

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

Former N.J.A.C. 7:26C-1.5, "Severability", recodified to N.J.A.C. 7:26C-1.8.

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

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

In (b), substituted "the" for "a" preceding "remediation" and deleted "of those activities" preceding "shall pay"; in (c), substituted "or" for "and" preceding "the environment" and inserted "remediation and any" preceding "construction, improvement, or change"; deleted (h) and (i).

#### 7:26C-1.6 Forms and submissions

Unless otherwise instructed by the Department, any person may obtain any forms or applications required by this chapter at the following address, and shall submit all forms, applications and documents required by this chapter to:

New Jersey Department of Environmental Protection  
Division of Remediation Support  
Case Assignment Section  
401 East State Street, 5th floor  
PO Box 434  
Trenton, New Jersey 08625-0434

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

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

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-1.7 Liberal construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of the law.

Recodified from N.J.A.C. 7:26C-1.4 by R.1997 d.499, effective November 17, 1997.

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

#### 7:26C-1.8 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from N.J.A.C. 7:26C-1.5 by R.1997 d.499, effective November 17, 1997.

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

### SUBCHAPTER 2. OVERSIGHT DOCUMENTS AND NO FURTHER ACTION LETTERS

#### 7:26C-2.1 Scope

(a) This subchapter identifies:

1. The oversight documents available for remediation of contaminated sites;

2. The conditions that a person must meet before the Department will issue a no further action letter;

3. The procedures for a person to acquire the Department's review of a remedial action report for a discharge, onto the lands but not into ground water, from an underground storage tank that is not regulated by Underground Storage Tanks rules, N.J.A.C. 7:14B; and

4. When the Department shall issue a covenant not to sue.

(b) In instances where a site is the subject of remediation pursuant to Federal or other State regulatory or enforcement mechanisms, the Department, in an exercise of its discretion, will decide to either:

1. Allow a regulatory or enforcement mechanism already in effect at the site to control a person's remediation of the site;

2. Pursue additional regulatory or enforcement mechanisms, including, but not limited to, those described in this subchapter; or

3. A combination of (b)1 and 2 above.

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

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

Deleted existing (a)1, (a)3, and (a)4; recodified existing (a)2 as (a)1; inserted new (a)2 and (a)3; and deleted (c) and (c)1 through (c)3. 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), substituted "but not" for "and/or into the waters except" following "lands" in 3, and added 4.

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), rewrote 2 and 3 and substituted "When" for "The conditions under which" in 4; rewrote (b).

#### 7:26C-2.2 Memorandum of agreement

If the Department, in the exercise of its enforcement discretion, chooses to allow a person who is not subject to the Industrial Site Recovery Act or the New Jersey Underground Storage of Hazardous Substances Act to conduct remediation at a known or suspected contaminated site, or area/areas of concern at a site, which the Department has not scheduled for publicly funded remediation, then such participation shall be governed by a memorandum of agreement in accordance with N.J.A.C. 7:26C-3.

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

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

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-2.3 Administrative consent order

(a) Except as provided in (b) below, when the Department chooses to allow a person to conduct remediation at a site which has been scheduled for publicly funded remediation, such participation shall be governed by an administrative consent order, or a memorandum of understanding where appropriate, pursuant to N.J.A.C. 7:26C-5.2.

(b) The Department may, in exercise of its enforcement discretion, allow a person to conduct remediation of a site that has been scheduled for publicly funded remediation as follows:

1. The Department may allow a person who is currently conducting the remediation pursuant to and in compliance with the Industrial Site Recovery Act or the New Jersey Underground Storage of Hazardous Substances Act to continue remediation under those authorities and not require the execution of an administrative consent order; and

2. The Department may allow a person who is currently conducting the remediation pursuant to and in compliance with memorandum of agreement to continue the remediation under the memorandum of agreement as provided in N.J.A.C. 7:26C-3.4.

(c) If a court of the State of New Jersey orders a person to conduct remediation at a contaminated site, the requirements of the court order may be implemented pursuant to an oversight document in the form of an administrative consent order, unless otherwise specified by the court order.

(d) The Department will include in each administrative consent order provisions that conform to the requirements in N.J.A.C. 7:26C-5.

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

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

Rewrote (b); inserted new (c); and recodified existing (c) as (d).

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), changed 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 (a) and (b).

#### 7:26C-2.4 Administrative order

(a) The Department may issue an administrative order for the remediation of a contaminated site.

(b) The Department will include, in each administrative order for the remediation of a contaminated site, provisions that conform to the requirements in N.J.A.C. 7:26C-5 to the extent appropriate to the particular enforcement action.

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

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

Rewrote (a).

#### 7:26C-2.5 Review of a remedial action report for remediation of discharges from an underground storage tank not regulated pursuant to N.J.A.C. 7:14B

(a) Any person may request the Department's review of a remedial action report for remediation of a discharge from an underground storage tank not regulated pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B, and from which there is a discharge onto the lands but not into groundwater as provided below. The person seeking the Department's review shall pay a fixed oversight cost in lieu of entering into a memorandum of agreement with the Department.

(b) The person requesting that the Department review a remedial action report in accordance with (a) above shall submit to the Department:

1. A remedial action report prepared pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.6;

2. The following information, certified in accordance with N.J.A.C. 7:26C-1.2(a)1:

i. The date that the discharge from the underground storage tank was reported in accordance with N.J.A.C. 7:1E-5, or the incident number;

ii. A statement that the underground storage tank is not regulated pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B;

iii. A statement that the discharge has been remediated and the remedial action report has been prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.6; and

iv. A statement that the discharge from the underground storage tank has not contaminated ground water; and that one of the following applies:

(1) Soil contamination is no longer present above the most stringent soil remediation standard;

(2) An alternate cleanup criterion is being requested; or

(3) A deed notice is included to address remaining soil contamination above the residential soil cleanup criteria pursuant to N.J.A.C. 7:26E-8; and

3. The fixed oversight cost pursuant to N.J.A.C. 7:26C-9.2. The fixed oversight cost is nonrefundable and shall be submitted with each and every submittal made to the Department pursuant to this section.

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 "Spill Act directive".

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-2.6 No further action letters

(a) The Department shall issue no further action letters:

1. Based upon information available to the Department at the time the Department makes its determination pursuant to this section;

2. Based upon a person's completion of all applicable requirements in the Technical Requirements for Site 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. 7:9-6, 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. 7:9-6; 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.

### 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;