

CHAPTER 26C**DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED SITES****Authority**

N.J.S.A. 13:1D et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11 et seq., and 58:10a-21 et seq.

Source and Effective Date

R.1993 d.186, effective May 17, 1993.
See: 24 N.J.R. 1281(b), 25 N.J.R. 2002(a).

Executive Order No. 66(1978) Expiration Date

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, expires on May 17, 1998.

Chapter Historical Note

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 28 N.J.R. 5499(a), 29 N.J.R. 704(a).

Law Review and Journal Commentaries

ISRA: What You Need to Know. Richard J. Conway, Jr., 160 N.J.Law. 16 (Mag.) (April 1994).

New Growth in Old Ground. Bernard A. Weintraub, 147 N.J.L.J. 761 No. 7, S-1 (1997).

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

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(a) This chapter identifies the documents available for a person who participates in the remediation of a contaminated site or the assessment and investigation of a potentially contaminated site under Department oversight, and presents the procedures to determine the applicable oversight document for a particular site.

(b) The participation by any person in any of the procedures outlined in this chapter shall not relieve that person from responsibility to comply with all other applicable statutes and regulations nor increase a responsible party's duties and obligations under existing statutes and regulations. Except as otherwise stated in this subchapter, nothing shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation.

(c) Nothing in this chapter prohibits a person for assessing or investigating a potentially contaminated site at risk without the Department's oversight unless:

- i. The Department issues a directive pursuant to N.J.S.A. 58:10-23.11f; or
- ii. The site is a priority site.

(d) This chapter provides the procedures used to obtain the Department's approval for a site's compliance with applicable remediation standards.

Case Notes

Provision of environmental cleanup agreement requiring purchaser to provide subsequent purchaser or lessee with copy of any declaration of environmental restrictions imposed or required for site was ambiguous under New Jersey law as to whether it obligated purchaser to execute declaration that would be required only if vendor remediated property to less stringent standard, or merely imposed duty for purchaser to provide copies of any previously executed declaration. *Sumitomo Machinery Corp. of America, Inc. v. AlliedSignal, Inc.*, C.A.3 (N.J.)1996, 81 F.3d 328.

7:26C-1.2 Certifications

(a) Any person making a submission to the Department required by this chapter, shall include the following signatures and two-part certification pursuant to (b) and (c) below.

(b) The following certification shall be signed by the highest ranking individual with overall responsibility for implementing the remediation of a site:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(c) The second certification shall be as indicated in (c)1 below.

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. The certification in (c)1 above shall be signed as follows:

- i. For a corporation, by a principal executive officer of at least the level of vice president;
- ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.
- iv. For persons other than (c)2i through iii above by the person with legal responsibility for the site.

(d) All documents listed in (c) above shall be signed by a person described in (b)2i above who shall make the certification set forth in (b)2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (b)2i above;
2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
3. The written authorization is submitted to the Department; and
4. If the authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(e) All signatures required by this section shall be notarized.

7:26C-1.3 Definitions

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

"Administrative consent order" means an administrative order issued by the Department which is consented to by one or more persons; and may be in the form of a memorandum of understanding for public entities at the Department's discretion.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.).

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

"Contaminated site" means all portions of environmental media at the site that contain one or more contaminants at a concentration which fails to satisfy any applicable remediation standard, and includes all contamination at an industrial establishment, facility or other site, and all contamination which is emanating, or which has emanated, therefrom.

"Contaminant" means any hazardous substance, hazardous constituent, hazardous waste or pollutant discharged by a person.

“Decision document” means a document issued by the Department that outlines the engineering components and cleanup standards for all or part of a contaminated site. The decision document summarizes the history, characteristics and risks posed by conditions at the site. The decision document also describes, where appropriate, the remedial alternatives that were considered during the site investigation, the comparative analysis of those alternatives and provides the rationale for selection of the final remedial action, specifically explaining the remedial action.

“Department” means the New Jersey Department of Environmental Protection.

“Directive” means a document issued by the Department pursuant to N.J.S.A. 58:10-23.11 et seq. and N.J.S.A. 13:1D-1 et seq. to, among other things, notify the recipient thereof that the Department has determined that it is necessary to remove or arrange for the removal of a discharge of hazardous substances and that the Department believes the recipient is a person who may be subject to liability for the discharge of a hazardous substance.

“Discharge” means any intentional or unintentional act or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance, hazardous constituent, hazardous waste or pollutant into the waters or onto the lands of the State or into waters outside the jurisdiction of the State when damage may result to the lands, waters, or natural resources within the jurisdiction of the State.

“ECRA” means the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq.

“Environmental medium” means any component such as soil, air, sediment, structures, ground water or surface water.

“EPA” means the United States Environmental Protection Agency.

“Hazardous constituent” means any substance defined as such pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26-8.16.

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

“Hazardous waste” means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26-8.

“Immediate environmental concern” means a condition exists at a site posing an acute, direct threat to human health or the environment.”

“Memorandum of agreement” means a written agreement between the Department and one or more persons concern-

ing the Department’s oversight of remediation pursuant to this chapter.

“Memorandum of understanding” means an oversight document issued by the Department to a public entity, similar to the form of an administrative consent order, but without the stipulated penalties and the financial assurance provisions.

“Multiple responsible parties” means five or more unrelated responsible parties, as determined by the Department, involved at a contaminated site.

“Natural resources” means all land, biota, fish, shellfish, and other wildlife, air, waters and other such resources.

“Operable unit” means part of a contaminated site for which a discrete action comprises an incremental step toward comprehensively addressing contaminated site problems. This discrete portion of remediation manages migration, or eliminates or mitigates a discharge, threat of a discharge, or pathway of exposure to a contaminant. Remediation of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

“Operation, maintenance and monitoring” or “OM & M” means activities required to operate, maintain and ensure the effectiveness of a remedial alternative.

“Oversight document” means any document the Department issues pursuant to this chapter to define the role of a person conducting the remediation of a contaminated site, and may include, without limitation, an administrative order, administrative consent order, directive, memorandum of understanding, or memorandum of agreement.

“Owner” means any person defined as an owner pursuant to N.J.A.C. 7:26B.

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

“Pollutant” means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

“Preliminary assessment” or “PA” means the initial search and evaluation of existing site specific operational

and environmental information to determine if further investigation concerning the documented, alleged, suspected or potential release of any contaminants is required by the Department. The preliminary assessment is the first phase in the process of determining whether contaminants are present at a site.

"Priority site" means a site which has been evaluated based on the Department's remedial priority scoring system and is scheduled to be remediated with public funds unless a person executes an administrative consent order pursuant to this subchapter.

"Public entity" means any Federal, State or county agency, commission or authority, any municipality or municipal authority or any body corporate and politic created by the act or acts of the Federal government, the State Legislature or any county or municipal government.

"RCRA" means the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.).

"Record of decision" or "ROD" is a decision document issued by the EPA pursuant to CERCLA, that outlines the engineering components and remediation goals in a remedial action plan for an NPL site or operable unit which is part of an NPL site. The ROD summarizes the history, characteristics and risks posed by conditions at the site. The ROD also describes the remedial alternatives that were considered during the feasibility study, the comparative analysis of those alternatives and provides the rationale for selection of the final remedial action, specifically explaining how the remedial action satisfies the requirements of CERCLA.

"Remedial action" or "RA" means those actions taken at a contaminated site and may be specified in a decision document, ROD, or other document the Department determines appropriate. The term includes, but is not limited to, such actions at the location of a contaminated site as compliance with cleanup standards, storage, confinement, perimeter protection using dikes, trenches, or ditches, clay or other covers, neutralization, cleanup of discharged contaminants and associated contaminated materials, ground water pumping and treatment, recycling or reuse, diversion, destruction, segregation of wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, treatment, off-site transport and off-site storage, treatment, destruction, or secure disposition of contaminants and associated contaminated materials, or any monitoring required to assure that such actions protect the public health or the environment. The term includes the permanent relocation of residents and businesses and community facilities where the Department determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such contaminants, or may otherwise be necessary to protect human health. The term includes the restoration of natural resources.

"Remedial alternative analysis" or "RAA" means a study to develop and evaluate options for remedial action pursuant to N.J.A.C. 7:26E. The RAA emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI). The RAA process uses data gathered during the RI to develop conceptual remedial action alternatives based on the characterization of the nature and extent of contamination. The RI data are used to define the objectives of the remedial action and to develop remedial action alternatives. Next, an initial screening of these alternatives is conducted to reduce the number of alternatives to a workable number. Finally, the RAA involves an analysis for engineering, scientific, institutional, human health, environmental and cost factors of a limited number of alternatives which remain after the initial screening stage.

"Remedial design" or "RD" means the technical analysis, procedures, and activities which follow the selection of a remedial action for a contaminated site and results in a detailed set of plans, reports and specifications for implementation of the remedial action.

"Remedial investigation" or "RI" are actions to investigate and or mitigate any known contamination and the problems presented by a discharge. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the remedial alternative analysis. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

"Remediation" means all necessary actions to investigate and clean up any known or suspected discharge or threatened discharge of contaminants, including, but not limited to, PA/SIs, RI, RAA, RDs, RAs, and OM & M.

"Responsible party" means a person who is in any way responsible for a contaminated site, or for the contaminants at a site including, for the purposes of this chapter, each owner or operator, and any other person obligated by law to clean up and remove contaminants at a site.

"Site investigation" or "SI" means the collection and evaluation of data necessary to determine whether or not contaminants exist at the site which fail to satisfy the applicable remediation standard.

"Solicitation document" means the document by which the Department seeks proposals from prospective offerors for the provision of services.

"Spill Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

Case Notes

Commercial general liability insurer's engineering costs for remedial investigation were "defense expenses," rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J.Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

7:26C-1.4 Liberal construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of the law.

