

**CHAPTER 26C**

**DEPARTMENT OVERSIGHT OF THE  
REMEDICATION OF CONTAMINATED SITES**

**Authority**

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

**Source and Effective Date**

R.2003 d.198, effective April 21, 2003.  
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

**Chapter Expiration Date**

Chapter 26C, Department Oversight of the Remediation of Contami-  
nated Sites, expires on April 21, 2008.

**Chapter Historical Note**

Chapter 26C, Department Oversight of the Remediation of  
Contaminated Sites, was adopted as R.1993 d.186, effective May 17,  
1993. See: 24 N.J.R. 1281(b), 25 N.J.R. 2002(a).

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).

Pursuant to Executive Order No. 66(1978), Chapter 26C was  
readopted as R.1997 d.499, effective October 23, 1997. As part of  
R.1997 d.499, Subchapter 2, Procedures for the Identification of the  
Appropriate Oversight Document, was renamed Oversight Documents;  
Subchapter 3, Memorandum of Agreement, was repealed and a new  
Subchapter 3, Administrative Process for Voluntary Cleanups was  
adopted; Subchapter 4, Spill Compensation and Control Act Directive;  
Subchapter 5, Administrative Consent Orders; Subchapter 6, Hazardous  
Discharge Site Remediation Fund; Subchapter 7, Remediation Funding  
Source; Subchapter 8, Site Access; Subchapter 9, Oversight Costs; and  
Subchapter 10, Civil Administrative Penalties and Requests for Adjudi-  
catory Hearings, were adopted as new rules; Appendix A, Standard  
Memorandum of Agreement; Appendix E, Standard Letter of Credit;  
Appendix F, Standard Standby Trust Agreement; Appendix G, Standard  
Fully Funded Trust Agreement; Appendix H, Standard Surety Bond;  
and Appendix I, Oversight Cost Formula, were repealed; Appendix C,  
Standard Responsible Party Oversight Document, was recodified as  
Appendix A, Standard Administrative Consent Order; and Appendix D,  
Standard Publicly Conducted Administrative Consent Order was  
recodified as Appendix B, effective November 17, 1997. See: 29 N.J.R.  
46(a), 29 N.J.R. 4957(a).

Chapter 26C, Department Oversight of the Remediation of  
Contaminated Sites, was readopted as R.2003 d.198, effective April 21,  
2003. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. GENERAL INFORMATION

**7:26C-1.1 Scope**

This chapter identifies the administrative procedures for a person to participate in the remediation of a contaminated site or of a potentially contaminated site under Department oversight, and presents the procedures to determine the applicable oversight document.

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), and eliminated the paragraph delineation; and deleted existing (b) through (d).

**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) Certifications, signed as specified in (b) below, shall be submitted to the Department as follows:

1. For workplans, reports and applications for grants and loans:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, 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. For remediation funding sources:

“I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-7 shall be maintained until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. 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.”

(b) The certifications required in (a)1 and 2 above shall be signed and dated original certifications, not photocopies, and shall be notarized.

(c) The person submitting the certification required by (a)1 and 2 above shall ensure that they are signed as follows:

1. For a corporation, 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; 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.

### 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.

“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.

**"Remediation agreement"** means an agreement defined as such pursuant to the Industrial Site Recovery Act Regulations, at N.J.A.C. 7:26B-1.4.

**"Remediation costs"** means all costs associated with the remediation, including the Department's oversight costs.

**"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.

"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.

"Restricted use standard" means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

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

"Underground storage tank" means an underground storage tank defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

"Unrestricted 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.

"Unrestricted use standard" means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

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

Amended "Administrative consent order", "Commissioner", "Contaminated site", "Department", "Directive", "Discharge", "Environmental medium", "Immediate environmental concern", "Memorandum of agreement", "Memorandum of understanding", "Natural resources", "Oversight document", "Owner", "Preliminary assessment", "Remedial action", "Remedial investigation", "Remediation", and "Site investigation"; added "Area of concern", "Contamination", "Declaration of environmental restrictions", "Engineering controls", "Financial assistance", "Industrial establishment", "Institutional controls", "ISRA", "No further action letter", "Operator", "Remedial action workplan", "Remediation agreement", "Restricted use standard", and "Unrestricted use standard"; and deleted "Contaminant", "Decision document", "ECRA", "Hazardous constituent", "Operable unit", "Operation, maintenance and monitoring", "Priority site", "Record of decision", "Remedial alternative analysis", "Remedial design", and "Solicitation document".

Amended by R.1998 d.155, effective April 6, 1998.

See: 29 N.J.R. 5154(a), 30 N.J.R. 1321(a).

Inserted "Applicant", "Authority", "Conditional hardship grant", "Fund", "Petroleum", "Public entity", "Regulated tank systems", "Underground storage tank", and "Underground storage tank system".

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Inserted "Covenant not to sue", "Innovative remedial action technology", "Limited restricted use remedial action", "Restricted use remedial action" and "Unrestricted use remedial action"; rewrote "Declaration of environmental restrictions" as "Deed notice"; and rewrote "Institutional controls".

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.

#### 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 Dispute resolution

(a) Any person conducting remediation with Department oversight may initiate the Department's dispute resolution process or the expedited dispute resolution process set forth in this section to resolve certain issues which arise that were not resolved at the case manager level, except as noted in (l) below.

(b) Any person conducting remediation with Department oversight may initiate this process by submitting a written request, to the section chief of the case manager overseeing the remediation of the site, which shall include all of the following:

1. The site name, address, and contaminated site list number;
2. The name of the case manager overseeing the remediation of the site;
3. The name, address, and telephone number, of the person making the request;
4. A summary of the issue not resolved including a brief discussion of why the Department's decision is not appropriate;
5. A description of previous efforts to resolve the issue;
6. A recommendation for resolution of the issue not resolved; and
7. A request for a meeting with the Department, if appropriate or desired.

(c) The section chief shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (b) above. The written response shall include the name, address, and telephone number of the bureau chief.

(d) If the requester is not satisfied with the resolution provided by the section chief, the requester may submit a written request for resolution of the issue to the bureau chief identified in the written response in (c) above. The written request shall include all the information in (b) above.

(e) The bureau chief shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (d) above. The written response shall include the name, address, and telephone number of the assistant director.

(f) If the requester is not satisfied with the resolution provided by the bureau chief, the requester may submit a

written request for resolution to the assistant director identified in the written response in (e) above. The written request shall include all the information in (b) above.

(g) The assistant director shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (f) above. The written response shall include the name, address, and telephone number of the director.

(h) If the requester is not satisfied with the resolution provided by the assistant director, the requester may continue the process in (b) through (g) above with the Director, Assistant Commissioner, and Commissioner or his or her designee.

(i) Any person may initiate the expedited dispute resolution process, instead of the process set forth in (b) through (h), above, by making a written request to the Commissioner or his or her designee, for an expedited review of the issue. The Commissioner, or his or her designee, shall issue a decision regarding the disputed issues within 21 calendar days after receipt of the request.

(j) If resolution of the disputed issues is not achieved through the process set forth in (b) through (i) above, the person may initiate the Department's alternate dispute resolution process by submitting a written request to the Commissioner.

(k) If resolution cannot be achieved through the alternate dispute resolution process and the Department determines the matter to be a contested case, the Department may transfer the matter to the Office of Administrative Law for scheduling of an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(l) The dispute resolution process set forth in (b) through (j) above does not apply to:

1. Issues regarding oversight costs;
  - i. Issues regarding oversight costs shall be resolved pursuant to N.J.A.C. 7:26C-9.4;
2. Technical issues which arise during Department oversight of remediation; or
3. Legal issues.

(m) The Department shall not act upon a request for dispute resolution unless it is submitted in writing and includes all the information in (b) above.

New Rule, R.1997 d.499, effective November 17, 1997.  
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Former N.J.A.C. 7:26C-1.4, "Liberal construction", recodified to N.J.A.C. 7:26C-1.7.  
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.

#### 7:26C-1.5 General provisions

(a) Any person that the Department allows to participate in the remediation of a contaminated site with Department oversight shall comply with the provisions of this section.

(b) A person conducting the remediation of a contaminated site with Department oversight shall pay all applicable oversight costs pursuant to N.J.A.C. 7:26C-9.

(c) Any person conducting remediation at a site pursuant to an oversight document or a court order shall, in addition to any other obligation required by law, notify the Department immediately upon knowledge of any condition posing an immediate environmental concern to the public health and safety or the environment. The Department may stop any remediation and any construction, improvement, or change at the contaminated site, due to the immediate environmental concern caused by contaminants.

(d) Nothing in this chapter 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 remedy which the party responsible for conducting the remediation may have under any applicable law or regulation.

(e) Failure to comply with the requirements associated with this chapter may result in the Department instituting proceedings to assess and collect civil or civil administrative penalties or penalties pursuant to N.J.A.C. 7:26C-10, or any other legal or equitable relief.

(f) 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. Except as otherwise stated in this chapter, 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.

(g) Nothing in this chapter prohibits a person from assessing or investigating a potentially contaminated site without the Department's oversight unless:

1. The Department issues a directive pursuant to N.J.S.A. 58:10-23.11f; or
2. The person has actual notice that the Department has begun publicly funded remediation.

New Rule, R.1997 d.499, effective November 17, 1997.

Remediation, N.J.A.C. 7:26E, at the time the no further action letter is issued;

3. For an entire site or one or more areas of concern, including all areas to which a discharge originating at the site or area of concern may have migrated, independent of a person's liability for the contamination or other status as a developer, responsible party, volunteer, or any other alleged status, except as specifically provided in this section; and

4. According to specific tax block and lot or other specific identification of the property that was remediated.

(b) The Department shall issue a no further action letter when the Department determines, based upon either a preliminary assessment or site investigation, that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standard;
2. The ground water remediation standards in the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.13; and
3. All other applicable remediation standards.

(c) The Department shall issue a no further action letter upon the completion of all remediation required by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including, without limitation, when, as applicable:

1. All contaminated soil has been remediated:
  - i. To the most stringent soil remediation standard; or
  - ii. Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard; and
2. All contaminated groundwater has been remediated:
  - i. To the applicable ground water quality standard; or
  - ii. The Department has:
    - (1) Determined, based upon eight quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards, at N.J.A.C. 7:9C, and approved a natural attenuation ground water remedial action;
    - (2) Estimated the time period during which the concentration of contaminants in the ground water will not meet the applicable remediation standard pursuant to the Ground Water Quality Standards, at N.J.A.C. 7:9C; and

(3) Established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3.

(d) The Department shall require additional remediation after it has issued a no further action letter for a site or area of concern if any of the following occur:

1. A discharge which occurred prior to the issuance of a no further action letter is discovered after the issuance of the no further action letter;
2. The Department adopts an amendment to a remediation standard that decreases the standard by an order of magnitude after the issuance of a no further action letter;
3. A contaminant exposure pathway from a discharge that predates the no further action letter is identified after the issuance of the no further action letter;
4. The person with the obligation to comply with the conditions of the no further action letter fails to do so; or
5. Other factors exist that demonstrate that the approved remediation is no longer protective of public health, safety and the environment.

(e) In any situation listed in (d) above, the Department may:

1. Rescind or modify a previously issued no further action letter;
  - i. The Department shall use its best efforts to notify the original recipient of the no further action letter, as well as the current owner and operator of the site that is the subject of the no further action letter, when rescinding or modifying the no further action letter; and
2. Require all additional remediation necessary to:
  - i. Fully implement any site remediation regulatory program; and
  - ii. Protect the public health and safety and the environment.

(f) The Department may rescind a no further action letter for failure to make complete payment of oversight costs due pursuant to N.J.A.C. 7:26C-9, provided such costs are not being contested pursuant to N.J.A.C. 7:26C-9.4.

(g) Pursuant to N.J.S.A. 58:10B-13.1, whenever the Department issues a no further action letter pursuant to this section, the Department shall issue the covenant not to sue included in Appendix C of this chapter, incorporated herein by reference, to the person(s) that conducted the remediation.

Repeal and New Rule, R.1997 d.499, effective November 17, 1997.

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

Section was "Court action".

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (a)1iii and (a)2iii, substituted references to deed notices for references to declarations of environmental restrictions; rewrote (d)1; and added (e) and (f).

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.

Administrative correction.

See: 37 N.J.R. 4245(a).

### SUBCHAPTER 3. ADMINISTRATIVE PROCESS FOR VOLUNTARY CLEANUPS

#### 7:26C-3.1 Scope

(a) This subchapter identifies the following:

1. The procedures and requirements for a person to request the Department's oversight of remediation through a memorandum of agreement;
2. The general requirements for a memorandum of agreement;
3. The procedures for termination of a memorandum of agreement; and
4. The procedures by which a person remediating a contaminated site pursuant to a memorandum of agreement, which the Department subsequently schedules for a publicly funded remediation, may continue the remediation of the site under a memorandum of agreement.

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

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

In (a), substituted "request" for "acquire" in 1, added a new 3 and recodified former 3 as 4.

#### 7:26C-3.2 Memorandum of agreement application

(a) Any person not subject to the New Jersey Underground Storage of Hazardous Substances Act or the Industrial Site Recovery Act may request the Department's oversight of remediation or any phase thereof at a site which the Department has not scheduled for publicly funded remediation by submitting a memorandum of agreement application including the following information:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot. In addition, submit the following information if known: Department case name and case manager name, program interest name, program interest number (preferred ID), acreage and geographic boundaries;
2. The name, address, and telephone number of the current property owner;
3. The name, address, and telephone number of the current business operator and/or business owner of the site;
4. A detailed description of the scope of remediation for which Department oversight is being requested, including a detailed schedule pursuant to N.J.A.C. 7:26E; and

5. The name, address, email address, and telephone number of the applicant's contact.

(b) The Department shall review the application and shall respond in writing, within 30 calendar days after receipt of the application, to the contact person identified in the application as follows:

1. The Department has determined that the memorandum of agreement application is administratively complete and the Department has decided:

- i. To accept the applicant's offer to conduct the remediation; or
- ii. Not to accept the applicant's offer to conduct remediation because:

(1) The applicant has not fulfilled its prior agreement to pay the Department's oversight costs for oversight of remediation for another site or for a previous remediation phase at this site; or

(2) The Department has otherwise decided not to allow the applicant to conduct the remediation, in which case the Department will list the factors that have aided the Department in making its determination not to accept the applicant's offer; or

2. The Department has determined that the memorandum of agreement application is administratively incomplete and shall inform the applicant of any deficiencies and any additional information necessary for the Department's review.

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.

#### 7:26C-3.3 Memorandum of agreement by rule

(a) Upon the applicant's receipt of the Department's written acceptance of the applicant's offer to conduct the remediation, pursuant to N.J.A.C. 7:26C-3.2(b)1i, the applicant has a memorandum of agreement with the Department which includes:

1. The application;
2. The Department's written acceptance; and
3. The following provisions:

i. The applicant shall pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-9 and this obligation continues, for those oversight costs that have accrued prior to termination, after the Department's termination of the memorandum of agreement;

ii. The applicant shall conduct all remediation pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

iii. Within 30 calendar days after the Department's receipt of any submission pursuant to the memorandum of agreement, the Department shall inform the person conducting the remediation in writing of any administrative deficiencies in the submittal, pursuant to N.J.A.C. 7:26E, that shall prevent the Department from conducting its review and of a date for the person conducting the remediation to re-forward the revised submittal to the Department. Once the Department determines that the submission is administratively complete, the Department shall notify the person conducting the remediation in writing of the time frame required for the Department to complete the review. This review shall include a determination by the Department whether or not all remediation activities have been carried out consistent with applicable rules, standards, and guidelines; and

iv. The applicant shall immediately notify the Department in writing of any change of identity, address, or telephone number of the contact;

(b) The procedure for the person responsible for conducting the remediation to have the Department terminate a memorandum of agreement is as follows:

1. The person responsible for conducting the remediation pursuant to a memorandum of agreement may request that the Department terminate the memorandum of agreement by:

i. Notifying the Department in writing of its request; and

ii. Submitting all data that the person has generated or collected concerning the site and contaminants at the site.

2. The Department shall cease review of any submittals under the memorandum of agreement on the date it receives the notice of intent to terminate described in (b)1i above.

3. Upon receipt of the person's request, the Department will send the person requesting the termination of a memorandum of agreement a bill for its outstanding oversight costs pursuant to N.J.A.C. 7:26C-9.1.

4. The person requesting termination of the memorandum of agreement shall reimburse the Department in full for all of that person's outstanding oversight costs.

5. When the Department determines that the person requesting the termination of the memorandum of agreement has complied with the requirements of (b)1 and 4 above, the Department will terminate the memorandum of agreement in a written letter to the person requesting the termination.

(c) The Department may unilaterally terminate a memorandum of agreement pursuant to this section as follows:

1. The Department determines that it is necessary to terminate a memorandum of agreement when the person responsible for conducting the remediation pursuant to the memorandum of agreement:

i. Has not made scheduled submissions to the Department for any six-month period or more;

ii. Has failed to pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-9;

iii. Has failed to submit documents required by a memorandum of agreement in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments; or

iv. When the Department has scheduled the site for publicly funded remediation and the person does not meet the conditions at N.J.A.C. 7:26C-3.4.

2. To terminate a memorandum of agreement pursuant to this section, the Department will notify the person responsible for conducting the remediation, in writing:

i. That the Department is ceasing review of any submittals under the memorandum of agreement;

ii. That the person is required to submit all data generated or collected, concerning the site and the contaminants at the site, that has not already been submitted;

iii. Of the amount of the person's outstanding oversight costs and that the obligation to pay oversight costs continues after the Department's termination of the memorandum of agreement pursuant to (a)3i above; and

iv. That the memorandum of agreement is terminated.

Amended by R.1999 d.241, effective August 2, 1999.

See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (b)3, substituted references to deed notices for references to declarations of environmental restrictions throughout, and inserted "responsible for conducting the remediation" following "person" in the second sentence; and in (c), inserted N.J.A.C. reference.

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.

**7:26C-3.4 Remediation of a site, scheduled for a publicly funded remediation, pursuant to a memorandum of agreement**

(a) The Department will provide written notification to the person responsible for conducting the remediation pursuant to a memorandum of agreement when the Department schedules the site for publicly funded remediation.

(b) The Department may, in its sole discretion, allow a person to continue remediation pursuant to a memorandum of agreement at a site which the Department subsequently schedules for publicly funded remediation if:

1. The person entered into the memorandum of agreement prior to the site being scheduled for publicly funded remediation;
2. That person is conducting remediation in compliance with all applicable regulations and approved schedules;
3. The memorandum of agreement includes all the phases of the remediation for the entire site, or is amended to include all of the phases of remediation for the entire site; and
4. That person submits to the Department a schedule to complete the remainder of the remediation, and the Department approves that schedule.

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.

2. The identity of those responsible parties receiving the directive;
3. The connection of each such responsible party to the discharge;
4. The nature of the necessary remediation or the estimated remediation costs;
5. The actions that the responsible parties are directed to take;
6. The manner and timetable for the undertaking of the remediation; and
7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) In those instances where the Department directs a responsible party to clean up and remove a hazardous substance, the Department will require 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 upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

(g) The responsible party 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 responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party 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 responsible party 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.

## SUBCHAPTER 4. SPILL COMPENSATION AND CONTROL ACT DIRECTIVE

### 7:26C-4.1 Scope

This subchapter identifies the procedures and requirements for a person to respond to a Spill Compensation and Control Act directive issued by the Department.

Amended by R.2003 d.198, effective May 19, 2003.  
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

### 7:26C-4.2 Spill Compensation and Control Act directive

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

1. Clean up and remove the discharge of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

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

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

1. The site of the discharge or threatened discharge;

1. Administrative orders issued pursuant to any of the Department's statutory authorities;
2. Administrative consent orders issued pursuant to N.J.A.C. 7:26C-5;
3. The Industrial Site Recovery Act Rules, specifically N.J.A.C. 7:26B-6;
4. Industrial Site Recovery Act remediation agreements issued pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
5. The Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-6 to 8;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; and
7. Declarations of environmental restrictions and deed notices established pursuant to N.J.A.C. 7:26E.

(b) This subchapter also governs the procedures for requesting an adjudicatory hearing on enforcement actions the Department takes pursuant to this subchapter.

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.

#### 7:26C-10.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a requirement of the Industrial Site Recovery Act Rules, a requirement of the Underground Storage Tanks rules, a requirement of the Discharges of Petroleum and Other Hazardous Substances rules, a deed notice, or a declaration of environmental restrictions constitutes an additional, separate and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Each day during which a violation continues constitutes an additional, separate, and distinct offense.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provisions provided for by any other statute in connection with the violation for which the assessment is levied.

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.

#### 7:26C-10.3 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations of an administrative order, an administrative consent order, a remediation agreement, a requirement of the

Industrial Site Recovery Act Rules, a requirement of the Underground Storage Tanks rules, a requirement of the Discharges of Petroleum and Other Hazardous Substances rules, a declaration of environmental restrictions, or a deed notice, the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. In each notice of civil administrative penalty assessment, the Department shall:

1. Identify the provisions violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty assessed pursuant to N.J.A.C. 7:26C-10.4; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-10.6.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a notice of civil administrative penalty becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:26C-10.6, a notice of civil administrative penalty assessment becomes a Final Order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a notice of civil administrative penalty assessment becomes a Final Order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

(c) If the violator does not pay a civil administrative penalty within 30 calendar days after the date of a Final Order, and the penalty is not contested pursuant to N.J.A.C. 7:26C-10.6, or if the violator does not make a required payment pursuant to a payment schedule entered into with the Department, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing and continue until the violator pays the penalty in full.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-10.6, and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on

that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.

(e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The Department may assess and recover, by civil administrative order, the reasonable cost of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, in addition to the penalty assessment.

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.

#### 7:26C-10.4 Amount of a civil administrative penalty

(a) The Department may assess a civil administrative penalty pursuant to this section against each person who violates:

1. An administrative order;
2. An administrative consent order;
3. A remediation agreement;
4. A requirement of the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B;
5. A requirement of the Underground Storage Tanks rules, N.J.A.C. 7:14B;
6. A requirement of the Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E;
7. A declaration of environmental restrictions or a deed notice; and
8. A requirement to pay a civil administrative penalty assessed pursuant to this subchapter.

(b) The Department shall assess a civil administrative penalty pursuant to (f) below, for each of the following non-minor violations of an administrative order or an administrative consent order:

1. Failure to perform interim remedial measures;
2. Failure to submit workplans in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments;
3. Failure to provide the Department with prior notice of all field work for remediation;
4. Failure to perform any work in a Department-approved workplan in accordance with a Department-approved schedule;

5. Failure to submit reports in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments;

6. Failure to submit an annual cost review;
7. Failure to establish and maintain sufficient funds in a remediation funding source;
8. Failure to pay the annual remediation funding source surcharge;
9. Failure to pay the Department's oversight costs;
10. Failure to pay penalties;
11. Failure to pay any other monies required by an administrative order or an administrative consent order; and
12. Failure to provide the Department access to the Site.

(c) The Department shall assess a civil administrative penalty pursuant to (f) below, for each of the following non-minor violations of a declaration of environmental restrictions or a deed notice:

1. Failure to comply with restricted uses pursuant to a declaration of environmental restrictions or a deed notice;
2. Failure to comply with conditions applicable to alterations, improvements and disturbances pursuant to a declaration of environmental restrictions or a deed notice;
3. Failure to notify the Department of any emergency as required by a declaration of environmental restrictions or a deed notice;
4. Failure to restore the property to pre-emergency conditions pursuant to a declaration of environmental restrictions or a deed notice;
5. Failure to comply with the monitoring and maintenance or protectiveness certification requirements pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8;
6. Failure to provide the Department access to the property as required pursuant to a declaration of environmental restrictions or a deed notice; and
7. Failure to provide the notices required pursuant to a declaration of environmental restrictions or a deed notice.

(d) The Department shall assess a civil administrative penalty pursuant to (f) below, for each of the following non-minor violations of the obligations concerning ground water classification exception areas pursuant to N.J.A.C. 7:26E-8.6:

1. Failure to evaluate changes in the applicable laws to determine if there are additional or different legal requirements pursuant to N.J.A.C. 7:26E-8.6(a)1;

2. Failure to identify planned changes in water use pursuant to N.J.A.C. 7:26E-8.6(a)2;
3. Failure to identify actual changes in ground water use pursuant to N.J.A.C. 7:26E-8.6(a)3;
4. Failure to inspect ground water monitoring wells pursuant to N.J.A.C. 7:26E-8.6(a)4;
5. Failure to identify land use disturbances pursuant to N.J.A.C. 7:26E-8.6(a)5;
6. Failure to determine whether changes in ground water use have influenced the protectiveness of the remedial action that includes the ground water classification exception area pursuant to N.J.A.C. 7:26E-8.6(a)6; and
7. Failure to assess the ground water quality pursuant to N.J.A.C. 7:26E-8.6(a)7.

(e) The Department shall assess a civil administrative penalty pursuant to (g) below, for all other violations as minor violations.

(f) The Department shall assess a civil administrative penalty for all non-minor violations in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
One to seven days	\$1,000 per calendar day
Eight to 14 days	\$2,500 per calendar day
15 days and over	\$5,000 per calendar day

(g) The Department shall assess a civil administrative penalty for all minor violations as follows:

1. The Department will provide the violator with written notice of each minor violation, including a description of the requirements that the violator has violated, the date that the violator was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to this section.
2. The Department will also establish a period not to exceed 30 calendar days for the violator to correct the minor violation.
3. If the violator corrects a minor violation within the time frame the Department specifies in its notice described in (g)2 above, the Department will not assess a penalty for that violation.
4. If the violator fails to correct a minor violation within the time frame the Department specifies in its notice described in (g)2 above, the Department shall assess a civil administrative penalty in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
One to seven days	\$ 500 per calendar day
Eight to 14 days	\$1,000 per calendar day
15 days and over	\$2,500 per calendar day

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.

**7:26C-10.5 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
4. All other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time nondepreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and
7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

New Rule, R.2003 d.198, effective May 19, 2003.  
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

**7:26C-10.6 Procedures for requesting and conducting adjudicatory hearings**

(a) To request an adjudicatory hearing to contest a notice of civil administrative penalty assessment or an administrative order assessed or issued pursuant to this chapter, the

violator shall submit an original request in writing to the Department at the address in (d) below, within 20 calendar days after the violator's receipt of the notice of civil administrative penalty assessment or an administrative order. The violator shall include the following information in each hearing request:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;
3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;
4. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order, stated in short and plain terms;
5. An admission or denial of each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;
6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
7. An estimate of the time required for the hearing (in days and/or hours); and
8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) The Department shall deny the hearing request if:

1. The violator fails to include all the information required by (a) above; or
2. The Department does not receive the request within 20 calendar days after the violator received the enforcement document being contested.

(c) The Department shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The violator shall send the request for an adjudicatory hearing to:

1. The Office of Legal Affairs

New Jersey Department of Environmental Protection

PO Box 402

Trenton, New Jersey 08625-0402

Attention: Hearing Request; and

2. New Jersey Department of Environmental Protection

Division of Remediation Support

PO Box 028

Trenton, New Jersey 08625-0028

Attention: Hearing Request.

Recodified from N.J.A.C. 7:26C-10.4 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.

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## SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

### 7:26C-11.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, to fund projects eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.

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.

### 7:26C-11.2 Application for loans and grants

(a) An applicant for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund shall submit an application on forms available from the Department and a written request, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, to the Department which includes the following information:

1. A statement by the applicant that the remediation is being conducted in accordance with an oversight document executed pursuant to N.J.A.C. 7:26C or that the upgrade or closure of an underground storage tank is being conducted pursuant to N.J.A.C. 7:14B. The statement shall include, as applicable, the name of the Department bureau overseeing the remediation, the program interest name and program interest number (preferred ID), if known, and the name of the assigned Department case manager;

2. For tanks regulated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-23, a statement by the applicant that the underground storage tank has been properly registered pursuant to N.J.A.C. 7:14B-2;

3. For underground storage tanks regulated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-23, the registration number;

4. A statement by the applicant as to whether the application is for a loan, a grant, or both;

5. A statement by the applicant as to which of the following provisions of the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 et seq., apply to the applicant's request:

i. A discharge of petroleum has occurred which poses an imminent and significant threat to drinking water sources, human health or to environmentally sensitive areas as defined pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

ii. The regulated tank is required to be upgraded pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 et seq., including necessary remediation;

iii. The regulated tank is required to be closed pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 et seq., including necessary remediation;

iv. The regulated tank is required to be upgraded pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., but not pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991, including necessary remediation;

v. The regulated tank requires the remediation of a discharge other than those given priority above;

vi. The regulated tank is required to be closed pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., but not pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991, including necessary remediation; or

vii. The underground storage tank requires the remediation of a discharge of heating oil from an

underground storage tank used to store oil for on-site consumption in a residential building;

6. A statement by the applicant whether an application has been made to any other funding source for a loan or grant, such as the Hazardous Discharge Site Remediation Fund or the New Jersey Spill Compensation Fund;

7. A statement as to whether the applicant has previously received monies from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund for the remediation, or the closure or upgrade of an underground storage tank;

8. A detailed description of the work to be completed under the loan and/or grant in accordance with the requirements of the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

9. A detailed cost estimate for the completion of work listed at (a)8 above. For an underground storage tank regulated pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B, a contractor certified pursuant to Underground Storage Tanks rules, at N.J.A.C. 7:14B-13, shall provide the cost estimate;

10. The total amount of loan or grant requested;

11. A statement as to whether the applicant is in violation of any Department requirements, or owes the Department any outstanding fees or penalties.

i. Any applicant not in compliance with all applicable Department rules and regulations shall submit a written description of, and explanation for such non-compliance, including a list of violations and outstanding fees, or penalties. The applicant shall specifically state whether the violations, fees, or penalties are currently being contested in a manner prescribed by law and whether the violations, fees or penalties resulted from a lack of financial resources to perform the required remediation;

12. For applicants other than public entities or owners or operators of an underground storage tank used to store heating oil for on-site consumption in a residential building, a statement that the applicant has applied to a bank, insurance company or other financial institution and has been rejected for a loan, grant or coverage. The applicant shall supply a copy of the rejection letter to the Department.

13. The last three annual financial statements of the applicant. An applicant who is a homeowner applying to remediate discharges at the applicant's domicile shall submit the applicant's last three Federal income tax returns; and

14. A certification by an applicant who is requesting a conditional hardship grant which states the following:

i. "I certify that I owned or operated the subject petroleum underground storage tank system(s) as of December 1, 1996 and continually thereafter or inherited the property from a person who owned the petroleum underground storage tank system(s) as of that date; and

(1) I have a taxable income less than \$100,000 per year;

(2) My net worth, exclusive of my primary residence, is less than \$100,000; or

(3) The net worth of my business that owns or operates less than 10 underground storage tank systems is less than \$2,000,000.

(b) A person seeking to amend their approved loan or grant award shall submit to the Department the information required in (a) above with respect to the amendment.

(c) The Department shall review the applicant's request for a loan and/or a grant, or amendment thereto, based on the information provided by the applicant in accordance with (a) above and shall notify the applicant in writing within 30 calendar days after receipt of the application as follows:

1. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively and technically complete and the Department has referred the request to the Authority for financial review in accordance with N.J.A.C. 19:31-11.

2. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively or technically incomplete and the Department cannot take further action on the application until the deficiencies listed in the Department's notification are corrected; or

3. The applicant is not eligible for a loan or grant, or amendment thereto, from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund and a statement of the reason(s) therefor.

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.

### 7:26C-11.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

1. The remediation costs were incurred after August 30, 1997; and

2. The remediation associated with the remediation costs was conducted with Department oversight.

New Rule, R.2003 d.198, effective May 19, 2003.  
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

### 7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-7.10 for the disbursement of funds.

New Rule, R.2003 d.198, effective May 19, 2003.  
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

## APPENDIX A

### STANDARD ADMINISTRATIVE CONSENT ORDER

The standard 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.

Prepared by

IN THE MATTER OF THE :

[Site name] : ADMINISTRATIVE  
CONSENT ORDER

AND :

[Name of Person] :

PROGRAM INTEREST :  
NUMBER

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through 19, the Solid Waste Management Act, N.J.S.A. 13:1E-1 through 91, and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 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 Administrative Consent Order.]

2. [The full name and mailing address of each party executing the Administrative Consent Order.]

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 nor waives any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order.

5. The scope of the investigation and remediation 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.

### ORDER

#### I. Remedial Investigation Requirements

6. Within [ ] calendar days after the effective date of this Administrative Consent Order or as otherwise approved in writing by the Department, [Person] agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E. [Person] agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

7. Within [ ] calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the RI Work Plan to conform to the Department's comments and agrees to 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 Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

8. Upon receipt of the Department's written final approval of the RI Work Plan, [Person] agrees to conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

9. [Person] agrees to submit to the Department a Remedial Investigation Report (hereinafter "RI Report") in accordance with N.J.A.C. 7:26E and the RI Work Plan and the schedule therein.

10. If upon review of the RI Report the Department determines that additional remedial investigation is required, [Person] agrees to conduct additional remedial investigation as required by the Department including submission of another RI Workplan and schedule, and submit another RI Report.

11. Within [ ] calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, [Person] agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise accept-

able to the Department shall be made solely by the Department in writing.

#### II. Remedial Action

12. Within [ ] calendar days after receipt of the Department's written approval of the RI Report, [Person] agrees to submit to the Department a Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

13. Within [ ] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the Department's comments and agrees to 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 Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

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

15. [Person] agrees to submit to the Department a Remedial Action Report (hereinafter "RA Report") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the RA Work Plan and the schedule therein.

16. If upon review of the RA Report the Department determines that additional remediation is required, [Person] agrees to conduct additional remediation as directed by the Department and agrees to submit subsequent RI Reports and RA Reports, as applicable.

17. Within [ ] calendar days after receipt of the Department's written comments on the RA Report, or longer as authorized by the Department, [Person] agrees to modify the RA Report to conform the Department's comments and agrees to submit the modified RA Report to the Department. The determination as to whether or not the modified RA Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

#### III. Additional Remedial Investigation and Remedial Action

18. If at any time that this Administrative Consent 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 remediation is required to protect the public

health and safety and the environment, [Person] agrees to conduct such additional remediation as the Department directs.

#### IV. Progress Reports

19. [Person] agrees to submit quarterly progress reports which detail the status of [Person's] compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). [Person] agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. [Person] agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. [Person] may request that the Department allow progress reports be submitted semi-annually or annually.

#### V. Project Coordination

20. [Person] agrees to submit to the Department all documents required by this Administrative Consent 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 Administrative Consent Order and the applicability of penalties and any other remedies available to the Department.

21. Within seven (7) calendar days after the effective date of this Administrative Consent Order, [Person] agrees to 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 Administrative Consent Order and [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to this agent of the date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

[Name, title, address and telephone number of [Person's] agent]

22. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, [Person] agrees to submit all payments and [number of copies] copies of all documents required by this Administrative Consent Order to the Department's contact.

23. [Person] agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to 21., above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

24. The Department will consider a written request for an extension of time to perform any requirement in this Administrative Consent Order, provided that [Person] submits any extension request to the Department two weeks prior to any applicable deadline to which the extension request refers.

#### VI. Remediation Funding Source and Remediation Funding Source Surcharge

25. [Person] agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. [Person] agrees that the initial remediation funding source amount is \$[ ].

26. [Person] agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

#### VII. Project Cost Review

27. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order, and annually thereafter on the same calendar day, [Person] agrees to submit to the Department a detailed review of all remediation costs expended by [Person] to comply with this Administrative Consent Order, including:

- (a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
- (b) The detailed estimated remediation costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
- (c) The reason for any changes from the previously submitted cost review.

28. 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 remediation funding source to reflect the remaining remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

29. If the estimated costs of meeting [Person's] obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, [Person] agrees to within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

30. If [Person] remediates the site to a restricted use remediation standard and [Person] implements institutional and engineering controls, [Person] shall maintain the remediation funding source, pursuant to N.J.A.C. 7:26C-7, in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.

#### VIII. Oversight Cost Reimbursement

31. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 33, determined pursuant to N.J.A.C. 7:26C-9.3, [Person] agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, for the period being charged.

32. [Person] agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.

33. [Person] also agrees to pay interest 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.

#### IX. Reservation of Rights

34. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that [Person] has violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, 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 to perform such obligation(s).

35. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this Administrative Consent Order. In any such action brought by the Department under

this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this Administrative Consent 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 Administrative Consent Order. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent 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 Administrative Consent Order.

36. This Administrative Consent Order shall not be construed 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.

37. Except as otherwise stated in this Administrative Consent 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 Administrative Consent 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.

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

#### X. Force Majeure

39. 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 Administrative Consent Order, [Person] agrees to 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] agrees to take all necessary action to prevent or minimize any such delay.

40. 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.

41. 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].

42. "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 Administrative Consent 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 Administrative Consent Order, unless denied by a court of competent jurisdiction.

#### XI. Penalties

43. [Person] agrees to pay penalties for its violations of this Administrative Consent Order, or for its violations of a deed notice or declaration of environmental restriction that is part of a remedial action implemented pursuant to the order, according to the amounts and conditions in this section.

44. [Person] agrees:

- (a) That each violation of any requirement, condition or deadline in this Administrative Consent Order constitutes an additional, separate, and distinct violation to which penalties apply;
- (b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;
- (c) To pay interest, at the rate set forth in the New Jersey Court Rules, R.4:42-11(a)i, on any unpaid penalty pursuant to this Administrative Consent Order commencing on the first day after it has agreed to pay a penalty pursuant to this Administrative Consent Order; and

(d) That nothing in this Administrative Consent Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order;

(e) That its payment of a penalty pursuant to this Administrative Consent Order does not alter [Person's] responsibility to complete any requirement of this Administrative Order; and

(f) To regard payments of penalties pursuant to this Administrative Consent Order as payments of civil or civil administrative penalties pursuant to the Spill Compensation And Control Act, N.J.S.A. 58:10-23.11 through 23.14.

45. [Person] agrees to pay a penalty for all violations of this Administrative Consent Order beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
1-7 days	\$ 500 per calendar day
8-14 days	\$1,000 per calendar day
15 days and over	\$2,500 per calendar day

46. The Department will provide [Person] with written notice of each violation, including a description of the conditions of this Administrative Consent Order that [Person] has violated, the date that [Person] was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 45, above.

47. [Person] agrees to pay each penalty required by this Administrative Consent Order by cashier's check or certified check payable to the "Treasurer, State of New Jersey," accompanied by DEP Form 062A and a letter referencing this Administrative Consent Order and the violations for which [Person] is submitting the payment within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 46, above.

48. [Person] agrees that nothing herein shall limit the Department's ability, upon [Person's] failure to pay a penalty pursuant to this Administrative Consent Order, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Administrative Consent Order.

49. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement] [List each non-DEP party to this Administrative Consent Order] are jointly and severally liable for penalties for violations of this Administrative Consent Order.

50. [Person] agrees to pay a penalty in the amount of the economic benefit (in dollars) which [Person] has realized as a result of not complying, or by delaying compliance, with the requirements of this Administrative Consent Order, including the following:

- (a) The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
- (b) The return earned or that may be earned on the amount of the avoided costs;
- (c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
- (d) All other benefits resulting from the violation.

51. [Person] agrees that the Department will consider the following factors in determining a penalty for economic benefit:

- (a) The amount of capital investments required, and whether they are one-time or recurring;
- (b) The amount of one-time nondepreciable expenditures;
- (c) The amount of annual expenses;
- (d) The useful life of capital;
- (e) Applicable tax, inflation and discount rates;
- (f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and
- (g) Any other factors relevant to economic benefit.

52. If the total economic benefit was derived from more than one violation, [Person] agrees that the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

## XII. Dispute Resolution

53. In the event a conflict arises between [Person] and the Department, [Person] may institute the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

## XIII. General Provisions

54. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site [Person] has access to, at all times, for the purpose of monitoring [Person's] compliance with this Administrative Consent Order and/or to perform any remedial activities [Person] fails to perform as required by this Administrative Consent Order. [Person] agrees that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph 34, above.

55. [Person] agrees to 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.

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

57. Nothing in this Administrative Consent Order relieves [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent 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 Administrative Consent Order. This Administrative Consent 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 Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent 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] agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

58. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

59. Upon the receipt of a written request from the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, [was] were developed pursuant to this Administrative Consent 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.

60. [Person] agrees to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

61. 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 [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.

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

63. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

64. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent 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 Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

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

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

67. This Administrative Consent 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 Administrative Consent Order.

68. [Person] agrees to preserve, during the pendency of this Administrative Consent 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 [Person's] divisions, employees, agents, accountants, contractors, or attorneys that 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] agrees to 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.

69. [Person] agrees to 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 in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] agrees to submit a cost review pursuant to this Administrative Consent Order to the Department. [Person] agrees to 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. 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. 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] agrees to obtain and submit to the Department additional financial assurance pursuant to this Administrative Consent Order.

70. If [Person] remediates the Site to a restricted use standard and [Person] implements institutional and engineering controls, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source. This Administrative Consent Order shall otherwise be terminated pursuant to paragraph 71 below.

71. If [Person] remediates contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department stating that [Person] has completed the remediation required by this Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent Order and therefore [Person] does not need to continue to maintain a remediation funding source nor pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Administrative Consent Order is thereby terminated. 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.

72. [Person] may assert a claim of confidentiality for any information submitted by [Person] pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

73. [Person] agrees to submit to the Department, along with two original copies of the [executed original] Administrative Consent Order, signed by [Person], documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind [Person] to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

74. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and [Person].

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title  
[Print Name of Company executing Order]

Date: \_\_\_\_\_ BY: \_\_\_\_\_

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

Recodified from N.J.A.C. 7:26C App. C and amended by R.1997 d.499, effective November 17, 1997.  
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Former N.J.A.C. 7:26C App. A, "Standard Memorandum of Agreement", repealed.

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

Under ORDER, deleted former II2, and recodified former II3 through II10 as II2 through II9, inserted VIII6, substituted references to deed notices for references to declarations of environmental restrictions in XIII19 and XIII20, and substituted "the Department approved deed notice with the county in which the property is located" for "a declaration of environmental restrictions" at the end of the first sentence in XIII19.

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.

APPENDIX B

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 CONSENT ORDER

AND :

[Name of Person] :

[Program Interest Number] :

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 N.J.S.A. 58:10B 1 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 party executing the administrative consent order.]
- 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 nor waives any rights or defenses with regard to the site except as specifically provided in this administrative consent order.

## 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 the Department's Form 062A to:

New Jersey Department of Environmental Protection  
Bureau of Revenue  
PO Box 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 [remedial 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) 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] as necessary.

4. The Department will allow [Person] to take split-samples of all samples collected during a sampling event as part of the [remedial phase] provided however, that [Person's] representatives do not in any way impede the progress of the [remedial phase].

### 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.