

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

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of
Chapter 26C, Department Oversight of the Remediation of Contami-
nated Sites, was extended by gubernatorial directive from April 21,
2008 to April 21, 2010. See: 40 N.J.R. 2474(b).

Chapter Historical Note

Chapter 26C, Department Oversight of the Remediation of Contami-
nated 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 re-
adopted 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Memorandum of Agreement, was repealed and a new Subchapter 3,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, Admin-
istrative Consent Orders; Subchapter 6, Hazardous Discharge Site Re-
mediation Fund; Subchapter 7, Remediation Funding Source; Subchap-
ter 8, Site Access; Subchapter 9, Oversight Costs; and Subchapter 10,
Civil Administrative Penalties and Requests for Adjudicatory 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Oversight Cost Formula, were repealed; Appendix C, Standard Respon-
sible 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 Contami-
nated Sites, was readopted as R.2003 d.198, effective April 21, 2003.
See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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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. Except as specified in (a)2 below, for all documents that are required to be certified pursuant to the applicable provisions of N.J.A.C. 7:14B, 7:26B, 7:26C, and 7:26E, the person responsible for conducting the remediation shall include the following certification with the document.

“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;

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

2. The information is complete, however, the requested disbursement amount includes remediation costs that the Department has not approved, and therefore, the Department will only disburse funds for the approved remediation costs; or

3. The information is incomplete, indicating the missing information, and the Department shall not give further consideration to the disbursement request until the requester submits all the required information.

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-7.11 Return of the remediation funding source

(a) The Department shall notify in writing the person required to establish the remediation funding source, when that person is no longer required to maintain the remediation funding source.

(b) The Department shall return the remediation funding source pursuant to (c) below when:

1. The Department determines that the person responsible for conducting the remediation has completed all the substantive and financial requirements of:

- i. The oversight document;
- ii. Court order; or
- iii. Department approved remedial action workplan for an industrial establishment; or

2. The Department approves in writing one of the following for the final remedial action for the site:

- i. An innovative remedial action technology;
- ii. A limited restricted use remedial action; or
- iii. An unrestricted use remedial action.

(c) When the Department makes one of the findings or approvals listed in (b) above, the Department shall allow the person responsible for establishing the remediation funding source to terminate or modify the remediation funding source consistent with the finding or approval. The Department shall only allow that person to terminate the remediation funding source if there is no additional remediation necessary at the site.

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

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

Rewrote (b); and added (c).

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 "required to establish" for "that has been established" and "source, when that person" for "source, that the person"; in (b), inserted "for the final remedial action for the site" in the introductory paragraph of 2; in (c), substituted "necessary at" for "which has not yet been completed".

7:26C-7.12 Failure to perform the remediation

(a) The Department shall notify in writing the person required to establish a remediation funding source if the Department determines that the person responsible for conducting the remediation has failed to perform the remediation as required pursuant to an oversight document, court order or Department approved remedial action workplan. The person shall have 30 calendar days after receipt of such notice, unless otherwise extended in writing by the Department, to perform the obligation(s) not performed.

(b) The Department shall provide a copy of the notification in (a) above to the current owners and operators of the site when the person required to establish the remediation funding source has failed to remediate the site.

(c) Thirty calendar days after the person's receipt of the notification in (a) above, the Department may, in its sole discretion, perform the remediation of a site using the funds in the remediation funding source.

(d) The Department may, in its discretion, disburse all or some of the monies to a person, other than the person who established the remediation funding source pursuant to this subchapter, after that other person has completed the remediation of the contaminated site with the Department's oversight.

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 8. SITE ACCESS

7:26C-8.1 Scope

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

7:26C-8.2 Site access

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

(b) The person responsible for conducting remediation of real property not owned by that person that requires access to that property shall send a written request via certified mail, return receipt requested, with a copy to the Department, for access to the property, to each owner which shall include:

1. A copy of the oversight document or a description of the regulatory program pursuant to which remediation is being conducted;
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 site owner respond in writing to the person requesting access within 30 calendar days after receipt of the written request.

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

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

(e) 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 if an access agreement with the property owner is not reached. The person responsible for conducting the remediation shall provide written confirmation to the Department of the initiation 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.

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 reason access is needed" for "why" in 3; in (c), substituted "shall" for "may" preceding "send a second written request".

SUBCHAPTER 9. OVERSIGHT COSTS

7:26C-9.1 Scope

(a) This subchapter provides:

1. The fixed cost schedule for Department review of a preliminary assessment report, site investigation report or biennial certification submitted by any person;

2. The fixed costs schedule for a person to obtain Department oversight of remediation of a discharge from an underground storage tank not regulated by N.J.A.C. 7:14B;

3. The oversight cost formula for Department oversight activities to be directly billed to the person conducting the remediation of a site not subject to the fixed costs set forth at N.J.A.C. 7:26C-9.2; and

4. The procedures and criteria by which the recipient of a bill for Department oversight costs calculated pursuant to N.J.A.C. 7:26C-9.3(d) may contest those oversight costs.

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-9.2 Fixed oversight costs

(a) The applicable fixed costs, required by this section upon submittal to the Department of each request or submission, are as follows:

1. Preliminary assessment report	\$375.00
2. Site investigation report	\$750.00
3. Remedial action report for tanks not regulated by N.J.A.C. 7:14B	\$400.00
4. Biennial Certification	\$375.00

(b) The fixed costs required by (a) above are:

1. Nonrefundable;
2. Not one time costs;
3. Required with each and every applicable submittal made to the Department; and

4. The minimum oversight costs to obtain the Department's review of the preliminary assessment report, site investigation report, remedial action report for an underground storage tank not regulated by N.J.A.C. 7:14B, and a biennial certification. The Department may use the oversight cost formula at N.J.A.C. 7:26C-9.3(d) to assess its oversight cost in lieu of the fixed oversight costs listed in (a) above, based on (c), below.

(c) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to the oversight cost formula in N.J.A.C. 7:26C-9.3(d) if the Department's actual costs to review the preliminary assessment report, site investigation report, remedial action report for an underground storage tank not regulated by N.J.A.C. 7:14B, or biennial certification are three or more times greater than the applicable fixed oversight cost in (a) above.

(d) The Department shall use the oversight cost formula in N.J.A.C. 7:26C-9.3(d) to determine its oversight costs for review of all documents pertaining to a remedial investigation and a remedial action for all sites. Sites where the only area of concern is an underground storage tank not regulated by N.J.A.C. 7:14B are excepted from this requirement.

(e) The person responsible for conducting the remediation who submits any of the reports listed at (a) above for Department review shall submit the applicable fixed cost along with each report. The Department shall not review a preliminary assessment report, site investigation report, biennial certification, or remedial action report for remediation of a discharge from an underground storage tank not regulated by N.J.A.C.

7:14B, unless and until the Department receives the fixed cost as listed in (a) above.

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

Rewrote the section.

Amended by R.2007 d.274, effective August 20, 2007.
See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).

In (a)1 through (a)4, updated the fee amounts; in (a)3, deleted the asterisk following "report"; deleted the footnote following (a)4; rewrote (b); added new (c) and (d); recodified former (c) as (e); and in new (e), added the first sentence, inserted "not regulated by N.J.A.C. 7:14B", and deleted "appropriate" preceding "fixed cost as listed".

7:26C-9.3 Oversight cost formula

(a) Oversight costs are due to the Department, at the address provided at N.J.A.C. 7:26C-9.5, within 30 calendar days

after receipt from the Department of a bill for the Department's oversight costs for the period being charged.

(b) The Department shall include the following information in the bill for the Department's oversight costs referenced in (a) above:

1. The site job number;
2. The name of each staff member performing work on the site;
3. The number of hours spent by each staff member working on the site; and
4. The dollar amount of the oversight costs calculated pursuant to (d) below.

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to notify the Department as required in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay and to take all necessary action to prevent or minimize any such delay.	7:26B, Appendix A	M	30	\$3,000
Failure to submit a certified check made payable to the "Treasurer, State of New Jersey" for \$[penalty amount].00, upon submittal of signed Remediation Agreement.	7:26B, Appendix A	M	30	\$4,000
Failure to pay penalties for violations of the Remediation Agreement, or for failure to implement and maintain institutional controls that are part of a remedial action implemented pursuant to the Remediation Agreement.	7:26B, Appendix A	M	30	\$4,000
Failure to allow the Department and its authorized representatives access to all areas of the Site as required.	7:26B, Appendix A	NM		\$12,000
Failure to provide a copy of the Remediation Agreement to each contractor and subcontractor retained to perform the work required by the Remediation Agreement, to condition all contracts and subcontracts entered for the performance of such work upon compliance with its terms and conditions, and to be responsible to the Department for ensuring that contractors and subcontractors perform the work in accordance with the Remediation Agreement.	7:26B, Appendix A	M	30	\$4,000
Failure to submit all data and information developed pursuant to the Remediation Agreement as required.	7:26B, Appendix A	M	30	\$4,000
Failure to comply with the Remediation Agreement.	7:26B, Appendix A	NM		\$8,000
Failure to record a copy of the Remediation Agreement with the County Clerk and to provide the Department with written verification of filing as required.	7:26B, Appendix A	M	30	\$4,000
Failure to preserve and submit all data and information, as required.	7:26B, Appendix A	NM		\$5,000
Failure to provide written notice of dissolution of identity, liquidation of assets or the closure, termination or transfer of operations prior to such action; submit a cost review; provide written notice of a filing of a petition for bankruptcy, and when requested, within fourteen (14) days increase the remediation funding source.	7:26B, Appendix A	NM		\$5,000
Failure to submit two original copies of the signed Remediation Agreement, documentary evidence that the signatory has the authority to commit to the terms of the Remediation Agreement, and proof that the remediation funding source has been established.	7:26B, Appendix A	M	30	\$4,000

4. Department Oversight of the Remediation of Contaminated Sites N.J.A.C. 7:26C

<u>Subchapter and Violation</u>	<u>Citation 7:26C-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to submit the signatures and certifications specified in N.J.A.C. 7:26C-1.2(a) through (c)1.	7:26C-1.2	M	30	\$3,000
Failure to submit payment of the applicable oversight costs to the Department.	7:26C-1.5(b)	M	30	\$4,000
Failure to notify the Department immediately upon knowledge of a condition that posed an immediate environmental concern to the public health and safety and to the environment.	7:26C-1.5(c)	NM		\$8,000
7 Remediation Funding Sources				
Failure to establish and maintain a remediation funding source.	7:26C-7.2(a)	NM		\$5,000
Failure to establish and maintain a remediation-funding source in an amount equal to the estimated cost of the remediation.	7:26C-7.2(c)1	NM		\$5,000
Failure to establish and maintain a remediation-funding source for a period of not less than the actual time necessary to complete the remediation.	7:26C-7.2(c)2	NM		\$5,000
Failure to submit information regarding areas of concern and cost estimate.	7:26C-7.3(a)	M	30	\$3,000
Failure to submit information required by the Department pursuant to N.J.A.C. 7:26C-7.3(b).	7:26C-7.3(b)	M	30	\$4,000
Failure to submit the required remediation trust fund agreement along with signed copies of the ACO, directive, court order or other judicial settlement.	7:26C-7.4(a)	M	30	\$4,000
Failure to submit the required remediation trust fund information pursuant to N.J.A.C. 7:26C-7.4(b).	7:26C-7.4(b)	M	30	\$4,000
Failure to submit to the Department, 30 days prior to the anniversary date of remediation trust fund, a written statement from the trustee confirming the value of the trust in an amount the Department approved.	7:26C-7.4(c)	M	30	\$4,000
Failure to submit an environmental insurance policy.	7:26C-7.5(a)	M	30	\$4,000
Failure to obtain an environmental insurance policy issued by an entity licensed by the State of New Jersey Dept. of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.5(b)1 through 5.	7:26C-7.5(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.	7:14B-10.2(b)	M	60	\$4,000
Failure to submit a permit application on forms provided by the Department.	7:14B-10.3(a)	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or upgrade which are signed and sealed by a New Jersey profession engineer.	7:14B-10.3(b)1	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system indicating the size and location of the tank systems, existing structures on the site, and distances from lot lines.	7:14B-10.3(b)2	M	30	\$4,000
Failure to submit information documenting soil permeability.	7:14B-10.3(b)3	M	30	\$4,000
Failure to submit required documentation of the depth to ground water.	7:14B-10.3(b)4	M	30	\$4,000
Failure to submit corrosion system designs which are properly certified.	7:14B-10.3(b)5	M	30	\$4,000
Failure to submit a detailed description of the upgrade, installation, or repair that is to be performed.	7:14B-10.3(b)6	M	30	\$4,000
Failure to submit documentation of the precision of the performance of the release detection monitoring method chosen pursuant to N.J.A.C. 7:14B-6.1, 6.2 and 6.3.	7:14B-10.3(b)7	M	30	\$4,000
Failure to submit a scaled site diagram accurately indicating the locations of all sampling and monitoring points in relation to all underground storage tank systems at the facility.	7:14B-10.3(b)8	M	30	\$4,000
Failure to submit the required certification, signed by a Department certified subsurface evaluator, that the number and locations of all vapor or product monitoring points is sufficient to monitor the tank system.	7:14B-10.3(b)9	M	30	\$3,000
Failure to make the Department issued permit available for inspection by an authorized local, State or Federal representative and prominently display the permit at the facility site during the course of the permitted activity.	7:14B-10.5(a)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection by an authorized local, State or Federal representative.	7:14B-10.5(b)	M	30	\$3,000
Failure to contact the Department as required to obtain an emergency permit, and to submit a permit application within 14 calendar days of receipt of the emergency permit.	7:14B-10.6(b)	NM		\$8,000
Failure to provide required information when requesting an emergency permit.	7:14B-10.6(c)	M	30	\$4,000
Failure to make the Department issued emergency permit number available for inspection by an authorized local, State or Federal representative and prominently display the emergency permit number at the facility site during the course of the permitted activity.	7:14B-10.6(d)	M	30	\$3,000
Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.	7:14B-10.8(e)	NM		\$8,000
11 Municipal Ordinances				
Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.	7:14B-11.1(b)	M	30	\$4,000
Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.	7:14B-11.2(a)	M	30	\$4,000
Failure to submit to the Department a copy of the final ordinance.	7:14B-11.3(d)	M	30	\$4,000
13 Certification of Individuals and Business Firms				
Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.	7:14B-13.1(a)	NM		\$12,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-13.1(b)	M	30	\$3,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-13.1(c)	M	30	\$3,000

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

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM		\$12,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	M	30	\$3,000
16 Certification Of Individuals And Business Firms For Unregulated Underground Storage Tank Systems				
Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tanks.	7:14B-16.2(a)	NM		\$12,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-16.2(b)	M	30	\$3,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-16.2(c)	M	30	\$3,000
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tanks are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-16.2(d)	NM		\$12,000
Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-16.2(e)1	NM		\$12,000
Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-16.2(e)2	NM		\$12,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit a list of the maximum price that they will charge to perform those services for which he or she or it is certified.	7:14B-16.2(g)1	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to cooperate in any audit of their pricing and business practices.	7:14B-16.2(g)2	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit documentation of the cost to provide the services for which the Petroleum Underground Storage Tank Remediation and Upgrade Closure Fund is providing financial assistance.	7:14B-16.2(g)3	M	30	\$3,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification other than those created by passing an examination.	7:14B-16.2(i)	M	30	\$3,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-16.2(j)	M	30	\$3,000
Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.	7:14B-16.2(k)	M	30	\$3,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-16.2(l)	M	30	\$3,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 CFR 1910.120(e)(8).	7:14B-16.7(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-16.7(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$12,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7.	7:14B-16.8(f)	M	30	\$3,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-16.9(a)	NM		\$12,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-16.9(b)	M	30	\$3,000

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

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

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

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

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

Section was "Amount of a civil administrative penalty".

Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).

See: 38 N.J.R. 4748(a).

In (c)5 table, added subchapter 16 references.

In accordance with N.J.S.A. 52:14B-5.1c, the expiration date of the special amendments was extended from April 3, 2008 to September 30, 2008.

See: 40 N.J.R. 2166(a).

Amended by R.2008 d.262, effective September 2, 2008.

See: 39 N.J.R. 2687(a), 40 N.J.R. 5010(a).

In (c)2, rewrote the table.

7:26C-10.5 Penalty adjustment factors

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

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

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

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

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

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

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

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

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

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

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate and distinct violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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).
Recodified from N.J.A.C. 7:26C-10.5 by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

7:26C-10.8 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.
Recodified from N.J.A.C. 7:26C-10.3 by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

7:26C-10.9 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.

Recodified from N.J.A.C. 7:26C-10.6 by R.2006 d.328, effective September 18, 2006.

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

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. The matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

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, 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 property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [], Lot [] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter "Property"), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").

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