

**STANDARD OPERATING PROCEDURE
FOR MANAGING SOIL / GROUNDWATER
CONTAMINATION ISSUES**



**N.J. DEPARTMENT OF TRANSPORTATION
N.J. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

JUNE 1989

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE
NEW JERSEY DEPARTMENT OF TRANSPORTATION

This Memorandum of Understanding by and between the New Jersey Department of Environmental Protection (hereinafter "NJDEP") and the New Jersey Department of Transportation (hereinafter "NJDOT") is executed pursuant to the provisions of N.J.S.A. 13:1D-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq.

WHEREAS, NJDEP is charged with the responsibility of protecting the environment and the public health, safety and welfare pursuant to the provisions of N.J.S.A. 13:1D-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., and

WHEREAS, NJDOT is charged with the responsibility of the development and promotion of programs to foster efficient and economical transportation services in the State and the preparation of plans for the preservation, improvement and expansion of the public transportation system, with special emphasis on the coordination of transit modes and the use of rail rights of way, highways and public streets for public transportation purposes pursuant to the provisions of the Transportation Act of 1966, N.J.S.A. 27:1A-1 et seq.

WHEREAS, NJDOT has the authority to acquire lands or rights therein whether for immediate or future use by gift, devise or purchase, or by condemnation as provided in the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq. pursuant to N.J.S.A. 27:7-22, and

WHEREAS NJDOT has acquired, is in the process of acquiring, or may acquire in the future, properties for the purpose of constructing transportation projects, and these properties may have soil and/or ground water contamination which must be investigated and remediated, and acquisition of such properties may trigger the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq.; and

WHEREAS close coordination between NJDOT and NJDEP is required in order for both departments to appropriately and efficiently carry out their respective statutory obligations; and

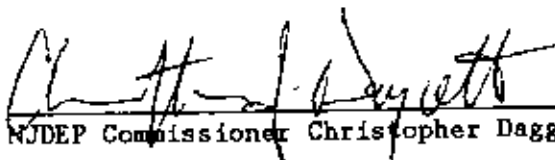
WHEREAS staff from both Departments have drafted and finalized the attached Standard Operating Procedure for Managing Soil/Groundwater Contamination Issues (hereinafter "SOP") and have consulted with technical and legal staff before finalizing the SOP; and

WHEREAS this SOP delineates a step by step process to be followed by NJDOT and NJDEP for the purpose of evaluating environmental conditions at properties already acquired or to be acquired by NJDOT, and for the purpose of coordinating implementation of remedial actions at those properties where remediation is necessary.

NOW, THEREFORE, NJDOT and NJDEP agree to follow the provisions of the SOP henceforth during development of NJDOT projects and agree to adopt modifications it as deemed necessary by both Departments.


NJDOT Commissioner Hazel Gluck

6/30/89
Date


NJDEP Commissioner Christopher Daggett

7/5/89
Date

STANDARD OPERATING PROCEDURE
FOR MANAGING
SOIL/GROUND WATER CONTAMINATION ISSUES

NEW JERSEY DEPARTMENT OF TRANSPORTATION
AND
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Preface

This Standard Operating Procedure (SOP) details a coordination process between the New Jersey Department of Transportation (DOT) and the New Jersey Department of Environmental Protection (DEP) regarding the assessment and handling of all transportation projects which involve the acquisition of properties with soil contamination and/or ground water contamination. The primary units responsible for assuring application and coordination of this SOP shall be the Bureau of Environmental Analysis (DOT), the Responsible Party Cleanup Element (DEP) and the Industrial Site Evaluation Element (DEP). This SOP shall allow for timely and technically sound site investigations/remediations for DOT's property acquisitions that may or may not trigger the provisions of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. (ECRA). This SOP delineates a step by step process to be used as guidance by the two agencies in addressing all site investigations and remedial actions required for each property. For those properties already acquired by DOT, they shall integrate said project with this SOP at the appropriate step to the extent feasible. A key element in the SOP is to resolve those cases where contamination is found, under both a schedule acceptable to DOT and according to a technical plan acceptable to the DEP. Both parties agree to perform the necessary reviews as outlined in the SOP in order to facilitate the construction of important public transportation projects. This SOP should thereby facilitate the goals of both agencies. This SOP does not confer any rights upon third parties. Step numbers in this SOP refer to the flowchart identified as Attachment 1. This SOP is comprised of both this narrative and the Attachment 1 flowchart.

