

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to prepare and submit a remedial action workplan that complies with all listed requirements.	7:26E-5.5	NM		\$15,000
Failure to apply for and obtain all required permits and comply with public notice requirements, prior to initiating the activity requiring the permit.	7:26E-5.6	NM		\$15,000
Failure to submit a remedial action report that conforms to the requirements of N.J.A.C. 7:26E-5.7.	7:26E-5.7	NM		\$15,000
Failure to conduct a remedial action within the required regulatory timeframe.	7:26E-5.8	NM		\$15,000

Administrative correction.
 See: 42 N.J.R. 1862(a).
 Amended by R.2011 d.072, effective February 22, 2011.
 See: 42 N.J.R. 2297(a), 42 N.J.R. 2360(a), 43 N.J.R. 389(c).
 In (b), rewrote the table.
 Amended by R.2011 d.251, effective October 3, 2011.
 See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).
 In (b), rewrote the table.
 Amended by R.2012 d.095, effective May 7, 2012.
 See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).
 In (a)1 and (a)4i, substituted "(b)" for "(c)"; and in (b), rewrote the table.

7:26C-9.6 Penalty adjustment factors

(a) For violations that meet the criteria set forth at N.J.A.C. 7:26C-9.5(a)4, the Department may adjust the base penalty listed in the table at N.J.A.C. 7:26C-9.5(c) based on the following factors:

1. The Department may increase the amount of the penalty based on the compliance history of the violator as follows:
 - i. The second time that the same violation occurs, the Department may increase the amount of the penalty by a factor of two; and
 - ii. The third time the violation occurs and for each subsequent occurrence, the Department may increase the penalty by a factor of five.
2. The Department may increase the penalty by up to 100 percent if the violation is the result of any intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

7:26C-9.7 Civil administrative penalty for submitting inaccurate or false information

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

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false informa-

tion to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

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

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be up to \$20,000 for the first offense, up to \$40,000 for the second offense and up to \$50,000 for the third and each subsequent offense; and
2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of up to \$1,000 for the first offense, up to \$2,000 for the second offense and up to \$5,000 for the third and each subsequent offense.

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

7:26C-9.8 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.

7:26C-9.9 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations listed in N.J.A.C. 7:26C-9.5(b), 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 provision 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-9.5; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-9.10.

(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-9.10, 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-9.6, 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-9.10 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.

Administrative correction.
See: 42 N.J.R. 2620(a).

7:26C-9.10 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, and if available, the fax number and email address, 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 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
Bureau of Enforcement and Investigations
PO Box 028
Trenton, New Jersey 08625-0028
Attention: Hearing Request

Administrative correction.
See: 42 N.J.R. 1862(a).

7:26C-9.11 Spill Compensation and Control Act directive

(a) A Spill Compensation and Control Act directive is a clear, written notice that the Department has determined that it is necessary to cleanup and remove discharges, and that notifies the respondents that the Department believes them to be responsible for the hazardous substances that were discharged.

(b) 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 or threatened 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.

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

1. The location of the discharge or threatened discharge;

2. The identity of those responsible parties receiving the directive;

3. The connection of each such responsible party to the hazardous substances at the site;

4. The scope 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 action pursuant to the directive; 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) 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.

(f) 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 (g) 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 comply with (g) below, indicating in writing that it chooses not to take any actions to comply with the directive.

(g) If the responsible party chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the responsible party shall submit a written response to the Department according to the requirements in the directive. The responsible party shall include in the response a detailed explanation of the person's reasons for its decision, including all good cause defenses to the directive.

Administrative correction.
See: 42 N.J.R. 1862(a).

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.1 Scope

(a) This subchapter contains provisions that:

1. Establish the eligibility requirements for technical assistance grants, at N.J.A.C. 7:26C-10.3;
2. Establish the pre-application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.4;
3. Establish the application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.5;
4. Establish the eligible technical assistance grant activities, at N.J.A.C. 7:26C-10.6; and

5. Establish the reporting requirements for a community group receiving a technical assistance grant, at N.J.A.C. 7:26C-10.7.

7:26C-10.2 General requirements

(a) The Department shall award a technical assistance grant in an amount not to exceed \$10,000 per remediation phase for each of the following phases of remediation:

1. The remedial investigation phase; and
2. The remedial action phase.

(b) The money awarded in a technical assistance grant shall be used for the limited purposes of hiring a licensed site remediation professional to support and advise a grant recipient concerning the technical assistance grant activities described at N.J.A.C. 7:26C-10.6(b).

(c) The Department shall not award a technical assistance grant to more than one community group at any one time for any contaminated site.

(d) The Department may provide reimbursement to any community group for costs incurred pursuant to N.J.A.C. 7:26C-10.4(d).

7:26C-10.3 Eligibility

(a) A community group is eligible for a technical assistance grant if it meets the following criteria:

1. One or more members of the community group lives near the site;
2. No member of the community group is associated with any person responsible for conducting the remediation of the site;
3. No person responsible for conducting the remediation of the site established or is currently supporting the community group;
4. The community group must not be affiliated with a national organization;
5. The community group is not an academic institution;
6. The community group does not consist of a political subdivision (example: township or municipality);
7. The community group is incorporated or in the process of incorporating;
8. The community group must be:
 - i. A non-profit organization pursuant to the Internal Revenue Code, 26 U.S.C. §501(c)3;
 - ii. In the process of obtaining status pursuant to 26 U.S.C. §501(c)3 status; or
 - iii. Be affiliated with a local organization that has obtained status under 26 U.S.C. §501(c)3 as a non-profit

organization for the specific purpose of representing the community;

9. The community group must have established procedures for recordkeeping and financial accounting in managing the technical assistance grant; and

10. The community group must have a commercial bank account in the name of the community group or the name of the 501(c)3 organization with which the community group has affiliated.

7:26C-10.4 Pre-application process

(a) A community group shall request that the Department make a finding of substantial public interest for each community group interested in applying for a technical assistance grant in connection with a particular contaminated site, as a condition of seeking a technical assistance grant, by submitting to the Department a petition containing the signatures of 25 or more people who live or work near the site.

(b) The Department will respond to a petition and inform the community group of whether or not it has met the requirements of substantial public interest.

(c) Within 30 days after receiving the Department's response, the community group shall submit to the Department's Office of Community Relations a Letter of Intent that includes the following information:

1. The name of the community group;
2. A description of the composition of the group, including a statement that the community group meets the eligibility requirements pursuant to N.J.A.C. 7:26C-10.3;
3. A statement of the group's intent to apply for a technical assistance grant;
4. The program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking the grant; and
5. The name and address of a contact person for the group and his or her daytime phone number.

(d) Upon submittal of the Letter of Intent to the Department, the community group shall publish a public notice in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site which includes the following information:

1. The program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking a technical assistance grant;
2. A statement that the community group has submitted a Letter of Intent to the Department as part of the process to acquire a technical assistance grant for the contaminated site;

3. The name of the community group, seeking the technical assistance grant, and its contact; and

4. A statement that any other community groups interested in a technical assistance grant for the same contaminated site have 60 days after the publication of the notice in the newspaper to submit a petition containing the signatures of 25 or more people who live or work near the site, requesting that the Department make a finding of substantial public interest for the community group, and that each community group must submit its own Letter of Intent to the Department.

(e) If the Department does not receive an additional petition and Letter of Intent within the prescribed time period, the Department will advise the community group in writing that it has 60 days to file an application for a technical assistance grant pursuant to N.J.A.C. 7:26C-10.5.

(f) If the Department receives additional petitions and Letters of Intent, all community groups filing letters will have an additional 60 days from the publication of the public notice to attempt to form a coalition. The Department's website at www.nj.gov/dep/srp/srra/community/ provides guidance about the coalition process.

(g) If multiple community groups apply for a grant for the same site and phase and no coalition is formed, the Department will not award a grant.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (a), (c)2, the introductory paragraph of (d) and (d)4; in (b), deleted "a" preceding "substantial"; in (e), inserted "petition and"; and in (f), inserted "petitions and" and substituted "60" for "30".