7:26C-1.5 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. PROCEDURES FOR THE IDENTIFICATION OF THE APPROPRIATE OVERSIGHT DOCUMENT

7:26C-2.1 Scope

(a) This subchapter identifies:

1. The statutory authority for the Department to oversee a person's participation in the remediation of a site;
2. The oversight documents available depending on the circumstances of the particular site;
3. The procedures and requirements for a person to respond to a Spill Act Directive from the Department; and
4. The procedures to determine which particular oversight document is appropriate for a particular site.

(b) If a person conducting remediation elects to obtain Department oversight of those activities, the parties shall execute an oversight document pursuant to this chapter.

(c) Nothing in this subchapter shall be construed as limiting:

1. Any legal, equitable or administrative remedies against any person which the Department may have under any applicable law or regulation;
2. The Department's discretion to pursue or to refrain from pursuing any such remedies; or
3. Except as otherwise stated in this chapter, any legal, equitable or administrative remedies which the party responsible for conducting the remediation may have under any applicable law or regulation.

7:26C-2.2 Memorandum of agreement

(a) The Department may choose to enter into an agreement with any person through which that person agrees to conduct a complete remediation of certain known or suspected contaminated sites, or any portion or remedial phase including preliminary assessment, site investigation, remedial investigation, remedial alternative analysis, remedial design, or remedial action.

(b) The Department will include in each memorandum of agreement, pursuant to (a) above, provisions pursuant to N.J.A.C. 7:26C-3.

7:26C-2.3 Administrative consent order

(a) Pursuant to N.J.S.A. 13:1D-1 et seq., the Environmental Cleanup Responsibility Act, the Spill Compensation and Control Act, the Solid Waste Management Act, and the Water Pollution Control Act, the Department may issue an administrative consent order. Among other actions, the Department may issue administrative consent orders for the remediation of a contaminated site.

(b) The Department may choose to enter into an agreement with any person through which that person shall undertake remediation of a high priority site under the supervision of the Department. Such agreements shall be administrative consent orders.

(c) The Department will include in each administrative consent order for the remediation of a site provisions that conform to the requirements in N.J.A.C. 7:26C-4 or 5 as applicable.

7:26C-2.4 Administrative order

(a) Pursuant to N.J.S.A. 13:1D-1 et seq., the Solid Waste Management Act, and the Water Pollution Control Act, the Department may issue an administrative order. Among other actions, the Department may issue administrative orders for the remediation of a contaminated site.

(b) The Department will include, in each administrative order for the remediation of a contaminated site, provisions that conform to the requirements in N.J.A.C. 7:26C-5 to the extent appropriate to the particular enforcement action.

7:26C-2.5 Spill Act directive

(a) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a discharge of a hazardous substance to:

1. Conduct the remediation of a contaminated site, including the actual removal of the contamination or measures designed to prevent or mitigate damages to human health or the environment; or
2. Arrange for the remediation of a contaminated site, including such indirect arrangements as the funding by the responsible party of the government's costs to conduct

the necessary remediation, or any other indirect arrangement deemed appropriate by the Department in the exercise of its enforcement discretion.

(b) This directive is intended to constitute a clear, written notice of that person's potential liability under N.J.S.A. 58:10-23.11 for any costs of cleanup, civil penalties or damages, and to provide that person a timely opportunity to respond to the directive.

(c) To the extent possible, the Department will in the directive provide general notice as to:

1. The site of the discharge or threatened discharge;
2. The identity of those responsible parties receiving the directive;
3. The connection of the directive recipient to the discharge;
4. The nature of the necessary remediation or the estimated costs to be incurred;
5. The actions that the directive recipients are directed to accomplish;
6. The manner and timetable for the undertaking of those activities; and
7. The identification of a period in which the recipients shall respond to the directive.

(d) The Department may issue a notice to an insurer or any other person who may have financial responsibility for those believed by the Department to be in any way responsible for a discharge of a hazardous substance.

(e) In those instances where the Department directs the performance of remediation, the Department may, in the exercise of its enforcement discretion, require the entry of an agreement in the form of an administrative consent order in order to provide assurance that any remediation required by that directive will be performed in a timely and proper fashion. These administrative consent orders shall conform to N.J.A.C. 7:26C-5.

(f) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive with the directive recipient. These discussions shall be initiated by the directive recipient and inquiries shall be made to the Department's contact person designated in the directive.

(g) The directive recipient shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the directive recipient decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the directive recipient decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the directive recipient shall make such payment in mitigation of any liability that it may possess and comply with (h) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the directive recipient decides not to comply with the directive, the directive recipient shall indicate in writing that it chooses not to take any actions to comply with the directive and comply with (h) below.

(h) If the directive recipient chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the directive recipient shall submit a written response to the Department according to the requirements in the directive.

1. The directive recipient shall include in the response a detailed explanation of the recipient's reasons for its decision, including all good cause defenses therefore. These written reasons will serve both to enable the Department to consider the recipient's contentions as to liability and to establish the nature and extent of any good cause defenses to treble damages.

2. The defenses the directive recipient includes in its written response to the directive will establish the good cause defenses to treble damages which the directive recipient may raise in a subsequent action by the Department to enforce the directive. The Department will rely on such defenses raised in a timely manner in its decision to proceed with public funds to remove or arrange for the removal of the discharge.

(i) In those circumstances where a person has chosen not to comply with a directive by executing an administrative consent order pursuant to this chapter, not to pay in mitigation of its liabilities under a directive, or not to respond to a directive, the Department may perform the remediation and seek to recover from the directive recipient in an amount equal to three times the cost of the remediation conducted in accordance with the directive. In order to obtain such a treble recovery, the Department must initiate a cost recovery action in court against the directive recipient and must prove, as an initial matter, its entitlement to a single-cost recovery against the directive recipient. If the Department is able to establish a single-cost recovery against a directive recipient, it will be entitled to treble the cost recovery unless the recipient can establish that the directive recipient had, at the time required to respond to the directive, an objectively reasonable basis for failing to comply with the directive.

(j) Nothing in this section shall prohibit the Department from pursuing a cost recovery action against any person.

Case Notes

Insured fragrance manufacturer would be permitted to amend its complaint to add claims against its comprehensive general liability insurers for its liability under the Department of Environmental Protection's Spill Act directive. *Adron, Inc. v. Home Ins. Co.*, 292 N.J. Super. 463, 679 A.2d 160 (A.D.1996).

Commercial general liability insurer's engineering costs for remedial investigation were "defense expenses," rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J. Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

7:26C-2.6 Court action

Pursuant to the Environmental Cleanup Responsibility Act, Water Pollution Control Act and the Spill Compensation and Control Act, other environmental statutes and the common law, the Department may seek a range of judicial relief to address a contaminated site. The Department will exercise its enforcement discretion on a case-by-case basis in determining whether or not and how to proceed with court actions for the remediation of a contaminated site.

7:26C-2.7 Procedures to identify the appropriate oversight document for a particular case

(a) The purpose of this section is to establish the procedures for the identification of the specific oversight document which is appropriate depending on the specific set of circumstances relevant to a particular case.

(b) If any person elects to perform remediation at a site which the Department has not identified as a priority site and the site is not subject to ECRA, the appropriate oversight document is identified in N.J.A.C. 7:26C-3, memorandum of agreement.

(c) If the Department has identified the contaminated site as a priority site and the site is not subject to ECRA, the appropriate oversight document is identified in N.J.A.C. 7:26C-5, responsible party administrative consent order.

(d) If the Department has elected to conduct the remediation itself and any person elects to pay the Department for the cost of the remediation, the appropriate oversight document is identified in N.J.A.C. 7:26C-5, publicly conducted administrative consent order.

SUBCHAPTER 3. MEMORANDUM OF AGREEMENT

7:26C-3.1 Scope

(a) This subchapter contains:

1. The procedures to obtain a memorandum of agreement; and

2. The wording requirements for a memorandum of agreement.

(b) If any person elects to perform any remedial phase(s) with the Department's oversight, at a site which the Department has not identified as a priority site and the site is not subject to ECRA, the remedial phase(s) shall be governed by a memorandum of agreement pursuant to this subchapter.

7:26C-3.2 Procedure to obtain a memorandum of agreement

(a) To obtain a memorandum of agreement pursuant to this subchapter, a person shall submit to the Department a completed application including the name of the applicant, site owner, tenants and operators, the site location and current and intended use, identification of all discharges and environmental permits, environmental compliance information and other information requested by the Department. Applications may be obtained from and submitted to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection
Bureau of Field Operations
CN 028
Trenton, New Jersey 08625-0028
Attn: MOA Application

(b) The Department will review completed applications and will utilize the information contained in the completed applications to aid in the preparation of the memoranda of agreement.

(c) The Department will review applications submitted requesting a memorandum of agreement to conduct a preliminary assessment and/or a site investigation to determine whether it is necessary to conduct a preliminary assessment and/or site investigation at the site. Within 30 calendar days after the Department's receipt of the completed application, the Department shall either:

1. Inform the applicant in writing that it is not necessary to conduct a preliminary assessment and/or site investigation at the site; or

2. Submit to the applicant a memorandum of agreement to conduct a preliminary assessment and/or site investigation at the site for the applicant's signature.

(d) Except as provided in (c) above, within 30 calendar days after the Department's receipt of a completed application for any remedial phase(s) the Department shall submit to the applicant a memorandum of agreement for the applicant's signature.

(e) Each signed memorandum of agreement shall be submitted to the Department, for Department execution, to

the address indicated in the cover letter to the memorandum of agreement.

(f) The Department will execute each signed memorandum of agreement within 14 calendar days after the Department's receipt of the signed memorandum of agreement from the applicant.

7:26C-3.3 Wording of memorandum of agreement

The Department shall prepare each memorandum of agreement pursuant to the standard memorandum of agreement in Appendix A, incorporated herein by reference, as appropriate for the specific remediation phase(s) the applicant intends to conduct.

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. RESPONSIBLE PARTY ADMINISTRATIVE CONSENT ORDERS

7:26C-5.1 Scope

(a) This subchapter presents:

1. The procedure the Department will use to inform the responsible party(s) for a particular site that the site is a high priority site;
2. The evaluation process the Department will use to decide whether or not to defer to an existing permit or oversight document for a high priority site; and
3. The procedure the Department will use to identify the appropriate oversight document for a person performing remediation of a high priority site.

(b) If the Department, in its discretion, elects to allow a person to participate in the remediation of a high priority contaminated site, such participation shall be governed by an administrative consent order pursuant to this subchapter.

(c) The degree, manner and scope of that participation will be based on the specifics of each case as determined by the Department pursuant to this subchapter.

7:26C-5.2 Notification of priority sites

(a) The Department will provide notification to the responsible party(s) for a particular site that the Department has identified the site as a priority site as follows:

1. The Department will prioritize known or suspected contaminated sites to determine which sites are priority sites at which the Department will expend public resources for site remediation unless a responsible party(ies) agrees to fund and/or implement the remediation pursuant to an administrative consent order in accordance with this subchapter; and

2. The Department will notify in writing the responsible party(ies) for those priority sites to inform them that the contaminated site will be remediated with public funds unless the responsible party(ies) executes an administrative consent order pursuant to this subchapter.

Notice of Priority Contaminated Sites.

See: 26 N.J.R. 259(c).

Withdrawal of Notice of Priority Contaminated Sites.

See: 26 N.J.R. 3753(b).

7:26C-5.3 Deferral to an existing regulatory or enforcement mechanism

(a) In some instances, a high priority site may be the subject of remediation pursuant to other Federal or State regulatory or enforcement mechanisms. For example, certain sites may be the subject of an enforcement order from the EPA pursuant to CERCLA, or a corrective action order pursuant to RCRA. Similarly, in certain instances, the remediation of a contaminated site may be subject to such State regulatory programs as ECRA, or the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or through a New Jersey Pollutant Discharge Elimination System permit issued pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(b) In determining the nature and extent of a responsible party's participation in the remediation of a contaminated site pursuant to this subchapter, the Department will evaluate the entirety of the circumstances surrounding the contaminated site and determine whether or not the remediation being performed pursuant to an existing regulatory or enforcement mechanism is sufficient. In making such an evaluation, the Department will evaluate the nature of the actions causing the contamination and any other relevant factors on the basis of the information then currently available, including among other things, the nature and extent of the contamination, the threat posed to human health and the environment, the nature of necessary remedial action, the nature and status of the ongoing remediation.

(c) Based upon the evaluation described in (b) above, the Department, in an exercise of its discretion, will decide to either:

1. Allow a regulatory or enforcement mechanism already in effect at the site to control the remediation at the site;
2. Pursue additional regulatory or enforcement mechanisms, including, but not limited to, those described in N.J.A.C. 7:26C-2; or

3. A combination of (c)1 and 2 above.

(d) The Department may reconsider its decision whether or not to defer to ongoing remediation activities at any time.

7:26C-5.4 Types and language of responsible party administrative consent orders

(a) The standard responsible party administrative consent order in Appendix C, incorporated herein by reference, is applicable in all situations pursuant to this subchapter, except as modified in (b) below.

(b) The Department has developed variations of the standard responsible party administrative consent order as follows:

1. For multiple responsible parties conducting the remedial investigation and feasibility study only, the standard responsible party administrative consent order shall be used without the remedial design, remedial action, and operation, maintenance and monitoring sections;

2. For one or more responsible parties implementing the remedial action, the standard responsible party administrative consent order shall be used without the interim response action, remedial investigation, and feasibility study sections;

3. For a public entity:

i. Conducting the entire remediation, the standard responsible party administrative consent order requirements shall be used excluding the financial assurance and penalty sections; and

ii. Implementing the remedial action, the standard responsible party administrative consent order shall be used without the remedial investigation, remedial alternative analysis, and financial assurance and penalty sections; and

4. For any person implementing a remedial action necessary to address an immediate environmental concern, the standard responsible party administrative consent order shall be used without the remedial investigation, remedial alternative analysis, financial assurance and penalty sections.

(c) If a contaminated site does not fit within any of the specific categories described in (b) above, the Department will select the administrative consent order based upon the similarity of the contaminated site and person to the categories listed in this subchapter or upon other factors in the exercise of its discretion.

(d) When any person agrees to pay the Department for all of its costs of remediation, the administrative consent order shall be consistent with the standard administrative consent order in Appendix D, incorporated herein by reference.

(e) Nothing in this section shall be construed as limiting the Department from settling additional issues in an administrative consent order.

(f) The Department may select an administrative consent order different from that provided for in this subchapter, based upon the Department's consideration of the current status of negotiations at the time of adoption of this chapter.

(g) Appendices E (Standard Letter of Credit), F (Standard Standby Trust Agreement), G (Standard Fully Funded Trust Agreement) and H (Standard Surety Bond) as referenced in Appendix C, and Appendix I (Oversight Cost Formula), are incorporated herein by reference as part of this chapter.

Case Notes

Timely administrative review had to be included in hazardous discharge site remediation. *E.I. du Pont de Nemours and Co. v. State*, Dept. of Environmental Protection and Energy, 283 N.J.Super. 331, 661 A.2d 1314 (A.D.1995).

7:26C-5.5 Negotiation procedures

(a) The Department will apply the following procedures to facilitate the entry of an administrative consent order.

1. The Department will notify, in writing, the responsible party of a negotiation period that shall not exceed 90 days. If negotiations have not been concluded within the established negotiation period, the Department in the exercise of its enforcement discretion may extend the negotiation period for a period of up to 45 days.

2. In those circumstances where the Department determines that a contaminated site involves multiple responsible parties, the Department may establish an initial period, that shall not exceed 60 days, prior to the start of the negotiation period during which the responsible parties have the opportunity to organize into a single representative body that will pursue negotiations with the Department. Whether or not a single representative body is formed during this initial period, the negotiation period shall commence as specified in the written notice given pursuant to (a)1 above.

3. Notwithstanding (a)1 and 2 above, if the Department determines that a remedial action is necessary to address an immediate environmental concern at a contaminated site, the Department shall specify the appropriate period of negotiation.

(b) If the Department agrees to allow a responsible party to conduct the remediation of a priority contaminated site, the responsible party shall execute an administrative consent order pursuant to this subchapter within the negotiation period specified at (a) above and in no case after the Department begins its publicly-funded process by issuing a solicitation document for the required remedial phase of the contaminated site.

(c) If the Department agrees to allow a responsible party to implement the selected remedial action for a contaminated site, the responsible party shall execute an administrative consent order pursuant to this subchapter within the time frame specified by (a) above, and in no case after the Department begins the publicly-funded process by issuing a solicitation document for the remedial design of the selected remedial action for the contaminated site.

(d) If the time for the negotiation of the administrative consent order specified at (a) above has expired without the execution of an administrative consent order, a responsible party may nevertheless participate in the required remediation of a contaminated site by paying all or part of the cost of the remediation. Any partial payment by responsible party will mitigate, but will not satisfy, the liability of the responsible party for the Department's cleanup and removal costs, statutory penalties and treble damages.

Case Notes

Commercial general liability insurer's engineering costs for remedial investigation were "defense expenses," rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J.Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

7:26C-5.6 Determination of financial assurance amount

(a) The Department shall determine the amount of financial assurance required for a responsible party administrative consent order by identifying the areas of concern at the contaminated site and estimating the cost of remediation for each area of concern and then adding all of the estimates to arrive at a total amount for the financial assurance.

(b) The responsible party may submit for the Department's evaluation the following additional information:

1. A detailed cost estimate for remediation of areas of concern, identifying the areas of concern, proposed remedial activities, and the estimated costs of those activities, to be performed at the site;
2. The condition of areas of concern prior to completion of remediation, the remediation completed and the condition of the areas upon completion of the remedial activities; and
3. Information concerning whether or not the responsible party possesses adequate funds to post the financial assurance, including its most recent corporate or other applicable tax returns for the past three years and any other additional information required by the Department.

(c) The Department may, in its discretion, adjust the amount of the financial assurance determined pursuant to (a) above, based on any information submitted pursuant to (b) above.

Case Notes

Imposition of oversight fees to recover costs of overseeing private remediation of hazardous discharge sites; not illegal taxation. *E.I. du Pont de Nemours and Co. v. State, Dept. of Environmental Protection and Energy*, 283 N.J.Super. 331, 661 A.2d 1314 (A.D.1995).

APPENDIX A

STANDARD MEMORANDUM OF AGREEMENT

The standard memorandum of agreement contains references to [Person], blank brackets [], and bracketed directions which specify required information. Upon the Department's issuance or entry of a memorandum of agreement, the Department will replace these terms, blank spaces and bracketed directions with the appropriate information for the specific memorandum of agreement.

IN THE MATTER OF :
THE [Name of the site] SITE : MEMORANDUM
AND : OF
[Name of [Person]] : AGREEMENT

This Memorandum of Agreement is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this memorandum of agreement is owned by [full name of current property owner], and is located at [address] and is designated as Block [], Lot [] on the tax maps of the [Township, Borough, City, etc.] of [], [] County, New Jersey (hereinafter the "Site"). The Site encompasses [] acres and is bounded generally by [geographical boundaries i.e. Main Street to the north, etc.].

2. [The full name of Company/Person executing the memorandum of agreement] (hereinafter "[Person]"), incorporated in the State of [] [describe structure, if different from corporation e.g., partnership, government entity], with principal offices at [], is the party executing this memorandum of agreement.

3. The intent of this memorandum of agreement is to allow [Person] to conduct any of the remedial activities outlined herein with oversight from the Department. [Person] has indicated to the Department in its application dated that it wishes to conduct the following activities at the Site with the Department's oversight:

[choose from the following those activities which apply]

- a. Preliminary Assessment
- b. Site Investigation

- c. Remedial Investigation
- d. Remedial Alternative Analysis

e. Remedial Action

4. By entering into this memorandum of agreement, [Person] does not admit to any fact, fault or liability under any statute or regulation for conditions which existed before, during, or after [Person's] execution of this memorandum of agreement nor shall it be construed as a waiver of any right or defense [Person] may have with regard to the Site.

5. [Additional provisions may be added at the Department's discretion with the concurrence of [Person].]

AGREEMENT

I. Remediation

1. [Person] agrees to submit the following documents and the Department agrees to review and comment on documents submitted.

[choose from the following those documents that apply]

- a. Preliminary Assessment Report
- b. Site Investigation Report
- c. Remedial Investigation
 - i. Workplan
 - ii. Report
- d. Remedial Alternative Analysis
- e. Remedial Action
 - i. Workplan
 - ii. Report

2. Within thirty (30) calendar days after the Department's receipt of any submission pursuant to this memorandum of agreement, the Department will inform [Person] in writing of any administrative deficiencies in the submission, pursuant to N.J.A.C. 7:26E, that will prevent the Department from conducting its review. When the Department determines that the submission is administratively complete, the Department will notify [Person] in writing of the timeframe required for the Department to complete the review. This review will include a determination by the Department whether or not all remedial activities have been carried out consistent with applicable rules, standards, and guidelines.

3. Within seven (7) calendar days after the effective date of this memorandum of agreement, [Person] will submit to the Department: a) the name, address and telephone number of the individual who will be the contact for [Person] regarding technical matters concerning this memorandum of agreement and b) the name, and address of the designated agent for [Person] for the purpose of service for all matters concerning this memorandum of agreement.

4. [Person] may terminate this memorandum of agreement if [Person] determines that it is no longer feasible or desirable to continue with this memorandum of agreement, when [Person]:

a. Submits full payment to the Department for any Department oversight costs the Department incurred pursuant to this memorandum of agreement which [Person] has not paid;

b. Notifies the Department in writing of its intentions to terminate this memorandum of agreement;

c. Submits all data generated pursuant to this memorandum of agreement; and

d. Ensures that no environmental hazards exist at the Site as a result of [Person's] actions pursuant to this memorandum of agreement.

e. The Department will cease review of any submittals under this memorandum of agreement on the date it receives the notice of intent to terminate described in Paragraph I.4(b) above; and no oversight costs will accrue after the Department has determined that the signatory is in full compliance with Paragraph I.4. The Department will then prepare a summary of its costs and provide it to [Person]. The date of termination of this agreement is the date of the Department's receipt of both the full unconditional payment of all of the Department's oversight costs and all data required by paragraph 4.c. above.

II. Project Coordination

1. Unless otherwise directed by the Department, [Person] shall submit four (4) copies of all documents required by this memorandum of agreement to the person identified below, who shall be the Department's contact for [Person] for all matters concerning this memorandum of agreement.

[
[insert appropriate mailing address]
Attention: Section Chief

III. Financial Obligations

1. Upon receipt of a summary of the Department's costs incurred in connection with its oversight functions of this memorandum of agreement, [and if applicable, add: for all prior costs associated with the Site] [Person] shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" with NJDEP Form 062A for the full amount of the Department's oversight costs. [Person] cannot be released from its obligations under this memorandum of agreement, until all oversight costs, for work performed by the Department, are paid.

2. Beginning three hundred sixty-five (365) calendar days after the effective date of this memorandum of agreement, and annually thereafter on that same calendar day, [Person] shall submit to the Department a detailed summary of all monies spent to date pursuant to this memorandum of agreement, the estimated cost of all future expenditure associated with this memorandum of agreement (including any operation and maintenance costs), and the reason for any changes from the previous cost review [Person] submitted.

IV. Reservation of Rights

1. The Department reserves the right to unilaterally terminate this memorandum of agreement in the event that [Person] violates any terms or fails to meet the obligations of this memorandum of agreement or in the event that the Site becomes a high priority for the Department.

2. Nothing herein, including any document the Department issues as agreed to above, shall be interpreted to constitute a release or waiver of liability for any of the conditions which existed before, during or after the Department's execution of this memorandum of agreement.

V. General Conditions

1. [Person] shall, in addition to any other obligation required by law, notify the Department contact immediately upon knowledge of any condition posing an immediate threat to human health and/or the environment.

2. [Person] shall perform all work conducted pursuant to this memorandum of agreement in accordance with N.J.A.C. 7:26E and prevailing professional standards then prevailing.

3. [Person] shall conform all actions required by this memorandum of agreement with all applicable Federal, State and local laws and regulations.

4. Nothing in this memorandum of agreement shall be deemed to impose on [Person] any additional liabilities or obligations, other than those specifically stated herein. Nothing shall relieve [Person] from complying with all other applicable laws and regulations.

5. [Person] shall preserve all potential evidentiary documentation found at the Site, which may provide a nexus between the contaminated site and any responsible party or lead to the discovery of other areas of concern including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any person which generated, treated, transported, stored or disposed of contaminants at the Site, until written approval is received from the Department to do otherwise.

6. Upon receipt of a written request from the Department, [Person] shall submit to the Department all data and information concerning contamination at the Site, including technical records and contractual documents, and raw sampling and monitoring data, whether or not such data and information was developed pursuant to this memorandum of agreement. If [Person] believes any such data or information is protected by a privilege it will retain the data and information and notify the Department of the nature of the document and the privilege claimed. [Person] may request that the Department keep confidential information contained in a submission to the Department pursuant to N.J.A.C. 7:14A-11.

7. The Department will issue a no further action statement when the Department has determined that the signatory has conducted the agreed upon remedial activities pursuant to this memorandum of agreement and the remedial activities are in accordance with all Department requirements.

8. This memorandum of agreement shall be governed and interpreted under the laws of the State of New Jersey.

9. This memorandum of agreement shall be binding, jointly and severally, on each party, its successors and assignees subject to the right of termination above. No change in the ownership or corporate or business status of any party, or of the facility or Site shall alter any signatory's responsibilities under this memorandum of agreement.

10. This memorandum of agreement shall become effective upon execution hereof by all parties.

Date: _____ NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
AND ENERGY

BY: _____

Signature

Print Full Name Signed Above

Title

Date: _____ [Print Name of Company executing Order]

BY: _____

Signature

Print Full Name Signed Above

Title

APPENDIX B

(RESERVED)

APPENDIX C

STANDARD RESPONSIBLE PARTY
OVERSIGHT DOCUMENT

The standard responsible party oversight document contains references to [Person] [amount], [Order], and other blank brackets []. Upon the Department's issuance or entry of an [Order], the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF THE :
[Site name] : [ORDER]
AND :
[Name of Person] :

This [Order] is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEPE") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the * [memorandum of agreement] * [Order].]
2. [The full name and mailing address of each responsible party executing the [Order] if applicable.]
3. [The regulatory and enforcement history of the site.]
4. By entering this [Order], [Person] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable] nor waives any rights or defenses with regard to the site except as specifically provided in this [Order].
5. All of the Department's public files concerning the [name of site] are incorporated herein and made a part hereof.
6. The scope of the investigation and remediation required by this [Order] will include all contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.
7. [Additional provisions may be added at the Department's discretion] with concurrence of [Person].

ORDER

I. Penalty, Damages and Reimbursement of Prior Costs [Optional]

1. [Person] shall submit to the Department a certified or cashier's check made payable to the "Treasurer, State of New Jersey" submitted with Form 062A for [amount], no later than [person's] signature and submission of this [Order] to the Department. Payment of this penalty shall not relieve [person's] obligation to fully comply with this [Order]. Furthermore, the Department's acceptance of this penalty shall not be construed as a waiver of the Department's right to compel [Person] to specifically perform its obligations pursuant to this [Order].
2. Within thirty (30) calendar days after receipt of a written summary of the Department's costs incurred to the effective date of this [Order] in accordance with N.J.A.C. 7:26C Appendix I, [Person] shall submit the amount indicated in the written summary to the Department as reimbursement of the costs in connection with the investigation of, and response to, the matters de-

scribed in the Findings hereinabove, including the costs associated with the preparation of this [Order]. [Person] shall make payment of the above amount by a cashier's or certified check payable to the ("Treasurer, State of New Jersey" or "Administrator, New Jersey Spill Compensation Fund", as appropriate) and submitted with DEPE Form 062A.

II. Remedial Investigation and Action Requirements

1. Within [] calendar days after the effective date of this [Order] or longer as authorized by the Department, [Person] shall submit to the Department a detailed draft Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E.
2. Within [] calendar days after receipt of the Department's written comments on the draft RI Work Plan, or longer as authorized by the Department, [Person] shall modify the draft RI Work Plan to conform to the Department's comments and shall submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.
3. Upon receipt of the Department's written final approval of the RI Work Plan, [Person] shall conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.
4. [Person] shall submit to the Department a draft Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.
5. If upon review of the draft RI Report the Department determines that additional remedial investigation is required, [Person] shall conduct additional remedial investigation as directed by the Department and submit a second draft RI Report.
6. Within [] calendar days after receipt of the Department's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) RI Report, or longer as authorized by the Department, [Person] shall modify the draft or second draft RI Report to conform to the Department's comments and shall submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

III. Remedial Alternative Analysis

1. Within [] calendar days after the Department's final approval of the RI Report, or as otherwise directed by the Department, [Person] shall submit to the Department a draft Remedial Alternative Analysis Report (hereinafter "RAA Report") in accordance with N.J.A.C. 7:26E.

