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CHAPTER 26B

INDUSTRIAL SITE RECOVERY ACT RULES

Authority

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

Source and Effective Date

R.1997 d.498, effective November 17, 1997.
See: 29 N.J.R. 16(a), 29 N.J.R. 4913(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26B, Industrial Site Recovery Act Rules, expires on May 16, 2003. See: 34 N.J.R. 2407(a).

Chapter Historical Note

Chapter 26B, Environmental Cleanup Responsibility Act Rules, was adopted as R.1987 d.528, effective December 21, 1987 (operative January 1, 1988). See: 19 N.J.R. 681(a), 19 N.J.R. 2435(a).

Pursuant to Executive Order No. 66(1978) Chapter 26B was readopted as R.1992 d.497, effective November 18, 1992. See: 24 N.J.R. 2773(b), 24 N.J.R. 4524(a).

Chapter 26B, Environmental Cleanup Responsibility Act Rules, was repealed and a new Chapter 26B, Industrial Site Recovery Act Rules, was adopted by R.1997 d.498, effective November 17, 1997. See: Source and Effective Date.

Law Review and Journal Commentaries

Overturning Environmental Regulations: A Primer on Breaching the Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (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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SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Industrial Site Recovery Act, P.L. 1993 c.139 (N.J.S.A. 13:1K-6 et seq.).

7:26B-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act.

7:26B-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operations to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

7:26B-1.4 Definitions

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

“Act” or “ISRA” means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

“Agricultural commodity” means any plant or part thereof, or animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

“Applicable remediation standard” means a remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Area of concern” means any area defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Authorization letter” means a written statement issued by the Department that authorizes an owner or operator of an industrial establishment to transfer ownership or operations or in the case of a cessation of operations, authorizes the cessation of operations as it relates to the owner and operators obligation to remediate the industrial establishment.

“Authorized agent” means the person authorized to receive correspondence or communications, on behalf of the person responsible for conducting the remediation of the industrial establishment, for matters covered by this chapter.

“Change in ownership” means, unless otherwise provided at N.J.A.C. 7:26B-2.2:

1. The sale or transfer of the business of an industrial establishment;

2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;

3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;

4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:

i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;

ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or

iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

5. The sale or transfer of the sole general partner's entire interest in a limited partnership where the limited partnership is one of the following:

i. The limited partnership is the direct owner or operator of the industrial establishment; or

ii. The limited partnership has the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

6. The reorganization of a general or limited partnership into a corporation, limited liability company, limited liability partnership or other similar business entity;

7. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

8. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment; and

9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an industrial establishment, where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b), that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment.

"Closing operations" means, unless otherwise provided at N.J.A.C. 7:26B-2.4:

1. The cessation of operations which, as measured on a constant, annual date-specific basis, within any five-year period:

i. Results in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment; or

ii. For industrial establishments which product output is undefined:

(1) Results in at least a 90 percent reduction in the number of employees; or

(2) Results in at least a 90 percent reduction in the area of operations of an industrial establishment;

2. Any temporary cessation of operations of an industrial establishment for a period greater than two years;

3. An industrial establishment becomes nonoperational for health or safety reasons as a result of a judicial proceeding or final agency action;

4. The initiation of bankruptcy proceedings pursuant to Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq.;

5. Any change of operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to ISRA;

6. The termination of a lease or sublease, unless there is no disruption in operations of the industrial establishment; and

7. The assignment of a lease or sublease, unless there is no change in the operator of the industrial establishment

and there is no disruption in operations of the industrial establishment.

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

"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity based on the criteria in N.J.A.C. 7:26B-2.2(d). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(d), this definition does not require that a person submit an application for an applicability determination in order for a person or transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(d).

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department's ability to reach those assets, or otherwise hinder the owner's or operator's ability to remediate the industrial establishment based on the criteria in N.J.A.C. 7:26B-2.2(c). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(c), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(c).

"Department" means the New Jersey Department of Environmental Protection.

"Direct owner or operator" means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance or hazardous waste into the waters or onto the lands of the State.

"Engineering controls" means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"GIN" means General Information Notice described at N.J.A.C. 7:26B-3.3(a).

"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 waste defined as such pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., that is further defined as a hazardous waste pursuant to the Solid Waste Regulations, N.J.A.C. 7:26-1.6.

