

New Mexico's Clandestine Drug Lab Cleanup Rule



Hazardous Waste Bureau
New Mexico Environment Department

Outline

- New Mexico's CDL Cleanup Rule
- The Cleanup Process
- How the Proposed Rule Compares with the City of Albuquerque's Ordinance
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Scope of Rule

- Found at 20.4.5.2 in proposed rule
- Law Enforcement Agencies (LEA) that discover Clandestine Drug Labs (CDL)
- Owners of properties with CDLs
- Persons who clean up CDLs

Objective

- Found at 20.4.5.6 of the proposed rule
- Residual contamination is serious threat
- Remediation is essential to protect human health and the environment
- Residual contamination affects a considerable number of members of the public
- Crucial elements of the rule
 - Notice of contamination
 - Occupancy prohibition until cleanup complete
 - Cleanup standards
 - Disclosure

Definitions

- Found at 20.4.5.7 of the proposed rule
- “Clandestine Drug Laboratory” – focused on unlawful manufacture of controlled substances
- “Property” – real property or a vehicle
- “Remediation Firm” – performs remediation or preliminary assessments
- “Residual Contamination” – contamination left after bulk chemicals and lab equipment is removed
- “Residually Contaminated Portion of the Property”
 - House, mobile home, or vehicle – entire property
 - Detached shed or garage – just that portion
 - Hotel or motel room – just that room and affected adjacent rooms

Notice of Contamination

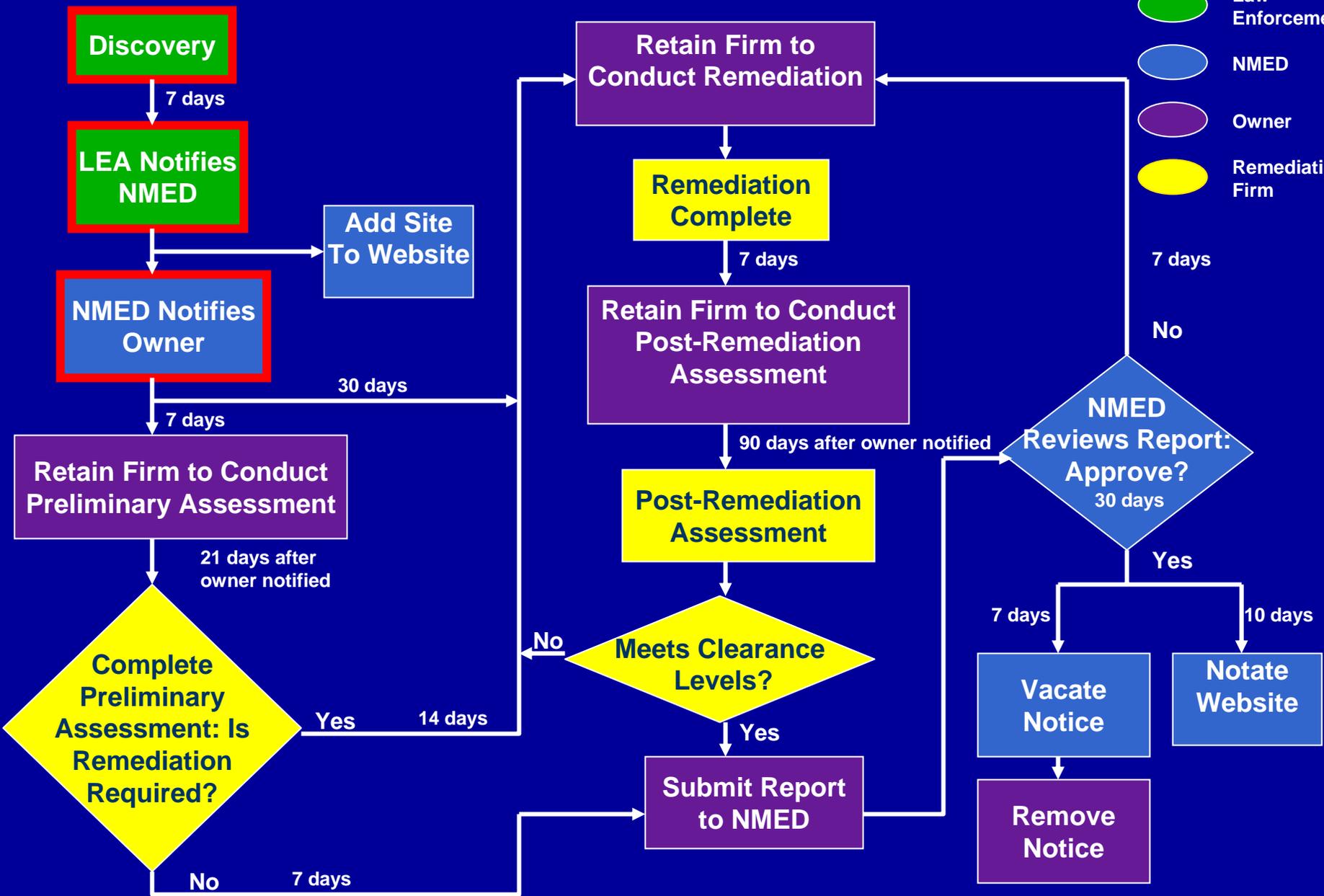
- Found at 20.4.5.200 of the proposed rule
- Upon identification of CDL by LEA
 - Post notice
 - Deliver copy of notice to owner
 - Document proof of posting (notice delivery to owner sufficient)
 - Notify NMED
- Upon notification of CDL, NMED must send copy to owner if not done by LEA
- Unsuspecting public must be aware of the potential for residual contamination in their midst

Contents of Notice

- Found at 20.4.5.201 of the proposed rule
 - English and Spanish
 - “WARNING”
 - Location of CDL
 - LEA information
 - Statement that site may still be dangerous
 - Statement that no one other than owner may enter premises
 - Statement that the notice shall not be disturbed
 - Statement that the owner shall cleanup up the property
 - Statement that owner must disclose to any transferees
 - Information about penalties for noncompliance
 - NMED contact information
- Owners and the unsuspecting public must know of the hazards of CDLs and the responsibilities of the owner