STEP 1

Levels of Action Assessment (LOAA), Environmental Assessment (EA), Environmental Impact Statement (EIS), Executive Order 53 (E053) Document

DOT conducts contamination investigations according to the magnitude of the project's potential effect on the environment, during the planning and design stages of the project. The source of information at Step 1 would be from three stages of project development - LOAA's or environmental documents (EA, EIS, E053). The unit within DOT, which shall lead in this coordination process unless otherwise noted by DOT, shall be the Bureau of Environmental Analysis (hereinafter BEA).

A LOAA, which is DOT's assessment procedure, applies to all federally funded DOT projects, and is used to evaluate and classify the degree of environmental study a project requires. As a result of the LOAA, a contamination screening effort is conducted which may include preliminary environmental sampling referred to as the "First Phase Effort". For state funded projects which are subject to Executive Order 53, a contamination screening will be conducted as part of the E053 Document.

Technical studies are conducted as part of an EA, EIS, or E053 Document. The contamination technical study, which is referred to as the "Second Phase Effort", includes sampling/remediation, alternatives analysis and associated cost estimates. For those projects where environmental documents are not warranted (generally small scale

projects) but where contamination is identified, a Second Phase Effort shall be conducted as part of the project design and shall be identified as the Final Contamination Study.

STEP 2

Preliminary Assessment Site Investigation with Preliminary Sampling

DOT screens transportation projects during the LOAA. If an environmental problem is identified, a more extensive investigation is conducted at the Environmental Document or Design Stage.

DOT shall use the DEP's Preliminary Assessment format as guidance for this screening. This format may be changed by DEP from time to time. DEP shall provide DOT with the most current format, in case of such change.

DOT shall use DEP's Field Sampling Procedures Manual as guidance when conducting any sampling. This manual may be changed by DEP from time to time. DEP shall provide DOT with the most current manual, in case of such change.

Upon DOT's request, DEP shall provide preliminary applicability determinations regarding sites potentially subject to ECRA.

STEP 3

Results of Sampling Provided to DEP Coordinator and Owner/Operator

DOT shall submit First Phase Effort sampling results to DEP's Transportation Coordinator within the Division of Hazardous Waste Management's Bureau of State Case Management for review and comment within forty-five days after DOT's receipt and completion of data validation.

The DOT will provide property owners and operators with copies of First Phase Effort sampling results as appropriate. When providing such results, DOT shall indicate that DEP's Transportation Coordinator is the party to contact for interpretation of the results.

STEP 4

Decision Point for Necessity of Second Phase Effort

DEP's Transportation Coordinator shall review the results of the First Phase Effort sampling results. If the Transportation Coordinator determines that the site is free of hazardous substance/waste contamination, it shall be considered a clean site and Second Phase Effort sampling shall not be required. If a site is considered clean, a determination regarding ECRA involvement is pursued (proceed to Step 4-1). If upon review of DOT's First Phase Sampling results, the DEP Transportation Coordinator determines that a Second Phase Effort is necessary, then the Transportation Coordinator shall formally notify DOT's Bureau of Environmental Analysis (proceed to Step 5).

STEP 4-1

Clean Site, ECRA Applicability Decision Point

As detailed in Step 2, DOT's Preliminary Assessment will identify those property(ies) identified which may be subject to ECRA. For those properties that are not subject to ECRA, the coordination process pursuant to this SOP ends. For those properties that are subject to ECRA, the coordination process continues at Step 4-2.