“Indirect owner” means any person who holds a controlling interest in a direct owner or operator, holds a controlling interest in another indirect owner, or holds an interest in a partnership which is the indirect owner or a direct owner or operator, of an industrial establishment.

“Industrial establishment” means any place of business or real property at which such business is conducted, having the primary SIC major group number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in, and determined in accordance with, the procedures described in the SIC manual and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. Except as provided below for lease properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For lease properties, the industrial establishment includes the leasehold and any external tank, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold.

“Innovative remedial action technology” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Negative declaration” means a written declaration, submitted by the owner or operator of an industrial establishment, or other person assuming responsibility for the remediation under ISRA and this chapter, to the Department certifying that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with N.J.A.C. 7:26E.

“No further action letter” means a written determination by the Department that, based upon an evaluation of the historical use of the industrial establishment, or of an area of concern or areas of concern, as applicable, and any other investigation or action the Department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the industrial establishment or area(s) of concern, or any other property to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, or that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the industrial establishment have been remediated in accordance with applicable remediation regulations. The Department may issue a “no further action letter” if hazardous substances or hazardous wastes remain on the industrial establishment or any other property with appropriate engineering and institutional controls.

“Operator” means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

“Owner” means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an owner of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

“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 within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

“Preliminary assessment” means the first phase of remediation defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial action” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial action workplan” means a plan defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remedial investigation” means those actions to investigate a discharge defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Remediation agreement” means a document the Department issues for the transfer of an industrial establishment prior to the completion of the remediation.

“Restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Restricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E-1.8.

“SIC” means Standard Industrial Classification.

“SIC manual” means the edition of the Standard Industrial Classification manual, prepared by the Office of Management and Budget in the Executive Office of the President of the United States, in effect at the time of the transaction.

“Site investigation” means the collection and evaluation of data defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Transferring ownership or operations” means:

1. Any transaction or proceeding through which an industrial establishment undergoes a change in ownership;

2. The sale or transfer of more than 50 percent of the assets of an industrial establishment, excluding real property within any five-year period as measured on a constant, annual date-specific basis. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery;

3. The execution of a lease for a period of 99 years or longer for an industrial establishment;

4. The dissolution of an entity that is an owner or operator or indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred; or

5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, “family” means any of the relations included at N.J.A.C. 7:26B-2.1(a)4.

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8.

“Unrestricted use standard” means a remediation standard as defined in N.J.A.C. 7:26E.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Rewrote “Applicable remediation standard”, “Remedial action” and “Remediation” or “remediate”; inserted “Area of concern”, “Engineering controls”, “Innovative remedial action technology”, “Institutional controls”, “Limited restricted use remedial action”, “Restricted use remedial action”, and “Unrestricted use remedial action”; and deleted “Declaration of environmental restriction”.

7:26B-1.5 Forms and submissions

Any forms or applications required by this chapter may be obtained from and returned to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection
401 East State Street
PO Box 028
Trenton, New Jersey 08625-0028

7:26B-1.6 Certifications and signatories

(a) Any person submitting an application, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include the certification provided at (c) below, as applicable. The person submitting the certification provided at (c) below shall sign the certification in accordance with (e) below.

(b) Any person submitting a remediation agreement application or remediation agreement amendment application to the Department pursuant to ISRA and N.J.A.C. 7:26B-4 shall include the certifications provided at (d)1, 2 and 3 below in addition to the certification required pursuant to (a) above, prior to the Department’s issuance of the remediation agreement or a remediation agreement amendment. The person submitting the certifications provided at (d)1, 2 and 3 below shall sign the certifications in accordance with (e) below.

(c) The following certification is for any application, workplan, report or other request to the Department pursuant to ISRA and this chapter:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, To the best of my knowledge 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 N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13.”

(d) The following certifications are for any remediation agreement application or remediation agreement amendment application submitted to the Department pursuant to ISRA and N.J.A.C. 7:26B-4:

1. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I am fully aware of the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 et seq., as it pertains to the remediation of the industrial establishment subject to this remediation agreement. Specifically, I am fully aware of the responsibilities of the owner or operator of the industrial establishment to remediate the site in accordance with ISRA and this chapter. I acknowledge that a remediation agreement has been requested to allow the transaction referenced in the remediation agreement application to proceed prior to completion of all ISRA compliance requirements and that the person entering into the remediation agreement is agreeing to comply with all ISRA requirements. I further acknowledge that the execution of a remediation agreement shall not release [Person] from any responsibilities [Person] have pursuant to ISRA and this chapter."

2. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I acknowledge that the transaction and industrial establishment that are the subject of this remediation agreement is a transfer of ownership or operations of an industrial establishment as defined by ISRA and N.J.A.C. 7:26B. I further acknowledge that [Person] is subject to penalties for violations of ISRA and this N.J.A.C. 7:26B. I am fully aware of [Person's] responsibilities to allow the Department access to the subject industrial establishment and of the requirements to prepare and submit any documents relevant to the remediation of the subject industrial establishment as required by the Department."

3. The purchaser, transferee, or lessee of the industrial establishment shall execute the following certification:

"I hereby certify that [Person] is the transferee and/or new lessee of the industrial establishment subject to this remediation agreement. I have read this application and am aware of the requirements and conditions of ISRA and the remediation agreement. [Person] expressly agrees to allow the Department, seller, previous owner, previous operator, any other person subject to the remediation agreement, and any of their respective agents or assignees the right to enter the industrial establishment after the ISRA-subject transaction has taken place and/or the lease has been executed for completion of the remediation of the industrial establishment. Additionally, I acknowledge and understand that if a restricted use or limited restricted use remedial action is warranted at the subject industrial establishment, institutional controls and engineering controls as defined in N.J.S.A. 13:1K-6 et seq., N.J.S.A. 58:10B-1 et seq., N.J.A.C. 7:26C, N.J.A.C. 7:26E and N.J.A.C. 7:26B may be necessary."

(e) The certifications required by (a) and (b) above shall be executed as follows:

1. For a corporation or limited liability company, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official; or

4. By a duly authorized representative of the corporation, partnership, sole proprietorship, municipality, state or Federal or other public agency, as applicable. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described in (e)1, 2 or 3 above and the authorization meets the following criteria:

i. The authorization specifies either an individual or a position having responsibility for the overall operation of the industrial establishment 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);

ii. The written authorization is submitted to the Department; and

iii. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

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

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (d)3, rewrote the last sentence of the certification.

7:26B-1.7 Department review

(a) The Department shall review and approve or disapprove all submissions by an owner or operator based on the following criteria:

1. Whether the remediation workplan and report was prepared, implemented or completed in compliance with N.J.A.C. 7:26C, 7:26E and this chapter;

2. Whether all the information and documents required to be submitted to the Department have been submitted; and

3. Whether the information submitted is sufficient, complete or accurate.

7:26B-7.6 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information

to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure;
2. The date on which disclosure was made;
3. The name of the person to which disclosure was made; and
4. A description of the information disclosed.

7:26B-7.7 Security procedures

(a) Submissions to the Department pursuant to this chapter will be opened only by persons authorized by the Department engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:26B-1.5.

(c) The Department shall store all submissions entitled to confidential treatment as determined at N.J.A.C. 7:26B-7.3 in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

SUBCHAPTER 8. FEE SCHEDULE AND DIRECT BILLING FEES

7:26B-8.1 Fee schedule

(a) Except as provided below, the owner or operator shall pay all applicable fees required by this section in accordance N.J.A.C. 7:26B-8.4, upon submittal to the Department of each and every request, application or submission listed below.

1. Applicability determination application	\$ 200.00
2. Area of concern waiver application†	200.00
3. Confidentiality claim	250.00
4. De minimis quantity exemption application	200.00
5. Expedited review application†	250.00
6. General Information Notice	100.00
7. Limited site review application†	450.00
8. Limited conveyance application†	500.00
9. Negative declaration review	100.00
10. Preliminary assessment report	250.00

11. Regulated underground storage tank waiver application†	500.00
12. Remedial action workplan deferral application†	750.00
13. Remediation agreement application	1,000.00
14. Remediation agreement amendment application	500.00
15. Remediation in progress waiver application†	250.00
16. Site investigation report	500.00

† This fee includes the costs of the Department's review of the General Information Notice required pursuant to N.J.A.C. 7:26B-3.2(a). Any person submitting this fee shall not be required to submit a separate General Information Notice fee.

(b) The applicable fees required by (a) above are nonrefundable.

(c) The fees required by (a) above are not one time fees but rather the fees required to perform the review of each specific submittal to the Department.