2. Within [] calendar days after receipt of the Department's written comments on the draft RAA Report, or longer as authorized by the Department, [Person] shall modify the draft RAA Report to conform to the Department's comments and shall submit the modified RAA Report to the Department. The determination as to whether or not the modified RAA Report, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

IV. Remedial Action

1. The Department will make the selection of the remedial action alternative.

2. Within [] calendar days after receipt of the Department's written notification of selection of a remedial action alternative, shall submit to the Department a detailed draft Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

3. Within [] calendar days after receipt of the Department's written comments on the draft Remedial Action Work Plan, or longer as authorized by the Department, [Person] shall modify the draft Remedial Action Work Plan to conform to the Department's comments and shall submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

4. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, [Person] shall implement the approved Remedial Action Work Plan in accordance with the schedule therein.

5. [Person] shall submit to the Department a draft Remedial Action Report (hereinafter "RA Report") in accordance with N.J.A.C. 7:26E and the RA Work Plan and the schedule therein.

6. If upon review of the draft RA Report the Department determines that additional remedial action is required, [Person] shall conduct additional remedial action as directed by the Department and shall submit a second draft RA Report.

7. Within [] calendar days after receipt of the Department's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) RA Report, or longer as authorized by the Department, [Person] shall modify the draft or second draft RA Report to conform to the Department's comments and shall submit the modified RA Report to the Department. The determination as to whether or not the modified RA Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

V. Additional Remedial Investigation and Remedial Action

1. If at any time that this [Order] is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remedial investigation and/or remedial action is required to protect human health or the environment, [Person] shall conduct such additional activities as directed by the Department.

VI. Permit Application Process for Remedial Activities

1. Within thirty (30) calendar days after receipt of the Department's written notification regarding the Department's selection of the remedial action, [Person] shall submit to the Department a detailed draft permit application submission schedule in accordance with N.J.A.C. 7:26E for all relevant federal, State and local permit applications, certifications or modifications necessary to implement the selected remedial action.

2. Upon receipt of the Department's written approval of the permit application schedule, [Person] shall carry out the permit application process in accordance with the approved schedule.

3. [Person] shall submit complete applications for all federal, State and local permits or permit modifications required to carry out the obligations of this [Order] in accordance with the approved schedules.

4. Within thirty (30) calendar days after [Person's] receipt of written comments from the permitting agency concerning any permit application to a federal, State, or local agency, or within a time period extended in writing by the Department, [Person] shall modify the permit application to conform to the permitting agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency.

5. The terms and conditions of any federal, State or local permit or permit modification issued to [Person] shall not be preempted by the terms and conditions of this [Order] even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this [Order].

6. To the extent that the terms and conditions of any federal, State or local permit or permit modification are substantially equivalent to the terms and conditions of this [Order], [Person] waives any rights it may have to contest such terms and conditions of any such permit.

VII. Progress Reports

1. [Person] shall submit quarterly progress reports to the Department in accordance with the next paragraph. [Person] shall submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this [Order]. [Person] shall submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. Based on site specific activities being performed by [Person], the Department may request that progress reports be submitted monthly, semi-annually or annually.

2. [Person] shall detail the status of [Person's] compliance with this [Order] in each progress report and shall include the following:

i. Identification of the contaminated site and a reference to this [Order], including signatory parties and effective date;

ii. Identification of specific requirements of this [Order], including the corresponding paragraph number and schedule, which were initiated during the reporting period;

iii. Identification of specific requirements of this [Order], including the corresponding paragraph number and schedule, which were initiated in a previous reporting period, which are still in progress and which will continue to be carried out during the next reporting period;

iv. Identification of specific requirements of this [Order], including the corresponding paragraph number and schedule, which were completed during this reporting period;

v. Identification of specific requirements of this [Order], including the corresponding paragraph numbers and schedule, which were scheduled to have been completed during the reporting period and were not;

vi. An explanation of each specific requirement of this [Order] not met, including actions taken or to be taken to address each such requirement;

vii. Identification of the specific requirements of this [Order], including the corresponding paragraph number and schedule, that will be initiated during the next reporting period; and

viii. All data generated during the reporting period which indicate that conditions at the contaminated site exceed federal, State or local human health based standards or criteria, or in the absence thereof, any data which indicate potential human health concerns; and

ix. All reports and other information required pursuant to any work plan or report the Department approves pursuant to this [Order].

VIII. Project Coordination

1. [Person] shall submit to the Department all documents required by this [Order], including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine [Person's] compliance with the requirements of this [Order] and the applicability of stipulated penalties and any other remedies available to the Department.

2. Within seven (7) calendar days after the effective date of this [Order], [Person] shall submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this [Order] and [Person] shall designate an agent for the purpose of service for all matters concerning this [Order] and shall provide the Department with the agent's name and address.

3. Unless otherwise directed in writing by the Department, [Person] shall submit all payments and [] copies of all documents required by this [Order] to the individual identified below, who shall be the Department's contact for [Person] for all matters concerning this [Order]:

[Name, title, address and telephone number of Department contact]

4. [Person] shall notify, both verbally and in writing, the contact person listed above at least fourteen (14) calendar days prior to the initiation of any field activities.

IX. Financial Assurance

1. The Department shall negotiate the language concerning the amount and form of the financial assurance on a case-by-case basis.

X. Project Cost Review

1. Beginning three hundred sixty-five (365) calendar days after the effective date of this [Order], and annually thereafter on the same calendar day, [Person] shall submit to the Department a detailed review of all costs required for [Person's] compliance with this [Order], including:

(a) A detailed summary of all monies spent to date pursuant to this [Order];

(b) The estimated cost of all future expenditures required to comply with this [Order], including any operation, maintenance and monitoring costs; and

(c) The reason for any changes from the previously submitted cost review.

2. At any time after [Person] submits the first cost review pursuant to the preceding paragraph, [Person] may request the Department's approval to reduce the amount of the financial assurance to reflect the remaining costs of performing the obligations under this [Order]. If the Department grants written approval of such a request,

[Person] may amend the amount of the then existing financial assurance consistent with that approval.

3. If the estimated costs of meeting [Person's] obligations in this [Order] at any time increase to an amount greater than financial assurance, [Person] shall:

(a) Within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing financial assurance or provide additional financial assurance to an amount equal to the Department's approved estimated cost; and

(b) Upon notification from the Department pursuant to Paragraph [] that the obligations of the [Order] have been satisfied, [Person] shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this [Order] for the site which is the subject of this [Order]. Upon the Department's written approval of the completion of any remediation required by this [Order], as verified by final site inspection and upon [Person's] satisfaction of all financial obligations in connection therewith, [Person] shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this [Order] for the Site at which the approved remediation has been completed.

XI. Oversight Cost Reimbursement

1. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's costs, including all accrued interest incurred pursuant to (a)2 below, determined pursuant to N.J.A.C. 7:26C Appendix I, [Person] shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEPE form 062A, for the full amount of the Department's oversight costs, for the period being charged.

2. Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

XII. Stipulated Penalties

1. [Person] agrees to pay stipulated penalties to the Department for [Person's] failure to comply with any of the deadlines, schedules or requirements of this [Order] including those established and approved by the Department in writing pursuant to this [Order]. Each day of violation for each deadline, schedule or requirement not complied with shall be an additional, separate and distinct violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this [Order]. Each signatory to this [Order] shall be jointly and severally liable for stipulated penalties for violations of this [Order] which result in the Department's issuance of a demand for stipulated penalties.

2. Stipulated penalties shall begin to accrue on the first calendar day after the performance is due or non-compliance occurs and not at the time the Department gives notice of the violation or non-compliance to [Person] or issues a written demand for stipulated penalties. Stipulated penalties shall then continue to accrue through the final day of correction of the non-compliance. The Department may determine that a submittal of insufficient quality constitutes non-compliance and one or more violations of this [Order]. Stipulated penalties for such violations shall accrue from the date [Person] made the submission for sixty (60) calendar days, unless the Department provides [Person] with written notice that stipulated penalties for such violations continue to accrue beyond that sixty (60) day period. In which case stipulated penalties will continue to accrue until [Person] corrects the non-compliance.

3. [Person's] payment of stipulated penalties for [Person's] failure to comply with the deadlines, schedules and requirements associated with the major deliverables and tasks required by this [Order], as identified below, shall be made according to this paragraph:

(a) Major violations include [Person's] failure, according to the schedules in the [Order], to:

- i. Submit any remedial investigation workplans;
- ii. Submit any remedial action workplans;
- iii. Implement any approved remedial investigation workplan;
- iv. Implement any approved remedial action workplan;
- v. Submit permit applications;
- vi. Satisfy any financial assurance requirement;
- vii. Failure to allow the Department or its authorized agents access to the site;
- viii. Implementation and recording of permanent use and/or access restrictions; and
- ix. Reimbursement of oversight costs, including prior costs.

(b) [Person] agrees to pay stipulated penalties for the major violations, identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1-14	\$ 1,000
15-29	\$ 2,500
30-44	\$ 5,000
45-59	\$10,000
60-over	\$25,000

(c) [Person] agrees to pay stipulated penalties for all other violations, not identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1-14	\$ 200
15-29	\$ 500
30-44	\$ 1,000
45-59	\$ 5,000
60-over	\$10,000

4. Stipulated penalties shall be due and payable thirty (30) calendar days after [Person's] receipt of a written demand by the Department. [Person] shall make payment of stipulated penalties by a cashier's or certified check payable to the "Treasurer, State of New Jersey" submitted with DEPE Form 062A, and the payment shall be accompanied by a letter referencing this [Order] and the Department's written demand for stipulated penalties.

5. [Person] shall regard payments of stipulated penalties pursuant to this [Order] as payments of civil or civil administrative penalties.

6. The payment of stipulated penalties does not alter [Person's] responsibility to complete any requirement of this [Order].

7. If [Person] fails to pay stipulated penalties pursuant to this section, the Department may take enforcement action, including without limitation, instituting civil proceedings to collect such penalties or assessing civil administrative penalties.

XIII. Reservation of Rights

1. The Department reserves the right to unilaterally terminate this [Order] in the event [Person] violates the terms of this [Order], provided, however, that before the Department takes this action, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and [Person] shall have thirty (30) calendar days after receipt of such notice, unless extended in writing by the Department, to remedy the failure to perform such obligation(s).

2. Nothing in this [Order] shall preclude the Department from seeking civil or civil administrative penalties, costs and damages or any other legal or equitable relief against [Person]. The Department reserves the right to conduct any remediation itself at any time.

3. Nothing in this [Order], including the Department's assessment of stipulated penalties, shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this [Order]. In any such action brought by the Department under this [Order] for injunctive relief, civil, or civil administrative penalties or collection of stipulated penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this [Order], on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties

for failure to comply with that particular requirement of the [Order]. Similarly, in the event that [Person] prevails in any proceeding in which [Person] alleges that the Department acted arbitrarily, capriciously, or unreasonably in exercising its right under to draw on the financial assurance, the Department will refund, to the account of the financial assurance the amount of the funds so drawn. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief or stipulated penalties, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this [Order] and under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this [Order].

4. This [Order] shall not be constructed to affect or waive the claims of federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

5. The Department reserves the right to require [Person] to take or arrange for the taking of any and all additional measures if the Department determines that such actions are necessary to protect human health or the environment.

6. Notwithstanding any other provision of this [Order], [Person] reserves its right to challenge, as a contested case pursuant to N.J.S.A. 52:14B-1 et seq., that the Department's draw on the financial assurance provided pursuant to this [Order] was arbitrary, capricious or unreasonable; [Person] agrees, however, not to initiate any such challenge until after the Department has corrected or implemented the requirement of this [Order] which was the focus of the Department's draw. The Department reserves its right to contest any such action.

7. Except as otherwise stated in this [Order], nothing herein shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this [Order], [Person] reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

XIV. Force Majeure

1. If any event specified in the following paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this [Order], [Person] shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be

taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] shall take all necessary action to prevent or minimize any such delay.

2. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

(a) [Person] has complied with the notice requirements of the preceding paragraph;

(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Person]; and

(c) [Person] has taken all necessary action to prevent or minimize any such delay.

3. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

4. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this [Order];

(c) Contractor's breach, unless [Person] demonstrates that such breach falls within the above paragraphs; and

(d) Failure to obtain access required to implement this [Order], unless denied by a court of competent jurisdiction.

XV. Dispute Resolution

1. In the event a conflict arises between [Person] and the Department, [Person] may institute the Department's internal process for resolving disputes. The initial step requires that [Person] notify the assigned case manager of the issue(s) that is (are) in dispute. If [Person] and the Department cannot resolve the dispute, [Person] has the option to contact the assigned case manager's supervisor. If the dispute cannot be resolved at that level, it will continue up the chain of command to the Bureau Chief, Assistant Director, Director, Assistant Commissioner and Commissioner or his or her designee, as necessary.

XVI. General Provisions

1. [Person] shall, in addition to any other obligation required by law, notify the Department contact identified in this [Order] immediately upon knowledge of any condition posing an immediate threat to human health and the environment. The Department reserves the right to stop any construction, improvement(s), or change(s) at the site(s) subject to this [Order], due to the immediate threat caused by contaminants, the disturbance of which, prior to implementation of the Department-approved remedial action, would or may cause a threat to human health and the environment as determined by the Department.

2. In the event that the Department determines that a meeting concerning the remediation of the site is necessary at any time, [Person] shall ensure that [Person's] appropriate representative is prepared and available for, and participates in such a meeting upon written notification from the Department of the date, time and place of such meeting.

3. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] shall allow the Department and its authorized representatives access to all areas of the Site [Person] has access at all times for the purpose of monitoring [Person's] compliance with this [Order] and/or to perform any remedial activities [Person] fails to perform as required by this [Order].

4. [Person] shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by [Persons] acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

5. [Person] shall perform all work conducted pursuant to this [Order] in accordance with prevailing professional standards then prevailing.

6. [Person] shall provide a copy of this [Order] to each contractor and subcontractor retained to perform the work required by this [Order] and shall condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this [Order]. [Person] shall be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this [Order].

7. [Person] shall conform all actions required by this [Order] with all applicable federal, State and local laws and regulations.

8. Nothing in this [Order] shall relieve [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this [Order] shall not excuse [Person] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this [Order]. This [Order] shall not preclude the Department from requiring that [Person] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this [Order] if the terms and conditions of any such permit are more stringent than the terms and conditions of this [Order]. Should any of the measures to be taken by [Person] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then [Person] shall obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

9. All work plans and documents required by this [Order] and approved in writing by the Department are incorporated herein and made a part hereof.

10. [Person] shall preserve all potential evidentiary documentation found at the site which may provide a nexus between the contaminated site and any responsible party or lead to the discovery of other areas of concern until written approval is received from the Department to do otherwise, including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any person which generated, treated, transported, stored or disposed of contaminants at the site.

11. Upon the receipt of a written request from the Department, [Person] shall submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitor data, whether or not such data and information, including technical records and contractual documents, was developed pursuant to this [Order]. [Person] reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

12. Obligations and penalties of this [Order] are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the human health, safety and welfare and are not intend-

ed to constitute debt or claims which may be limited or discharged in a bankruptcy proceeding.

13. [Person] hereby consents to and agrees to comply with this [Order] which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

14. No modification or waiver of this [Order] shall be valid except by written amendment to this [Order] duly executed by [Person] and the Department. Any amendment to this [Order] shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules of this [Order] prior to executing any such amendment.

15. [Person] waives its rights to an administrative hearing concerning the entry of this [Order].

16. This [Order] shall be governed and interpreted under the laws of the State of New Jersey.

17. If any provision of this [Order] or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this [Order] or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this [Order] shall be valid and enforced to the fullest extent permitted by law.

18. This [Order] represents the entire integrated agreement between the Department and [Person] concerning the site subject to this [Order] and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

19. Within thirty (30) calendar days after the effective date of this [Order], [Person] shall record a copy of this [Order] with the County Clerk, [] County, State of New Jersey and shall provide the Department with written verification of compliance with this paragraph which shall include a copy of this [Order] stamped "Filed" by the County Clerk.

20. This [Order] shall not be construed to be a permit or in lieu of a permit for any activities which require permits and it shall not relieve [Person] from obtaining and complying with all applicable federal, State and local permits necessary for any activities which [Person] must perform in order to carry out all obligations of this [Order].

21. The site or any portion thereof may be freely alienated provided that [Person], if an owner of the site, complies with the requirements in this paragraph and all other applicable laws.

(a) Any contract to alienate the site shall require the grantee to allow the implementation and continuation of all activities and obligations pursuant to this [Order] and to allow [Person], the Department and its authorized representatives access to the site for purposes of such activities and obligations. Any alienation shall not affect [Person's] obligations under this [Order].

(b) [Person] shall include in any instrument of conveyance, including but not limited to a deed, title, lease, easement or license for the site a written notice that the site is the subject of this [Order]. Any such instrument of conveyance shall be subject to the requirements set forth in this [Order] regarding the use of the site and deed restrictions.

22. This [Order] shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this [Order].

23. [Person] shall preserve, during the pendency of this [Order] and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] shall submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

24. [Person] agrees not to contest the authority or jurisdiction of the Department to issue this [Order]; [Person] further agrees not to contest the terms or conditions of this [Order] except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the Department to enforce the provisions of this [Order]. [Person] reserves all of its rights pursuant to the Spill Act concerning the Department's selection of any remedial action pursuant to this [Order].

25. [Person] shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least thirty (30) calendar days prior to such action. Upon such notice, [Person] shall submit a cost review pursuant to this [Order] to the Department. [Person] shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. This requirement shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] shall obtain and submit to the Department additional financial assurance pursuant to this [Order].

26. This paragraph will only be applicable when any signatory to the [Order] is the owner of the site and/or at such time that the signatory becomes an owner of the site. [Person] shall not make any use of the site or take any actions at the site inconsistent within this [Order]. [Person] shall impose such use and/or access restrictions as may be deemed necessary by the Department. The use and access restrictions are to run with the land and be for the benefit of and enforceable by the Department and any citizen which is or may be damaged as a result of violations of the use and access restrictions. The use and access restrictions shall provide actual and constructive notice of any subsequent grantee of the locations and concentrations of all contaminants which remain at the site and of the use and access restrictions imposed. Within thirty (30) calendar days after [Person's] receipt of a written request from the Department, [Person] shall record the restrictions with the [] County Clerk, [] County, State of New Jersey, and provide the Department with a copy of this [Order] stamped "Filed" by the [] County Clerk.

27. Except as otherwise provided, the requirements of this [Order] shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this [Order]. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this [Order].

28. Except as otherwise set forth herein, by the execution of this [Order] the Department does not release [Person] from any liabilities or obligations such person may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

29. [Person] shall submit to the Department, along with the executed original [Order], documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Person] to the terms of this [Order].

30. The Department will consider a request for an extension of time to perform any requirement under this [Order], provided that any extension request is submitted to the Department two weeks prior to any applicable deadline to which the extension request refers.

31. [Person] may assert a claim of confidentiality for any information submitted by [Person] pursuant to this [Order], by following the Department's procedures in N.J.A.C. 7:14A-11.

32. [Person] expressly agrees that in the event that [Person] fails or refuses to perform any obligation(s) under this [Order] as determined by the Department, the Department shall have the right to exercise any option or combination of options available to the Department under this [Order], or any other statute.

33. This [Order] shall be effective upon the execution of this [Order] by the Department and [Person]. The [Person] shall return a fully executed [Order] to the Department together with the financial assurance required by Paragraph [] above, and signature authorization required by Paragraph [] above.

Date: _____ NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
AND ENERGY

BY: _____
Signature

Print Full Name Signed Above

Title

Date: _____ [Print Name of Company executing Order]
BY: _____
Signature

Print Full Name Signed Above

Title

APPENDIX D

STANDARD PUBLICLY CONDUCTED ADMINISTRATIVE CONSENT ORDER

The standard publicly conducted administrative consent order contains—references to [Person], [amount], and other blank brackets []. Upon the Department's issuance or entry of an administrative consent order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF THE :
[Site Name] SITE : ADMINISTRATIVE
AND : CONSENT ORDER
[Name of Person] :

The Administrative Consent Order is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director for the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the administrative consent order.]

2. [The full name and mailing address of each responsible party executing the administrative consent order if applicable.]

3. [The regulatory and enforcement history of the site.]

4. By entering this administrative consent order, [Person] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable] nor waives any rights or defenses with regard to the site except as specifically provided in this administrative consent order.

5. All of the Department's public files concerning the [name of site] are incorporated herein and made a part thereof.

6. The scope of the investigation and cleanup required by this administrative consent order will include all contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

7. [Additional provisions may be added at the Department's discretion with the concurrence of [Person].]

ORDER

I. Reimbursement of Prior Costs [Optional]

1. Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay to the Department the sum of \$[amount] as reimbursement of costs incurred by the Department to date, in connection with the investigation of, and response to, the matters described in the Findings hereinabove. [Person] shall make payment of the above amount by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submit it with DEPE Form 062A to:

New Jersey Department of Environmental Protection

Bureau of Revenue

CN 402

440 East State Street

Trenton, New Jersey 08625-0402

II. Payment

1. The Department will conduct a [remedial phase] of hazardous substances, as defined by the Spill Compensation and Control Act, and all pollutants, as defined by the Water Pollution Control Act, discharged at, emanating from, or which have emanated from the Site. The [remediation phase] will be performed in accordance with N.J.A.C. 7:26E.

2. [Person] shall pay for all of the Department's costs in its preparation and performance of the [remedial phase] described above, including contracting costs and the cost of the Department's administration and supervision of the performance of the [remedial phase] as follows (hereinafter collectively "cost of the [remedial phase]"):

(a) Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay the sum of \$[amount] to the Department to pay the costs of the [remedial phase]. The Department shall deposit this payment in a separate interest bearing account (hereinafter "Account"). The Department will draw on the Account to pay the costs of the [remedial phase]. All interest earned upon the Account shall be credited to the Account.

(b) Within thirty (30) calendar days after payment of the invoices by the Department, the Department to its contractors, the Department will provide [Person] with copies of all invoices submitted to the Department by its contractors. Within thirty (30) calendar days after the Department draws down on the Account the Department will provide [Person] with a statement showing that the Department has paid the invoices from the Account.

(c) Within seven (7) calendar days after receipt of a written notice from the Department that the balance of the Account has fallen below the amount necessary to satisfy (a) above, [Person] shall submit such payments to the Department to restore the Account in an amount which will be sufficient to pay the costs of the [remedial phase]. The Department will deposit this payment in the Account.

(d) Funds remaining in the Account upon the Department's completion of the remedial phases described in this administrative consent order shall be promptly returned to [Person] by the Department.

III. Exchange of Information

1. The Department will provide [Person] with final copies of [remedial phase] documents defined as Deliverables in the approved contract between the Department and its contractor(s), which include: Work Plan and Sampling Plans; Quality Assurance/Quality Control ("QA/QC") Protocols; [remedial phase] Reports; Endangerment or Risk Assessment Reports; and Data Reports that include all data that have passed or failed QA/QC. For any data that fails QA/QC, the reasons for such failure will be explained in the data report.

2. [Person] may submit written comments to the Department on the Deliverables. The Department will review all such comments submitted by [Person], but is under no obligation to incorporate [Person's] comments in the Deliverables.

3. The Department will schedule meetings concerning the [remedial phase] with [Person] on a quarterly basis, or more often if considered necessary or appropriate by both the Department and [Person].

4. The Department will provide [Person] with reasonable advance notice of all field activities for conducting of the [remedial phase]. The Department will not exclude [Person] representatives from being present during the implementation of [remedial phase] activities and from taking split-samples of all samples collected as part of the [remedial phase] provided however, that [Person's] representatives do not in any way impede the progress of the [remedial phase], and subject to [Person] obtaining any necessary access agreement to the site or the property where [remedial phase] activities are taking place.

5. [Person] agrees that no employee of, representative of, or consultant to [Person] shall have any ex-parte communications with the contractor hired by the Department to conduct the [remedial phase] other than simple verbal exchanges which may occur in the field and are necessary to conduct the [remedial phase] field activities.

IV. General Provisions

1. [Person] hereby consents to and agrees to comply with this administrative consent order which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

2. No modification or waiver of this administrative consent order shall be valid except by written amendment to this administrative consent order duly executed by [Person] and the Department. Any amendment to this administrative consent order shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules or this administrative consent order prior to executing any such amendment.

3. [Person] waives its rights to an administrative hearing concerning the entry of this administrative consent order.

4. This administrative consent order shall be governed and interpreted under the laws of the State of New Jersey.

5. This administrative consent order shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the facility or site shall alter signatory's responsibilities under this administrative consent order.

6. [Person] agrees not to contest the authority or jurisdiction of the Department to issue this administrative consent order; [Person] further agrees not to contest the terms or conditions of this administrative consent order except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the Department to enforce the provisions of this administrative consent order. [Person] reserves all of its rights pursuant to the Spill Compensation and Control Act concerning the Department's selection of any remedial action pursuant to this administrative consent order.

7. [Person] shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least thirty (30) calendar days prior to such action. Upon such notice, [Person] shall submit a cost review pursuant to Paragraph [] to the Department. [Person] shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than five business days after such filing. This requirement shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations.

8. [Person] shall submit to the Department, along with the executed original administrative consent order, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Person] to the terms of this administrative consent order.

9. [Person] expressly agrees that in the event that [Person] fails or refuses to perform any obligation(s) under this administrative consent order as determined by the Department, the Department shall have the right to exercise any option or combination of options available to the Department under this administrative consent order, or any other statute.

10. Except as otherwise provided, the requirements of this administrative consent order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this administrative consent order. Such written notice shall not relieve [Person] from the obligation to conduct future

investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this administrative consent order.

11. By entering into this Administrative Consent Order, the Department does not waive its right to assess or collect civil or civil administrative penalties for past, present and future violations by [Person] of any New Jersey environmental statutes or regulations.

12. [Person] admits that it has agreed to comply with the terms of this Administrative Consent Order. Neither the entry into this Administrative Consent Order nor the conduct of [Person] hereunder, shall be construed as any admission of fact, fault or liability by the [Person] under any applicable laws or regulations.

13. Within thirty (30) calendar days after the effective date of this [Order], [Person] shall record a copy of this [Order] with the County Clerk, [] County, State of New Jersey and shall provide the Department with written verification of compliance with this paragraph which shall include a copy of this [Order] stamped "Filed" by the County Clerk.

14. Except as otherwise stated in this [Order], nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this [Order], [Person] reserves any defenses which the Spill Compensation and Control Act, (Matter of Kimber Petroleum Corp., 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

15. This administrative consent order shall be effective upon the execution of this administrative consent order by the Department and [Person]. The [Person] shall return a fully executed [Order] to the Department together with the signature authorization required above within five (5) business days from the effective date.

Date: _____ NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
AND ENERGY

BY: _____
Signature

Print Full Name Signed Above

Title

Date: _____ [Print Name of Company executing Order]
BY: _____
Signature

Print Full Name Signed Above

Title

APPENDIX E

STANDARD LETTER OF CREDIT

The standard letter of credit contains references to [Person], [amount], and other blank [] which the issuing institution shall fill in as appropriate when issuing the letter of credit.

LETTER OF CREDIT WORDING

[_____, 19__]

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION & ENERGY
DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

CN 028

Trenton, New Jersey 08625

Attention: Chief, Bureau of Budget and Accounting

RE: Administrative Consent Order, [date executed] Division of Responsible Party Site Remediation [site and location include street address lot(s) and block(s) municipality and county]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of [Person] and address up to the aggregate amount of [amount written out] U.S. Dollars [\$amount], available upon presentation by you of:

(1) Your sight draft, bearing reference to this letter of credit No. ____, and

(2) Your signed statement reading as follows. "I certify that the amount of the draft is payable pursuant to the terms and provisions of the _____, 19__ Administrative Consent Order executed by the New Jersey Department of Environmental Protection and [Person] in order to remedy contamination identified at site and location.

This letter of credit is irrevocable and issued for a period of at least one (1) year. This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 calendar days before the current expiration date, we notify both you and [Person] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 calendar days after the date of receipt by both you and [Person], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [Person] in accordance with your instructions.

We hereby agree to be subject to the jurisdiction of the New Jersey courts for all claims made by the NJDEP against the letter of credit and that this letter of credit shall be construed and enforced according to the State of New Jersey.

We shall not cancel this letter of credit on the basis of a request from [Person] until we have received written authorization from you.

This letter of credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"]

Very truly yours,

[Name of Issuing Bank]

[Signature and Title of Official]

[Printed Name of Officials]

[Date]

APPENDIX F

STANDARD STANDBY TRUST AGREEMENT

The standard standby trust agreement contains references to [Person], [amount], and other blank brackets [] which the issuing institution shall fill in as appropriate when issuing the standby trust agreement.

STANDBY TRUST AGREEMENT WORDING

Trust Agreement, "Agreement", entered into as of [date] by and between [Person] known as "Grantor" and issuing institution the "Trustee".

Whereas, the New Jersey Department of Environmental Protection, "NJDEP", an agency of the State of New Jersey, has entered into an Administrative Consent Order with Grantor dated _____, 19__, to cleanup contamination identified at site and location, a copy of which is annexed hereto as Schedule "A", pursuant to which Grantor is obligated to establish a trust fund to assure the availability of funds to secure the performance of Grantor's obligations under that Administrative Consent Order.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means [Person] who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee, who has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. The name, address and title of the Trustee is:

(c) The term "Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.

(d) The term "Beneficiary" means the New Jersey Department of Environmental Protection.

(e) The term "NJDEP" means the New Jersey Department of Environmental Protection.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule "A".

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule "B", attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as herein provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for Performance of Administrative Consent Order. The Trustee shall make payment from the Fund as the NJDEP Commissioner shall direct, in writing, to provide for the payment of the costs of performing Grantor's obligations under the _____, 19__ Administrative Consent Order (annexed hereto as Schedule "A"). The Trustee shall reimburse the Grantor or other persons, as specified by NJDEP, in such amounts as the NJDEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts, as the NJDEP specifies in

writing. Upon refund, such funds shall no longer constitute part of the Fund, as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. At such time as the corpus of the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his/her duties with respect to the Trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound

to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall, annually, at least 30 calendar days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 calendar days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 calendar days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee, may from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 calendar days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule "C". The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement, as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with this Agreement. The Trust shall be indemnified and saved harmless by the Grantor or the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written:

DATE: _____	[NAME OF GRANTOR]
	BY: _____
	TITLE: _____
DATE: _____	[NAME OF TRUSTEE]
	BY: _____
	TITLE: _____

**CERTIFICATION OF ACKNOWLEDGEMENT
TO BE EXECUTED BY BOTH THE
GRANTOR AND TRUSTEE**

State of _____

County of _____

On the _____ day of _____, 19____, before me personally came [name] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the Trust Agreement; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is [was] so

affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

SCHEDULE A

Instructions to the Grantor:

Include here a copy of the Administrative Consent Order.

SCHEDULE B

Instructions to the Grantor:

Include here the initial amount of money the Administrative Consent Order requires you to deposit in the irrevocable standby trust fund.

\$_____ in cash

\$_____ in securities

SCHEDULE C

Instructions to the Grantor:

Include here the required information of your designee for communications with the Trustee.

individual's name, title

[Person]

CERTIFICATE OF ACKNOWLEDGEMENT

State of _____

County of _____

On this _____ day of _____, 19____, before me personally came [name] to me known, who being by me duly sworn, did depose and say that she/he resides at _____, that she/he is [title] of [Person], the corporation described in and which executed the Trust Agreement pursuant to the Administrative Consent Order dated _____, 19____, that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that it was so affixed by Order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Notary Public]

APPENDIX G

STANDARD FULLY FUNDED TRUST AGREEMENT

The standard fully funded trust agreement contains references to [Person], [amount], and other blank brackets [] which the issuing institution shall fill in as appropriate when issuing the fully funded trust agreement.

FULLY FUNDED TRUST AGREEMENT

RE: RESPONSIBLE PARTY SITE REMEDIATION

ADMINISTRATIVE CONSENT ORDER executed on [date] by the New Jersey Department of Environmental Protection and [PERSON] for the investigation and clean-up of the contaminated site located at [include lot and block numbers, municipality and county]

Trust Agreement, "Agreement", entered into as of [date] by and between [Person] known as "Grantor" and issuing institution the "Trustee".

Whereas, the New Jersey Department of Environmental Protection, "NJDEP", an agency of the State of New Jersey, has entered into an Administrative Consent Order with Grantor dated _____, 19____, to clean up contamination identified at site and location, a copy of which is annexed hereto as Schedule "A", pursuant to which Grantor is obligated to establish a trust fund to assure the availability of funds to secure the performance of Grantor's obligations under that Administrative Consent Order.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

(c) The term "Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.

(d) The term "Beneficiary" means the New Jersey Department of Environmental Protection.

(e) The term "NJDEP" means the New Jersey Department of Environmental Protection.

Section 2. Identification of Industrial Establishment and Cost Estimates.

This Agreement pertains to the industrial establishments and cost estimates identified in Schedule "A".

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee and NJDEP, described in Schedule "B", attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for Cleanup.

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated _____ or "covered by the cleanup approved by the NJDEP on _____] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEP, from the Fund for cleanup expenditures in such amounts as the NJDEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund, as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

i. Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

ii. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

iii. The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though,

when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall, annually, at least 30 calendar days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 calendar days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 calendar days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Schedule "C". The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of a written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 15. Amendment of Agreement.

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 16. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act of omission[s], made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 19. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written:

[NAME OF GRANTOR]

DATE: _____

BY: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____

BY: _____

TITLE: _____

CERTIFICATION OF ACKNOWLEDGMENT
TO BE EXECUTED BY BOTH THE
GRANTOR AND TRUSTEE

State of _____

County of _____

On the ____ day of ____ before me personally came [name] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation] the corporation described in and which executed the Trust Agreement; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is [was] so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

Schedule A

Instructions to the Grantor:

Include here a copy of the Administrative Consent Order.

Schedule B

Instructions to the Grantor:

Include here the initial amount of money the Administrative Consent Order requires you to deposit in the standby trust fund

\$____ in cash

\$____ in securities

Schedule C

Instructions to the Grantor:

Include here the required information of your designee for communications with the Trustee.

Individual's name

Title

Company

APPENDIX H

STANDARD SURETY BOND

The standard surety bond contains references to [Person], [amount], and other blank brackets [] which the issuing institution shall fill in as appropriate when issuing the surety bond.

SURETY BOND

RE: ADMINISTRATIVE CONSENT ORDER executed on [date] by the New Jersey Department of Environmental Protection and [PERSON] for the investigation and cleanup of the contaminated site located at [include lot and block numbers, municipality and county]

Date bond executed: _____

Effective date: _____

Principal: [Legal name and business address of owner or operator of the industrial establishment]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation _____

Surety(ies): [names and business addresses]

Total penal sum of bond: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEP dated [date], under which Principal has agreed, among other things, to undertake certain actions in order to comply with the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Solid Waste Management Act, N.J.S.A. 58:10-23.11 et seq., and all obligations set forth by the Administrative Consent Order executed for the above referenced property.

WHEREAS, said Principal is required to provide financial assurance in the amount equal to or greater than the cost estimate for implementation of the obligations set forth by the Administrative Consent Order date ____.

WHEREAS, the condition of this obligation is such that, if Principal shall promptly and faithfully perform its obligations under the Administrative Consent Order, then this obligation shall be null and void; otherwise the surety bond shall remain in full force and effect to assure and guarantee the performance and implementation of all obligations set forth by the Administrative Consent Order for this site.

WHEREAS, said Principal shall establish a standby trust fund as is required by the Administrative Consent Order when a surety bond is used to provide a mechanism for access by NJDEP to all or part of such financial assurance required by the Administrative Consent Order to assure

performance of the implementation of all obligations set forth by the Administrative Consent Order.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under the Administrative Consent Order, whenever required to do so, regarding each site for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Surety(ies) shall place funds in the amount guaranteed for the investigation and cleanup of the site into the standby trust fund as directed by the NJDEP within ten (10) days of receipt of NJDEP's notification.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP contact referenced above; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts, nor shall cancellation occur while proceedings to enforce the terms of the Administrative Consent Order are pending or actions to a violation of the Administrative Consent Order are underway.

The Principal may terminate the bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and the Surety(ies) and that the wording of this surety bond is identical to the wording required by the Administrative Consent Order dated ____.

Principal
[Signature(s)]
[Date]
[Name(s)]
[Title(s)]
[Corporate Seal]
[Name and address]

State of incorporation: _____
Liability limit: _____
[Signature(s)]
[Date]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above].
Bond premium: _____

APPENDIX I

OVERSIGHT COST FORMULA

I. Formula

Administrative Cost Recovery Formula = A + B as detailed below.

A. Case Management Team

Staff members—including case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, etc.—who have coded to the site-specific project activity code (PAC) reflecting direct hours worked on the case. Actual hours and salaries for all staff members using the specific PAC will be included in the formula calculations.

(Sum of coded hours x hourly rates) x additive factor x fringe benefit factor x indirect cost factor = A

B. Direct Costs

Represents any non-salary direct site-specific costs such as laboratory analysis contractor expenses, etc. These costs will be billed directly to the responsible party as a formula add on.

Direct costs = B

II. Factor Definitions

The values for the various factors are subject to change on an annual basis. The Department will publish those factors in the New Jersey Register on an annual basis to inform the public of revised rates.

Salary Additive Rate—22.0%

The NJDEP salary additive represents the prorated percentage of charges attributable to employees' reimbursable "down-time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular site/project.

Fringe Benefit Rate

The New Jersey Office of Management and Budget negotiates with the United States Department of Health and Human Services for a composite fringe benefit rate of a certain percentage of base salaries. The rate is applicable to personnel who are members of the Public Employees' Retirement System (PERS) and covers charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance and unused sick leave. The employer's share of FICA taxes is added to the composite fringe benefit rate. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, Dedicated and Non-State programs.

Indirect Cost Rate

The indirect cost rate is developed for this program in accordance with Federal OMB Circular A-87, "Cost Principles for State and Local Governments". Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

The components of the Department's indirect cost rate include indirect salaries and various indirect non-salary costs incurred by Department management, the Division of Publicly Funded Site Remediation, the Division of Responsible Party Site Remediation, and divisional indirect offices—i.e., Commissioner, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

Also, building rent and the Departmental allocation as determined by the Department of Treasury in the Statewide Cost Allocation Plan are includable as indirect costs. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

The total of these indirect costs divided by the total direct costs of these programs determine the indirect cost rate.

Notice of Rates.
See: 25 N.J.R. 3561(b).
Notice of Rates, FY 1995.
See: 27 N.J.R. 1580(a).