STEP 4-2

Notify Appropriate DOT Units Regarding ECRA Applicability

The appropriate DOT units will be notified by DOT's BEA that ECRA coordination may be required. Those units shall include as appropriate but not be limited to:

- Division Regional Engineer
- Division of Bridge Design
- Division of Roadways Design
- Division of Traffic Engineering and Local Aid
- Division of Right-of-Way

STEP 4-3

DOT Final Design Process Proceeds

Although a site may be subject to ECRA, at this point it has been identified as being clean (either based upon site assessment or as a result of private party remediation), and the design of the subject project proceeds.

STEPS 4-4, 4-5, 4-6

DOT's Division of Right-of-Way (ROW) Conducts Appraisal of Property(ies)/ROW Contacts Owner with Offer Letter

As part of the ROW acquisition process DOT conducts appraisals of property(ies). DOT's Division of ROW submits to the property owner its standard "offer letter" to purchase said property. Pursuant to the ECRA regulations, specifically N.J.A.C. 7:26B-1.6(a), "receipt by the owner or operator of an offer letter to purchase issued by a condemning authority" triggers the ECRA process. In addition to the "offer letter", DOT shall concurrently submit to the property owner an ECRA notification letter (see Attachment 2). This letter shall inform the recipient of ECRA regulatory responsibilities as set forth in N.J.A.C. 7:26B-1 et seq. The recipient shall be directed by DOT to contact the DEP's Industrial Site Evaluation Element for further information and assistance. DOT shall provide the Industrial Site Evaluation Element with a copy of the notification letter sent to the owner.

Compliance with ECRA is the responsibility of the owner/operator, over which DOT has no control. Since at this stage the property has been

determined not to require further investigation, DOT shall proceed with its property(ies) acquisition(s) independent of the owner/operator compliance schedule. DEP shall notify DOT when the ECRA process has been completed.

STEP 5

Property Contaminated - Further Action Required

Upon review of the results of DOT's First Phase Effort regarding a particular site, DEP may determine that the contamination detected must be further investigated. Prior to continuing with Design or ROW acquisition several agency (DOT and DEP) decision steps are required. Proceed to Step 6.

STEP 6

DEP Prioritization for Case Assignment

All available information regarding a site will be forwarded by DOT to the Bureau of Planning and Assessment (BPA) within the DEP's Division of Hazardous Waste Management. Prioritization for case assignment at DEP will be based upon various agency criteria, including but not limited to public health and safety concerns. If BPA determines that a site is a high priority, proceed to Step 7. If a low priority determination is made, proceed to Step 6-1.

On Federal Aid projects, concurrent with DEP's prioritization process, DOT shall notify the Federal Highway Administration that the DEP has determined that contamination exists within the proposed project limits, and that this coordination process is proceeding in order to address the contamination issue(s).

STEP 6-1

DEP Determination of Low Priority; DOT Alternatives Evaluation

When DEP makes a low priority determination, DEP shall notify DOT and then DOT shall consider reassessing the project's alignment and scope in the following ways:

- Possible relocation of alignment to avoid contaminated property(ies).
- Possible reduction of ROW acquisition (e.g., reduce median, reduction in number of lanes) or alternate design (e.g., retaining walls).

If the DOT reassessment results in a decision that the project alignment can be modified to avoid the contaminated property(ies), the coordination process reverts to Step 4-1 or Step 2 depending on the nature of the project modification.

If the DOT reassessment determines that avoidance of the contaminated property(ies) in question is not feasible, then DOT shall decide whether or not to commit its own resources in order to investigate and remediate the property(ies) in question. If DOT chooses this approach, this process proceeds to Step 8-3 and DOT proceeds with all investigations and remediations necessary related to the properties to be acquired.

STEP 7

DEP Determination of High Priority; Case Assignment in DEP

If DEP determines that site conditions at a property (or properties) warrant assignment to a DEP unit for promotion of site investigation and/or remediation by the potential responsible party (PRP), proceed to Step 8.

