

**DEPARTMENT OVERSIGHT OF THE REMEDIATION 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., and 58:10A-21 et seq., 58:10B-1 et seq.

**Source and Effective Date**

R.1997 d.499, effective October 23, 1997.  
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, expires on April 21, 2003. See: 34 N.J.R. 3703(a).

**Chapter Historical Note**

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was adopted as R.1993 d.186, effective May 17, 1993. See: 24 N.J.R. 1281(b), 25 N.J.R. 2002(a). Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 28 N.J.R. 5499(a), 29 N.J.R. 704(a).

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of the Appropriate Oversight Document, was re-named Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5,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Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard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

**Law Review and Journal Commentaries**

Historic Pesticide Contamination Task Force Issues Report. Bruce S. Katcher, 155 N.J.L.J. 1155 (1999).

ISRA: What You Need to Know. Richard J. Conway, Jr., 160 N.J.Law. 16 (Mag.) (April 1994).

New Growth in Old Ground. Bernard A. Weintraub, 147 N.J.L.J. 761 No. 7, S-1 (1997).

Proving Bad Faith in Environmental Coverage Actions. Patrick Nucciarone, Jeffrey A. Cohen, Alexa Richman-La Londe, 149 N.J.L.J. 468 (1997).

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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) Any person submitting workplans and reports to the Department pursuant to N.J.A.C. 7:26E shall include the signatures and certification below.

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and 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. The certification in (a)1 above shall be signed as follows:

- i. For a corporation, by a principal executive officer of at least the level of vice president;
- ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(b) The certification listed in (a)1 above shall be signed by a person described in (a)2 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- 1. The authorization is made in writing by a person described in (a)2 above;
- 2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

3. The written authorization is submitted to the Department; and

4. If the authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(c) The following certification shall be submitted along with the remediation funding source, pursuant to N.J.A.C. 7:26C-7:

1. "I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 et seq., as they pertain to remediation funding sources. Specifically, I am aware of my responsibilities in the establishment and maintenance of a remediation funding source. Additionally, I acknowledge that this remediation funding source shall be maintained until such time as I have submitted an alternative remediation funding source to the Department and it has been approved by the Department in writing or I have been notified by the Department in writing that I am no longer required 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."

2. The certification in (c)1 above shall be signed as specified in (a)2 above or by a duly authorized representative as specified in (b) above.

(d) Any person that elects to conduct remediation at a site which has not been scheduled for publicly funded remediation shall submit the following certification along with the memorandum of agreement application, required pursuant to N.J.A.C. 7:26C-3.2:

1. "I certify that I am fully aware of the requirements of N.J.A.C. 7:26C-3, specifically as it pertains to the memorandum of agreement by rule. Further, I agree to pay the Department's oversight costs for the Department's review of any submissions pursuant to the memorandum of agreement until such time as I notify the Department that it is no longer feasible or desirable for me to continue with the memorandum of agreement."

2. The certification in (d)1 above shall be signed as specified in (a)2 above or by a duly authorized representative as specified in (b) above.

(e) All signatures required by this section shall be notarized.

Amended by R.1997 d.499, effective November 17, 1997.  
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Rewrote (a); deleted existing (b) and (c); recodified existing (c)1 and (c)2 as (a)1 and (a)2; deleted existing (c)2iv; recodified existing (d) as (b); and inserted new (c) and (d).

### 7:26C-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless context clearly indicates otherwise:

"Administrative consent order" means an administrative order issued by the Department which is executed by one or more persons; and may be in the form of a memorandum of understanding for public entities at the Department's discretion.

"Applicant" means a corporation, partnership, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district that has applied to the Department for financial assistance.

"Area of concern" means any location defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Authority" means the New Jersey Economic Development Authority.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.).

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her authorized representative.

"Conditional hardship grant" means a grant to an eligible owner or operator as provided in N.J.S.A. 58:10A-37.5.

"Contaminated site" means all portions of environmental media at a site and any location where contamination is emanating, or which has emanated therefrom, that contain one or more contaminants at a concentration which fails to satisfy any applicable remediation standard.

"Contamination" or "contaminant" means any discharged hazardous substance as defined in N.J.S.A. 58:10-23.11b, hazardous waste as defined in N.J.S.A. 13:1E-38, or pollutant as defined in N.J.S.A. 58:10A-3. For the purposes of a remediation conducted pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., "contamination" or "contaminant" means only any discharged hazardous substance or hazardous waste.

"Covenant not to sue" means a document which shall be identical in wording to Appendix C, incorporated herein by reference.

"Deed notice" means a document defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, which shall be identical in wording to N.J.A.C. 7:26E, Appendix E.

"Department" means the New Jersey Department of Environmental Protection.

"Directive" means a document issued by the Department pursuant to N.J.S.A. 58:10-23.11 et seq. and 13:1D-1 et seq. to, among other things, notify the recipient thereof that the Department has determined that it is necessary to cleanup and remove or arrange for the cleanup and removal of a discharge and that the Department believes the recipient is a person who may be subject to liability for the discharge.

“Discharge” means an intentional or unintentional action or omission defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Engineering controls” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Environmental medium” means any such medium defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“EPA” means the United States Environmental Protection Agency.

“Financial assistance” means loans or loan guarantees as may be established by the New Jersey Economic Development Authority.

“Fund” means the Petroleum Underground Storage Tank Systems Remediation, Upgrade and Closure Fund.

“Hazardous substance” means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

“Hazardous waste” means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26-8.

“Immediate environmental concern” means a condition defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Industrial establishment” means any place defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

“Innovative remedial action technology” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“ISRA” means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“Memorandum of agreement” means a written agreement between the Department and one or more persons to conduct remediation at a site which the Department has not scheduled for publicly funded remediation.

“Memorandum of understanding” means an oversight document executed by the Department and a public entity, similar to the form of an administrative consent order, but without the requirement for the establishment of a remediation funding source.

“Multiple responsible parties” means five or more unrelated responsible parties, as determined by the Department, involved at a contaminated site.

“Natural resources” means all media defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

“No further action letter” means a written determination by the Department that based upon an evaluation of the historical use of the site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations.

“Operator” means any person defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

“Oversight document” means any document or control document the Department issues or executes pursuant to this chapter to define the role of a person participating in the remediation of a contaminated site or area of concern, and may include, without limitation, an administrative order, administrative consent order, memorandum of understanding, memorandum of agreement, or remediation agreement.

“Owner” means any person who owns the real property of a site or who owns the site. A holder of a mortgage or other security interest in the site shall not be deemed to be an owner of the site unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 et seq.

“Person” means any individual or entity, including without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of or found within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

“Petroleum” means petroleum defined pursuant to N.J.A.C. 7:14B-1.6.

"Pollutant" means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Preliminary assessment" means the first phase in the process of identifying areas of concern defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Public entity" means any county, municipality, or public school district, but shall not include any authority created by those entities.

"RCRA" means the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.).

"Regulated tank systems" means a petroleum underground storage tank systems that is required to be upgraded pursuant to N.J.A.C. 7:14B or 42 U.S.C. § 6991.

"Remedial action" means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, taken at a contaminated site.

"Remedial action workplan" or "RAW" means a plan for the remedial action to be undertaken at a contaminated site defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

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

"Remediation" or "remediate" means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

"Responsible party" means a person who is in any way responsible for a contaminated site, or for the contaminants at a site including, for the purposes of this chapter, each owner or operator, and any other person obligated by law to clean up and remove contaminants at a site.

"Restricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

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

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

"Underground storage tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures and other related equipment, used to contain an accumulation of petroleum product, the volume of which including the volume of appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more beneath the surface of the ground.

"Underground storage tank system" means a petroleum underground storage tank and its associated ancillary equipment and containment system, if any.

"Unrestricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

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

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

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

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

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

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

Inserted "Applicant", "Authority", "Conditional hardship grant", "Fund", "Petroleum", "Public entity", "Regulated tank systems", "Underground storage tank", and "Underground storage tank system". Amended by R.1999 d.241, effective August 2, 1999.

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

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

#### Case Notes

Commercial general liability insurer's engineering costs for remedial investigation were "defense expenses," rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J.Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

#### 7:26C-1.4 Dispute resolution

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

(b) Any person shall submit a written request, to the section chief of the case manager overseeing the remediation of the site to initiate the dispute resolution process, which shall include:

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

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

(d) If the issue is not resolved at the section chief level, the person shall submit a written request for resolution of the issue to the bureau chief identified in the written response in (c) above. The written request shall include all the information in (b) above.

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

(f) If the issue is not resolved at the bureau chief level, the person shall submit a written request for resolution to the assistant director identified in the written response in (e) above. The written request shall include all the information in (b) above.

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

(h) If the issue is not resolved at the assistant director level, the person may continue the process in (b) through (g) above with the Director, Assistant Commissioner, and Commissioner.

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

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

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

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

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

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

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

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

Former N.J.A.C. 7:26C-1.4, "Liberal construction", recodified to N.J.A.C. 7:26C-1.7.

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

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

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

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

(d) Nothing in this chapter shall be construed as limiting:

1. Any legal, equitable or administrative remedies against any person which the Department may have under any applicable law or regulation;

2. The Department's discretion to pursue or to refrain from pursuing any such remedies; or

3. Except as otherwise stated in this chapter, any legal, equitable or administrative remedy which the party responsible for conducting the remediation may have under any applicable law or regulation.

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

(f) The participation by any person in any of the procedures outlined in this chapter shall not relieve that person from responsibility to comply with all other applicable statutes and regulations. Except as otherwise stated in this chapter, nothing shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation.

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

1. The Department issues a directive pursuant to N.J.S.A. 58:10-23.11f; or

2. The person has actual notice that the Department has begun publicly funded remediation.

(h) The Department may refuse to enter into an oversight document with any person who has not paid the Department's oversight costs for previous remediation, at the same or other sites, unless the person obligated as to those previous oversight costs has documented with the Department either a dispute relative to those costs pursuant to N.J.A.C. 7:26C-9.4 or an inability to pay.

(i) In determining the nature and extent of a responsible party's participation in the remediation of a contaminated site pursuant to this chapter, the Department shall evaluate the entirety of the circumstances surrounding the contaminated site and determine whether or not the remediation being performed pursuant to an existing regulatory or enforcement mechanism is sufficient. In making such a determination, the Department shall evaluate the nature of the actions causing the contamination and any other relevant factors on the basis of the information then available, including among other things, the nature and extent of the contamination, the threat posed to public health, safety, and the environment, the nature of necessary remedial action, and the nature and status of the ongoing remediation.

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

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

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

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

(a) All persons shall obtain at and submit any forms or applications, required by this chapter, to the following address unless otherwise instructed by the Department:

Division of Responsible Party Site Remediation  
New Jersey Department of Environmental Protection

401 East State Street, 5th floor

Case Assignment Section

PO Box 434

Trenton, New Jersey 08625-0434

(b) All persons shall submit to the Department all documents required by this chapter, by certified mail return receipt requested or by any other means evidencing receipt by the Department, unless otherwise instructed by the Department. The date that the Department executes the acknowledgment of receipt will be the date the Department uses to determine compliance with the requirements of this chapter and the applicability of penalties and any other remedies available to the Department.

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

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

#### 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

### 7:26C-2.1 Scope

(a) This subchapter identifies:

1. The oversight documents available for remediation of contaminated sites;
2. The procedures for a person to obtain a no further action letter from the Department;
3. The procedures for an owner or operator of an underground storage tank which is not regulated by N.J.A.C. 7:14B and from which there is a discharge onto the lands but not into groundwater to acquire the Department's review of a remedial action report; and
4. The conditions under which the Department shall issue a covenant not to sue.

(b) If a person conducting remediation elects to obtain Department oversight of those activities or if the Department chooses to allow a person to participate in the remediation of a site which has been scheduled for publicly funded remediation, the person shall execute an oversight document pursuant to this chapter.

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.

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

(a) The Department, in the exercise of its enforcement discretion, may choose to enter into a memorandum of agreement with any person through which that person agrees to conduct a complete remediation of certain known or suspected contaminated sites or area/areas of concern at a site, or any portion or remedial phase including remedial investigation, or remedial action at a site or area/areas of concern at a site which the Department has not scheduled for publicly funded remediation.

(b) The Department will include in each memorandum of agreement provisions pursuant to 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).

#### 7:26C-2.3 Administrative consent order

(a) Pursuant to N.J.S.A. 13:1D-1 et seq., the Spill Compensation and Control Act, the Solid Waste Management Act, and the Water Pollution Control Act, if the Department chooses to allow a person to conduct remediation at a site which has been scheduled for publicly funded remediation the Department may choose to enter into an administrative consent order.

(b) If the Department has scheduled the site for publicly funded remediation and chooses to allow a government agency to conduct the remediation, the appropriate oversight document is a memorandum of understanding in the form of an **administrative consent** order as modified pursuant to N.J.A.C. 7:26C-5.3(c)5.

(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.

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

(a) Pursuant to N.J.S.A. 13:1D-1 et seq., the Solid Waste Management Act, and the Water Pollution Control Act, the Department may issue an administrative order. Among other actions, the Department may issue administrative orders 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.

#### 7:26C-2.5 Review of a remedial action report for remediation of discharges from an unregulated underground storage tank

(a) An owner or operator of an underground storage tank used to store heating oil for on-site consumption or of an underground storage tank of 1,100 gallon capacity or less used to store motor fuel at a farm or residence which motor fuel was used for non-commercial purposes which are not regulated pursuant to N.J.A.C. 7:14B and from which there is a discharge onto the lands but not into groundwater as provided below, may request that the Department review a remedial action report for remediation of discharges for a fixed oversight cost. The owner's or operator's payment of the fixed oversight cost shall be in lieu of entering into a memorandum of agreement pursuant to N.J.A.C. 7:26C-3.

(b) The person requesting that the Department review a remedial action report in accordance with (a) above shall submit to the Department at the address provided at N.J.A.C. 7:26C-1.6:

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

2. A certification pursuant to N.J.A.C. 7:26C-1.2 which states:

i. The discharge from the underground storage tank has been reported in accordance with N.J.A.C. 7:1E-5;

ii. The underground storage tank has been used solely for the storage of heating oil for on-site consumption or the underground storage tank is of 1,100 gallon capacity or less and has been used solely for the storage of motor fuel at a farm or residence and which motor fuel was used for non-commercial purposes;

iii. 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. The discharge from the underground storage tank has not contaminated groundwater; and

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

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".

#### **7:26C-2.6 No further action letters and covenants not to sue**

(a) The Department shall issue a no further action letter according to specific tax block and lot or other specific identification of the property in question:

1. For an entire site, including all areas to which a discharge originating at the site may have migrated, when the Department determines that:

i. Based upon either a preliminary assessment or site investigation, no further remediation is required at any part of the site because the entire site has been investigated and either:

(1) No contamination has been identified above the unrestricted use remediation standards for the site; or

(2) The Department previously approved the remediation of the entire site and a subsequent preliminary assessment or site investigation supports a finding that no further remediation is necessary in order to protect the public health and safety and the environment;

ii. Based upon the completion of all remediation, any contamination which had been present at the site has been remediated in accordance with the unrestricted use remediation standards; or

iii. Based upon the completion of all remediation, no further remediation is necessary for the site, but that all subsequent use of the site must be consistent with any recorded deed notices, groundwater classification exception area or other institutional controls and engineering controls applicable to the site;

2. For one or more areas of concern, when the Department determines that:

i. Based upon either a preliminary assessment or site investigation, no further remediation is required because each of these areas of concern has been investigated and either:

(1) No contamination has been identified above the unrestricted use remediation standards; or

(2) The Department previously approved the remediation of the area of concern and a subsequent preliminary assessment or site investigation of the area of concern supports a finding that no further remediation is necessary in order to protect the public health and safety and the environment;

ii. Based upon the completion of all remediation, no further remediation is necessary because any contamination which had been present at the area of concern and that had migrated from the area of concern has been remediated in accordance with the unrestricted use remediation standards; or

iii. Based upon the scope of the remediation, no further remediation is necessary, but that all subsequent use of the property encompassing one or more of the areas of concern must be consistent with any recorded deed notices, established groundwater classification exception area or other institutional controls and engineering controls applicable to the site.

(b) The Department issues a no further action letter based upon information available to the Department at the time the Department makes its determination.

(c) The following shall result in the need for additional remediation after the Department has issued a no further action letter for a particular site:

1. The identification of new or additional discharges;

2. The remediation standards change by an order of magnitude;

3. The identification of a contaminant exposure pathway not previously addressed in the remediation; or

4. Other factors which demonstrate that the approved remediation is no longer protective of public health, safety, or the environment.

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

1. Rescind or modify any 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 and covenant not to sue, as well as the current owner and operator of the site which is the subject of the no further action letter and covenant not to sue, when

rescinding or modifying the no further action letter or covenant not to sue; 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.

(e) Pursuant to N.J.S.A. 58:10B-13.1, whenever the Department issues a no further action letter pursuant to (a) and (b) above, the Department shall issue a covenant not to sue to the person that conducted the remediation.

(f) The covenant not to sue document in chapter Appendix C is incorporated herein by reference and is applicable in all situations 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 "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).

#### 7:26C-2.7 (Reserved)

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

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

Section was "Procedures to identify the appropriate oversight document for a particular case".

### 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 acquire the Department's oversight of remediation through a memorandum of agreement;

2. The general requirements for a memorandum of agreement; and

3. 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.

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

(a) Any person seeking Department oversight of remediation or any phase thereof at a site which the Department has not scheduled for publicly funded remediation shall submit a memorandum of agreement application as follows:

1. The memorandum of agreement application shall be certified in accordance with N.J.A.C. 7:26C-1.2;

2. The memorandum of agreement application shall be submitted to the Department at the address provided at N.J.A.C. 7:26C-1.6, and shall include the following information as appropriate:

i. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot, latitude and longitude, Known Contaminated Site List number, acreage and geographic boundaries;

ii. The name, address, and telephone number of the current property owner;

iii. The name, address, and telephone number of the current business operator and/or business owner of the site;

iv. A detailed schedule, for completion of remediation pursuant to N.J.A.C. 7:26E-4.2 and 6.5 at the site, including a schedule for the submission of workplans and reports to the Department;

v. The name, address and telephone number of the applicant's contact. The applicant shall notify the Department in writing, at the address provided at N.J.A.C. 7:26C-1.6, of any change of identity, address, or telephone number of the contact. The Department shall provide written notice or will telephone this contact person as appropriate, if the Department must communicate with the person responsible for conducting the remediation;

vi. The certification provided at N.J.A.C. 7:26C-1.2, which states that the applicant agrees to pay the Department's oversight costs for the Department's oversight of the remediation; and

vii. Any additional information required by the Department from a specific applicant.

(b) The Department shall review the application and shall respond in writing, within 30 calendar days from 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:

i. The Department's written response constitutes the memorandum of agreement in accordance with N.J.A.C. 7:26C-3.3 below; or

ii. The Department has decided not to accept the applicant's offer to conduct remediation because:

(1) Except as provided in N.J.A.C. 7:26C-1.5(h), the applicant has not fulfilled its prior agreement to pay the Department's oversight costs for oversight of remediation at other sites;

(2) The Department has decided, in the exercise of its enforcement discretion, not to allow the applicant to conduct the remediation; or

(3) Certain factors, as listed in the response, 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 person of any deficiencies and any additional information necessary for the Department's review within 30 calendar days from receipt of the application.

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

(a) If the Department determines that the memorandum of agreement application is administratively complete pursuant to N.J.A.C. 7:26C-3.2(b)1i, the applicant will be deemed to have entered into a memorandum of agreement by rule pursuant to (b) and (c) below.

(b) The memorandum of agreement shall incorporate the information in the memorandum of agreement application and the following provisions:

1. The intent of the memorandum of agreement is to allow a person to conduct any of the remediation activities outlined in the memorandum of agreement application with oversight from the Department;

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

3. If the person conducting the remediation is not the site owner and the person proposes to implement institutional and/or engineering controls at the site in lieu of remediating the site to an established remediation standard, the person conducting the remediation shall obtain the site owner's written confirmation that the site owner shall record a deed notice pursuant to N.J.A.C. 7:26E-6.2. If the site owner agrees to record a deed notice, the person responsible for conducting the remediation shall notify in writing, with a copy to the Department, the local health department and the governing body of each municipality where the site is located of the specific institutional

and/or engineering controls being implemented at the site. If the site owner does not agree to record a deed notice, the person shall remediate the site to the established unrestricted remediation standard. However, only notification of the site owner is required for filing of a classification exception area.

