

1. Meets all applicable remediation standards without the need for the remedial action permit; and

2. Is protective of the public health and safety and of the environment without the presence of the remedial action permit.

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the form appropriate for the specific remedial action permit, found on the Department's website at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms), the following:

1. The name, address and telephone number of the permittee requesting termination of the permit;
2. The name, address and telephone number of the prospective permittee;
3. Site identification;
4. A detailed written rationale on why the permittee believes that the engineering or institutional controls, the remediation systems, or the remedial action implemented for the site no longer require oversight over time in order to be protective of the public health and safety and the environment;
5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix D to this chapter, incorporated herein by reference; and

6. Confirmation that the permittee requesting termination of the remedial action permit does not have any outstanding fees pursuant to N.J.A.C. 7:26C-4.

(c) Upon written notice that the Department has terminated a remedial action permit, the permittee may cease compliance with the remedial action permit that the Department has terminated and have the owner of the property file the termination of deed notice, if applicable.

Administrative correction.

See: 42 N.J.R. 778(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 (b), substituted "form" for "Remedial Action Permit Form" and "found on the Department's" for "available from the Department on its".

Recodified from N.J.A.C. 7:26C-7.10 and amended by R.2012 d.095, effective May 7, 2012.

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

In the introductory paragraph of (b), substituted "form" for "Remedial Action Permit Form"; and in (b)5, substituted "D" for "B".

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

This subchapter identifies the minimum requirements for the person responsible for conducting the remediation of real property not owned by that person, to obtain access to that property.

7:26C-8.2 Site access

(a) The person responsible for conducting remediation shall take all appropriate actions, as outlined in (b) below, to obtain the access to property, not owned by that person, which is necessary to implement the remediation.

(b) The person responsible for conducting the remediation that requires access to the property of another shall send to each owner a written request, via certified mail, for access to the property. The person responsible for conducting remediation shall include the following information in the written request:

1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;
2. A site map indicating each area for which access is needed;
3. A description of the reason access is needed and the extent of access needed;
4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and
5. A request that the property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

(c) If the owner of the property does not respond, the person responsible for conducting the remediation shall send a second written request to the property owner by certified mail. The person responsible for conducting the remediation shall include in the second written request a copy of the first written request detailed in (b) above.

(d) If the property owner does not grant access, the person responsible for conducting the remediation shall initiate and rigorously pursue an action in Superior Court, including an appeal to the Appellate Division, if appropriate, for site access. The person responsible for conducting the remediation shall provide written confirmation to the Department of the filing of such action. Upon request by the Department, the person responsible for conducting the remediation shall submit a copy of the court order that indicates that the Superior Court denied access to the property.

(e) The person responsible for conducting the remediation shall provide to the Department all appropriate information as detailed in this section when applying for an extension of a regulatory, mandatory, or expedited site specific timeframe, pursuant to N.J.A.C. 7:26C-3.

(f) Nothing contained in this section shall be construed to relieve any person conducting the remediation of that person's obligations to conduct remediation at any portion of a site or area of concern to which the person has access.

## SUBCHAPTER 9. ENFORCEMENT

**7:26C-9.1 Scope**

(a) This subchapter governs administrative enforcement actions the Department may take for a person's violation of any of the following:

1. An administrative order issued pursuant to any of the Department's statutory authorities;
2. An administrative consent order;
3. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., including any of the following:
  - i. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; and
  - ii. A remediation agreement issued pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
4. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and this chapter;
5. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1.3, and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; or
7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.

(b) This subchapter:

1. Identifies those violations where a grace period will be afforded;
2. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period;
3. Governs the procedures the Department will follow when it issues an administrative order;
4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; and
5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.

**7:26C-9.2 Applicability**

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a rule, or a remedial action permit constitutes an additional, separate, and distinct offense, and each penalty payment constitutes a pay-

ment 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 provision provided for by any other statute or rule in connection with the violation for which the assessment is levied.

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty provisions may request in writing that the Department amend its document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-9. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

**Case Notes**

Where respondents failed to immediately mitigate vapor and groundwater hazards down-gradient at a nearby property, and failed to perform proper remedial investigations, most particularly by not delineating the horizontal and vertical extent of groundwater contamination, respondents' liability was clear; contrary to respondents' allegations, the penalty was not duplicative where one penalty was for failing to immediately mitigate the effects of a discharge on a specific neighbor and the other was for delaying the remedial investigation of all potential impacts (adopting 2007 N.J. AGEN LEXIS 149). N.J. Dep't of Env'tl. Prot. v. Foster, OAL Dkt. No. EHW 83-06, 2007 N.J. AGEN LEXIS 505, Final Decision (May 4, 2007).

**7:26C-9.3 Administrative orders**

(a) Whenever the person responsible for conducting the remediation fails to comply with any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial action permit, or guidance the Department may issue an administrative order that:

1. Specifies the provision or provisions of any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial permit or guidance of which that person is in violation;
2. Cites the action or omission that caused the violation;
3. Requires compliance with such provision or provisions; and
4. Gives notice to that person of a right to an administrative hearing to contest a notice of an administrative order issued pursuant to this subchapter.

**7:26C-9.4 Grace period applicability; procedures**

(a) Each violation identified in the penalty table at (c) below by an "M" in the Type of Violation column, for which

<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.

**Case Notes**

Initial Decision (2010 N.J. AGEN LEXIS 151) adopted, which found that although a corporation was properly assessed a penalty for failing to perform a ground water receptor evaluation, a penalty of \$4,000 under the current regulation, rather than \$5,000 under the older version of the regulation, should have applied. N.J. Dep't. of Env't. Prot., Bureau of Enforcement v. Five Brothers, Inc., OAL Dkt. No. ESR 06003-09S, 2010 N.J. AGEN LEXIS 749, Final Decision (May 19, 2010).

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

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

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

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

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

**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

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/](http://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".

#### Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 275) adopted, which found that respondent was properly assessed civil administrative penalties because, although respondent did not cause the contamination, it knew or should have known of the contamination when it purchased the property and was strictly liable for its clean up, which it failed to do. N.J. Dep't of Env'tl. Prot. v. Caruso, OAL Dkt. No. EHW 4714-07, 2009 N.J. AGEN LEXIS 845, Final Decision (June 26, 2009).

Where respondents failed to immediately mitigate vapor and ground water hazards down-gradient at a nearby property, and failed to perform proper remedial investigations, most particularly by not delineating the horizontal and vertical extent of groundwater contamination, respondents' liability was clear and, contrary to their allegations, the penalty was not duplicative where one penalty was for failing to immediately mitigate the effects of a discharge on a specific neighbor and the other was for delaying the remedial investigation of all potential impacts (adopting 2007 N.J. AGEN LEXIS 149). N.J. Dep't of Env'tl. Prot. v. Foster, OAL Dkt. No. EHW 83-06, 2007 N.J. AGEN LEXIS 505, Final Decision (May 4, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 590) adopted, which found that respondents — a gas station and its owner — were properly assessed \$28,000 for failing to perform a proper remedial investigation for the 21 days from the last date of the Department's required submission of a completed report; the pertinent regulations provided detailed information as to the exact items and concerns that needed be addressed in the report, yet despite several letters and deficiency information supplied over the years by Department, respondents regularly failed to provide appropriate required information. N.J. Dep't of Env'tl. Prot. v. Hammonton Gulf Station, OAL Dkt. No. EHW 08927-03S, 2005 N.J. AGEN LEXIS 1298, Final Decision (August 23, 2005).

**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](http://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: