

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

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

(d) A duly authorized representative of the person described in (c)1 through 3 above may sign the certification required in (a)1 and 2 above. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (c) 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); and

3. The written authorization is submitted to the Department along with the certification.

Amended by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Rewrote (a); deleted existing (b) and (c); recodified existing (c)1 and (c)2 as (a)1 and (a)2; deleted existing (c)2iv; recodified existing (d) as (b); and inserted new (c) and (d).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote the introductory paragraph of (a)1.

7:26C-1.3 Definitions

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

“Administrative consent order” means an administrative order which is signed by one or more persons and the Department; and may be in the form of a memorandum of understanding for public entities at the Department’s discretion.

“Applicant” means a corporation, partnership, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district that has applied to the Department for a loan or grant.

“Area of concern” means any location defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Authority” means the New Jersey Economic Development Authority.

“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.

“Conditional hardship grant” means a grant to an eligible owner or operator as provided in N.J.S.A. 58:10A-37.5.

“Contaminated site” means any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Contamination” or “contaminant” means any discharged hazardous substance as defined in N.J.S.A. 58:10-23.11b, hazardous waste as defined in N.J.S.A. 13:1E-38, or pollutant as defined in N.J.S.A. 58:10A-3.

“Covenant not to sue” means a document which shall be identical in wording to Appendix C, incorporated herein by reference.

“Deed notice” means a document defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

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

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Engineering controls” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Environmental medium” means any such medium defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“EPA” means the United States Environmental Protection Agency.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

“Hazardous substance” means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, at N.J.A.C. 7:1E-1.7.

“Hazardous waste” means any solid waste as defined in the Hazardous Waste Regulations, at N.J.A.C. 7:26G-5.

“Immediate environmental concern” means a condition defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Industrial establishment” means any place defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-8.

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

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

“Memorandum of agreement” means a written agreement between the Department and one or more persons to conduct remediation of a site or an area of concern.

“Memorandum of understanding” means an oversight document executed by the Department and a public entity, similar to the form of an administrative consent order.

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

“Natural resources” means all media defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“No further action letter” means a written determination by the Department that based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations.

“Operator” means any person defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

“Oversight costs” means all cleanup and removal costs as defined by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, that the Department incurs in overseeing the remediation conducted by the person responsible for conducting the remediation or in overseeing the remediation conducted by a contractor on behalf of the Department, calculated in accordance with the formula included at N.J.A.C. 7:26C-9.3.

“Oversight document” means any document the Department or a court issues to define the role of a person participating in the remediation of a contaminated site or area of concern, and may include, without limitation, an administrative order, administrative consent order, court order, memorandum of understanding, memorandum of agreement, or remediation agreement.

“Person responsible for conducting remediation” means a person responsible for conducting remediation as defined pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Petroleum” means petroleum defined pursuant to Underground Storage Tanks rules, at N.J.A.C. 7:14B-1.6.

“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” means the first phase in the process of identifying areas of concern defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-3.1.

“Public entity” means any county, municipality, or public school district, but shall not include any authority created by those entities.

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

“Regulated tank system” means an underground storage tank system defined pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B.

“Remedial action” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remedial action workplan” or “RAW” means a plan for the remedial action to be undertaken at a contaminated site defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

“Remedial investigation” means actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-13.1(d)	NM		\$12,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-13.1(e)1	NM		\$12,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)2	NM		\$12,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-13.1(h)	M	30	\$3,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-13.1(j)	M	30	\$3,000
Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.	7:14B-13.1(k)	M	30	\$3,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-13.1(l)	M	30	\$3,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).	7:14B-13.6(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-13.6(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$12,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-13.6.	7:14B-13.7(f)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM	Grace	\$12,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	M	30	\$3,000

New Rule, R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Former N.J.A.C. 7:26C-10.4, Procedures for requesting and conducting adjudicatory hearings, recodified to N.J.A.C. 7:26C-10.6.

Repeal and New Rule, R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Section was "Amount of a civil administrative penalty".

7:26C-10.5 Penalty adjustment factors

(a) For violations that meet the criteria set forth at N.J.A.C. 7:26C-10.4(a)4, the Department may adjust the base penalty listed in the table at N.J.A.C. 7:26C-10.4(c) based on the following factors:

1. The Department may increase the amount of the penalty based on the compliance history of the violator as follows:

i. The second time that the same violation occurs, the Department may increase the amount of the penalty by a factor of two; and

ii. The third time the violation occurs and for each subsequent occurrence, the Department may increase the penalty by a factor of five.

2. The Department may increase the penalty by up to 100 percent if the violation is the result of any intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

New Rule, R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Former N.J.A.C. 7:26C-10.5, Civil administrative penalty for economic benefit, recodified to N.J.A.C. 7:26C-10.7.

7:26C-10.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to this chapter.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the

Department of a written correction by the violator, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be up to \$20,000 for the first offense, up to \$40,000 for the second offense and up to \$50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of up to \$1,000 for the first offense, up to \$2,000 for the second offense and up to \$5,000 for the third and each subsequent offense.

(d) A violation under this section is non-minor and therefore is not subject to a grace period.

New Rule, R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Former N.J.A.C. 7:26C-10.6, Procedures for requesting and conducting adjudicatory hearings, recodified to N.J.A.C. 7:26C-10.9.

7:26C-10.7 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with any applicable requirements.

(b) The Department shall include the following dollar amounts in its calculation of economic benefit:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

2. The return earned or that may be earned on the amount of the avoided costs;

3. All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and