(d) Any fees required pursuant to (a) above that are subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

7:26B-8.2 Oversight costs

The owner or operator conducting the remediation of an industrial establishment pursuant to ISRA and this chapter shall submit payment to the Department pursuant to the provisions found in the rules for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.3 and submit payment pursuant to N.J.A.C. 7:26C-9.5.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).
Rewrote the section.

7:26B-8.3 Oversight cost review

To contest an oversight cost calculated pursuant to the rules for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C-9.3, the contestor shall follow the procedures found in N.J.A.C. 7:26C-9.4.

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).
Rewrote the section.

7:26B-8.4 Payment of fees

All fees required by this subchapter shall be made by certified check, attorney check, money order, or by personal check shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all fees shall be mailed to New Jersey Department of Environmental Protection, Division of Responsible Party Site Remediation, 401 E. State Street, PO Box 028, Trenton, New Jersey 08625-0028. Courier and hand deliveries may be made to 401 East State Street, 5th Floor, Trenton, New Jersey.

APPENDIX A

STANDARD ISRA REMEDIATION AGREEMENT

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

Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF :
 THE [Name of the site] SITE : REMEDIATION
 AND [Name of operator] : AGREEMENT
 AND [Name of owner] :
 ISRA Case # []

This Remediation Agreement is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "NJDEP") by N.J.S.A. 13:1D-1 et. seq., and the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et. seq., and duly delegated to the Assistant Director for the Industrial Site Evaluation Element within the 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 Remediation Agreement is operated by [full name of the direct owner] and 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 "[]" or "Site"). The Standard Industrial Classification ("SIC") numbers which best describe the operations at the [] industrial establishment are []. [Paragraph 1 will be repeated as 1.A, 1.B, etc. for each industrial establishment subject to this Remediation Agreement]

2. On [date], [Corporation/entity/individual] submitted to NJDEP an application for a Remediation Agreement pursuant to N.J.A.C. 7:26B-4.1. This Remediation Agreement application is incorporated herein by reference and includes the following information:

A. Transaction

Seller: []

Buyer: []

Description: []

B. Person(s) executing this Remediation Agreement and responsible for conducting the remediation of the [] industrial establishment. (hereinafter referred to as "Responsible Person(s)").

Lead Responsible Person:

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

Responsible Person: [Any other Person(s)]

Name: []

Business Association: []

Address: []

Telephone No. [() -] Fax No. [() -]

3. NJDEP and the [Responsible Person(s)] expressly agree that the terms and conditions of this Remediation Agreement shall apply separately to each of the industrial establishments listed in Paragraph 1 above. Furthermore, NJDEP and the [Responsible Person(s)] agree to administer and complete all applicable ISRA program requirements, including the remediation funding source requirements and any other remedial measures undertaken pursuant to this Remediation Agreement and ISRA, for the industrial establishment.

4. The transaction described in Paragraph 2.A above is the transfer of ownership or operations of an industrial establishment as defined by ISRA. NJDEP and [Responsible Person(s)] expressly agree that the transaction described in Paragraph 2.A above is subject to ISRA. [Responsible Person(s)] has requested that NJDEP prepare a Remediation Agreement which, when effective, will allow the transaction described in Paragraph 2.A above to be consummated prior to the completion of all administrative and remediation requirements pursuant to ISRA.

5. By entering into this Remediation Agreement, [Responsible Person(s)] 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 Remediation Agreement.

6. [OPTIONAL—[Responsible Person(s)] shall submit to NJDEP a certified check made payable to the "Treasurer, State of New Jersey" for \$[]00, no later than [Responsible Person(s)] execution and submittal to NJDEP of the Remediation Agreement. NJDEP's acceptance of the penalty shall not be construed as a waiver of NJDEP's right to compel [Responsible Person(s)] to specifically perform their obligations under this Remediation Agreement.]

7. [Additional provisions may be added at the NJDEP's discretion with the agreement of [Responsible Person(s)].

AGREEMENT

I. Remediation

1. [Responsible Person(s)] agrees to remediate the [] industrial establishment and to submit the following documents as established below:

A. Within [()] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or such additional time as authorized by NJDEP, [Responsible Person(s)] shall submit a preliminary assessment report, site investigation report, and remedial investigation workplan, as applicable, prepared in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [] industrial establishment.

B. Within [()] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or within [()] calendar days from receipt of NJDEP's written approval of the Remedial Investigation Workplan or longer as authorized by NJDEP, [Responsible Person(s)] shall submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [] industrial establishment.