7:26C-10.5 Application for technical assistance grant

(a) An applicant for a technical assistance grant shall submit an application, on a form, found on the Department's website at www.nj.gov/dep/srp/srra/community/, which includes the following information:

1. A description of the community group, including:
 - i. The bylaws established by the community group;
 - ii. An explanation of how the community group is organized, including officers and purpose;
 - iii. An explanation of how the community group's board of directors, technical advisors, and project manager will interact with each other; and
 - iv. The name and address of contact person for the community group and his/her daytime phone number;
2. Documentation that the community group meets the eligibility requirements outlined in N.J.A.C. 7:26C-10.3(a); and
3. A financial plan, including:

- i. The total amount of money being requested in the technical assistance grant;
- ii. A budget that describes how the community group will spend the money;
- iii. A description of the work that will be undertaken with the assistance of a licensed site remediation professional;
- iv. An outline of how the community group will share information with the community in which the site is located; and
- v. A list of project milestones and a schedule for meeting those milestones;

(b) After reviewing the application for eligibility, administrative completeness, and technical acceptability, the Department will notify the contact person for the community group in writing as follows:

1. The community group is eligible, the application is administratively complete, technically acceptable and the Department approves the application for all or part of the amount requested, provided there are sufficient funds in the Remediation Guarantee Fund;
2. The application is administratively incomplete or technically unacceptable and the Department cannot take further action until the deficiencies listed in the Department's notification are corrected; or
3. The community group is not eligible for a technical assistance grant, with a statement of the reason(s) therefor.

(c) The Department reserves the right to deny any and all technical assistance grant applications.

Administrative correction.

See: 42 N.J.R. 1862(a).

Amended by R.2011 d.251, effective October 3, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

In the introductory paragraph of (a), substituted "form, found on the Department's website" for "Technical Assistance Grant Form available from the Department".

7:26C-10.6 Eligible technical assistance grant activities

(a) The community group shall use the technical assistance grant to hire a licensed site remediation professional that is not associated with any person responsible for conducting the remediation of the contaminated site.

(b) The community group shall use the technical assistance grant to offset the costs of the licensed site remediation professional to:

1. Interpret and comment on remediation documents, including technical reports and analytical data prepared by the person responsible for conducting the remediation;
2. Participate in public meetings concerning the contaminated site;

3. Evaluate the potential impacts of the remediation on the community based upon the information provided by the person responsible for conducting the remediation; and

4. Interpret site information that is ancillary to the remediation, including, but not limited to, public health and redevelopment information, as these issues may be relevant.

(c) The community group shall not use the technical assistance grant to fund:

1. Lawsuits or other legal actions, including payment of attorney fees for advice related to any kind of legal action or any activities that would result in an attorney/client relationship;
2. Political activity or lobbying;
3. Social, ceremonial or amusement activities and related costs, including meals, lodging, rentals, transportation, and tips;
4. Training or travel for any group member or the licensed site remediation professional;
5. Generation of new site-specific environmental data, such as soil and water data;
6. Resolving disputes with the Department; or
7. Epidemiological or health studies, such as urine or blood testing.

(d) The Department will issue payments upon the submission of invoices up to the amount of the technical assistance grant to the community group for documented technical assistance costs that are identified in the community group's approved budget and scope of work.

(e) If the community group or its licensed site remediation professional uses technical assistance grant funds for activities not identified in the approved budget and scope of work or for activities listed in (c) above:

1. The Department shall revoke the technical assistance grant and require reimbursement; and
2. The community group shall repay the portion of the grant that was used for activities not identified in the approved budget and scope of work or for activities listed in (c) above within 60 days of the revocation.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (e)1, substituted "shall" for "may"; and rewrote (e)2.

7:26C-10.7 Reporting requirements

(a) The community group shall submit the following reports to the Department for the duration of the technical assistance grant:

1. Annual progress reports which include the following information: