respondent presents witnesses. The Respondent may testify. The Respondent and any witnesses for the respondent are subject to cross-examination by the prosecution.~~

6.12.2.6.5. Closing statements are made. The signature of the Secretary.

6.12.2.7. Every final order shall be mailed, or otherwise delivered, to each party and any other person requesting it no later than ten (10) days after the date it is issued.

6.12.3. Appeals to the Environmental Appeals Board

~~6.8.2.2.4. A person aggrieved by the prosecution and then the Respondent.~~

~~6.8.3. The Hearing Officer's Written Report and Decision~~

~~6.8.3.1. Introductory Information~~

~~6.8.3.1.1. Introductory information in the Report and Recommendation includes the date, time and place of the hearing, the persons present and their capacities, and the witnesses who testified.~~

~~6.8.3.2. Findings of Fact~~

~~6.8.3.2.1. The Hearing Officer shall make findings of fact based on the sworn testimony and exhibits entered into evidence at the hearing. Conflicting testimony is noted. If the Hearing Officer chooses to place more weight and credibility on certain testimony in evidence, the reasons are given. If critical testimony is uncontroverted by the opposing party, the Hearing Officer should say so. Evidence that is excluded or given less weight because of objection should be so noted. Exhibits relevant to the decision should be referenced and attached.~~

~~6.8.3.3. Conclusions of Law~~

~~6.8.3.3.1. The Hearing Officer should explicitly state: "I make the following conclusions of law." This section applies facts to the applicable statute or law.~~

~~6.8.3.4. Decision~~

~~6.8.3.4.1. The Hearing Officer shall then make a decision based on the Findings of Fact and Conclusions of Law.~~

~~6.8.3.5. Procedures~~

~~6.8.3.5.6.12.3.1. The written Report and Decision shall be sent to the Respondent by hand-delivery or regular and certified U.S. Mail. The cover letter by the Hearing Officer shall inform the Respondent of the decision and shall state that the Respondent has the right to a decision to deny certification or recertification, or to suspend or revoke the person's certification, may appeal the decision to the Environmental Appeals Board at that time within twenty (20) days of receipt of the decision.~~

~~6.8.3.6. Burden of Proof~~

~~6.8.3.6.1. The Hearing Officer's Report and Recommendation should explicitly state that the Hearing Officer finds the prosecution proved, or did not prove, its case by a preponderance of evidence.~~

~~6.12.3.2. Any applicant whose No appeal shall operate to stay the implementation of the decision regarding denial, of certification or recertification, or suspension or revocation is upheld by of certification; however, for good cause shown, the hearing officer Secretary may stay the action pending disposition of the appeal to before the Environmental Appeals Board. ~~Appeals~~~~

~~6.8.3.7.6.12.3.3. The appeals to the Environmental Appeals Board shall be in writing and shall be within ten (10) days of receiving notice of denial, suspension or revocation from the hearing officer of all decisions to deny certification or recertification, or to suspend or revoke a person's certification, shall be conducted in conformity with the provisions of 7 Del.C. §6008.~~

~~6.9. Any certified consultant shall notify the Department of any name, address, or key personnel change within thirty (30) days of such change.~~

~~6.10. Any certified consultant shall notify the Department of any litigation against them, involving any type of construction or any environmental or regulatory compliance, within ten (10) days of receipt of filed complaint.~~

7.0 Analytical Procedures

7.1. Analytical procedures must be conducted in accordance with all applicable provisions of the Standard Operating Procedures of the Hazardous Substance Cleanup Act for Chemical Analytical Programs, (SOPCAP), as amended by the Department. Other ~~special~~ analytical protocols, if required methods not addressed under the SOPCAP, which may be necessary to perform the remedy, must be approved by the Department.

~~7.2. Laboratory Selection and Requirements~~

~~7.2.1. A potentially responsible party shall inform the Department, in writing, the name of a Department approved laboratory where analyses will be performed. Analytical laboratories not already approved by the Department will require written approval prior to sample analysis;~~

~~7.2.2. The Department may, at any time during response activities, perform an audit of the selected laboratory or require an independent audit of the selected laboratory. Based on the audit results, the Department may disapprove the use of the laboratory;~~

~~7.2.3. The potentially responsible party shall ensure that the laboratory produces deliverables as required by the Department, and maintains the laboratory records for a period of no less than ten (10) years from the completion of the remedial action. This period may be extended with notice by the Department. Laboratory records shall be retained in such a manner to facilitate retrieval of data in sufficient detail to reconstruct the handling of samples for the entire period the samples were in the laboratory. The Department retains the right during this ten (10) year period, or longer, to require an audit of the laboratory analytical records and require additional sampling and analysis at the potential responsible parties' expense.~~

~~7.3.7.2. Analytical Methods~~

~~7.3.1.7.2.1. All analytical procedures used shall be doneperformed in accordance with the analytical methods identified in the Sampling and Analysis Plan prepared under Section 9.2.3. of these Regulations.~~

~~7.3.2.7.2.2. Samples shall be analyzed consistent with methods appropriate for the facility, the media being analyzed, the suspected hazardous substances being analyzed for, and the anticipated use of the data.~~

~~7.3.3.7.2.3. Upon the Department's approval, the standard analytical methods identified in the Sampling and Analysis Plan may be modified. Modifications include adjusted quantitation limits, improved to improve accuracy and/or achieve greater precision: of analytical results.~~

~~7.3.4. Laboratories shall achieve the lowest practical quantitation limits consistent with the selected method and matrix.~~

~~7.3.5. Where there is more than one method with a practical quantitation limit less than the cleanup level, any of the methods may be selected. In these situations, considerations in selecting a particular method shall include confidence in the data, analytical costs,~~

~~applicability of the analytical method to the sample matrix and considerations relating to quality assurance or analysis efficiencies.~~

~~7.3.6.—The Department may require an analysis to be conducted by more than one method in order to provide higher data quality.~~

8.0 Public Notification related to Remedial Activities under the Act

~~8.1.—Whenever public notice is required by the Act or these ~~regulations~~Regulations, the Department shall, at a minimum, provide or require notice as described in this ~~Subsection~~.~~

8.1. ~~Notice of the proposed action~~Section. Public notice shall be published in a newspaper circulated in the county of the proposed action, ~~by one or more of the following methods: by display advertisement;~~ legal notice; or any other appropriate format, as determined by the Department.

~~8.1.2.—In addition, the Department may provide or require a Public notice, as required by any other method deemed appropriate.~~

~~8.1.3.—All public notices shall indicate the public comment period, if any, on the proposed action. The comment periodsthe Act, shall be no less than twenty (20) days from the date of the notice. Any document due on the weekend or a holiday may be submitted on the first working day after the weekend or holiday.~~

~~8.2.—The following notification requirements shall be applicable for consent decrees.~~

~~8.2.1.—The Department shall provide or require public notice of the proposed consent decree for a twenty (20) day comment period.~~

~~8.2.2.—If the Department and the potentially responsible party agree to substantial changes to the proposed consent decree, the Department shall provide additional public notice and at least a twenty (20) day comment period.~~

~~8.3.—The following notification requirements shall be applicable for BDA.~~

~~8.3.2.~~The Department shall provide public notice~~provided~~ within twenty (20) days of ~~entering into BDA negotiations.~~the following:

~~8.3.2.1.~~ Commencement of negotiations for a Brownfields Development Agreement (BDA). The date of Brownfields certification by the Department shall provide public notice of the signing of be deemed to be the BDA within twenty (20) days~~commencement of the execution and provide a twenty (20) day comment period~~negotiations for a BDA.

~~8.4.—The following notification requirements shall be applicable for VCP Negotiations.~~

~~8.4.1.—The Department shall provide public notice within twenty (20) days of entering into VCP negotiations.~~

~~8.2.2. The following notification requirements~~Commencement of negotiations for a Voluntary Cleanup Program (VCP) Agreement. The date of receipt of a VCP Application by the Department shall be deemed to be the commencement of negotiations for a VCP Agreement.

~~8.2.3. Determination by the Department that there has been a release or imminent threat of a release of a hazardous substance which will require a remedy.~~

~~8.5. Public notice, as required by the Act, shall be applicable~~provided to the proposed plan of remedial action:

~~8.5.1. The Department shall provide or require public notice of the proposed plan of remedial action and of the investigation upon which the proposed plan of remedial action is based. At a minimum, public notice shall briefly:~~

~~8.5.1.1. Describe the facility;~~

~~8.5.8.3. Identify the Department's proposed remedial action and provide an explanation~~establish a twenty (20) day comment period for its selection or indicate where the information may be obtained, and; the following:

~~8.5.1.3. Invite public comment on the proposed plan of remedial action. The public comment period shall run for at least twenty (20) days from the date of issuance of the public notice.~~

~~8.3.1. The Department shall provide or require public notice of~~Issuance of a Proposed Plan of Remedial Action

~~8.3.2. Execution of a Consent Decree~~

~~8.3.3. Execution of a BDA~~

~~8.6.8.4. Public notice shall be provided upon the adoption of the final plan of remedial action.~~Final Plan of Remedial Action (FPRA), including a brief description of the selected remedy or and where it a copy of the FPRA may be obtained, by advertising in a newspaper of general circulation in the state.

~~8.7.8.5. The Department Public notice shall provide~~be provided twenty (20) days prior to public notice of Public Hearings~~hearings.~~

9.0 Investigation

~~9.1. The Department or any person may conduct any investigation at any facility suspected of a release, an imminent threat of release, or an identified potential release or, the Department, at a person's request, may review the results of an investigation conducted by the person. Any person may elect to obtain oversight from the Department by entering into any agreement approved by the Department for the purposes described in Section 1.7. of these Regulations.~~

~~9.2. Sampling and Analysis Plan—The following requirements are applicable to all stages of investigation:~~

~~9.2.1. Analytical Requirements~~

~~9.2.1.1. Analytical procedures, including field screening methods, must be conducted in accordance with all applicable provisions of the Standard Operating Procedures of the Hazardous Substance Cleanup Act for Chemical Analytical Programs, as amended by the Department, or as preapproved by the Department.~~

~~9.2.1. Data shall be evaluated against accepted quality assurance/quality control parameters to determine data usability.~~

~~9.2.2. Sampling Requirements~~

~~9.2.2. Sampling of the environmental media should be performed to collect representative samples that reflect the data quality objectives of the investigation.~~

~~9.2.2.2. At its discretion, the Department may approve the use of field screening methods.~~

~~9.3.9.1. Initial Investigation~~

~~9.3.1. The Initial Investigation is the process of evaluating a suspected release, an imminent threat of release, or an identified potential release at a facility based on existing information.~~

~~9.3.2. The Department may determine that a Phase I environmental site assessment or a Preliminary Assessment conducted by the Environmental Protection Agency is equivalent to an The purpose of the initial investigation.~~

~~9.3.3.9.1.1. The results of the Initial Investigation will be evaluated is to determine if sufficient data have been collected information is available for the Department to determine if a release or imminent threat of release of a hazardous substance has occurred, and, if so, to perform an initial hazard ranking of the facility based on the Delaware Hazard Ranking Model as described and specified in Section 3.2.1.1.3. of these Regulations.~~

~~9.3.4.9.1.2. Information shall be analyzed using quality assurance/quality control procedures to determine if the quality of the information quality is acceptable to the Department for the objective of the initial investigation.~~

~~9.1.3. The Department may determine that a Phase I Environmental Site Assessment, all appropriate inquiry (AAI), or a Preliminary Assessment satisfies the requirements of an initial investigation.~~

~~9.3.5.9.1.4. Based on the information obtained about the facility during the initial investigation or initial hazard ranking of the property facility, the Department shall require one or more of the following: may:~~

~~9.3.5.1-9.1.4.1. A facility evaluation or review of~~Require a facility evaluation ~~conducted by any person or a remedial investigation;~~

~~9.3.5.2-9.1.4.2. An~~Require an interim action;

~~9.3.5.3-9.1.4.3. Placing~~Place the facility on the priority list prepared by the Department;

~~9.3.5.4-9.1.4.4. Any~~Take any other action determined by the Department to be appropriate; ~~or~~

~~9.3.5.5. Issue a Conditional~~ No further action under these regulations at this time because either:

~~9.3.5.5.1. There has been no release or there is no imminent threat of release; or,~~

~~9.3.5.5.2. A historical release has occurred which has been mitigated as determined by the Department or does not pose a threat to public health, welfare, or the environment; or,~~

~~9.3.5.5-9.1.4.5. Further~~ Action under another authority is appropriate; ~~Determination.~~

~~9.3.6-9.1.5. A Conditional No Further~~ Action Determination pursuant to paragraph 9.31.4.5- of this subsection does not preclude the Department from requiring further action based on additional information or other circumstances as it deems appropriate.

9.4.9.2. Facility Evaluation

~~9.4.1. The Facility Evaluation (FE) is applicable to a facility where an initial investigation warrants further investigation.~~

~~9.4.2. The Department may determine that a Phase II environmental site assessment, a Site Inspection, Site Specific Assessment, or equivalent conducted by the Environmental Protection Agency is equivalent to a FE.~~

~~9.4.3. The Department may determine that existing information constitutes the equivalent of all or part of a FE.~~

~~9.4.4-9.2.1.~~ The purpose of the ~~FE~~facility evaluation (FE) includes:

~~9.4.4.1-9.2.1.1.~~ Developing information and sampling data which will meet the data quality objectives; ~~;~~

~~9.4.4.2-9.2.1.2.~~ Confirming the release or imminent threat of release;

~~9.4.4.3-9.2.1.3.~~ Identifying the hazardous substances with sufficient data to determine future action at the facility. The FE does not require ~~that~~ the full extent of contamination ~~to~~ be identified or ~~that~~ a full risk assessment ~~to~~ be performed; ~~.~~ The sample locations shall be in areas of the facility where the highest levels of contamination are likely to exist.

~~9.4.4.4.9.2.1.4.~~ Identifying facility characteristics that could result in hazardous substances entering and moving through the environment; ~~and~~

~~9.4.4.5.~~ Performing ~~a preliminary~~ initial risk screening as described in Section ~~10.1.;~~ ~~and;~~

~~9.4.4.6.9.2.1.5.~~ ~~Evaluating~~ 9.4 in order to evaluate the threat to public health, welfare, and the environment.

9.2.2. The Department may determine that a Phase II Environmental Site Assessment, a site inspection, site specific assessment satisfies the requirements of a FE.

9.2.3. The Department may determine that existing information constitutes the equivalent of all or part of a FE.

~~9.4.5.~~ ~~Prior to the Department conducting a FE, the Department shall attempt to notify the owner or operator of the facility, if known, of the Department's intent to conduct the evaluation, and require the owner or operator to submit relevant information to the Department or agree for the owner or operator to conduct the evaluation.~~

~~9.4.6.9.2.4.~~ The scope of the FE will depend on the specific characteristics of the facility. Sufficient information shall be collected to perform a ~~preliminary~~ initial risk screening as defined in Section ~~10.19.4.~~

~~9.4.7.9.2.5.~~ A FE shall be conducted in accordance with the criteria, procedures, and time schedules established and agreed to by the Department.

~~9.4.8.~~ ~~The results of the FE will be evaluated to determine if sufficient data have been collected to perform a preliminary risk screening as described and specified in Section 4.2.1.~~

~~9.4.9.9.2.6.~~ Based on the information obtained about the facility during the FE and ~~preliminary~~ the initial risk screening, the Department will ~~perform one or more of the following.;~~

~~9.4.9.1.9.2.6.1.~~ Revise the relative priority of the facility ~~using~~ by performing a hazard ranking based on the FE results;

~~9.4.9.2.9.2.6.2.~~ Conduct; or require ~~a potentially responsible party to conduct, the~~ performance of a remedial investigation and/or a feasibility study;

~~9.4.9.3.9.2.6.3.~~ Enter into a ~~settlement agreement~~ Settlement Agreement with any person that offers to conduct a remedial investigation and/or feasibility study;

~~9.4.9.4.9.2.6.4.~~ ~~Require~~ Conduct or ~~conduct~~ require an immediate ~~response~~ remedial action (or interim action);;

~~9.4.9.5.9.2.6.5.~~ Conduct or require any other action as determined by the Department ~~to be~~ appropriate.; or

9.2.6.6. Issue a Conditional No Further Action Determination.

9.3. Sampling and Analysis Plan - The following requirements are applicable to all stages of investigation:

9.3.1. Analytical procedures, including field screening methods, must be conducted in accordance with all applicable provisions of the Standard Operating Procedures of the Hazardous Substance Cleanup Act for Chemical Analytical Programs (SOPCAP), as issued or amended by the Department, or other methods or procedures preapproved by the Department.

9.3.2. Data shall be evaluated against accepted quality assurance/quality control parameters to determine data usability.

9.3.3. Sampling of the environmental media should be performed to collect representative samples that reflect the data quality objectives of the investigation.

~~9.4.9.6. Decide that the facility requires no further action under these regulations at the time of review because either:~~

9.4. ~~There has been no release or there is no imminent threat~~Initial Risk Screening

9.4.1. The methodology described in this Section shall apply to a facility evaluation (FE) or equivalent investigation as specified in Section 9.2 of these Regulations.

~~9.4.9.6.1. The purpose of release; or~~

~~9.4.9.9.4.2. A release has occurred, but in the Department's judgment, based on a preliminary~~the initial risk screening, does not pose shall be to determine whether, based on available data, a threat to public release at a facility poses a potential risk to human health, welfare, or the environment; or,

~~9.4.9.6.3. Action under another authority is appropriate;~~

9.4.3. The initial risk screening shall identify the maximum observed concentrations of analytes found in environmental samples. The sample locations shall be in areas of the facility where the highest levels of contamination are likely to exist.

9.4.3.1. Any laboratory confirmed analyte concentration, in excess of the applicable screening levels approved by the Department, shall require further evaluation.

9.4.3.2. The scope of the initial risk screening shall include an ecological screening to determine whether an Ecologically Sensitive Area (ECSA) is present on site or immediately adjacent to the site. If an ECSA is present, further ecological evaluation shall be performed.

9.5. Remedial Investigation

9.5.1. The purpose of the ~~Remedial Investigation~~remedial investigation (RI) includes:

- 9.5.1.1. Characterizing the nature and extent of the release or the potential release of hazardous substances;
- 9.5.1.2. Collecting data to perform a risk assessment as specified in Section 10.0; and
- 9.5.1.3. Identifying the specific conditions that require potential remediation.

~~9.5.2.~~ A Department approved Sampling and Analysis Plan (SAP), as specified in Section 9.3, is required prior to conducting a Remedial Investigation, unless the RI.

~~9.5.2.9.5.3.~~ The Department, upon request, determines may determine that the existing information constitutes the equivalent of regarding a facility satisfies all or part of the requirements of a RI.

~~9.5.3.9.5.4.~~ The scope of the Remedial Investigation RI will depend on the specific characteristics of the facility and will meet the data quality objectives specified in the RI Sampling and Analysis Plan SAP.

~~9.5.4.9.5.5.~~ A Remedial Investigation A RI shall be conducted in accordance with the criteria, procedures, and time schedules determined by the Department.

~~9.5.5.9.5.6.~~ The results of the Remedial Investigation RI will be evaluated to determine if data quality objectives, as described in the SAP approved by the Department, have been met.

~~9.5.6.9.5.7.~~ Based on the information obtained about the facility during the RI and risk assessment as specified in Section 10.0, the Department shall do one or more of the following may:

~~9.5.6.1.9.5.7.1.~~ Require a Feasibility Study, as specified in Section 12.4., to evaluate the site facility;

~~9.5.6.2.9.5.7.2.~~ Require or conduct additional investigation or remedy (interim action); and/or

~~9.5.6.3.9.5.7.3.~~ Issue a Proposed Plan of Remedial Action;

~~9.5.6.4.~~ Issue a determination of No Further Action under Section 13.2.

9.6. Brownfield Investigation

~~9.6.1.~~ The Brownfield Investigation, which is applicable to certified Brownfield sites and combines a RI and a focused feasibility study based on the proposed development plan.

~~10.0~~ Risk Evaluation

~~10.1.~~ Preliminary Risk Screening

~~10.1.1.9.6.1. The methodology described in this section shall apply to a Facility Evaluation (FE) or equivalent investigation, shall meet the requirement of the RI as described and specified in Section 9.4. of these Regulations5.~~

~~10.1.2. The purpose of the Preliminary Risk Screening shall be to determine whether hazardous substances have been released into the environment at the site or a similar limited purpose approved by the Department.~~

~~10.1.3. The Preliminary Risk Screening shall identify the maximum observed concentrations of analytes found in environmental samples deliberately located to reveal any contamination if it is present.~~

~~10.1.3.1. Any laboratory confirmed analyte concentration, in excess of the greater of background concentrations or the conservative risk based screening values approved by the Department, shall require further evaluation.~~

~~10.1.3.2. The scope of the Preliminary Risk Screening shall include an assessment of whether viable habitat is present, and if present, an ecological risk screen shall be performed.~~

~~10.1.3.3. The initial hazard ranking shall be revised based on FE results.~~

10.0 Risk Assessment

~~10.2.10.1. The methodology described in this section shall apply to the results of a Remedial Investigation remedial investigation as described and specified in Section 9.5. of these Regulations.~~

10.2. The purpose of the Risk Assessment is to characterize the nature and magnitude of health risks to humans and adverse effects to ecological receptors caused by the release of hazardous substances at a facility.

~~10.2.10.3. The methods of risk assessment shall conform to formally issued guidance and policy of the Department or by to other methods preapproved by the Department.~~

~~10.2.10.4. The risk assessment shall use exposure assumptions that result in an overall exposure assessment that is conservative and consistent with the current and potential future use of the facility.~~

~~10.2.10.5. Fully referenced toxicological Toxicological data and exposure assumptions, used in risk calculations shall appear in the Risk Assessment risk assessment report. The toxicological data shall be from the Integrated Risk Information System or other sources approved by the Department.~~

11.0 Remedial Action Objectives & Cleanup ~~Standards~~ Levels

11.1. Remedial Action Objectives

11.1.1. During or following the remedial investigation, remedial action objectives shall be developed by a potentially responsible party, any person conducting the investigation, or the Department. ~~Remedial action objectives shall consider factors including current and potential land use, natural resource use, use of surrounding properties, background contamination, facility specific risk assessment, specific environmental issues, and any applicable local, state and federal laws and regulations.~~ Remedial action objectives will include qualitative and quantitative objectives. At the Department's discretion, remedial action objectives may be revised based on additional information.

11.1.2. Qualitative objectives describe, in general terms, how the remedial action will address specific threats to public health, or welfare, or the environment.

11.1.3. Based on the qualitative objectives, quantitative objectives will be developed that define specific levels of remedial action.

11.1.4. Remedial action objectives shall consider factors including current and potential land use, natural resource use, use of surrounding properties, background levels, facility specific risk assessment, specific environmental issues, and any applicable local, state and federal laws and regulations.

11.2. Cleanup ~~Standards~~Levels

11.2.1. Cleanup levels shall meet the acceptable risk.

~~11.2.1.~~ 11.2.2. Cleanup levels shall be based on site specific risks caused by releases of hazardous substances.

~~11.2.2.~~ 11.2.3. ~~At the discretion of the Department, the~~ The future use of the ~~site or~~ facility shall be incorporated in a determination of ~~the~~ cleanup levels based on site specific risks.

~~11.2.3.~~ 11.2.4. When multiple contaminants of concern (COCs) are present or multiple environmental media are contaminated, then the total cumulative risk from all of the COCs in all appropriate pathways of exposure ~~will~~shall not exceed the acceptable risk, except that:

~~11.2.3.1.~~ 11.2.4.1. The cumulative non-carcinogenic effect of COCs shall be evaluated specific in relation to target organs.

~~11.2.3.2. The remedial action objectives in ground water shall meet acceptable risk values, but the Maximum Contaminant Levels (MCLs) may be used as the cleanup level if the Department determines it is protective of human health and the environment and it is consistent with the policy and purposes of the Act and these Regulations.~~

11.2.4.2. At its discretion, the Department may allow the maximum contaminant levels (MCLs) to be used as the cleanup levels for groundwater at a facility.

~~11.2.3.3.~~11.2.4.3. When the background concentration level of a COC exceeds the concentration corresponding to the acceptable risk, ~~then~~ the background concentration level shall be the cleanup level.

~~11.2.3.4.~~ At its discretion, the Department shall approve Default Cleanup Levels in lieu of cleanup levels based on site specific risks.

12.0 Remedial Actions

~~12.1.~~ Department Oversight of Remedial Actions

12.1. At any facility where the Department determines that a release has occurred, or a release is imminent, the Department ~~shall~~may require ~~the identified potentially responsible parties~~a person to undertake appropriate ~~response activities to investigate, abate, minimize, stabilize, mitigate or eliminate the~~remedial actions to reduce the risk of a release or imminent threat of release of hazardous substances to the acceptable risk level.

~~12.2.~~ Department Oversight of Remedial Actions

~~12.1.2.~~12.2.1. A partyperson must enter into a settlement agreement with the Department in order to obtain oversight from the Department for the remedial action.

~~12.2.2.~~ A person shall not perform a remedial action without Department oversight, unless the activity is being performed pursuant to another state or federal regulatory authority.

~~12.1.3.~~12.2.3. Any partyperson who performs a remedial action without Department oversight will not be eligible to receive a Certificate of Completion of Remedy (COCR) from the Department until a remedial action, approved by the Department, has been completed at the facility.

~~12.2.~~12.3. Interim ~~Response Activities~~Actions

~~12.2.1.~~12.3.1. ~~At its discretion, the~~The Department may require or permit an interim action at a facility prior to issuing the Proposed Plan of Remedial Action for the facility. ~~The purpose of the interim action where the Department determines that it is to alleviate threats to human health, public welfare, or the environment.~~consistent with or will not interfere with potential or final remedial actions.

~~12.2.2.~~12.3.2. Interim actions include spill response, drainage controls, site stabilization, removal of drums, tanks or bulk storage containers, free product removal, and ~~temporary evacuation~~excavation of contaminated material.

~~12.2.3.~~ The Department shall not approve interim actions that are inconsistent with or interfere with potential or final remedial actions or those that do not mitigate threats to human health, public welfare, or the environment.

~~12.2.4.~~ Interim actions are not intended to substitute for permanent remedial actions.

~~12.2.5.12.3.3.~~ For any facility at which an interim action has occurred, the Proposed Plan of Remedial Action shall include a description of the interim action and a determination of whether additional remedial action is needed to meet the remedial action objectives.

~~12.3.— Feasibility Study~~

~~12.3.4.~~ The ~~purpose~~Department may adopt an interim action as all or part of the ~~feasibility study is to identify potential~~chosen final remedial alternatives that are applicable to satisfy the remedial action objectivesaction for ~~the a~~ facility if it determines the interim action is protective of public health or welfare or the environment.

~~12.4. Remedial Alternative Selection~~

~~12.3.1.— and meet~~Prior to the selection ~~criteria in 12.4.~~ of ~~these Regulations.~~

~~12.3.2.12.4.1.~~ ~~The scope of a remedial action,~~ the Department may require a feasibility study ~~shall depend~~depending on site specific factors including the nature of the contamination and the complexity of the facility ~~and is subject to Department approval.~~ The. The feasibility study shall address each contaminated medium identified in the remedial investigation or risk assessment.

~~12.4.— Remedial Alternative Selection~~

~~12.4.1.12.4.2.~~ ~~A responsible party~~The Department, or any ~~other~~ person who has entered into an agreement with the Department concerning a facility, shall propose one or more remedial ~~alternative~~alternatives for the facility. ~~Remedial alternative selection, including no further action, requires Department approval, which meet the criteria in 12.4.4.~~

~~12.4.2.12.4.3.~~ The Department will evaluate and select the proposed remedial alternatives for the facility according to ~~three~~the threshold ~~criteria~~ and ~~seven~~ balancing criteria.

~~12.4.3.12.4.4.~~ At a minimum, an approved ~~remedy~~remedial action shall meet the following initial threshold criteria:

~~12.4.3.1.12.4.4.1.~~ Protection of human~~public~~ health and or welfare or the environment.;

~~12.4.3.2.12.4.4.2.~~ Attainment of remedial action objectives, including applicable local, state, and federal laws and ~~regulations.~~regulation; and

~~12.4.3.3.12.4.4.3.~~ Control of sources of contamination.

~~12.4.4.12.4.5.~~ The Department shall consider the following balancing criteria in selecting a preferred ~~remedy~~remedial action from alternatives meeting the initial threshold criteria:

~~12.4.4.1.—~~Incorporation of sustainability principles:

~~12.4.4.2.—~~Long term reliability.

~~12.4.4.3. Reduction of contaminant toxicity, mobility or volume.~~

~~12.4.4.4. Acceptance by the community in which the facility is located.~~

~~12.4.4.5. Ease of implementation.~~

~~12.4.4.6. Short term effectiveness.~~

~~12.4.4.7. Life cycle costs.~~

~~12.4.5.0.~~ 12.4.5.1. For the purposes of this section “sustainability principles” includes: including low energy inputs, restoration of habitat, preservation of cultural resources, land reuse, materials recycling, infrastructure reuse, reduced run-off, permanence and protectiveness without an environmental covenant.;

~~12.4.5.2. Upon approval~~ Reduction of contaminant toxicity, mobility or volume;

~~12.4.5.3. Comments or input from the selected remedy~~ community in which the facility is located;

~~12.4.5.4. Ease of implementation;~~

~~12.4.5.5. Short-term effectiveness;~~

~~12.4.5.6. Long-term effectiveness; and~~

~~12.4.5.7. Life-cycle costs including present and future direct and indirect capital costs, operation and maintenance costs, compliance monitoring costs, and other foreseeable costs.~~

~~12.4.6. For remedial action alternatives that satisfy the criteria of 12.4.4 and after the Department considers the balancing criteria of 12.4.5, preference shall be given to the remedial action which is most cost effective.~~

~~12.4.7. A remedial action may not be considered cost effective if the incremental cost of the remedial action is substantial and disproportionate to the incremental degree of protection it would achieve.~~

~~12.4.6.~~ 12.4.8. Upon selection of the remedial alternative, the Department shall issue a Proposed Plan of Remedial Action.

12.5. Proposed Plan of Remedial Action

~~12.5.1. Prior to implementation of the remedial action for a facility, the~~ The Department shall issue a Proposed Plan of Remedial Action describing the proposed remedial action ~~except when~~ prior to implementation of the remedial action for a facility. When the Department requires or approves an interim ~~response activity~~ action as described in Section ~~12.2.3.~~ of these Regulations.

~~12.5.1. The, the Department shall publish public notification of the may issue a Proposed Plan of Remedial Action after the implementation of the interim action.~~

12.5.2. The Department shall provide public notice of the Proposed Plan of Remedial Action and the details of the public comment period as described in Section 8.0. of these Regulations.

~~12.5.2.1. The Department shall establish in policy criteria by which a party to a Brownfields Development Agreement may perform an investigation at a facility concurrently with the public comment period on a presumptive remedial action.~~

12.5.3. At the conclusion of the public comment period, the Department shall evaluate questions and comments on the Proposed Plan. ~~At its discretion, the Department may issue written responses to questions and comments on the Proposed Plan. of Remedial Action.~~

12.6. Final Plan of Remedial Action

12.6.1. The Department shall issue a Final Plan of Remedial Action with due consideration of the comments on the Proposed Plan of Remedial Action and any additional study or investigation the Department deems useful.

12.6.2. The Proposed and Final Plans of Remedial Action and the basis for ~~itthem~~, as well as all comments received by the Department, shall constitute the remedial decision record of the Secretary ~~of the Department~~.

12.6.3. The Department shall ~~publish~~provide public ~~notification~~notice of the Final Plan of Remedial Action as described in Section 8.0 of these Regulations.

~~12.6.4. The Final Plan of Remedial Action is a decision of the Secretary of the Department and subject to 7 Del.C. §9110.~~

~~12.7. Implementation of the Remedy~~

12.7. Remedial Action

12.7.1. No person shall implement a ~~final Plan of Remedial Action~~remedial action at a facility without concurrent oversight from the Department. ~~The Department will require a potentially responsible party to implement the final plan of remedial action. Failure to do so will result in enforcement.~~

12.7.2. All of the phases of the ~~remedy~~remedial action require prior written approval from the Department.

12.7.3. Remedial Action Work Plan

12.7.3.1. A Remedial ~~action work plan documents~~ Action Work Plan (RAWP) shall be prepared for ~~theany~~ remedial action. The level of detail of ~~these documents~~the RAWP will depend on the nature and complexity of the ~~remedial action~~Remedial

Action, and will require the Department's written approval prior to implementation. The Department ~~will~~may require the submission of the following ~~reports~~documents as part of the RAWP, which may be combined into one ~~report~~document:

- 12.7.3.1.1. ~~The Remedial Design Report shall contain information~~Information as required by the Department including treatability studies, and pilot studies ~~;~~
and
- 12.7.3.1.2. Construction plans and specifications which shall describe in detail the remedial action to be performed. The plans and specifications shall be prepared in ~~conformance~~conformity with the currently accepted engineering practices and techniques. Any applicable or required permits shall be ~~detailed~~documented in the construction plans and specifications.
- 12.7.3.2. ~~Revisions~~Any revisions to plans and specifications shall require the Department's prior written approval.
- 12.7.3.3. ~~As part of the~~The Department will require and review a Health and Safety Plan (HASP), ~~monitoring during construction will be required in order~~. The HASP will include criteria to demonstrate adequate ~~adequately monitor the~~ protection of public health, ~~or~~ welfare, and or the environment.
- 12.7.4. Remedial Action ~~Construction~~Implementation
- 12.7.4.1. ~~Construction~~Implementation of the ~~remedy~~remedial action shall be conducted in accordance with the approved Remedial Action Work Plan.
- 12.7.4.2. Upon request by the Department, interim progress reports for the remedial action must be submitted.
- 12.7.4.3. The ~~Construction~~Remedial Action Completion Report (~~CCRR~~RACR) shall contain as-built drawings and documentation of all aspects of ~~facility construction as the implementation of the remedial action~~ approved by the Department. The ~~construction completion report~~RACR shall ~~contain certification from~~ be certified by a Delaware licensed professional engineer and/or geologist, as appropriate, based on testing results and inspections, ~~as to whether the remedial action work has been~~ ~~constructed~~implemented in compliance with the Proposed and Final Plans of Remedial Action, the plans and specifications, and other related documents. The RACR is subject to the approval of the Department.
- 12.7.4.4. The Department may conduct inspections of the facility at any time to ensure compliance with the ~~remedial action and~~Final Plan of Remedial Action and long-term stewardship requirements.

12.7.5. Long-Term Stewardship

~~12.7.4.4.~~12.7.5.1. Long-term stewardship (LTS) is addressed in a LTS Plan approved by the Department, and includes operation and maintenance, monitoring, environmental covenant, and periodic review requirements.

~~12.7.5.~~ Long Term Stewardship

~~12.7.5.1.~~12.7.5.2. Operation and Maintenance

~~12.7.5.1.1.~~12.7.5.2.1. Operation and maintenance referrefers to measures initiated after the remedyremedial action is determined to be operational and functional. Operation and maintenance isincludes all activities necessary to ensure the integrity and functionality of the remedyremedial action.

12.7.5.2.2. ComplianceAny person responsible for Operation and maintenance must obtain any necessary permits before initiating activities which require a permit under State or Federal or local laws and regulations. Possession of such permits shall be required for initial, and continuing, Department approval of the operation and maintenance plan.

12.7.5.2.3. Failure to perform operation and maintenance in compliance with a Department approved operation and maintenance plan may result in an enforcement action up to and including rescission of the Certification of Completion of Remedy.

~~12.7.5.2.~~12.7.5.3. Remedial Action Monitoring

~~12.7.5.2.1.~~ PerformanceRemedial action monitoring measures the ongoing effectiveness of the remedial action.

~~12.7.5.2.2.~~12.7.5.3.1. Confirmation monitoring measuresis required to measure the long-term effectiveness of the remedial action.

12.7.5.3.2. Remedial action monitoring ensures the attainment of the cleanup level and confirms the long-term effectiveness of the remedial action objectives.

12.7.5.3.3. Remedial action monitoring requirements are contained in the LTS Plan which is subject to the approval of the Department.

12.7.5.4. Environmental Covenant

~~12.7.5.3.0.~~12.7.5.4.1. The Department may require the placement of an Environmental Covenant (EC) on a facility, as provided for in the Uniform Environmental Covenant Act (UECA), as all or part of the remedial action.

~~12.7.5.3.1.~~12.7.5.4.2. Environmental Covenants (ECs) are legal and administrative tools or actions takenAn EC may be used in order to reduce the potential for exposure to hazardous substances and shall comply with the Uniform Environmental Covenant Act (UECA). At its discretion the Department shall require ECs as all or part of the remedy. ECs, and may include land

use restrictions, activity restrictions, ~~or~~ groundwater ~~management zones (GMZ)-use restrictions, operation and maintenance requirements, or other institutional controls.~~

~~12.7.5.4.~~12.7.5.5. Periodic Review

~~12.7.5.4.1.~~12.7.5.5.1. ~~At its discretion, the~~The Department ~~shall~~ may require periodic ~~reviews~~review consisting of an evaluation of the continuing long-term effectiveness and protectiveness of the ~~remedy~~remedial action.

12.7.5.5.2. If the Department selects or approves a remedial action that results in hazardous substances remaining at a facility at concentrations which exceed applicable cleanup levels, the Department shall periodically review the remedial action as it deems necessary to ensure that public health or welfare or the environment is protected.

12.8. Interference with Remedy

12.8.1. This section will apply to the following:

12.8.1.1. A facility for which any person has ~~been notified~~received notice pursuant to 7 Del.C. §9107, ~~or~~;

12.8.1.2. A facility which is the subject of an application for entry into the VCP or BD Program;

~~12.8.1.2.~~12.8.1.3. A facility undergoing an interim action, ~~or~~;

~~12.8.1.3.~~12.8.1.4. A facility undergoing a remedial investigation or remedial action, ~~or~~;

~~12.8.1.4.~~12.8.1.5. A facility for which an order has been issued ~~under~~pursuant to 7 Del.C. §9106(b) or 7 Del.C. §9109(b),~~);~~ or

~~12.8.1.5.~~12.8.1.6. ~~Any~~A facility that has restrictions ~~imposed~~required by ~~Certification of Completion~~the Final Plan of ~~Remedy~~Remedial Action.

12.8.2. No person shall perform any work or construction activities that may interfere with the ~~remedy~~remedial action at the facility, unless authorized by the Department as part of the ~~remedy~~remedial action, without doing all of the following:

12.8.2.1. ~~Provide~~Providing notice to the Department of any such planned work or construction activities;

12.8.2.2. ~~Provide~~Providing copies of all plans and a description of the planned work or construction activities to be performed at the facility;

12.8.2.3. ~~Provide~~Providing an explanation of how and why the planned work or construction activities will not interfere with any part of the remedy; and

12.8.2.4. ~~Obtain~~Obtaining the Department's prior written approval, ~~in writing,~~ for any work or construction activities to be performed ~~on~~at the facility.

12.8.3. For the purpose of this subsection, "work or construction activities" shall include ~~any:~~

~~12.8.3.0.~~12.8.3.1. Any building, constructing, drilling, digging, excavating, grading, filling, landscaping, earthmoving, agricultural or any other land disturbing activities.

12.8.3.2. ~~However, this~~Storage, bulk or not, of inventory, equipment, or materials which limit access to remedial activities.

12.8.3.3. Any activities that may cause additional or new releases or exacerbation of site conditions.

12.8.4. This subsection shall not apply to any work or construction activities performed in a facility or areas of a facility where any drilling, digging or excavation is carried out to collect samples ~~to determine if contamination is present in the area of the proposed work or construction activities~~in accordance with any appropriate plan approved by the Department.

13.0 Remedy Completion and Site Closure

13.1. Remedy Completion

13.1.1. In order to obtain a Certification of Completion of Remedy ~~at the completion of remedy, the owner, parties to a settlement agreement or parties responding to an order~~(COCR) pursuant to 7 Del.C. §9108, a person seeking a COCR shall submit to the Department a signed request for certification of completion of remedy, the COCR. The request for certification must be accompanied by the following documentation supporting the ~~certification request:~~

13.1.1.1. ~~Receipt from the Recorder of Deeds, in the County which the property is located, has been submitted to the Department~~Proof that the Uniform any Environmental Covenant Act, if required by the Final Plan of Remedial Action, has been filed with the Recorder of Deeds in the county in which the facility is located;

13.1.1.2. ~~Payment~~Proof of payment of all Department administrative costs associated with the facility;

13.1.1.3. ~~Approval of Operation & Maintenance /Long Term Stewardship~~The Department's written approval of long-term stewardship plan by the Department, if required by the Final Plan of Remedial Action; and,

13.1.1.4. ~~All~~The Remedial Action Completion Report, if required, indicating that all requirements have been fulfilled as specified within the Final Plan of Remedial Action have been fulfilled.

13.1.2. ~~Amendment of Certification~~A COCR may be amended when a change in site conditions warrants a change in any restrictions imposed by the COCR.

~~13.1.2.—Any person who performs a remedial action without Department oversight will be ineligible to receive a Certificate of Completion of Remedy (COCR)~~

~~13.1.2.1.—A COCR may be amended in the following ways:~~

~~13.1.2.1.1.—Change from restrictive to unrestrictive land use~~

~~13.1.2.1.2.—Removal of Operation & Maintenance /Long Term Stewardship requirements upon their completion~~

~~13.1.2.1.3.—Removal of any other requirements specified in the Final Plan of Remedial Action upon their completion~~

~~13.1.3. The Department shall not issue a certification of completion of remedy to a person who has conducted a remedy without oversight from the Department until that person has entered into a settlement agreement remedial action in accordance with the Act, approved by the Department, has been completed at the facility.~~

13.2. SiteFacility Closure

~~13.2.1. All facilities addressed under 7 Del.C. Ch. 91 will be eligible for site facility closure. A site facility is eligible for closure when the Department determines that no further action (NFA) under 7 Del.C. all requirements of the Final Plan of Remedial Action have been completed and no restrictions remain on the facility. The Department may Ch. 91 is required. Site closure can occur at several stages of the cleanup process including initial investigation, facility evaluation, remedial investigation, final plan, remedial action, long term stewardship, and as determined by the Department. The Department reserves the right to require additional measures to be taken by the responsible party remedial activities at the facility after it has achieved closure if circumstances change or if any new information becomes available that relates to a release of hazardous substances which shows that the completed remedial action is no longer protective of public health or welfare or the environment.~~

~~13.2.2. Facility closure is achieved through the issuance of a facility closure determination by the Department under the following conditions:~~

~~13.2.1.0.13.2.2.1. The Final Plan of Remedial Action requires no remedial activities at the site facility; or~~

~~13.2.2.—Site closure may be achieved through the following determinations:~~

~~13.2.2.1.—The Department shall issue a NFA determination under the following conditions:~~

~~13.2.2.1.1.— There has been no release or there is no imminent threat of release; or,~~

~~13.2.2.1.2.— A release has occurred but, in the Department’s judgment, does not pose a threat to public health, welfare, or the environment and does not require any restrictions to remain protective of public health, welfare, or the environment. However, the appropriate party may request to enter into a~~

~~settlement agreement and upon completion of requirements, request a COCR pursuant to Section 13.1. of these Regulations; or,~~

~~13.2.2.1.3.— Action under another authority is appropriate.~~

~~13.2.2.2.— A NFA determination by the Department does not release past, present, or future owners of liability under 7 Del.C. §9105(a).~~

~~13.2.2.3.~~13.2.2.2. A site will be considered closed if a Certification of Completion of Remedy is issued or amended by the Department ~~certifying and the Department determines~~ that the remedy remedial action, as described in the Final Plan of Remedial Action, is completed and no restrictions remain on the facility.

13.3. Archiving Sites

13.3.1. At its discretion, the Department will remove sites from the current inventory of hazardous substance release sites to the archive of closed sites.

14.0 Natural Resource Damage Assessment and Restoration

14.1. Purpose

14.1.1. To ensure comprehensive ~~and timely~~ assessment of injuries or losses to natural resources and natural resource services resulting from a release of hazardous substances or results from efforts required actions to prevent, mitigate, or remedy such a release.

14.1.2. To ensure restoration, replacement, or compensation ~~by the potentially responsible party or appropriate trust fund~~ for all lost or injured natural resources and natural resource services resulting from the release of a hazardous substance, or efforts required actions to prevent, mitigate, or remedy such a release, that would not otherwise be restored or replaced as part of any remedial action.

14.2. Restoration, Replacement, and Compensation

14.2.1. The Department ~~shall~~may require restoration, replacement and/or compensation for lost or injured natural resources and natural resource services. Restoration, replacement ~~or~~ and compensation ~~shall~~may include costs of monitoring, maintenance, and or corrective activities necessary to sustain the restoration project in perpetuity, ~~or as otherwise determined appropriate by the Department~~.

14.2.1.1. The Department may require the restoration of an injured resource as nearly as practicable to its baseline condition. The baseline condition shall be determined in terms of the injured resource's physical, chemical, and biological properties or the services it ~~previously~~ provided prior to the release.

14.2.1.2. The Department may require replacement or acquisition of the equivalent of any injured natural ~~resources~~ resource or natural resource ~~services~~ service.

- 14.2.1.3. The Department may require compensation for an injury to natural resources and natural resource services, including compensation for lost uses or services during the entire period prior to re-attainment of the baseline condition. If any restoration or replacement efforts ultimately fail, the Department may require compensation for any periods after such failure, until baseline conditions are restored.
- 14.2.2. The Department ~~shall attempt to~~may recover ~~from the potentially responsible party or appropriate trust fund~~ all the Department's costs of performing the natural resource damage pre-assessment, assessment, and post-~~assessment~~.
- 14.3. Agreements with other ~~Parties~~Persons
- 14.3.1. The Department may enter ~~into~~agreements with ~~trustee agencies of persons for the Federal government, of other States, or of tribes~~assessment, restoration, replacement, and with potentially responsible parties, or compensation for damages to conduct joint or cooperative assessments~~natural resources and natural resource services. These agreements include:~~
- 14.3.1.1. Cooperative Assessments.~~In~~
- 14.3.1.1.1. Cooperative Assessments are performed by the ~~ease of agreements~~Department and other persons to jointly assess damages to natural resources and/or natural resource services.
- ~~14.3.1.1.0.~~14.3.1.1.2. Agreements for cooperative assessments with ~~potentially responsible parties, said agreement shall~~ a person may include a provision obligating the ~~potentially responsible party~~person to pay the Department's costs of assessment on a periodic basis while the assessment is in progress. ~~The potentially responsible party shall submit a monetary deposit to the Department from which the cost of the assessment will be drawn. Once the deposit has been spent down, the responsible party will be billed on a quarterly basis, unless the parties agree to an alternative billing schedule, until the assessment has been completed, and the assessment costs fully recovered.~~
- ~~14.3.2.0.~~14.3.1.2. Restoration in Anticipation of Unquantified Claims
- 14.3.1.2.1. The Department may elect to enter into an agreement with a ~~potentially responsible party~~person to allow the ~~potentially responsible party~~person to conduct restoration at a site, with oversight by the Department, before a damage assessment is completed. Upon ~~satisfactory~~ completion of the restoration work ~~and resolution of, as approved by the damage claim~~Department, the Department may, ~~at its discretion~~, grant credit to the ~~potentially responsible party~~person to offset all or a portion of the person's liability for the natural resource damage ~~claim. Such~~at the site.