C. Within [()] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or within [()] calendar days from receipt of NJDEP's written approval of the Remedial Investigation Report or longer as authorized by NJDEP, [Responsible Person(s)] shall submit a Remedial Action Workplan as applicable, prepared in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [] industrial establishment.

D. The NJDEP will review all documents in accordance with N.J.A.C. 7:26B and N.J.A.C. 7:26E.

2. If NJDEP determines any submittal made under this section is inadequate or incomplete, the NJDEP shall provide [Responsible Person(s)] with written notification of each deficiency, and [Responsible Person(s)] shall revise and resubmit the required information within thirty (30) calendar days or longer as authorized by NJDEP from receipt of such notification.

3. If the NJDEP determines that no further action is required at the [] industrial establishment, [Responsible Person(s)] shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6.6, within thirty (30) calendar days or longer as authorized by NJDEP from receipt of the NJDEP's request for the submission of the negative declaration.

4. Nothing in this Remediation Agreement shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the [] industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.

5. If at any time that this Remediation Agreement is in effect the NJDEP determines that the requirements of N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, [Responsible Person(s)] shall conduct such additional remediation as the NJDEP directs.

6. The NJDEP will consider a request for an extension of time to perform any requirement under this Remediation Agreement, provided that any extension request is submitted to the NJDEP fourteen (14) calendar days prior to any applicable deadline to which the extension request refers.

II. Remediation Funding Source

7. [Responsible Person(s)] shall establish and maintain a remediation funding source in a form pursuant to N.J.A.C. 7:26C-7 in the amount of \$[.00]. If [Responsible Person(s)] chooses and the Department approves in writing an innovative remedial action technology, unrestricted use or a limited restricted use remedial action for all or part of the remedial action, [Person] is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action.

8. Upon submission of the remediation funding source and annually thereafter, [Responsible Person(s)] shall submit a remediation funding source surcharge payment in an amount equal to one percent of the required amount of the remediation funding source. [Responsible Person(s)] shall submit to the NJDEP a cashier's or certified check payable to the "New Jersey Economic Development Authority" for the full amount of the remediation funding source surcharge. No surcharge is due on the amount of the remediation funding source established as self-guarantee or the amount of the remediation funding source that is established by financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

9. Whenever the remediation cost increases, [Responsible Person(s)] shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate within thirty (30) calendar days.

10. Whenever the remediation cost decreases, [Responsible Person(s)] may file a written request to NJDEP to decrease the amount in the remediation funding source. If NJDEP approves, [Responsible Person(s)] may decrease the remediation funding source upon receipt of NJDEP's written approval to the person who established the remediation

funding source and to the person or institution providing the remediation funding source.

11. NJDEP shall return the remediation funding source established upon [Responsible Person(s)] submission of a substitute remediation funding source or upon NJDEP's issuance of a no further action letter for the [] industrial establishment.

12. In the event that NJDEP determines that [Responsible Person(s)] has failed to perform any of its obligations under this Remediation Agreement or ISRA, NJDEP shall notify the [Responsible Person(s)] in writing of the obligation(s) with which it has not complied and [Responsible Person(s)] shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) calendar days or longer as authorized by NJDEP from receipt of such notification. If [Responsible Person(s)] fails to revise and resubmit the required information the schedule established above, NJDEP may perform the remediation in place of [Responsible Person(s)] making disbursements from the remediation funding source and may pursue any additional rights and remedies in accordance with N.J.S.A. 58:10B-3(g). Nothing in this paragraph shall prevent NJDEP from seeking civil or civil administrative penalties, costs and damages or any other legal or equitable relief against [Responsible Person(s)].

III. Project Coordination

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

14. Unless otherwise directed by NJDEP, any submission to be made to NJDEP in accordance with this Remediation Agreement and ISRA shall be directed to:

[Assistant Director]
Division of Responsible Party Site Remediation
401 East State Street
PO Box 028
Trenton, NJ 08625-0028

IV. Oversight Cost Reimbursement

15. All submissions required pursuant to this Remediation Agreement shall be accompanied by all appropriate fees pursuant to N.J.A.C. 7:26B-8.

