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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).

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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope

(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.