~~14.3.2.1.—The Department may permit a grant of credit shall be in writing, supported by adequate scientific and economic documentation of the losses granted to a person for restoration at a site or injuriessites to be used to offset, as well as the credit gained.~~

~~14.3.2.2.—Any such credit may only be applied when, and to the extent that, the restoration performed serves to restore, rehabilitate, or acquire the equivalent of the specific natural resources and natural resource services determined to have been lost or injured.~~

~~14.3.2.3.0:14.3.1.2.2. Credit granted for such restoration may be held by the potentially responsible party for later useperson's liability at other sites in Delaware or at sites outside the State which have injured Delaware's trust resources for which the potentially responsible party have or may have Natural Resource Damage liability. The Department shall review the restoration work at the time the credit is to be applied to determine whether the amount of credit is warranted by the current condition of the restoration project.~~

14.4. Pre-Assessment Phase

14.4.1. Upon identification of a release or threat of a release of a hazardous substance, the Department ~~shall~~may conduct a preliminary review to determine whether there are any natural resources affected or potentially affected by the release or threat of release. Upon finding that a release of a hazardous substance may injure, or may have injured, trust resources of the State, the Department ~~shall~~may conduct, either alone or in cooperation with trustee agencies of the Federal government, tribes, or other States:

14.4.1.1. A pre-assessment screen to determine whether the release justifies a natural resource damage assessment;

14.4.1.2. ~~Immediate sampling~~Sampling and data collection for the purpose of obtaining evidence which would otherwise be lost; ~~and/or~~

14.4.1.3. Emergency response activities to the extent the Department deems appropriate to prevent or reduce actual or potential injuries to natural resources.

14.4.2. Pre-Assessment Screen

14.4.2.1. The pre-assessment screen ~~shall include~~includes a review of existing information, preliminary identification of natural resources potentially at risk, sampling, preliminary identification of the substances released, preliminary identification of pathways of exposure, and costs of performing an assessment.

14.4.2.2. Based on information gathered pursuant to the pre-assessment screen, the Department ~~shall~~may make a preliminary determination that the following criteria are substantially met before proceeding with an assessment:

14.4.2.2.1. A release of a hazardous substance has occurred or may occur;

- 14.4.2.2.2. Natural resources for which the State may assert trusteeship have been or are likely to have been adversely affected by the release or potential release;
- 14.4.2.2.3. The quantity and concentration of the released or potentially released hazardous substances is potentially sufficient to cause injury to those natural resources;
- 14.4.2.2.4. Data sufficient to pursue an assessment are readily available or likely to be obtained at reasonable cost; ~~and/or~~
- 14.4.2.2.5. ~~Response~~Remedial actions, if any, carried out or planned, do not or will not sufficiently remedy the injury to natural resources without further action.

~~14.4.3. Pre-assessment activities shall be considered enforcement actions, and as such, shall be confidential and protected from disclosure as provided by 29 Del.C. Ch. 100 or other applicable laws unless the Secretary determines otherwise in writing.~~

14.5. Assessment Phase

- 14.5.1. If a damage assessment is determined to be appropriate in the pre-assessment phase, the Department, alone or in conjunction with other Trustees or PRPs, ~~shall~~may develop a damage assessment plan. Assessments may be conducted using the procedures outlined in 43 CFR Part 11, as amended, or ~~via~~by other procedures determined to be appropriate by the Department. The damage assessment plan ~~should~~may be incorporated into the ~~Remedial Investigation Work Plan to the maximum extent practicable~~remedial investigation work plan.
- 14.5.2. The assessment ~~shall be~~is conducted in the following three stages: injury determination, quantification, and damage determination.
 - 14.5.2.1. Injury Determination.~~The Department shall determine:~~ This determines whether an injury to one or more natural resources or natural resource services ~~has occurred or~~ may have occurred, and whether the injury ~~did result or~~ may have resulted from the release of a hazardous substance.
 - 14.5.2.2. Quantification.~~:~~ If ~~the Department determines it is determined~~ that there ~~is or~~ may be an injury to a natural resource or natural resource service, the ~~Department shall evaluate the~~ magnitude of the injury may be evaluated.
 - 14.5.2.3. Damage Determination.~~The Department shall determine:~~ This determines the damages resulting from the release of a hazardous substance based upon the information provided in the ~~Injury Determination~~injury determination and ~~Quantification~~quantification stages. ~~The Department shall use~~ Restoration Valuation, and one or ~~more~~both of the additional valuation approaches outlined below. ~~Each benefit or cost shall, may be counted once.~~used in the Damage Determination.

- 14.5.2.3.1. Restoration Valuation: This methodology ~~shall consist~~ consists of damage estimation based on restoration or replacement of the injured natural resource due to the release of a hazardous substance. An evaluation of restoration alternatives ~~shall~~ may be conducted. The evaluation ~~shall consider~~ considers a range of actions to restore the injured services over various recovery periods, and ~~shall~~ may include a "no-action" or natural recovery alternative. The expected net present value of each restoration alternative shall be determined: and
- 14.5.2.3.2. Use Value Valuation: These methodologies ~~shall~~ consist of damage estimations based on the reduction of use values, including hiking, fishing, hunting, boating, or camping. The use values of the injured resource ~~shall~~ may be estimated by using approaches ~~as~~ specified by the Department: and/or
- 14.5.2.3.3. Nonuse Value Valuation: These methodologies ~~shall~~ consist of damage estimations based on the reduction of nonuse values, including aesthetics. The nonuse values of the injured resource ~~shall~~ may be estimated by using approaches ~~as~~ specified by the Department.
- 14.5.3. The results of ~~the~~ an assessment, ~~upon acceptance performed by other persons shall be submitted to~~ the Department, ~~shall be documented in a written report for its approval.~~
- 14.6. Post-Assessment Phase
- 14.6.1. Upon completion of the assessment, the Department ~~shall~~ may, as appropriate:
- 14.6.1.1. ~~Present a demand in writing~~ Require persons to the potentially responsible party ~~for provide~~ compensation for the injury to natural resources and natural resource services, or an appropriate trust fund;
- ~~14.6.1.1.1. If monetary damages are received by the State in satisfaction of NRDA claims, they shall be placed in a dedicated interest-bearing account managed by the Department and used for the implementation of a selected restoration alternative.~~
- 14.6.1.2. Select an appropriate restoration alternative pursuant to 14.6.2;
- 14.6.1.3. Develop, or require ~~the potentially responsible party~~ a person to develop, a ~~Restoration Plan~~ restoration plan. The ~~Plan shall describe~~ plan describes the specific actions to be taken to restore, replace, and/or provide compensation for the injured natural resources and natural resource services;
- 14.6.1.4. Implement, or require ~~the potentially responsible party~~ a person to implement, the approved ~~Restoration Plan~~ restoration plan.

14.6.1.5. Recover its costs for assessment, restoration planning, restoration, and post-restoration activities from ~~the potentially responsible party~~ a person or appropriate trust fund.

14.6.2. In the evaluation of restoration alternatives, the Department ~~shall~~ may:

14.6.2.1. Consider whether the proposed restoration projects serve to restore, replace, or acquire the equivalent of the natural resources and natural resource services injured as a result of the subject releases; or

~~14.6.2.2.~~ Consider projects benefitting the watershed, aquifer, populations, or species injured;

~~14.6.2.3.~~ ~~14.6.2.2.~~ Ensure that sufficient financial resources are available for long term monitoring, maintenance, and corrective action for projects benefitting other watersheds, aquifers, populations, or species. Preference may be given to projects that benefit the restoration project in perpetuity, or as otherwise specified in the Restoration Plan affected watershed, aquifer, populations, or species.