16. Within thirty (30) calendar days after receipt from the NJDEP of a written summary, conforming to N.J.A.C. 7:26B-8.2, of the NJDEP's oversight costs, including all accrued interest incurred pursuant to the paragraph below, determined pursuant to N.J.A.C. 7:26B-8, [Responsible Person(s)] shall submit to the NJDEP a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A in accordance with N.J.A.C. 7:26B-8.4, for the full amount of the NJDEP's oversight costs. Nothing contained in the paragraph shall be construed to limit or restrict any person's ability to contest any oversight costs calculated pursuant to N.J.A.C. 7:26B-8.2 in accordance with the oversight cost review procedures at N.J.A.C. 7:26B-8.3.

17. 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.

V. Force Majeure

18. If any event specified in the following paragraph occurs which [Responsible Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Remediation Agreement, [Responsible Person] shall notify the NJDEP 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 measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Responsible Person] shall take all necessary action to prevent or minimize any such delay.

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

- (a) [Responsible 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 [Responsible Person]; and
- (c) [Responsible Person] has taken all necessary action to prevent or minimize any such delay.

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

21. "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 [Responsible Person] in fulfilling the requirements of this Remediation Agreement;

(c) Contractor's breach, unless [Responsible Person] demonstrates that such breach falls within paragraph 19 above; and

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

VI. Reservation of Rights

22. By entering into this Remediation Agreement, the NJDEP does not waive its right to seek, assess or collect civil or civil administrative penalties or any other legal or equitable relief against [Responsible Person(s)] for past, present and future violations by [Responsible Person(s)] of any New Jersey environmental statutes or regulations.

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

24. [Responsible Person(s)] admits that it has agreed to comply with the terms of this Remediation Agreement. Neither the entry into this Remediation Agreement nor the conduct of [Responsible Person(s)] hereunder, shall be construed as any admission of fact, fault or liability by the [Responsible Person(s)] under any applicable laws or regulations.

25. Except as otherwise set forth herein, by the execution of this Remediation Agreement the NJDEP does not release any person, including without limitation, [] from any liabilities or obligations such person may have pursuant to ISRA and the ISRA regulations, or any other applicable authority, nor does the NJDEP waive any of its rights or remedies pursuant thereto.

VII. General Provisions

26. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by [Responsible Person(s)] and the NJDEP. Any amendment to this Remediation Agreement shall be executed by the NJDEP and [Responsible Person(s)]. The NJDEP reserves the right to require the resolution of any outstanding violations ISRA or this Remediation Agreement prior to executing any such amendment.

27. This Remediation Agreement 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 industrial establishment or site shall alter signatory's responsibilities under this Remediation Agreement.

28. [Responsible Person(s)] agrees not to contest the authority or jurisdiction of the NJDEP to issue this Remediation Agreement; [Responsible Person(s)] further agrees not to contest the terms or conditions of this Remediation Agreement except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the NJDEP to enforce the provisions of this Remediation Agreement.

29. [Responsible Person(s)] shall provide to the NJDEP 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 five (5) calendar days prior to such action. [Responsible Person(s)] shall also provide written notice to the NJDEP of a filing of a petition for bankruptcy no later than five business days after such filing. These requirements 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.

30. For persons executing this Remediation Agreement on behalf of a corporate entity, [Responsible Person(s)] shall submit to the NJDEP, along with the executed original Remediation Agreement, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Responsible Person(s)] to the terms of this Remediation Agreement.

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

32. Except as otherwise provided, the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by [Responsible Person(s)] of written notice from the NJDEP that [Responsible Person(s)] has demonstrated, to the satisfaction of the NJDEP, that [Responsible Person(s)] has completed the substantive and financial obligations imposed by this Remediation Agreement. Such written notice shall not relieve [Responsible Person(s)] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Remediation Agreement.

33. Compliance with the terms of this Remediation Agreement shall not excuse any Person(s) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ISRA through this Remediation Agreement. The execution of this Remediation Agreement shall not excuse any Person(s) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that the Person(s) obtain and comply with any permits, and/or orders issued by NJDEP 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 Remediation Agreement if the terms and conditions of any such permit are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by the Person(s) 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 the Person(s) shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.

34. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the NJDEP and the [Responsible Person(s)]. [Responsible Person(s)] may consummate the transaction described at Paragraph 2.A above, upon the execution of this Remediation Agreement. [Responsible Person(s)] shall return a fully executed Remediation Agreement to the NJDEP together with the signature authorization required above within five business days from the effective date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____ By: _____
 _____, Assistant Director
 Site Remediation Program
 [NAME OF PERSON EXECUTING AGREEMENT]
 Date: _____ By: _____
 [of]

 Print Full Name Signed Above

 Title

Amended by R.1999 d.241, effective August 2, 1999.
 See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).
 In AGREEMENT, added a second sentence in 7, added a reference to days in 9, deleted a reference to Industrial Site Evaluation Element in 14, and changed N.J.A.C. reference in 16; and in NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, substituted a reference to Site Remediation Program for a reference to Responsible Party Cleanup Element.