4. If the person conducting the remediation is the site owner, the person shall notify in writing if appropriate, with a copy to the Department, pursuant to N.J.A.C. 7:26E-1.4, the local health department and the governing body of each municipality where the site is located, of the specific institutional and or engineering controls being implemented at the site;

5. The person conducting the remediation pursuant to a memorandum of agreement may terminate the memorandum of agreement if the person determines that it is no longer feasible or desirable to continue with the memorandum of agreement. The person terminating the memorandum of agreement shall:

i. Notify the Department in writing of its intent to terminate the memorandum of agreement;

ii. Submit all data generated pursuant to the memorandum of agreement; and

iii. Submit full payment to the Department for any Department oversight costs the Department incurred pursuant to the memorandum of agreement which the person has not paid; and

6. The Department shall cease review of any submittals under the memorandum of agreement on the date it receives the notice of intent to terminate described in (b)5i above. The Department shall then prepare a summary of its costs and provide it to the person. The date of termination of the memorandum of agreement is the date of the Department's receipt of the full unconditional payment of all of the Department's oversight costs required to be paid by the person pursuant to the memorandum of agreement and or the date of the person's receipt of a letter from the Department which states that the memorandum of agreement has been terminated.

(c) The memorandum of agreement is effective upon receipt of written notification from the Department, pursuant to N.J.A.C. 7:26C-3.2(b)1i, that the memorandum of agreement application is administratively complete and all the requirements of this section have been met.

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

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

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

(a) The Department may, in its sole discretion, allow a person to continue remediation pursuant to a memorandum of agreement at a site which the Department subsequently schedules for publicly funded remediation as specified in this section.

(b) The following criteria shall be met for remediation to continue pursuant to a memorandum of agreement at a site that is scheduled for publicly funded remediation:

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

**SUBCHAPTER 4. SPILL COMPENSATION AND CONTROL ACT DIRECTIVE**

**7:26C-4.1 Scope**

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

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

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

1. Conduct the remediation of a contaminated site, including the actual removal of the contamination or measures designed to prevent or mitigate damages to the public health and safety and the environment; or
2. **Arrange for the remediation** of a contaminated site, including such indirect arrangements as the funding of the Department's costs to conduct the necessary remediation, or any other indirect arrangement deemed appropriate by the Department in the exercise of its enforcement discretion.

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

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

1. The site of the discharge or threatened discharge;
2. The identity of those responsible parties receiving the directive;
3. The connection of the directive recipient to the discharge;
4. The nature of the necessary remediation or the estimated costs to be incurred;
5. The actions that the directive recipients are directed to accomplish;
6. The manner and timetable for the undertaking of those activities; and
7. The identification of a period in which the recipients shall respond to the directive.

(d) The Department may issue a notice to an insurer or any other person who may have financial responsibility for those believed by the Department to be in any way responsible for a discharge of a hazardous substance.

(e) In those instances where the Department directs the performance of remediation, the Department may, in the exercise of its enforcement discretion, require the entry of an agreement in the form of an administrative consent order in order to provide assurance that any remediation required by that directive will be performed in a timely and proper fashion. These administrative consent orders shall conform to N.J.A.C. 7:26C-5.

(f) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive with the directive recipient. These discussions shall be initiated by the directive recipient and inquiries shall be made to the Department's contact person designated in the directive.

(g) The directive recipient shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the directive recipient decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the directive recipient decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the directive recipient shall make such payment in mitigation of any liability that it may possess and comply with (h) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the directive recipient decides not to comply with the directive, the directive recipient shall indicate in writing that it chooses not to take any actions to comply with the directive and comply with (h) below.

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

(i) The directive recipient may use later developed evidence or evidence coming to light after the directive recipient initially responded to the directive in asserting good cause defenses in an action brought by the Department against the directive recipient for refusing to comply with the directive.

## SUBCHAPTER 5. ADMINISTRATIVE CONSENT ORDERS

### 7:26C-5.1 Scope

(a) This subchapter presents:

1. The types of administrative consent orders available for the remediation of sites which the Department has scheduled for publicly funded remediation; and

2. The procedures and timeframes for entering into administrative consent orders with the Department.

(b) If the Department, in its discretion, elects to allow a person to participate in the remediation of a site which the Department has scheduled for publicly funded remediation, such participation shall be governed by an administrative consent order pursuant to this subchapter, except as provided in N.J.A.C. 7:26C-3.4.

(c) The degree, manner and scope of that participation will be based on the specifics of each case as determined by the Department pursuant to this subchapter.

(d) The Department shall provide written notification to the person or persons responsible for conducting the remediation when the Department schedules the site for publicly funded remediation.

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)1 and (a)2; deleted (a)3; and added (d).

### 7:26C-5.2 Deferral to an existing regulatory or enforcement mechanism

(a) In some instances, a site which the Department has scheduled for publicly funded remediation is the subject of remediation pursuant to other Federal or State regulatory or enforcement mechanisms. For example, certain sites may be the subject of an enforcement order from the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, or a corrective action order pursuant to the Resource Conservation and Recovery Act. Similarly, in certain instances, the remediation of a contaminated site may be subject to such State regulatory programs as ISRA, or the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

(b) 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 the remediation at the site;

2. Pursue additional regulatory or enforcement mechanisms, including, but not limited to, those described in N.J.A.C. 7:26C-2; or

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

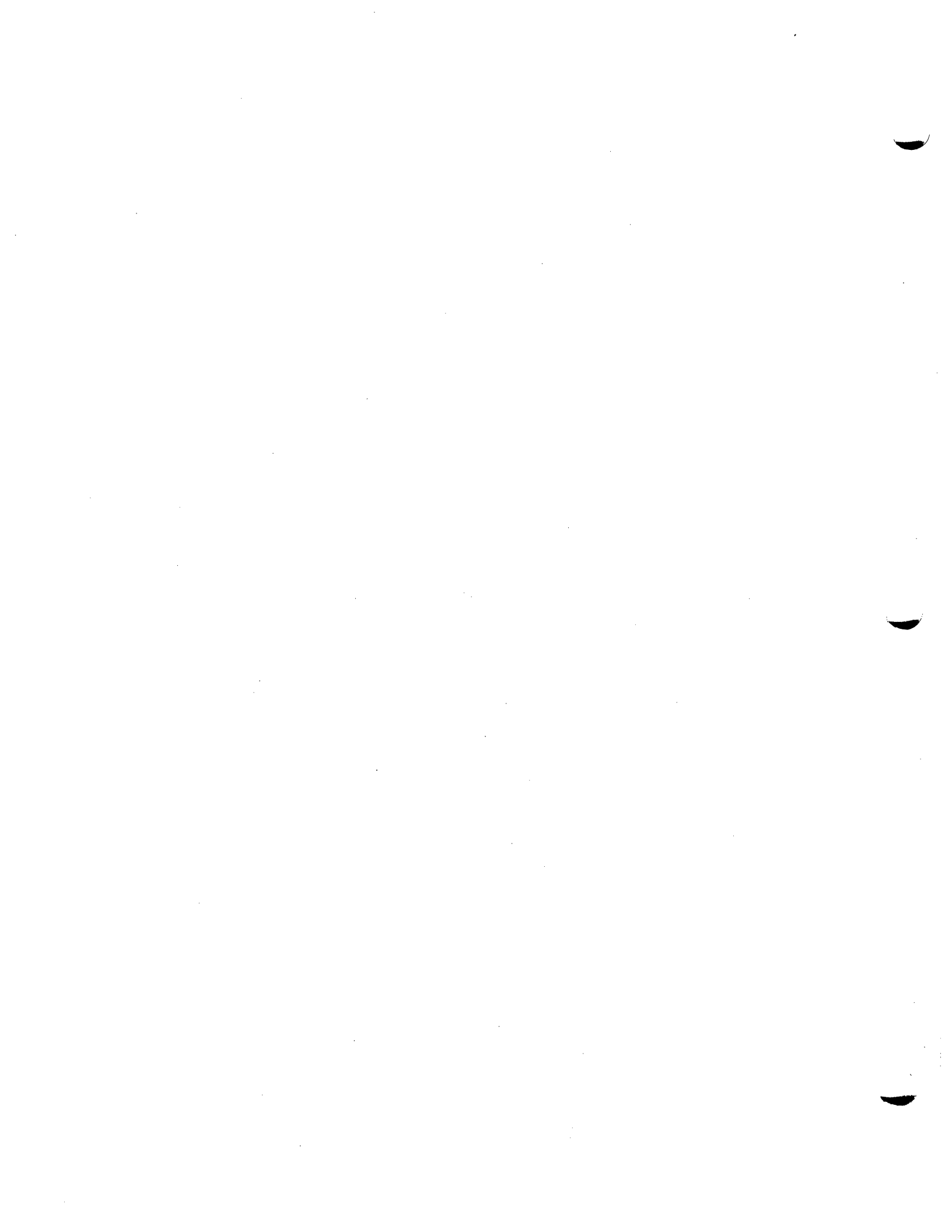
Recodified from N.J.A.C. 7:26C-5.3 and amended by R.1997 d.499, effective November 17, 1997.

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

Deleted existing (b); recodified existing (c) as (b); and deleted (d). Former N.J.A.C. 7:26C-5.2, "Notification of priority sites", repealed.

### 7:26C-5.3 Types and language of administrative consent orders

(a) The Department may choose to allow a person to participate in the remediation of a site, which the Department has scheduled for publicly funded remediation, through an administrative consent order as described in (b) through (e) below.



(b) The administrative consent order in Appendix A, incorporated herein by reference, is applicable in all situations pursuant to this subchapter, except as modified in (c) below.

(c) The Department has developed variations of the administrative consent order as follows:

1. For any person conducting the entire remediation the administrative consent order in Appendix A shall be used;

2. For multiple responsible parties conducting the remedial investigation only, the administrative consent order shall be used without the remedial action section;

3. For any person implementing the remedial action or implementing the remedial action necessary to address an immediate environmental concern, the administrative consent order shall be used without the remedial investigation section, except that in order to address an immediate environmental concern at which remedial investigation is necessary to determine the source of the contamination, the administrative consent order shall include the remedial investigation section as appropriate as well as the remedial action section;

4. For any person implementing the entire remediation at a site for which that person has submitted an application for a property tax exemption pursuant to P.L. 1995, c.413, the Environmental Opportunity Zone Act, the standard administrative consent order shall be used without the remediation funding source requirements. If subsequent to full execution of the administrative consent order the municipality does not grant the tax exemption, the person shall establish remediation funding source.

5. For a public entity:

i. Conducting the entire remediation, a memorandum of understanding in the form of the administrative consent order shall be used excluding the remediation funding source requirements;

ii. Conducting the remedial investigation only, a memorandum of understanding in the form of the administrative consent order shall be used excluding the remedial action section and the remediation funding source requirements; or

iii. Implementing the remedial action, a memorandum of understanding in the form of the administrative consent order shall be used without the remedial investigation and remediation funding source requirements.

(d) If a contaminated site does not fit within any of the specific categories described in (c) above, the Department will select the administrative consent order based upon the similarity of the contaminated site and person to the categories listed in this subchapter or upon other factors in the exercise of its discretion.