STEP 8

Potential Responsible Party Cooperation Determination

The DEP shall contact the PRP(s) and inform said party(ies) of the environmental concerns associated with the property. DEP shall require the PRP(s) to enter into a control mechanism (e.g., Administrative Consent Order) and conduct the appropriate level of site investigation/remediation. Implementation schedules within the proposed control mechanism shall be mutually developed by DOT and DEP. If the PRP(s) is cooperative, this coordination process proceeds to Step 9. If the PRP(s) is not cooperative, proceed to Step 8-1.

STEP 8-1/8-2

DEP and DOT Strategy Session/Case by Case Alternatives Review

If the PRP(s) is not cooperative with regard to site investigation/remediation, DOT and DEP will meet to determine the appropriate strategy. Alternatives shall be discussed on a case by case basis which may include but not be limited to:

- The DEP shall consider issuing a Spill Act Directive to the PRP(s) at this step in the process, to provide for the possible recovery of the public dollars to be expended. The DOT commits funding for and implements a full Second Phase Effort, but only for the ROW portion of the affected property(ies). The non-ROW portions would be the responsibility of DEP. In this scenario, this coordination process proceeds to Step 8-3.

OR

- The DEP takes the lead and commits funds to conduct investigation/remediation of the site in question. This may be accomplished by the issuance of a "Spill Act Directive" to the PRP(s) requiring remediation. If the PRP(s) does not

comply with the Directive, then the DEP shall proceed with the committed funds mentioned above, to implement the appropriate activities. DEP would then ultimately pursue cost recovery from the PRP(s).

OR

- DOT may again reassess the project to either avoid the subject property(ies) or utilize an alternate design (Go to Step 6-1).

STEP 9

PRP Proceeds With Investigation/Remediation

Upon entering into a control mechanism (e.g., Administrative Consent Order) with the DEP, the PRP(s) shall proceed to implement a RI/FS (Remedial Investigation/Feasibility Study) and remedial action for the property(ies) in question.

STEP 10

Monitoring of Implementation by PRP

The DEP shall track the PRP's implementation of the RI/FS and remedial action as detailed within the control mechanism mentioned in Step 10 above. The DEP shall keep DOT fully informed regarding the PRP's progress.

If the PRP(s) fails to comply with the requirements detailed in the control mechanism (such as the implementation schedule or technical requirements), DEP and DOT shall convene a strategy session to discuss options available, such as:

- litigation
- monetary penalties
- DOT assuming responsibility for completion of second phase effort only on ROW portion (for this option, proceed to Step 8-3).

If the PRP is in compliance with the control mechanism, proceed to Step 11.

STEP 11

Cleanup Completed

The DEP will determine compliance with the control mechanism by the PRP(s) based upon review of the necessary documentation. DEP shall notify the DOT of its determination as to compliance and satisfactory completion of the work required of the PRP(s). Proceed to Step 12.

STEP 12

ECRA Applicability Decision Point

At this point in the process, the property in question has been remediated to the satisfaction of the DEP, and DOT has been informed of DEP's determination. As detailed in Step 2, during DOT's Preliminary Assessment, property(ies) have been identified that may be subject to ECRA. For those properties that are not subject to ECRA, DOT acquires the property and the coordination process, pursuant to this SOP, ends. For those properties that are subject to ECRA, the coordination process continues at Step 4-2.

STEP 13

DOT Acquires Property

For a property whose acquisition will not trigger ECRA, DEP/DOT coordination process has ended and DOT proceeds to acquire the property.

STEP 8-3

Split Project

Here DOT and DEP shall split the "lead" responsibility with regard to implementation of a Second Phase Effort at the property(ies) in question. DOT shall be responsible for implementing a Second Phase Effort on the ROW portion of the subject property(ies). DOT's Second Phase Effort shall be conducted in accordance with the standards of, and pursuant to oversight by, the DEP.

The DEP shall pursue the PRP(s) (e.g., property owners, operators, etc.) for implementation of a RI/FS and remedial action (if necessary) on the non-ROW portion of the property(ies) in question. This shall occur on a time schedule determined by DEP and may not be simultaneous with DOT's efforts. Proceed to Step 8-4.

STEP 8-4

DOT Implements Second Phase Effort

DOT shall develop and submit to DEP's Transportation Coordinator a Final Contamination Study (which will complete the RI/FS) for review and approval. The Final Contamination Study shall be implemented prior to completion of the final highway design and shall enable DOT to then design the remedial action plans and health and safety plans for the property(ies) involved. The choice of remedial action(s) is subject to DEP approval. Proceed to Step 8-5.

STEP 8-5

ECRA Applicability Review

DEP assists the DOT to determine if the acquisition of the property undergoing investigation and remediation will be subject to ECRA. If the acquisition will be subject to ECRA, proceed to Step 8-5A. If the property acquisition is not subject to ECRA, proceed to Step 8-6.

STEP 8-5A

Offer Letter Notifies Owner of ECRA Responsibilities

As part of the ROW acquisition process DOT conducts appraisals of property(ies). DOT's Division of ROW submits to the property owner its standard "offer letter" to purchase said property. Pursuant to the ECRA regulations, specifically N.J.A.C. 7:26B-1.6(a), "receipt by the owner or operator of an offer letter to purchase issued by a condemning authority" triggers the ECRA process. In addition to the "offer letter", DOT shall concurrently submit to the property owner an ECRA notification letter (see Attachment 2). This letter shall inform the recipient of ECRA regulatory responsibilities as set forth in N.J.A.C. 7:26B-1 et seq. The recipient shall be directed by DOT to contact the DEP's Industrial Site Evaluation Element for further information and assistance. DOT shall provide the Industrial Site Evaluation Element with a copy of the notification letter sent to the owner. Proceed to Step 8-6.

STEP 8-6

DOT Acquires Property

The DOT shall proceed with its ROW property acquisition. This could include freezing funds in escrow with the condemnation (or other) court until completion of environmental activities related to the property acquisition, investigation and remediation. Proceed to Steps 8-7/8-8.

STEPS 8-7/8-8

Remedial Action(s) Implemented/Completed by DOT

DOT shall proceed to fully implement the remedial action(s) previously approved by DEP. Implementation and completion shall be subject to oversight by the DEP. DOT shall provide DEP with weekly progress reports. Completion of implementation shall be determined by DEP, in writing, based upon reports and documentation provided to DEP by DOT or its contractor. Proceed to Step 8-9.

STEP 8-9

Cost Recovery by DOT

The DOT may look to recover the costs of all its activities related to implementation of this SOP either by collection of monies previously escrowed in court (see Step 8-6) or by initiation of other cost recovery actions through the courts. Cost recovery is the final step of this SOP.



State of New Jersey
DEPARTMENT OF TRANSPORTATION

1035 PARKWAY AVENUE
CN 600
TRENTON, NEW JERSEY 08625

HAZEL FRANK GLUCK
COMMISSIONER

IN REPLY PLEASE REFER TO
Route
Section
Parcel
Owner:

Project No.

Dear

Our acquisition of your property may be subject to the New Jersey Environmental Cleanup Responsibility Act ("ECRA") and implementing New Jersey Department of Environmental Protection Regulations. If so, it is the responsibility of the owner/operator to comply with ECRA by obtaining certain approvals from the New Jersey Department of Environmental Protection.

The Department of Environmental Protection has been notified that this transfer is pending. If ECRA applies in this situation, you are required to submit to the Department of Environmental Protection certain paperwork no more than five (5) days subsequent to receipt of an offer letter.

Please contact the Bureau of ECRA Applicability and Compliance, Industrial Site Evaluation Element of the Department of Environmental Protection at (609) 633-7141.

Very truly yours,

cc: Bureau of Acquisitions, NJDOT
Bureau of ECRA Applicability and Compliance,
Industrial Site Evaluation Element, NJDEP

ATTACHMENT 2

New Jersey Is An Equal Opportunity Employer