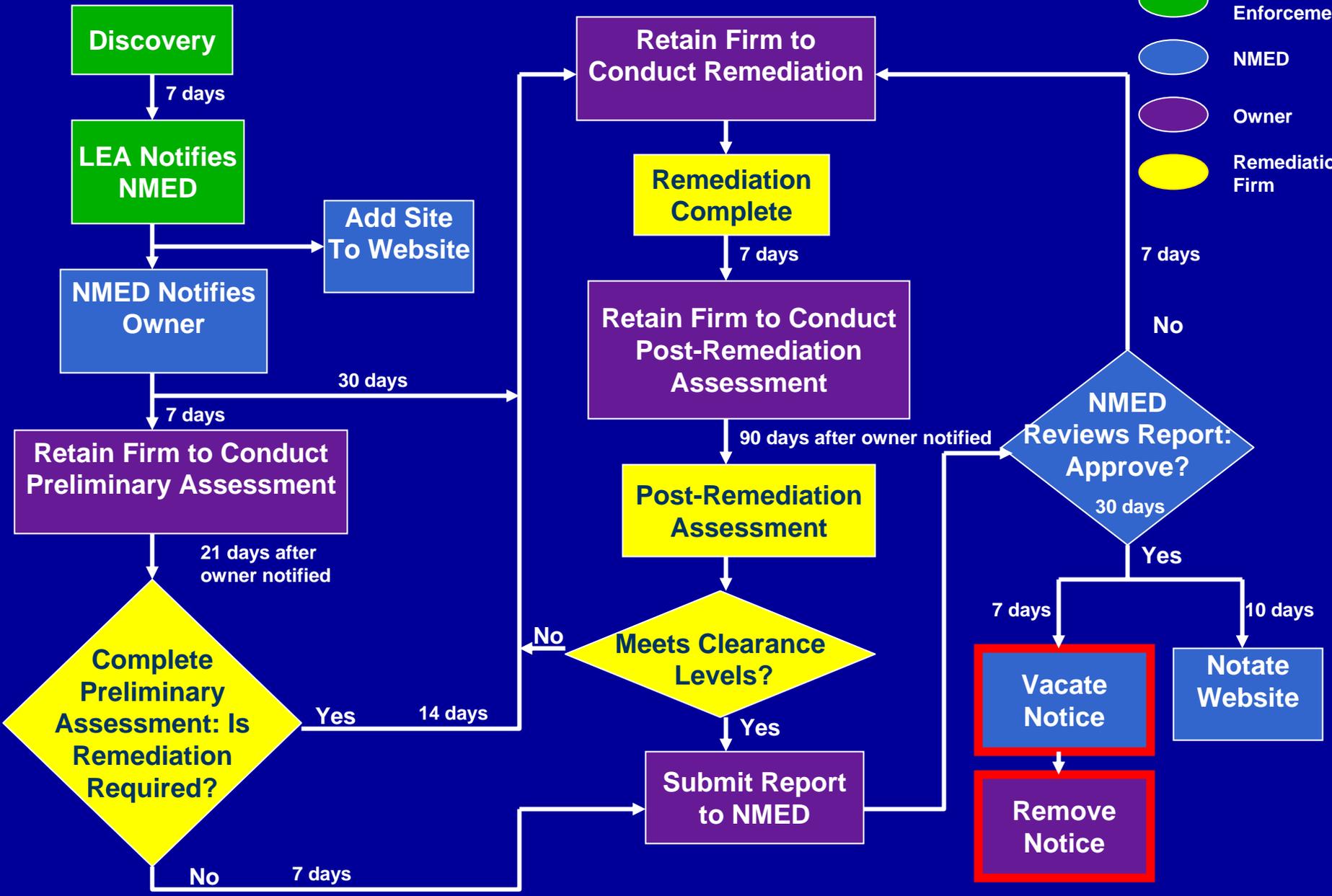
Clandestine Drug Lab Cleanup Process

- Law Enforcement
- NMED
- Owner
- Remediation Firm



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Removing the Notice

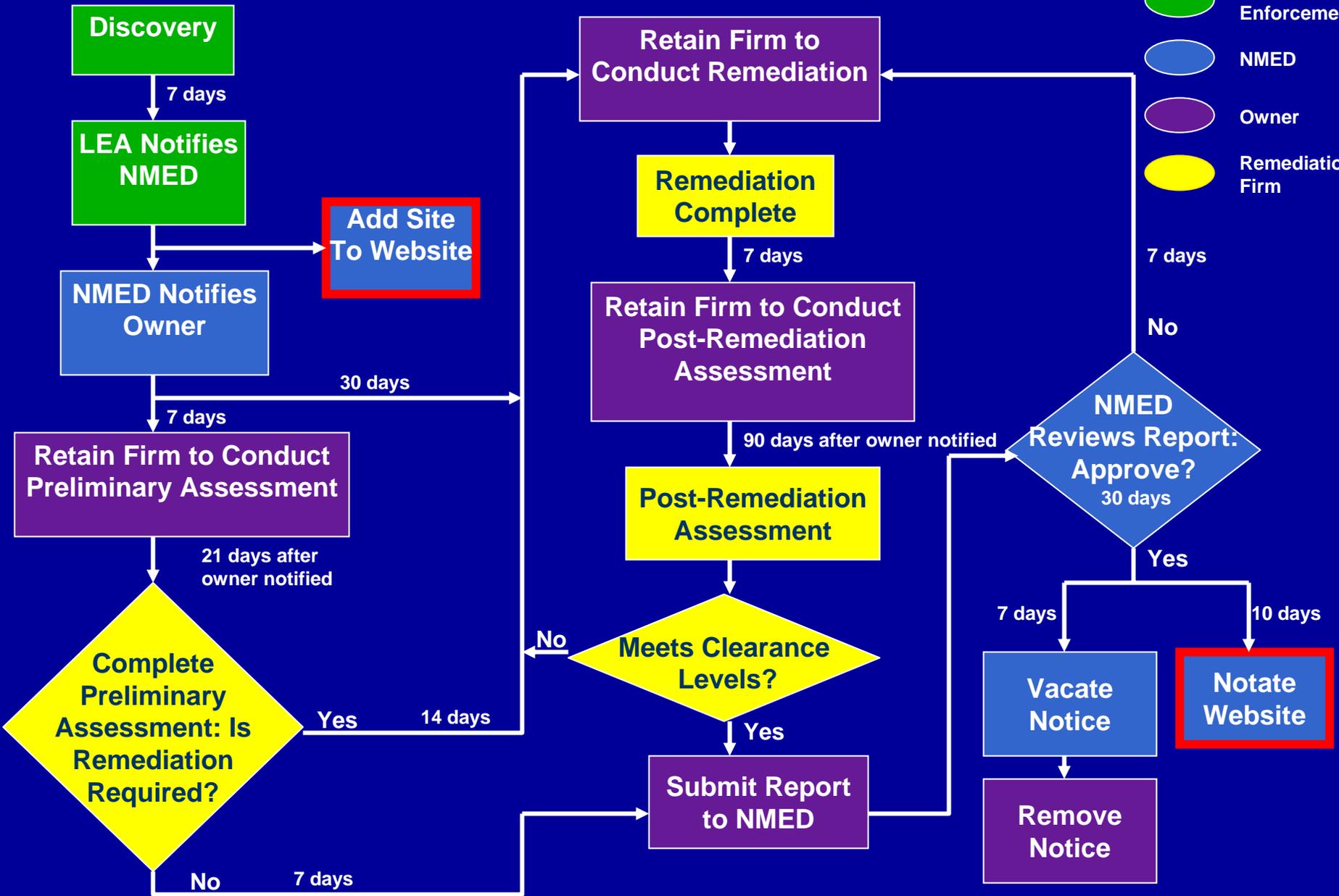
- Found at 20.4.5.202 of the proposed rule
- Owner responsible for providing proof of cleanup
- Owner may remove notice after NMED approves cleanup
- Important provision to allow owners to timely “move on” after a cleanup is complete

Use of the Contaminated Property

- Found at 20.4.5.300 of the proposed rule
- Owners may not sell or transfer unless
 - Notice to transferee that property had a CDL
 - Acknowledgement of receipt of notice
 - Copy to NMED
- Anyone other than owner, agent, NMED, LEA, or cleanup firm may not enter, occupy, or use property until cleanup is complete
- Crucial to ensure children, families, and other members of the public do not come in contact with contaminated properties and suffer ill effects
- Restrictions removed after NMED vacates notice

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Website

- Found at 20.4.5.400 of the proposed rule
- NMED shall maintain a list of CDL sites
- Consistent with other lists of contaminated sites NMED maintains
- Appropriate counterbalance to DEA website
 - NMED will note site cleaned up (changed provision)
- Crucial information to future occupants and state licensure authorities



National Clandestine Laboratory Register - New Mexico

COUNTIES: [BERNALILLO](#) | [CHAVES](#) | [CURRY](#) | [DONA ANA](#) | [EDDY](#) | [GRANT](#) | [LEA](#) | [OTERO](#) | [RIO ARRIBA](#) | [ROOSEVELT](#) | [SANDOVAL](#) | [SANTA FE](#) | [SIERRA](#) | [TAOS](#) | [TORRANCE](#) | [UNION](#) | [VALENCIA](#)

COUNTY	CITY	ADDRESS	SEIZURE DATE
BERNALILLO	ALBUQUERQUE	1037 SE DAKOTA	1/4/2004
BERNALILLO	ALBUQUERQUE	13004 NE MOUNTAIN VIEW	1/10/2004
BERNALILLO	ALBUQUERQUE	2309 NE ALGODONES	1/26/2004
BERNALILLO	ALBUQUERQUE	602 SW 14TH	2/9/2004
BERNALILLO	ALBUQUERQUE	2421 NE ZENA LONA	2/28/2004
BERNALILLO	ALBUQUERQUE	605 NW SAN CLEMENTE	3/18/2004
BERNALILLO	ALBUQUERQUE	1613 NE CEDAR RIDGE	4/19/2004
BERNALILLO	ALBUQUERQUE	12337 NE EASTRIDGE	4/20/2004
BERNALILLO	ALBUQUERQUE	6066 STABAUGH RD	4/21/2004
CHAVES	ROSWELL	717 E HENDRICKS	3/2/2004
CHAVES	ROSWELL	300 W LINDA VISTA	3/28/2004
CURRY	CLOVIS	624 W AVE	7/27/2004
DONA ANA	CHAPARRAL	302 COLES AVE	8/12/2004
DONA ANA	CHAPARRAL	329 PALOMA BLANCA	11/23/2004
EDDY	CARLSBAD	1705 QUAY	6/26/2006
GRANT	SILVER CITY	2080 MEMORY LN Apt C-10	6/4/2004
LEA	LOVINGTON	501 TYLER	6/9/2004
LEA	HOBBS	200 W MIDWEST	3/3/2005
OTERO	ALAMOGORDO	13 SAGE	2/17/2005
OTERO	TULAROSA	30 WHITE MOUNTAIN RD	7/12/2006
RIO ARRIBA	LLAVES	1721 COUNTY RD Apt 41	10/8/2004
ROOSEVELT	PORTALES	1683 S ROOSEVELT RD 7 RD	3/23/2005

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Law Enforcement

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Drug Prevention

[For Young Adults](#)
[Additional Resources](#)

Diversions Control & Prescription Drugs

[Registration](#)
[Cases Against Doctors](#)

Drug Policy

[Controlled Substances Act](#)
[Federal Trafficking Penalties](#)
[Drug Scheduling](#)

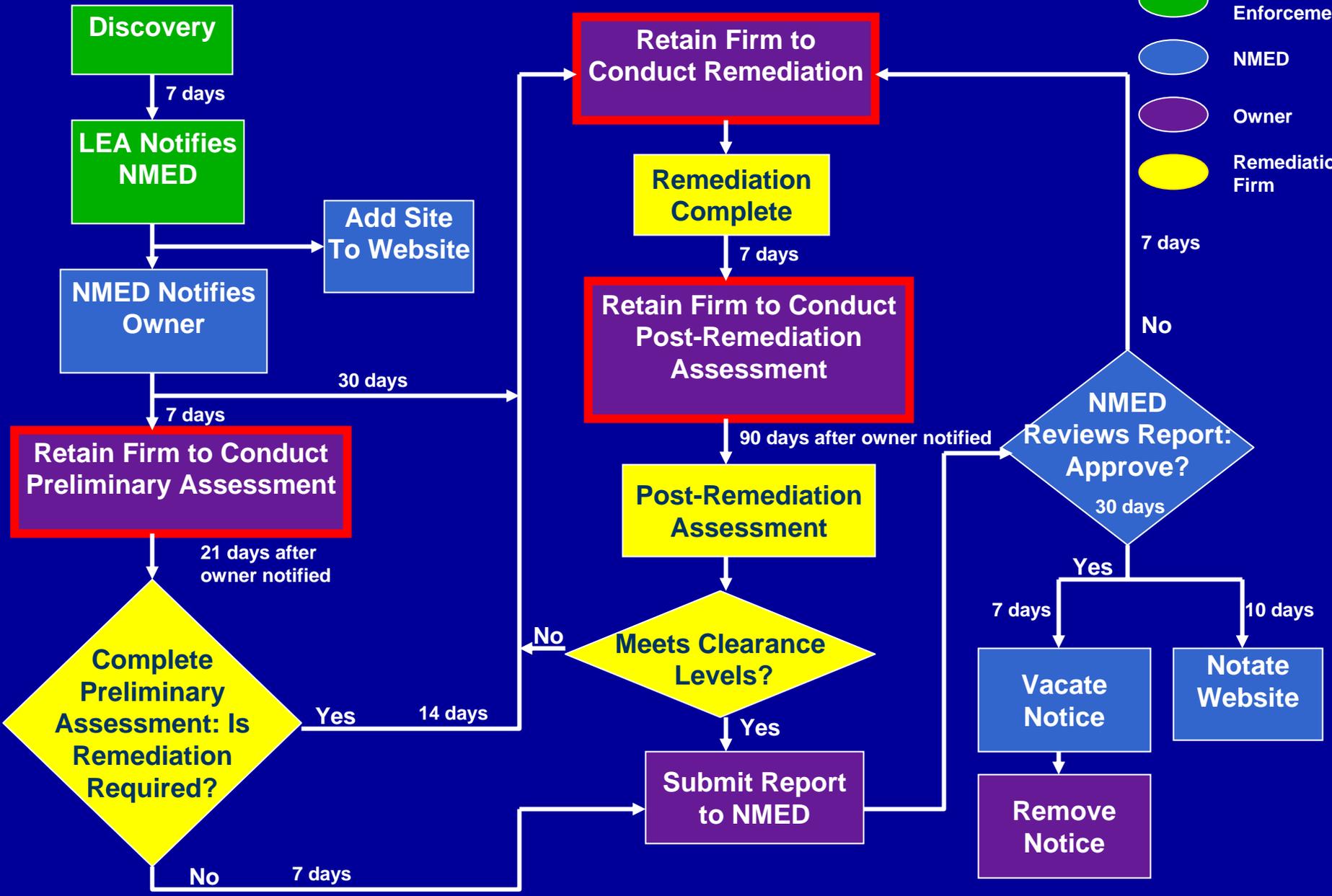
Legislative Resources

Publications

Acquisitions & Contracts

Clandestine Drug Lab Cleanup Process

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Owners Must Clean Up

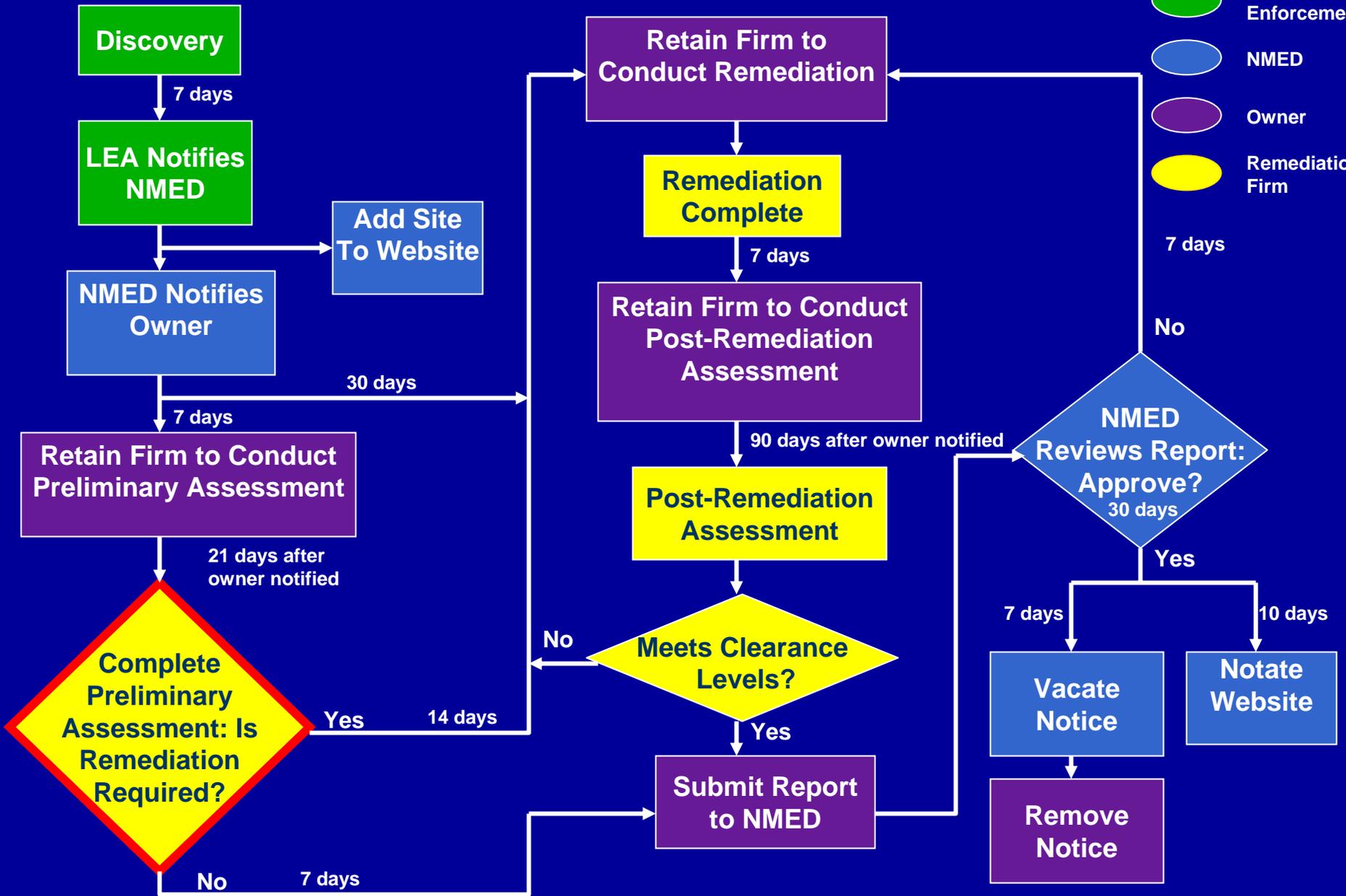
- Found at 20.4.5.500 of the proposed rule
- Strict owner liability for cleanup
- Preliminary assessment within 7 days
 - Notify NMED of results
 - Owner may bypass this step
- Owner must retain remediation firm within 14 days of above step
- Remediation complete within 60 days
- Post-remediation assessment required
- Provision drives cleanups that are effective, verifiable, and timely, so property can be used without restrictions
- Changed provisions clarify timeframes and process

Remediation Standards

- Found at 20.4.5.600 of the proposed rule
- Remediation firms, must either
 - Have certified industrial hygienist
 - Be registered or certified elsewhere
 - May be rejected
- Provision ensures consumers (i.e., owners) are protected, and work is conducted in a methodical and scientifically sound manner

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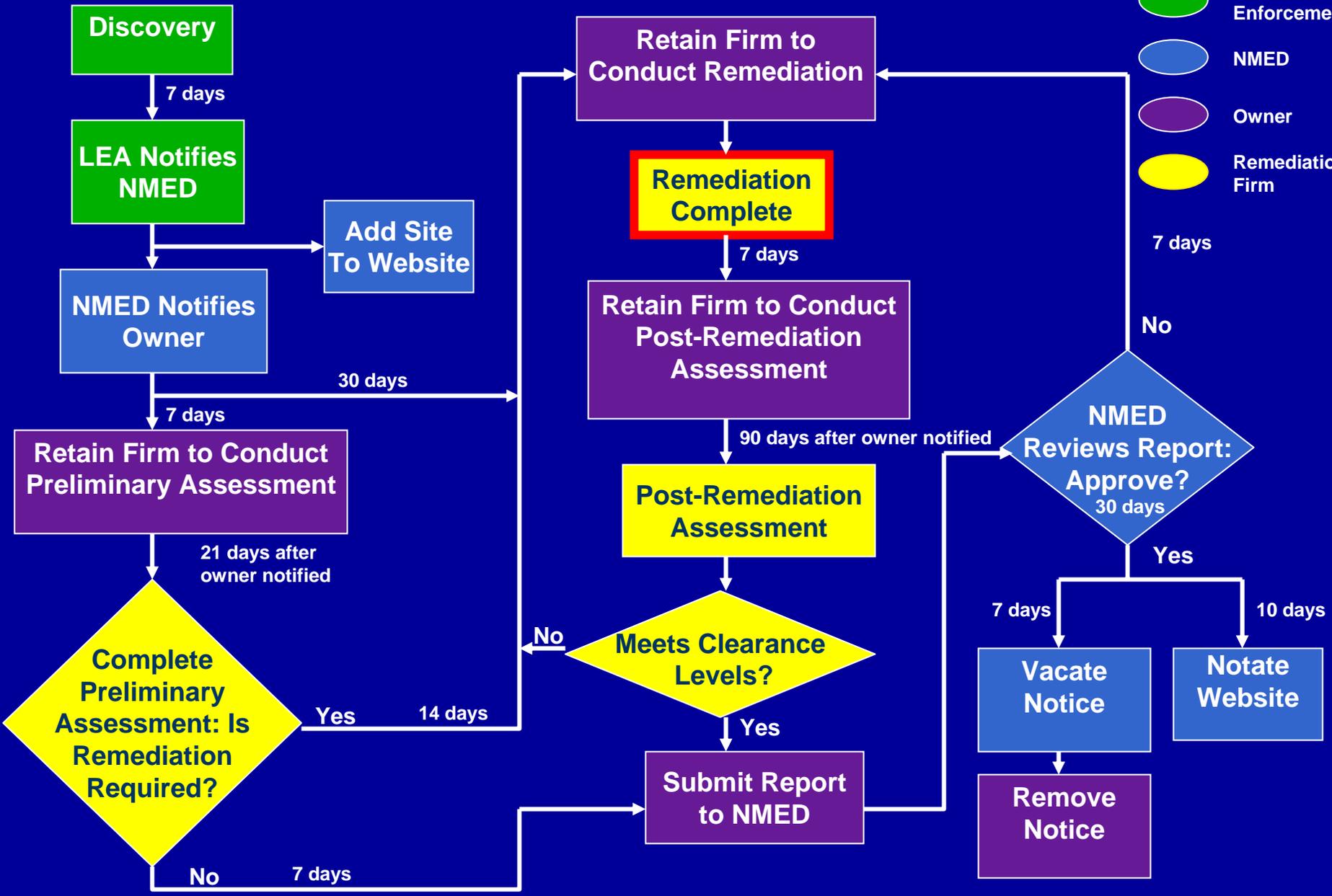


Remediation Standards

- Preliminary assessment
 - Review of available information (e.g., from LEA)
 - Physical inspection
 - Sampling and testing
 - Work plan for remediation (if necessary)
 - Certification (if remediation is not necessary provided to NMED)
- Crucial provision would eliminate unnecessary work and expense; some CDLs won't need cleanup

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Remediation Standards

- Remediation of Residual Contamination
- Interior
 - Ventilation for volatile organic compounds (VOCs)
 - Decontaminate or dispose of contents
 - Decontaminate heavy use areas
 - Decontaminate HVAC systems and ductwork
 - Remove surfaces that can't be cleaned
- Provision ensures all sites are protective of members of the public in the event of reoccupation of the property

Remediation Standards

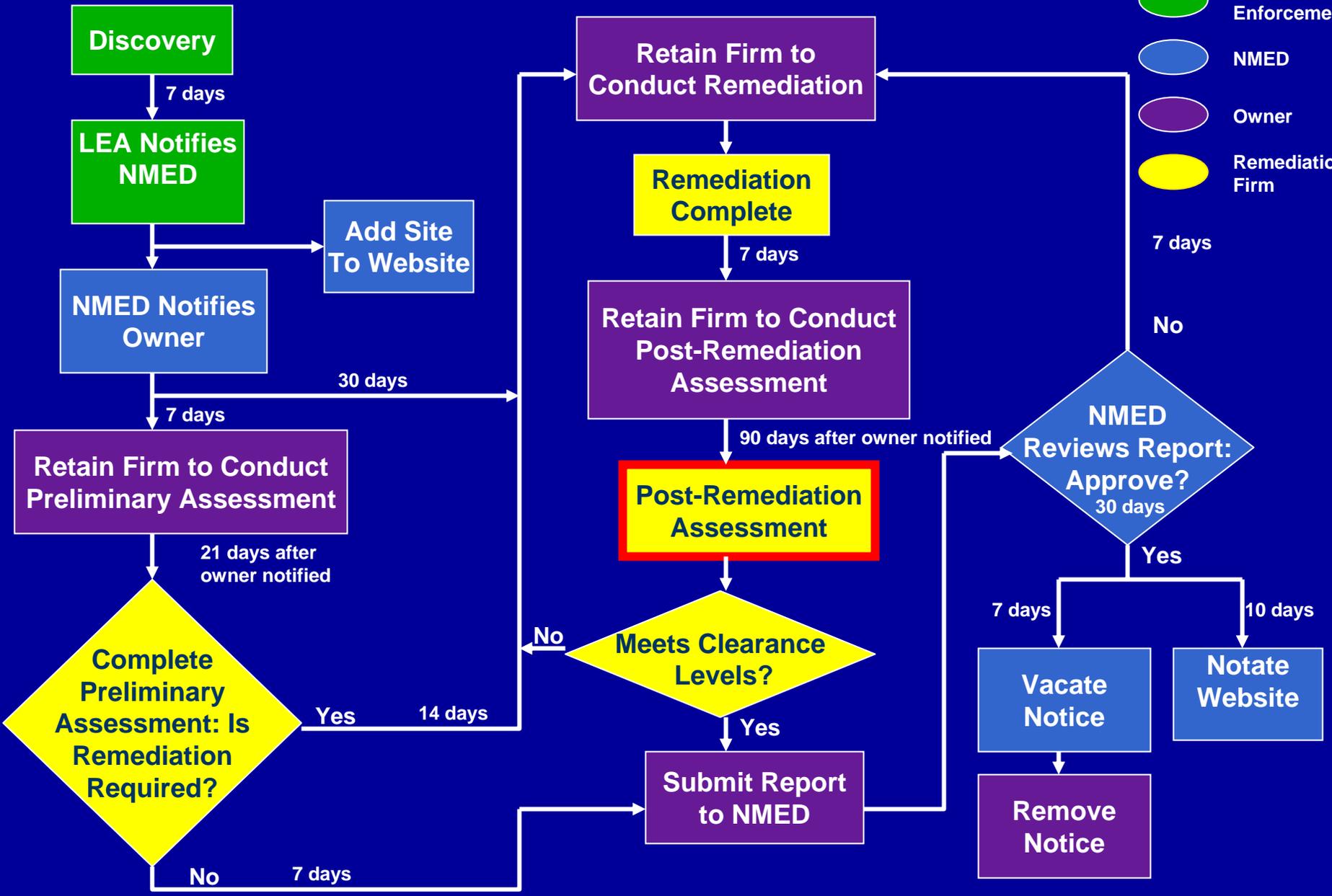
- Exterior
 - Soil sampling from disposal areas
 - On site liquid waste disposal
 - Samples from water supply wells
 - Other sampling if required
- Provision ensures “Tiers 2-4” sites are rendered safe for future use

Remediation Standards

- Special provisions for vehicles
 - Follow interior remediation provisions
 - If the cost is more than the value of the vehicle, scrapping is an option

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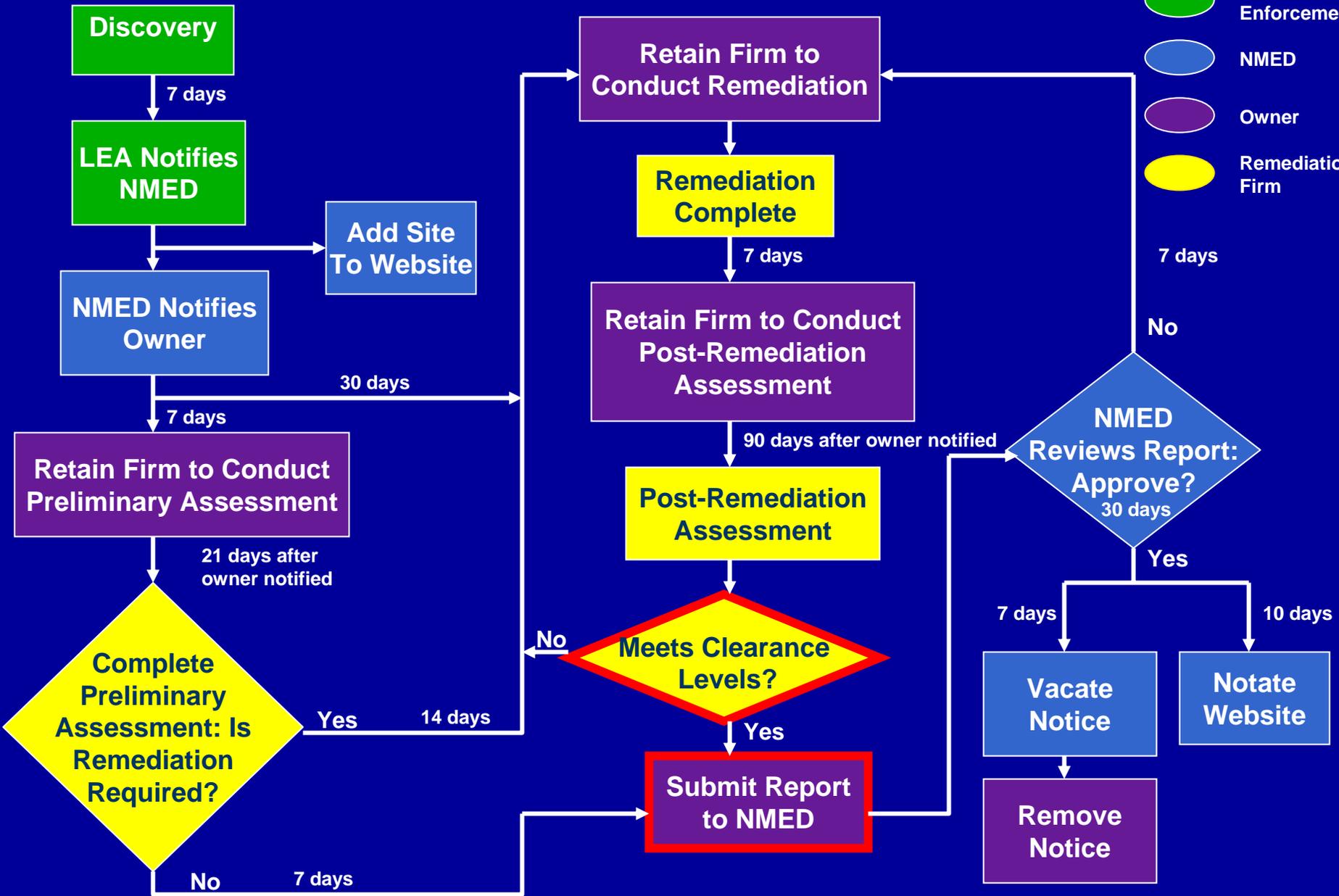


Remediation Standards

- Post Remediation Assessment
 - Visual Inspection
 - Review of documentation
 - Confirmatory sampling
 - Must meet clearance levels
 - Remediation report generated
 - Three year document retention requirement
- Ensures the cleanup was effective and hazards were mitigated
- Typographical error in 20.4.5.600.D(1) & (2)
- Changed provision in (3) clarifies timeframes and process

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Remediation Standards

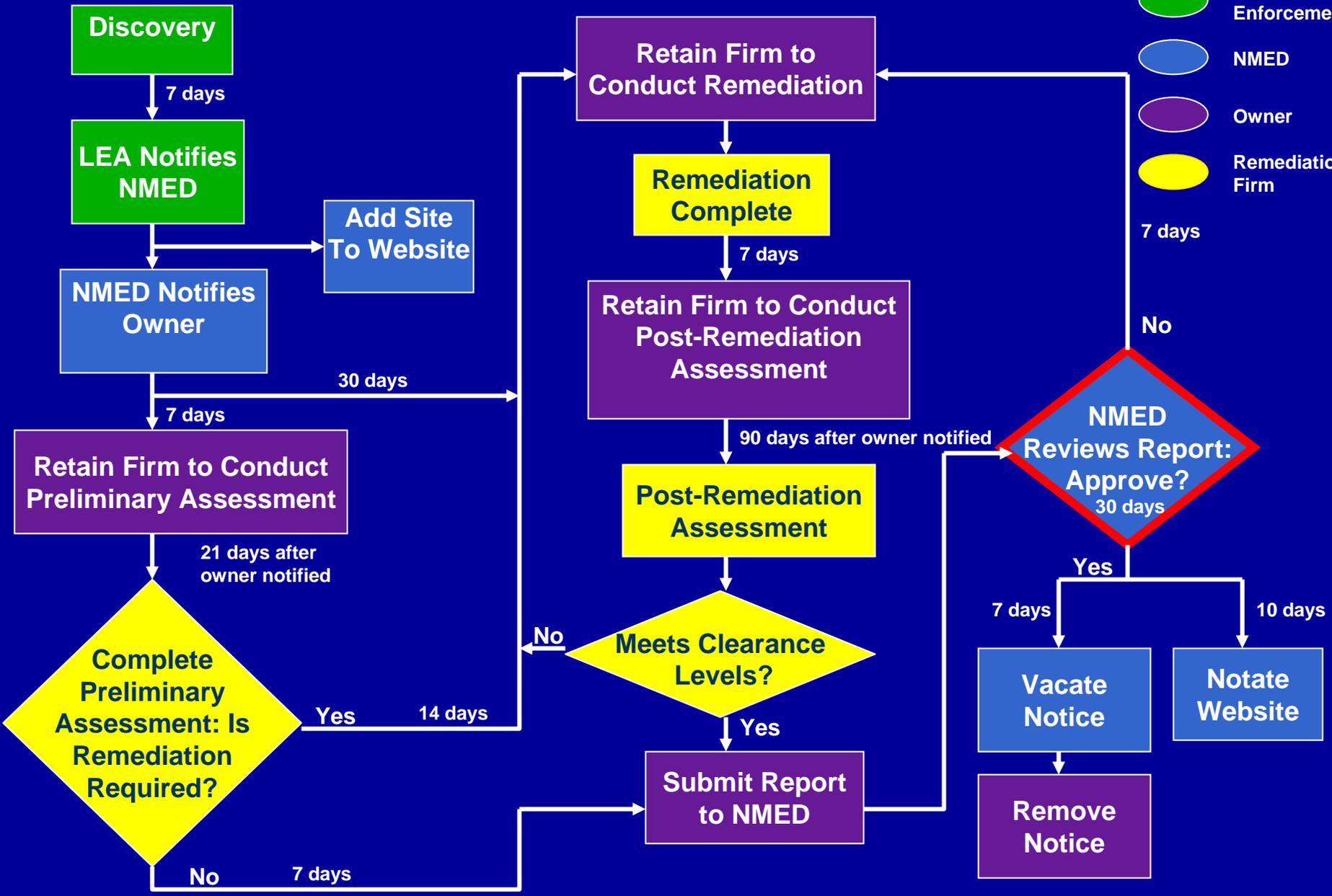
- Remediation Report
 - Qualifications
 - Property description
 - Diagrams and photographs
 - Description of work conducted
 - Sampling and testing results
 - Waste characterization documentation
 - Certification

Clearance Levels

- Found at 20.4.5.601 of the proposed rule
- Illicit substance – surface area wipe $<1.0 \mu\text{g}/\text{ft}^2$
 - Changed provision (NMED required testing for meth in every case)
- VOCs – indoor air $\leq 1 \text{ ppm}$
- Lead (total) – surface area wipe $\leq 40 \mu\text{g}/\text{ft}^2$
- Mercury (vapor) – Indoor air $<0.3 \mu\text{g}/\text{m}^3$
- Corrosives – surface pH 6 to 8
 - Changed provision (NMED should have added corrosives to list of substances)
- Don't have to test for everything if evidence exists showing some constituents weren't present
 - Changed provision (NMED proposes to delete “clear” as a modifier to “evidence” because of inherent ambiguity)

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NMED Approval

- Found at 20.4.5.602 of the proposed rule
- NMED reviews report within 30 days
- NMED notifies owner within 7 days of completion of review

Preemption Clause

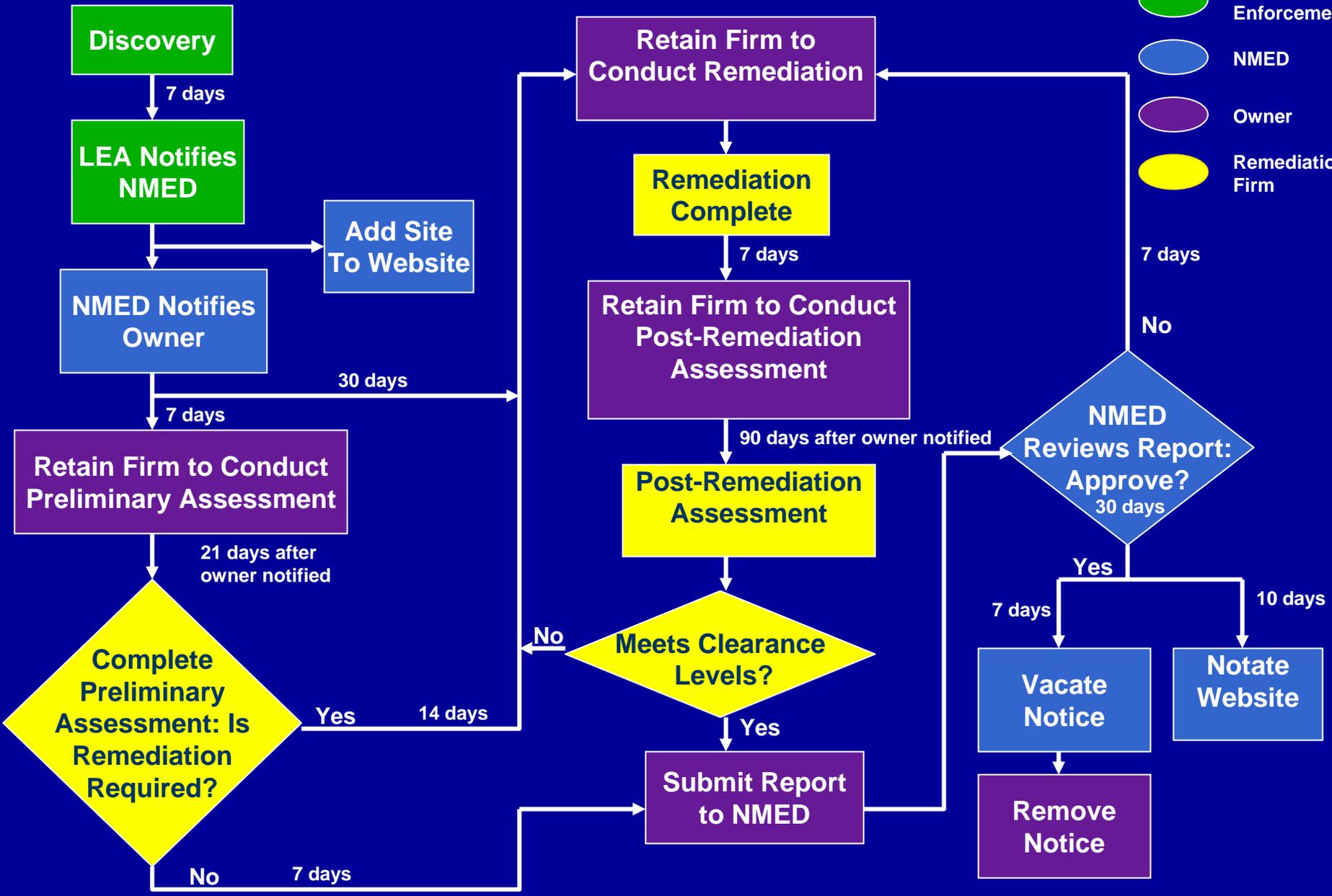
- Found at 20.4.5.700 of the proposed rule
- If a municipality has adopted a drug lab cleanup rule or ordinance prior to the effective date of these rule, the municipality may enforce its rules in lieu of these
- NMED still provided notice
- This is a changed provision, to ensure Albuquerque's successful program will continue

Penalties

- Found at 20.4.5.800 of the proposed rule
- Also in statutory authority
- Civil penalties
 - In Hazardous Waste Act at 74-4-10 NMSA 1978
 - \$10,000 per day per violation
 - Enforced by NMED through administrative compliance orders or actions in District Court
 - Appeal process includes administrative hearing or action to state Court of Appeals
- Criminal penalties
 - In Environmental Improvement Act at 74-1-10 NMSA 1978
 - Petty misdemeanor
 - NMED with a local District Attorney would bring an action
 - Appeal and hearing under current law

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Comparison with City's Ordinance

- In Albuquerque
 - Substandard housing notice – no one goes inside
 - Notice filed with County Assessor
 - Remove persons
 - Remediation firm different from “tester”
 - No website
 - Different penalty provisions
 - Clearance levels lower; in guidance document

Potential Benefits vs. Costs to Property Owners

- Benefits
 - Protection of health and safety of members of public
 - Increase in property value
 - Disclosure to unsuspecting transferees and renters
 - Protection of financial institutions' collateral
- Costs
 - Nothing to a few hundred dollars for Tier 1
 - Up to several thousand dollars for Tier 2 (most common)
 - Up to several tens of thousands for Tier 3 (most common)
 - Lost income on rental properties for several months pending cleanup