APPENDIX B

STANDARD LANDLORD/TENANT PETITION

Landlord/Tenant Petition, Pursuant to N.J.S.A. 13:1K-11.9, Requesting the Department of Environmental Protection to First Compel the Other Responsible Person to Comply With the Industrial Site Recovery Act ("ISRA") Based Upon the Parties' Prior Agreement Pursuant to Their Lease.

Both the owner and operator of an industrial establishment are responsible for remediation of any industrial establishment pursuant to N.J.S.A. 13:1K-6 et seq. However, pursuant to N.J.S.A. 13:1K-11.9, where owner is the Landlord and operator is the Tenant and there has been a failure to comply with ISRA, either of those parties may petition the Department of Environmental Protection to request that the Department first compel the other party to comply with ISRA pursuant to a clearly articulated Lease between the parties concerning the subject industrial establishment. This Petition follows:

PETITION

["Name of Landlord or Tenant"] is the [Landlord or Tenant] for ISRA Case No. [] pursuant to a Lease entered into on [Date] with [Name of Landlord or Tenant], [Landlord or Tenant].

[Name of Landlord or Tenant] states that it desires the Department to exercise its discretion to first require [Name of Landlord or Tenant], who is the [Landlord or Tenant], to comply with ISRA with respect to the following property [Lot(s)/Block(s) and Leasehold unit number] the ("industrial establishment").

[Name of Landlord or Tenant] desires that if the Department is satisfied that the Lease clearly reflects an agreement by the parties to the Lease that [Name of Landlord or Tenant] is to be responsible for the ISRA obligations, the Department will agree to first pursue [Landlord/Tenant] to compel compliance with ISRA.

Attached for the Department's review are the following documents in support of this Petition.

1. Landlord's and Tenant's full names and current addresses;
2. A true and correct copy of the fully executed and dated subject Lease, together with any and all Addenda and Riders to that Lease;
3. A copy of the General Information Notice for the ISRA case referenced above;
4. True and correct copies of any and all contracts, agreements, orders and remediation agreements which [Name of Landlord or Tenant] believes may affect the interpretation of the subject lease and the parties' respective responsibilities and remediation obligations pursuant to ISRA and that Lease;

5. A narrative, which identifies, in [Name of Landlord or Tenant's] view, the pertinent sections in the lease, and interpretation of the those sections;

6. A separate, notarized Affidavit, executed by [Name of Landlord or Tenant], that articulates all relevant facts which, in [Name of Landlord's or Tenant's] view, support and explain any non-compliance with ISRA and the Lease;

7. Copies of any pleadings and discovery documents generated in any lawsuit involving the subject industrial establishment and/or the subject Lease;

8. Copies of any writings issued by the Department of Environmental Protection, to either ISRA responsible party or to any ISRA agent, concerning the subject Lease or the subject industrial establishment and the respective responsibilities of each such party concerning this ISRA transaction; and

9. Any other documents which [Name of Landlord or Tenant] believes may assist the Department in its determination.

Within thirty (30) calendar days after the Department determines that it has received a complete Petition, the Department will advise all parties to the lease of its determination as to whether the Lease is clear in identifying [Name of Landlord or Tenant] as responsible for complying with

ISRA under the Lease. [Name of Landlord or Tenant] understands that the Department may require further information, clarification or additional documentation in order to complete this Petition.

The information contained within this Petition, including any documents submitted to the Department in support of this Petition, is complete and accurate to the best of [Name of Landlord or Tenant's] knowledge, information and belief, and, by executing this Petition below, [Name of Landlord or Tenant] hereby certifies to its completeness and accuracy, and also, that [Name of Landlord or Tenant] will notify the Department immediately should new or additional information come to light which may have a bearing upon interpretations of the subject Lease, or the parties' respective ISRA responsibilities, under the lease.

Dated: _____
Name: _____
[Landlord or Tenant]
For ISRA Case No.
[]

Print Full Name Signed Above

Title

New Rule, R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).