(e) When any person agrees to pay the Department for all of its costs of remediation, the administrative consent order shall be consistent with the standard administrative consent order in Appendix B, incorporated herein by reference.

(f) If the Department agrees to allow a person to implement any remediation phase at a site which is undergoing publicly funded remediation, the person shall enter into an administrative consent order which shall incorporate the appropriate remediation phase(s).

(g) Nothing in this section shall be construed as limiting the Department from settling additional issues in an administrative consent order.

Recodified from N.J.A.C. 7:26C-5.4 and amended by R.1997 d.499, effective November 17, 1997.

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

Inserted new (a); recodified existing (a) and (b) as (b) and (c); inserted new (c)1; recodified existing (b)1 and (b)2 as (c)2 and (c)3; inserted new (c)4; recodified existing (b)3 as (c)5; inserted new (c)5ii; recodified existing (b)5ii as (c)5iii; deleted existing (b)4; recodified existing (c) and (d) as (d) and (e); inserted new (f); recodified existing (e) as (g); and deleted existing (f) and (g). Former N.J.A.C. 7:26C-5.3, "Deferral to an existing regulatory or enforcement mechanism", recodified to N.J.A.C. 7:26C-5.2.

#### Case Notes

Timely administrative review had to be included in hazardous discharge site remediation. *E.I. du Pont de Nemours and Co. v. State*, Dept. of Environmental Protection and Energy, 283 N.J.Super. 331, 661 A.2d 1314 (A.D.1995).

#### 7:26C-5.4 Procedures for entry into administrative consent orders

(a) If the Department agrees to allow a person to conduct the remediation of a site which the Department has scheduled for publicly funded remediation, the person shall execute an administrative consent order pursuant to this subchapter within the time period specified below.

1. The Department will notify, in writing, the person of a time period that shall not exceed 90 calendar days at the conclusion of which the administrative consent order shall have been entered into. The Department in the exercise of its enforcement discretion may extend the period for up to 45 calendar days.

2. In those circumstances where the Department determines that a contaminated site involves multiple responsible parties, the Department may establish an initial period, that shall not exceed 60 calendar days, during which the responsible parties have the opportunity to organize into a single representative body. Whether or not a single representative body is formed during this initial period, the time period provided to enter into an administrative consent order shall commence as specified in the written notice given pursuant to (a)3 below.

3. In those circumstances where the Department determines that the site involves multiple responsible parties,

the Department will notify in writing those responsible parties of which it is aware, subsequent to the initial 60 calendar day time period referenced in (a)2 above, of a time period that shall not exceed 180 calendar days at the conclusion of which the administrative consent order shall have been entered into. The Department, in the exercise of its enforcement discretion, may extend the period for up to 45 calendar days.

4. Notwithstanding (a)1, 2, and 3 above, if the Department determines that a remedial action is necessary to address an immediate environmental concern at a contaminated site, the Department shall specify the appropriate time period to enter into an administrative consent order.

(b) If the Department agrees to allow a person to implement any remediation phase at a site which is undergoing publicly funded remediation, the person shall execute an administrative consent order pursuant to this subchapter within the time frame specified by (a) above, and in no case after the Department initiates the process to engage a contractor to conduct the remediation.

(c) If the time period to enter into the administrative consent order specified at (a) above has expired without the execution of an administrative consent order, a person may nevertheless participate in the required remediation of a contaminated site by paying all or part of the cost of the remediation. Any partial payment by a person will mitigate, but will not satisfy, the liability of the person for the Department's cleanup and removal costs, statutory penalties and treble damages.

(d) If a person has applied for financial assistance or a grant from the Hazardous Discharge Site Remediation Fund which is not approved within the established time period for entry into an administrative consent order, the person may enter into the administrative consent order which shall only become effective upon approval of the loan or grant. If the loan or grant is denied, the administrative consent order shall become null and void.

Recodified from N.J.A.C. 7:26C-5.5 and 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); inserted new (a)3; recodified existing (a)3 as (a)4; deleted (b); recodified existing (c) and (d) as (b) and (c); and added new (d). Former N.J.A.C. 7:26C-5.4, "Types and language of responsible party administrative consent orders", recodified to N.J.A.C. 7:26C-5.3.

#### Case Notes

Commercial general liability insurer's engineering costs for remedial investigation were "defense expenses," rather than liability coverage for damages. *General Acc. Ins. Co. of America v. State, Dept. of Environmental Protection*, 278 N.J.Super. 412, 651 A.2d 472 (A.D.1995), certification granted 140 N.J. 328, 658 A.2d 728, reversed 143 N.J. 462, 672 A.2d 1154.

#### 7:26C-5.5 (Reserved)

Recodified to N.J.A.C. 7:26C-5.4 by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Section was, "Negotiation procedures".

#### 7:26C-5.6 (Reserved)

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

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Section was, "Determination of financial assurance amount".

## SUBCHAPTER 6. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

### 7:26C-6.1 Scope

This subchapter provides the requirements for any person who meets the eligibility requirements of N.J.A.C. 19:31-8 to apply for financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

### 7:26C-6.2 Financial assistance and grants

(a) A person that elects to apply for financial assistance or a grant from the Hazardous Discharge Site Remediation Fund shall submit a proposal on forms available from the Department at the address provided at N.J.A.C. 7:26C-1.6 and a written request, certified in accordance with N.J.A.C. 7:26C-1.2, to the Department at the address provided at N.J.A.C. 7:26C-1.6 which includes:

1. A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to an oversight document, including as applicable, case number, Known Contaminated Site List number and the Department case manager for the case;
2. A statement by the applicant whether the proposal is for a grant or financial assistance and identification of the provision within N.J.A.C. 19:31-8.3 that supports the applicant's request for financial assistance or grant;
3. A description of the remediation to be completed at the site under the financial assistance or grant;
4. A cost estimate for the completion of remediation listed at (a)3 above. For any portion of the proposed remediation listed in (a)3 above which concerns an underground storage tank regulated by N.J.A.C. 7:14B, that portion of the cost estimate shall be prepared by an individual certified pursuant to N.J.A.C. 7:14B-13.1;
5. The total amount of financial assistance or grant requested;
6. The following certification, if the applicant does not have any violations, outstanding fees or penalties:

i. "I certify that I am in compliance with all applicable Department rules and regulations and do not have any outstanding violations, fees, or penalties";

ii. The certification above shall be signed pursuant to N.J.A.C. 7:26C-1.2(b)2; and

iii. If the applicant is not in compliance with all applicable Department rules, the applicant shall submit to the Department a written description of, and explanation for, noncompliance 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 or whether the violations, fees or penalties resulted from a lack of financial resources to perform the required remediation;

7. A description and the amount of any other funding sources available to the applicant;

8. The last three annual financial statements of the applicant, who is not applying for an innocent party grant or who is not a municipal entity. An applicant that is a homeowner applying to remediate discharges at the applicant's domicile shall submit the applicant's last three Federal income tax returns;

9. A statement by an applicant who is requesting an innocent party grant which states:

i. The applicant qualifies for an innocent party grant pursuant to N.J.A.C. 19:31-8.3;

ii. The applicant acquired title to the property before December 31, 1983, a copy of the deed to the property must be included with this statement;

iii. Neither the applicant nor any person authorized by the applicant to use the contaminated site used the hazardous substance that was discharged at the contaminated site; and

iv. Neither the applicant nor any person authorized by the applicant to use the contaminated site discharged any hazardous substance at the contaminated site; and

10. A statement by an applicant required to establish a remediation funding source or that has voluntarily undertaken the remediation of a site, that the applicant cannot obtain an environmental insurance policy or a line of credit, cannot establish a remediation trust fund, and cannot provide a self-guarantee pursuant to N.J.A.C. 7:26C-7.

(b) Any person required to establish a remediation funding source that elects to apply for financial assistance or a grant to satisfy all or a portion of the remediation funding source requirements shall submit all the information required in (a) above upon submission of either a remediation agreement application pursuant to N.J.S.A 13:1K-6 et seq., or remedial action workplan for an industrial establishment,

or upon receipt of an administrative consent order from the Department.

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

1. The applicant's request for financial assistance and/or a grant is administratively and technically complete and the Department has referred the request to the New Jersey Economic Development Authority for financial review in accordance with N.J.A.C. 19:31-8;

2. The applicant's request for financial assistance and/or a grant is administratively and/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 financial assistance and/or a grant from the Hazardous Discharge Site Remediation Fund.

(d) In the event that the Department or the New Jersey Economic Development Authority determines that the person is able to establish a remediation funding source, the person required to establish a remediation funding source shall establish the full amount of the remediation funding source in accordance with N.J.A.C. 7:26C-7, within 14 calendar days after the person's receipt of notice from the Department or the New Jersey Economic Development Authority that the application for financial assistance and/or a grant from the Hazardous Discharge Site Remediation Fund has been denied as applicable.

## SUBCHAPTER 7. REMEDIATION FUNDING SOURCE

### 7:26C-7.1 Scope

(a) This subchapter identifies:

1. The types of remediation funding sources available;
2. The requirements for the establishment, maintenance, and disbursement of the remediation funding source; and
3. The requirements for payment of the remediation funding source surcharge.

### 7:26C-7.2 Establishing remediation funding sources

(a) Any person required to conduct remediation at a contaminated site, pursuant to a court order, an administrative consent order, a remediation agreement or a Department approved remedial action workplan for an industrial

establishment shall establish and maintain a remediation funding source.

(b) If the Department approves an innovative remedial action technology, or an unrestricted use or limited restricted use remedial action for all or part of the remedial action at a contaminated site or area(s) of concern:

1. Any person otherwise required to establish a remediation funding source for the site or area of concern is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action; and

2. The Department shall release any existing remediation funding source consistent with (b)1 above and pursuant to N.J.A.C. 7:26C-7.11.

(c) Any person required to or that chooses to establish a remediation funding source shall establish and maintain a remediation funding source:

1. In an amount equal to or greater than the estimated cost of implementing the remediation, including estimated cost of maintaining engineering and institutional controls, as applicable; and

2. For a period not less than the actual time necessary to complete the remediation.

(d) The remediation funding source may be established in any one or any combination of the following forms:

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-7.4;

2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-7.5;

3. A line of credit agreement in accordance with N.J.A.C. 7:26C-7.6;

4. A self-guarantee in accordance with N.J.A.C. 7:26C-7.7; or

5. Financial assistance or a grant in accordance with N.J.A.C. 7:26C-6 and 19:31-8.

(e) Any person may establish a remediation funding source pursuant to this section, other than a self-guarantee, for any other person required to establish a remediation funding source.

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

Inserted a new (b); and recodified former (b) through (d) as (c) through (e).

### **7:26C-7.3 Determination of remediation funding source amount**

(a) A person required to establish a remediation funding source shall submit the information required by (b) below, certified in accordance with N.J.A.C. 7:26C-1.2, to the Department at the address provided at N.J.A.C. 7:26C-1.6:

1. Within 30 calendar days after receipt of a draft administrative consent order from the Department pursuant to N.J.A.C. 7:26C-5;

2. Upon submission to the Department of an application for a remediation agreement pursuant to N.J.S.A. 13:1K-6 et seq.; or

3. Upon submission to the Department of a remedial action workplan for an industrial establishment.

(b) The person establishing a remediation funding source shall submit the following information pursuant to (a) above:

1. A list of all known areas of concern at the site; and

2. A cost estimate, for the remediation of the site, performed in accordance N.J.A.C. 7:26E-1.8.

(c) The Department may, in its discretion:

1. Require the submission of any documentation including, but not limited to, any workplans or reports that were used to determine the cost estimate submitted pursuant to (b)2 above; and

2. Request a revised cost estimate if the documentation used to determine the cost estimate is incomplete, inaccurate or deficient.

### **7:26C-7.4 Remediation trust fund requirements**

(a) Any person who chooses to establish a remediation trust fund agreement shall:

1. Submit duplicate original remediation trust fund agreements pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) and (c) to the Department at the address provided at N.J.A.C. 7:26C-1.6; and

2. Submit the remediation trust fund agreement within 14 calendar days after the effective date of the oversight document, court order or receipt of the Department's approval of the remedial action workplan for an industrial establishment.

(b) The remediation trust fund agreement shall specify the following:

1. The applicable case number, the Known Contaminated Site List number, site name, site address, and name of the Department contact;

2. That the trustee of the remediation trust fund is an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency;

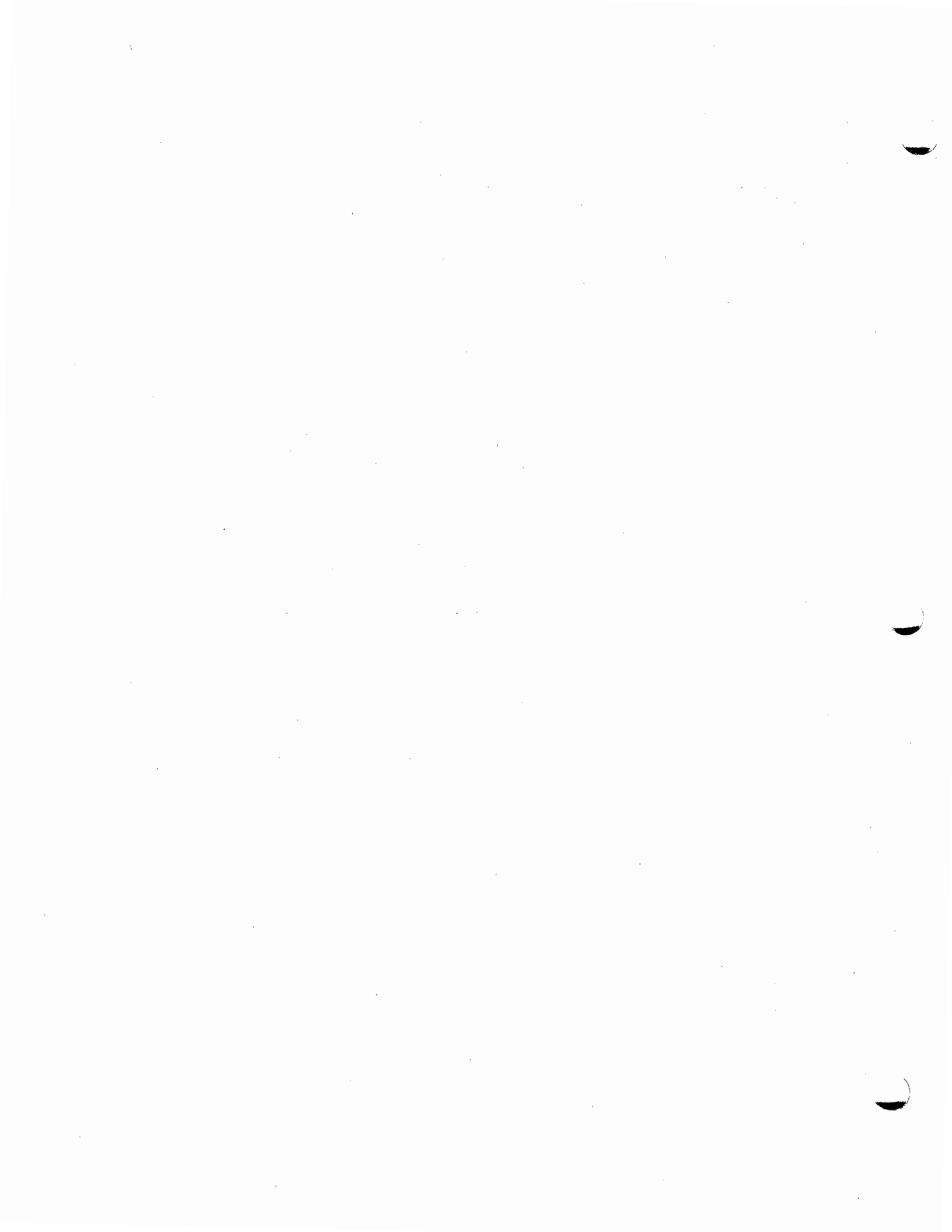
3. That the remediation trust fund shall not be revoked or terminated without the prior written approval of the Department;

4. That the trustee shall only disburse those funds from the remediation trust fund that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;

5. That the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation and for management of the remediation trust fund;

6. That the Department is the sole beneficiary of the remediation trust fund; and

7. That, in the event that the person that has established the remediation trust fund or the person conducting the remediation, as appropriate, fails to complete the remediation, the Department may, in its sole discretion, perform the remediation of the site or allow a transferee of an industrial establishment to perform the remediation of the site using the funds in the remediation trust fund.



(c) The person required to establish the remediation funding source may at any time submit a written request to the Department to substitute the remediation trust fund agreement with an alternate remediation funding source pursuant to N.J.A.C. 7:26C-7.2(b) and (c). The Department shall return the duplicate original remediation trust fund agreements to the trustee for termination after the Department has determined that an alternate remediation funding source has been established pursuant to the requirements in this subchapter.

#### 7:26C-7.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy shall:

1. Submit duplicate original environmental insurance policies pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) and (c) to the Department at the address provided at N.J.A.C. 7:26C-1.6; and

2. Submit the environmental insurance policy within 30 calendar days after the effective date of the oversight document, court order or receipt of the Department's approval of the remedial action workplan for an industrial establishment.

(b) The environmental insurance policy shall be issued by an entity licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey and shall specify the following:

1. The applicable case number, the known contaminated site list number, site name, site address, and name of the Department contact;

2. That the environmental insurance policy shall not be revoked or terminated without the prior written approval of the Department;

3. That the insurer shall only disburse those funds from the environmental insurance policy that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;

4. That the funds in the environmental insurance policy will be utilized solely for the purposes of conducting the remediation;

5. The Department is the sole beneficiary of the environmental insurance policy; and

6. That, in the event that the person that has established the environmental insurance policy or the person conducting the remediation, as appropriate, fails to complete the remediation, the Department may, in its sole discretion, perform the remediation of the site or allow a transferee of an industrial establishment to perform the remediation of the site using the funds in the environmental insurance policy.

(c) The person required to establish the remediation funding source may at any time submit a written request to

the Department to substitute the environmental insurance policy with an alternate remediation funding source pursuant to N.J.A.C. 7:26C-7.2(b) and (c). The Department shall return the duplicate original environmental insurance policy to the person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to the requirements in this subchapter.

#### 7:26C-7.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit agreement shall:

1. Submit duplicate original line of credit agreements pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) and (c) to the Department at the address provided at N.J.A.C. 7:26C-1.6; and

2. Submit the line of credit agreement within 14 calendar days after the effective date of the oversight document, court order or receipt of the Department's approval of the remedial action workplan for an industrial establishment.

(b) The line of credit agreement shall specify the following:

1. The applicable case number, the Known Contaminated Site List number, site name, site address, and name of the Department contact;

2. That the line of credit agreement shall not be revoked or terminated without the prior written approval of the Department;

3. That the person providing the line of credit shall only disburse those funds from the line of credit that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;

4. That the funds in the line of credit shall be utilized solely for the purposes of conducting the remediation and for management of the line of credit; and

5. That, in the event that the person that has established the line of credit or the person conducting the remediation, as appropriate, fails to complete the remediation, the Department may, in its sole discretion, perform the remediation of the site or allow a transferee of an industrial establishment to perform the remediation of the site using the funds in the line of credit.

(c) The person that has established the remediation funding source may at any time submit a written request to the Department to substitute the line of credit with an alternate remediation funding source pursuant to N.J.A.C. 7:26C-7.2(b) and (c). The Department shall return the duplicate original line of credit agreement to the person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to the requirements in this subchapter.

**7:26C-7.7 Self-guarantee requirements**

(a) Any person who chooses to provide a self-guarantee to satisfy the requirement of a remediation funding source shall:

1. Submit a written statement to satisfy the requirements for a remediation funding source by providing a self-guarantee, certified in accordance with N.J.A.C. 7:26C-1.2(a) and (c), to the Department at the address provided at N.J.A.C. 7:26C-1.6;

2. Submit the written statement identified in (a)1 above:

i. Within 30 calendar days after receipt of a draft administrative consent order pursuant to N.J.A.C. 7:26C-5; or

ii. Upon submission to the Department of an application for a remediation agreement pursuant to N.J.S.A. 13:1K-6 et seq.; or

iii. Upon submission to the Department for approval of a remedial action workplan for an industrial establishment.

(b) The written statement shall demonstrate the following:

1. That the estimated cost of the remediation, approved by the Department, shall not exceed one-third of the tangible net worth of the person required to establish the remediation funding source; and

2. That the person has the cash flow to assure the availability of money for the cost of remediation during the time necessary to conduct the remediation. Specifically, the written statement shall demonstrate that:

i. The person's gross receipts (income) exceed its gross payments (expenses) for the preceding fiscal year that ended closest in time to the date of the Department's receipt of the self-guarantee statement submitted pursuant to (a)2 above; and

ii. The person's gross receipts must be greater than or equal to the estimated costs of completing the remediation activities scheduled for the following 12-month period.

(c) The written statement shall include the following:

1. The applicable case number, the known contaminated site list number, site name, site address, name of Department contact, and the estimated cost of remediation determined in accordance with N.J.A.C. 7:26C-7.3(b);

2. A current statement of income and expenses;

3. An audited balance sheet or similar statement of assets and liabilities, for the preceding fiscal year that ended closest in time to the date of the self-guarantee statement; and

4. A statement from the chief financial officer or similar officer that the information in the written request is true to the best of the requestor's information, knowledge and belief and meets the requirements of N.J.S.A. 58:10B-3(f).

(d) The Department shall notify the person seeking to provide a self-guarantee whether or not the person satisfies the self-guarantee requirements as outlined at (b) above.

(e) The self-guarantee shall be valid, if approved by the Department, for one year from the date of the Department's approval, the effective date of the administrative consent order, the effective date of the remediation agreement, or approval of the remedial action workplan, as applicable. Thereafter, the person shall:

1. Comply with the requirements of (a), (b) and (c) above, annually, to provide a self-guarantee for each successive year that the person is required to maintain a remediation funding source and wishes to continue to provide a self-guarantee; and

2. Submit the information required by (a), (b) and (c) above to the Department, at the address provided at N.J.A.C. 7:26C-1.6, 30 calendar days prior to the date of expiration of the existing statement.

**7:26C-7.8 Remediation funding source surcharge**

(a) A person required to establish and maintain a remediation funding source that elects to establish the remediation funding source by one or any combination of the following: a remediation trust fund, a line of credit, or an environmental insurance policy, shall submit to the Department a remediation funding source surcharge pursuant to (b) below.

(b) The person shall submit the remediation funding source surcharge to the Department at the address provided at N.J.A.C. 7:26C-1.6 and shall conform with the requirements outlined below:

1. The amount of the remediation funding source surcharge shall be equal to one percent of the remediation funding source;

2. The remediation funding source surcharge shall be submitted to the Department within 30 calendar days after the effective date of the oversight document, receipt of the Department's approval of the remedial action workplan for an industrial establishment, or court order and annually thereafter on the same date until the Department notifies the person in writing that the person has satisfied the requirements of the court order, oversight document, or Department approved remedial action workplan for an industrial establishment and the remediation funding source is no longer needed; and

3. The remediation funding source surcharge payment shall be made by cashier's or certified check and made payable to the New Jersey Economic Development Authority.

**7:26C-7.9 Changes in the remediation funding source amount**

(a) The person that has established the remediation funding source may at any time submit to the Department a request to approve a reduction in the amount of the remediation funding source, along with a revised remediation cost estimate.

(b) The Department shall respond to requests pursuant to N.J.A.C. 7:26C-7.9(a) within 90 calendar days after the Department's receipt of such request.

(c) Upon receipt of a written approval from the Department, the person that has established the remediation funding source may decrease the remediation funding source amount to an amount equal to the amount approved by the Department.

(d) Within 30 calendar days after completion of the remediation cost review required pursuant to N.J.A.C. 7:26C, Appendix C or within 30 calendar days after receipt of written notice from the Department that the cost of the remediation has increased, the person that has established the remediation funding source shall increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation.

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

Inserted a new (b); and recodified former (b) and (c) as (c) and (d).

**7:26C-7.10 Disbursements from the remediation funding source to fund the remediation**

(a) A person responsible for conducting the remediation of a site for which a remediation funding source has been established may submit to the Department, at the address provided at N.J.A.C. 7:26C-1.6, a written request to use the remediation funding source to pay for the actual costs of the remediation, which includes the following information:

1. Identification of the site, including name, address, case number (if applicable), comprehensive site list number, status of the case and the Department contact for the case;
2. A detailed description, including documentation, of costs incurred and the specific remediation activities that have been completed;
3. A detailed description, including documentation, of costs to be incurred and the specific remediation activities that will be completed under this request; and
4. The amount of the disbursement requested based on (a)2 and 3 above and the remediation activities remaining to be completed at the site.

(b) Within 30 calendar days after the Department's receipt of the written request submitted pursuant to (a) above, the Department shall review the request and shall respond as follows:

1. The information is complete and the disbursement amount represents actual costs of remediation therefore the disbursement is approved;
2. The information is complete however the disbursement amount does not represent actual costs of remediation therefore the disbursement is not approved; or
3. The information is incomplete and the Department shall not give further consideration to the disbursement request until the requestor submits all the required information.

**7:26C-7.11 Return of the remediation funding source**

(a) The Department shall notify in writing the person that has established the remediation funding source, that the 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:
  - 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 which has not yet been completed 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).

**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 for an industrial establishment. 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 any transferee of an industrial establishment when the person required to establish the remediation funding source has failed to remediate an industrial establishment.

(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 or allow a transferee of an industrial establishment to perform the remediation of the site using the funds in the remediation funding source.

## 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 why 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 may 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.

## 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 or site investigation report submitted by any person, at N.J.A.C. 7:26C-9.2;

2. The fixed costs to obtain Department oversight of remediation for an owner or operator of an underground storage tank not regulated by N.J.A.C. 7:14B, which is used solely to store heating oil for consumption on site or which is of 1,100 gallon capacity or less and is used solely for storage of motor fuel at a farm or residence which motor fuel was not used for commercial purposes, and from which there has been a discharge, at N.J.A.C. 7:26C-9.2;

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, at N.J.A.C. 7:26C-9.3; 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 costs at N.J.A.C. 7:26C-9.4.

**7:26C-9.2 Fixed oversight costs**

(a) A person shall pay all applicable fixed costs required by this section upon submittal to the Department of each request or submission as follows:

1. Preliminary assessment report \$250.00
2. Site investigation report \$500.00
3. Remedial action report† \$500.00

† This is limited to owners or operators of underground storage tanks not regulated by N.J.A.C. 7:14B and used solely for storing heating oil for on-site consumption; or of underground storage tanks of 1,100 gallon capacity or less used solely for storage of motor fuel at a farm or residence which motor fuel was used for noncommercial purposes.

(b) The fixed costs required by (a) above are nonrefundable, are not one time costs, and shall be submitted with each and every submittal made to the Department.

(c) The person responsible for conducting the remediation shall pay all fixed costs required by this section in accordance N.J.A.C. 7:26C-9.5.

(d) The Department shall not review a preliminary assessment report, site investigation report, or remedial action report for remediation of a discharge from an underground storage tank unless and until the Department receives the appropriate fixed cost as listed in (a) above.

**7:26C-9.3 Oversight cost formula**

(a) Any person conducting remediation with the Department's oversight pursuant to this chapter, the Industrial Site Recovery Act, pursuant to N.J.A.C. 7:26B, or the Underground Storage of Hazardous Substances Act, pursuant to N.J.A.C. 7:14B, shall submit payment to the Department, to 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. Site job number;
2. Name of each staff member performing work on the site; and
3. Number of hours spent by each staff member working on the site.

(c) The Department shall send a bill based on the formula in (d) below to the person responsible for conducting the remediation at regular intervals throughout the duration of the remediation.

(d) The Department's oversight costs are based on the Department's costs of working on activities for a site. These costs are based upon the formula: Oversight Costs = A + B;

1. Where A = [(Number of coded hours x Hourly Salary Rate) x (Salary Additive Factor) x (Fringe Benefit Factor)] + [(Number of coded hours x Hourly Salary Rate)] + specifically:

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific job number. Actual hours for all State employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to NJDEP employees' reimbursable "down time." Reimbursable "down time" includes vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling-employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive is the sum of the reimbursable "down time" divided by the net Department regular salary for a given fiscal year. The net Department regular salary is calculated by subtracting from the Department regular salary employees' reimbursable and non-reimbursable "down time." Non-reimbursable "down time" includes absent without pay, fire called by State Fire Warden, conferences and seminars, voluntary furlough, family leave, and suspension without pay;

iv. The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-state funded programs; and

2. Where B = (Direct Costs), specifically direct costs represent any nonsalary direct, site-specific costs including, but not limited to, laboratory analysis or contractor expenses. These costs shall be billed directly as a formula add on.

(e) Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the 30 calendar day period established at (a) above, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

(f) The Department shall develop on an annual basis and publish notice in the New Jersey Register of the fringe benefit rate to be used by the Site Remediation Program for the fiscal year.

(g) The person conducting the remediation of a site shall not receive a "no further action" letter from the Department unless all oversight costs and fixed costs for work previously billed by the Department to the site are paid. The Department may discontinue oversight or review of a submittal unless all oversight costs for work previously billed are paid. In addition, the Department may consider the failure to pay the oversight costs and fixed costs to be a violation of the applicable statutory and regulatory authorities and may initiate actions to recover its oversight costs.

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

Rewrote (a); in (d)1, deleted a reference to Indirect Cost Factor in the introductory paragraph, and deleted v through viii; and in (f), deleted "and the indirect cost rate" following "benefit rate".

#### 7:26C-9.4 Oversight cost review

(a) To contest an oversight cost calculated pursuant to N.J.A.C. 7:26C-9.3(d), any person shall, within 30 calendar days after the person's receipt of the bill for the oversight cost from the Department, submit a written request to the Department, at the address provided at (c) below, for an oversight cost review pursuant to (d) below.

(b) The Department shall not accept an oversight cost review request if the request is based on the following:

1. An employee's hourly salary rate;
2. The Department's salary additive rate or fringe benefit rate; or
3. Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit an oversight cost review request to the Department at the following address:

Attention: Oversight Cost Review Request  
(Assistant Director)  
Division of Responsible Party Site Remediation  
New Jersey Department of Environmental Protection  
401 E. State Street  
PO Box 028  
Trenton, NJ 08625-0028.

(d) The following information shall be included in a request for an oversight cost review:

1. A copy of the bill;
2. Payment of all uncontested charges, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address and telephone number of the person making the request;
6. Information supporting the request or other written documents relied upon to support the request;
7. An estimate of the amount of time required for an informal meeting with Department representatives; and
8. A request, if necessary, for a barrier free meeting or hearing location for physically disabled persons.

(e) If any information or the payment required by (d) above is not included, the Department shall deny a request for an oversight cost review.

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a new bill which shall be due and payable within 30 calendar days after receipt.

(g) The Department may, if it determines that the factual issues involving an oversight cost dispute cannot be resolved informally, determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(h) If the Department does not determine the matter to be a contested case and, therefore, not subject to an adjudicatory hearing, the Department shall issue written notification for this determination. This determination shall be considered a final agency action.

(i) If the objector does not file a request for an oversight cost review within 30 calendar days after the objector's receipt of the bill for the oversight cost from the Department, the full amount of the oversight cost shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-9.3(g).

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)2, deleted a reference to indirect rate.

**7:26C-9.5 Payment for oversight costs**

All payments of oversight costs required by this subchapter shall be made by certified check, attorney check, money order, or by personal check. Checks and money orders shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all payments of oversight costs shall be made to the address indicated on the invoice.

## SUBCHAPTER 10. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

**7:26C-10.1 Scope**

This subchapter shall govern the Department's assessment of civil administrative penalties for violations of administrative orders or administrative consent orders issued pursuant to N.J.A.C. 7:26C-5 or of declarations of environmental restrictions recorded pursuant to N.J.A.C. 7:26E-6. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment.

**7:26C-10.2 Applicability**

(a) Each violation of an administrative order or an administrative consent order or a declaration of environmental restrictions shall constitute a separate and distinct offense.

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

(c) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

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

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

(a) In order to assess a civil administrative penalty for violations of an administrative order or an administrative consent order or a declaration of environmental restrictions 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. This notice of civil administrative penalty assessment 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 to be imposed; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:26C-10.4.

(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-10.4, 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 a civil administrative penalty is not paid within 30 calendar days of the date of a Final Order, and the penalty is not contested pursuant to N.J.A.C. 7:26C-10.4, or any payment pursuant to a payment schedule entered into with the Department is not made, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-10.4 and the amount of the penalty is upheld, in whole or in part, a rate of interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing.

(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 costs of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil

administrative penalty, and shall be in addition to the penalty assessment.

(g) Any person who violates an administrative order or an administrative consent order or a declaration of environmental restrictions, or who fails to pay a civil administrative penalty in full or to agree to a schedule of payment therefor, shall be subject to a civil penalty not to exceed \$50,000 per offense. Any penalty so incurred may be recovered with costs in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq., in the Superior Court or a municipal court.

#### **7:26C-10.4 Procedures for requesting and conducting adjudicatory hearings**

(a) If the Department does not receive a hearing request within 20 calendar days after receipt by the violator of a notice of civil administrative penalty assessment, the Department shall deny the hearing request.

(b) To request an adjudicatory hearing to contest a notice of civil administrative penalty assessment, the violator shall submit the following information in writing to the Department at the address in (e) below:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the notice of administrative penalty assessment. 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;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(c) If the violator fails to include all the information required by (b) above, the Department shall deny the hearing request.

(d) All adjudicatory hearings shall be conducted 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.

(e) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs  
New Jersey Department of Environmental Protection  
PO Box 402  
Trenton, New Jersey 08625-0402  
Attention: Hearing Request

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

#### **Authority**

N.J.S.A. 13:1D-1 et seq. and P.L. 1997, c.235.

#### **Source and Effective Date**

R.1998 d.155, effective April 6, 1998.  
See: 29 N.J.R. 5154(a), 30 N.J.R. 1321(a).

#### **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 Systems Remediation, Upgrade and Closure Fund.

#### **7:26C-11.2 Financial assistance, loans and grants**

(a) An applicant for a loan and/or a grant from the Fund shall submit an application on forms available from the Department at the address provided at N.J.A.C. 7:26C-1.6 and a written request, certified in accordance with N.J.A.C. 7:26C-1.2, to the Department at the address provided at N.J.A.C. 7:26C-1.6 which includes:

1. A statement by the applicant which states whether or not the applicant is currently conducting the remediation of a discharge or the upgrade or closure of an underground storage tank system(s) pursuant to N.J.A.C. 7:14B, or conducting a remediation in accordance with an oversight document executed pursuant to N.J.A.C. 7:26C. The statement shall include, as applicable, case number, Known Contaminated Site List number and the name of the assigned Department case manager;

2. For tanks regulated pursuant to N.J.S.A. 58:10A-23, a statement by the applicant that the underground storage tank system(s) has been properly registered by the Department pursuant to N.J.A.C. 7:14B;

3. For underground storage tanks regulated pursuant to 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 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 N.J.A.C. 7:26E;

ii. The regulated tank system is required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation;

iii. The regulated tank system is required to be closed pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation;

iv. The regulated tank system is required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq., but not pursuant to 42 U.S.C. §§ 6991, including necessary remediation;

v. The regulated tank system(s) requires the remediation of a discharge other than those given priority above; or

vi. The regulated tank system(s) is required to be closed pursuant to N.J.S.A. 58:10A-21 et seq., but not pursuant to 42 U.S.C. §§ 6991, including necessary remediation;

vii. The underground storage tank system(s) requires the remediation of a discharge of heating oil from an underground storage tank system(s) 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 financial assistance, 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 Fund for a remediation, or the closure or upgrade of an underground storage tank systems;

8. A description of the work to be completed under the loan and/or grant. All work being conducted on the petroleum underground storage tank systems shall be conducted pursuant to the requirements of N.J.A.C. 7:14B and 7:26E;

9. A cost estimate for the completion of work listed at (a)8 above. For a regulated underground storage tank system(s) other than homeowner tanks, a contractor certified pursuant to N.J.A.C. 7:14B-13 shall provide the cost estimate;

10. The total amount of loan or grant requested;

11. The following certification which states that the applicant does not have any violations, outstanding fees or penalties with the Department:

i. "I certify that I am in compliance with all applicable Department rules and regulations and do not have any outstanding violations, fees, or penalties"; and

ii. The certification in (a)11i above shall be signed pursuant to N.J.A.C. 7:26C-1.2(b)2; and

iii. 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 or 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 underground storage tank systems 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 financial assistance 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) The Department shall review the applicant's request for a loan and/or a grant 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 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 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 from the Fund and a statement of the reason(s) therefor.

#### APPENDIX A

##### STANDARD ADMINISTRATIVE CONSENT ORDER

The standard administrative consent order contains references to [Person], [amount], [Order], and other blank brackets [ ]. Upon the Department's issuance or entry of an [Order], the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF THE :

[Site name] :

AND : [ORDER]

[Name of Person] :

This [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 et seq., and N.J.S.A. 58:10B-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

#### FINDINGS

1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the [Order].]

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

3. [The regulatory and enforcement history of the site.]

4. By entering this [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 [Order].

5. The scope of the investigation and remediation required by this [Order] will include all contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

#### ORDER

##### I. Remedial Investigation Requirements

1. Within [ ] calendar days after the effective date of this [Order] or as otherwise approved in writing by the Department, [Person] shall submit to the Department a detailed draft Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E.

2. Within [ ] calendar days after receipt of the Department's written comments on the draft RI Work Plan, or as otherwise approved in writing by the Department, [Person] shall modify the draft RI Work Plan to conform to the Department's comments and shall submit the modified RI Work Plan to the Department. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

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

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

5. If upon review of the draft RI Report the Department determines that additional remedial investigation is required, [Person] shall conduct additional remedial investigation as required by the Department and submit a second draft RI Report.

6. Within [ ] calendar days after receipt of the Department's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) RI Report, or longer as authorized by the Department, [Person] shall modify the draft or second draft RI Report to conform to the Department's comments and shall submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

##### II. Remedial Action Selection Report and Remedial Action

1. If required by the Department in writing, within [ ] calendar days after [Person's] receipt of the Department's written notice that the modified RI Report conforms with the Department's comments and is otherwise acceptable to the Department, [Person] shall submit a draft Remedial Action Selection Report to the Department. [Person] shall in the remedial action selection report demonstrate how the proposed remedial action will ensure the protection of the public health and safety, and the environment, by including in the report:

(a) A detailed discussion of the necessary technical performance, effectiveness, and reliability of the remedial action to attain and maintain compliance with applicable remediation standards and required health risk levels pursuant to N.J.S.A. 58:10B-1 et seq.;

(b) A schedule for implementation of the remedial action; and

(c) Identification of potential technical and legal impediments, specifically, use restrictions, zoning and access, to implementation of the remedial action and how [Person] expects to remove those impediments.

2. Within [ ] calendar days after [Person's] receipt of the Department's written comments on the draft Remedial Action Selection Report, or as otherwise approved in writing by the Department, [Person] shall modify the draft Remedial Action Selection Report to conform to the Department's comments and shall submit the modified Remedial Action Selection Report to the Department. The determination as to whether or not the modified Remedial Action Selection Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

3. If required by the Department in writing, within [ ] calendar days after receipt of the Department's written approval of the Remedial Action Selection Report, [Person] shall submit to the Department a draft Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

4. Within [ ] calendar days after receipt of the Department's written comments on the draft Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] shall modify the draft Remedial Action Work Plan to conform to the Department's comments and shall submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

5. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, [Person] shall

implement the approved Remedial Action Work Plan in accordance with the schedule therein.

6. [Person] shall submit to the Department a draft Remedial Action Report (hereinafter "RA Report") in accordance with N.J.A.C. 7:26E and the RA Work Plan and the schedule therein.

7. If upon review of the draft RA Report the Department determines that additional remedial action is required, [Person] shall conduct additional remedial action as directed by the Department and shall submit a second draft RA Report.

8. Within [ ] calendar days after receipt of the Department's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) RA Report, or longer as authorized by the Department, [Person] shall modify the draft or second draft RA Report to conform to the Department's comments and shall submit the modified RA Report to the Department. The determination as to whether or not the modified RA Report, as resubmitted, conforms with the Department's comments and is otherwise acceptable to the Department shall be made solely by the Department in writing.

9. If [Person] is implementing a remedial action which will not meet an established remediation standard, [Person] shall comply with the requirements of N.J.A.C. 7:26E-6.1, 6.2, 6.4, 6.6, and 6.7 for declarations of environmental restrictions and implementing and maintaining institutional or engineering controls.

### III. Additional Remedial Investigation and Remedial Action

1. If at any time that this [Order] is in effect the Department determines that the prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remedial investigation and/or remedial action is required to protect the public health and safety and the environment, [Person] shall conduct such additional activities as directed by the Department.

### IV. Permit Application Process for Remediation

1. Within thirty (30) calendar days after receipt of the Department's written notification regarding the Department's selection of the remedial action, [Person] shall submit to the Department a detailed draft permit application submission schedule in accordance with N.J.A.C. 7:26E-7 for all relevant Federal, State and local permit applications, certifications or modifications necessary to implement the selected remedial action.

### V. Progress Reports

1. [Person] shall submit quarterly progress reports which detail the status of [Person's] compliance with this [Order] to the Department contact identified in this [Order] in

accordance with N.J.A.C. 7:26E-6.5(b). [Person] shall submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this [Order]. [Person] shall submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. Based on site specific activities being performed by [Person], the Department may request that progress reports be submitted monthly, semi-annually or annually.

#### VI. Project Coordination

1. [Person] shall submit to the Department all documents required by this [Order], including correspondence relating to force majeure issues, by delivery with an acknowledgment of receipt from the Department. The date that the Department executes the acknowledgment will be the date the Department uses to determine [Person's] compliance with the requirements of this [Order] and the applicability of stipulated penalties and any other remedies available to the Department.

2. Within seven (7) calendar days after the effective date of this [Order], [Person] shall submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this [Order] and [Person] shall designate an agent for the purpose of service for all matters concerning this [Order] and shall provide the Department with the agent's name and address. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to these individuals of the date, time and place of such meeting. [Person] shall ensure that these individuals are available for and participate in such meeting.

3. Unless otherwise directed in writing by the Department, [Person] shall submit all payments and [ ] copies of all documents required by this [Order] to the individual identified below, who shall be the Department's contact for [Person] for all matters concerning this [Order]:

[Name, title, address and telephone number of Department contact]

4. [Person] shall notify, both verbally and in writing, the Department's contact person listed above at least fourteen (14) calendar days prior to the initiation of any field activities.

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

#### VII. Remediation Funding Source

1. [The Department shall negotiate the language concerning the amount and form of the financial assurance on a case-by-case basis.] [Person] shall establish a remediation funding source, pursuant to N.J.A.C. 7:26C-7 in the amount of \$ , which is necessary to pay the estimated cost of the remediation. The remediation funding source shall be in effect for a period not less than the actual time necessary to conduct the remediation.

#### VIII. Project Cost Review

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

(a) A detailed summary of all monies spent to date pursuant to this [Order];

(b) The estimated cost of all future expenditures required to comply with this [Order], including any operation, maintenance and monitoring costs; and

(c) The reason for any changes from the previously submitted cost review.

2. At any time after [Person] submits the first cost review pursuant to the preceding paragraph, [Person] may request the Department's approval to reduce the amount of the remediation funding source to reflect the remaining costs of performing the obligations under this [Order]. If the Department grants written approval of such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

3. If the estimated costs of meeting [Person's] obligations in this [Order] at any time increase to an amount greater than the remediation funding source, [Person] shall:

(a) Within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing remediation funding source or provide additional remediation funding source to an amount equal to the Department's approved estimated cost.

4. Upon notification from the Department pursuant to Paragraph [ ] that the obligations of the [Order] have been satisfied, as verified by final site inspection, [Person] shall be relieved of any further obligation to maintain in full force and effect the remediation funding source required by this [Order] for the site which is the subject of this [Order]. The Department will notify [Person] in writing that [Person] may proceed to terminate the remediation funding source.

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

6. If [Person] chooses and the Department approves in writing an innovative remedial action technology, unrestricted use or a limited restricted use remedial action for all or part of the remedial action, [Person] is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action.

#### IX. Oversight Cost Reimbursement

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

2. If [Person] decides to pay the Department's past costs associated with the Site, if any, the Department will provide [Person] with a written statement of the past costs and [Person] shall pay the past costs within thirty (30) calendar days of receipt of the Department's written statement.

3. Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

#### X. Reservation of Rights

1. The Department reserves the right to unilaterally terminate this [Order] in the event [Person] violates the terms of this [Order] provided, however, that before the Department takes this action, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and [Person] shall have thirty (30) calendar days after receipt of such notice, unless otherwise extended in writing by the Department, to perform such obligation(s).

2. Nothing in this [Order] shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this [Order]. In any such action brought by the Department under this [Order] for injunctive relief, civil, or civil administrative penalties [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this [Order], on the basis that the Department's decision was arbitrary, capricious or unreasonable.

If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the [Order]. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this [Order] and under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this [Order].

3. This [Order] shall not be constructed to affect or waive the claims of federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

4. Except as otherwise stated in this [Order], nothing herein shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this [Order], [Person] reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

#### XI. Force Majeure

1. If any event specified in the following paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this [Order], [Person] shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] shall take all necessary action to prevent or minimize any such delay.

2. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

- (a) [Person] has complied with the notice requirements of the preceding paragraph;
- (b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Person]; and
- (c) [Person] has taken all necessary action to prevent or minimize any such delay.

3. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

4. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this [Order];

(c) Contractor's breach, unless [Person] demonstrates that such breach falls within the above paragraphs; and

(d) Failure to obtain access required to implement this [Order], unless denied by a court of competent jurisdiction.

## XII. Dispute Resolution

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

## XIII. General Provisions

1. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] shall allow the Department and its authorized representatives access to all areas of the Site [Person] has access at all times for the purpose of monitoring [Person's] compliance with this [Order] and/or to perform any remedial activities [Person] fails to perform as required by this [Order].

2. [Person] shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

3. [Person] shall perform all work conducted pursuant to this [Order] in accordance with prevailing professional standards.

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

5. [Person] shall conform all actions required by this [Order] with all applicable federal, State and local laws and regulations.

6. Nothing in this [Order] shall relieve [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this [Order] shall not excuse [Person] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this [Order]. This [Order] shall not preclude the Department from requiring that [Person] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this [Order] if the terms and conditions of any such permit are more stringent than the terms and conditions of this [Order]. Should any of the measures to be taken by [Person] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then [Person] shall obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

7. All work plans and documents required by this [Order] and approved in writing by the Department are incorporated herein and made a part hereof.

8. Upon the receipt of a written request from the Department, [Person] shall submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitor data, whether or not such data and information, including technical records and contractual documents, was developed pursuant to this [Order]. [Person] reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

9. [Person] hereby consents to and agrees to comply with this [Order] which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

10. No modification or waiver of this [Order] shall be valid except by written amendment to this [Order] duly executed by [Person] and the Department. Any amendment to this [Order] shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules of this [Order] prior to executing any such amendment.

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

12. This [Order] shall be governed and interpreted under the laws of the State of New Jersey.

13. If any provision of this [Order] or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this [Order] or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this [Order] shall be valid and enforced to the fullest extent permitted by law.

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

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

16. This [Order] shall be binding, jointly and severally, on each party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the facility or site shall alter party's responsibilities under this [Order].

17. [Person] shall preserve, during the pendency of this [Order] and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] shall submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

18. [Person] shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] shall submit a cost review pursuant to this [Order] to the Department. [Person] shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] shall obtain and submit to the Department additional financial assurance pursuant to this [Order].

19. If [Person] is not the Site owner and [Person] proposes to implement institutional and or engineering controls at the Site in lieu of remediating the Site to an established remediation standard, [Person] shall obtain the Site owner's written confirmation that the Site owner will record the Department approved deed notice with the county in which the property is located. If the Site owner agrees to record a deed notice, [Person] shall provide a copy of the deed notice, to the Department, to the [name of municipality where the Site is located] health department and the [name of municipality where the Site is located] Clerk. If the Site owner does not agree to record a deed notice, [Person] shall remediate the Site to the established unrestricted remediation standard.

20. If [Person] is the owner of the Site and [Person] proposes to implement institutional and engineering controls at the Site in lieu of remediating the Site to an established remediation standard, [Person] shall record a deed notice pursuant to N.J.A.C. 7:26E-6.4 and [Person] shall provide a copy of the deed notice if appropriate, to the Department, pursuant to N.J.A.C. 7:26E-1.4, to the [name of municipality where the Site is located] health department and the [name of municipality where the Site is located] Clerk of the specific institutional and or engineering controls being implemented at the Site.

21. If [Person] remediates the Site to a restricted use remediation standard and [Person] implements institutional and engineering controls, this [Order] shall remain in full force and effect including the requirements to file a declaration of environmental restrictions pursuant to paragraphs 19 and 20 above and N.J.A.C. 7:26E-6.2, to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source. This [Order] shall otherwise be terminated pursuant to paragraph 22 below.

22. If [Person] remediates the Site to the Department's unrestricted use remediation standard, the requirements of this [Order] shall be deemed satisfied upon the receipt by [Person] of written notice from the Department stating that [Person] has completed the remediation required by this [Order] in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this [Order] and therefore [Person] does not need to continue to maintain a remediation funding source nor pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the [Order] is thereby terminated. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this [Order].

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

24. [Person] may assert a claim of confidentiality for any information submitted by [Person] pursuant to this [Order], by following the Department's procedures in N.J.A.C. 7:14A-11.

25. [Person] shall submit to the Department, along with the executed original [Order], documentary evidence such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind [Person] to the terms of this [Order].

26. This [Order] shall be effective upon the execution of this [Order] by the Department and [Person]. If [Person] has applied for financial assistance, the Department will execute the [Order] subsequent to approval of the financial assistance. If the financial assistance is denied the [Order] shall be null and void. [Person] shall return both original executed [Order] to the Department for Department signature together with the signature authorization required by Paragraph [ ] above.

Recodified from N.J.A.C. 7:26C App. C and amended by R.1997 d.499, effective November 17, 1997.  
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Former N.J.A.C. 7:26C App. A, "Standard Memorandum of Agreement", repealed.  
Amended by R.1999 d.241, effective August 2, 1999.  
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

Under ORDER, deleted former II2, and recodified former I13 through I10 as II2 through II9, inserted VIII6, substituted references to deed notices for references to declarations of environmental restrictions in XIII19 and XIII20, and substituted "the Department approved deed notice with the county in which the property is located" for "a declaration of environmental restrictions" at the end of the first sentence in XIII19.

APPENDIX B

STANDARD PUBLICLY CONDUCTED ADMINISTRATIVE CONSENT ORDER

The standard publicly conducted administrative consent order contains references to [Person], [amount], and other blank brackets [ ]. Upon the Department's issuance or entry of an administrative consent order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF THE :  
[Site Name] SITE : ADMINISTRATIVE  
AND : CONSENT ORDER  
[Name of Person] :

The Administrative Consent Order is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and N.J.S.A. 58:10B-1 et seq., and duly delegated to the Assistant Director for the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the administrative consent order.]
- 2. [The full name and mailing address of each party executing the administrative consent order.]
- 3. [The regulatory and enforcement history of the site.]
- 4. By entering this administrative consent order, [Person] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this administrative consent order.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Full Name Signed Above  
\_\_\_\_\_  
Title  
[Print Name of Company executing Order]

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Full Name Signed Above  
\_\_\_\_\_  
Title

## ORDER

## I. Reimbursement of Prior Costs [Optional]

1. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, [Person] shall pay to the Department the sum of \$ [amount] as reimbursement of costs incurred by the Department to date, in connection with the investigation of, and response to, the matters described in the Findings hereinabove. [Person] shall make payment of the above amount by a cashier's or certified check payable to the "Treasurer State of New Jersey" and submit it with NJDEPE Form 062A to:

New Jersey Department of Environmental Protection  
Bureau of Revenue  
PO Box 402  
440 East State Street  
Trenton, New Jersey 08625-0402

## II. Payment

1. The Department will conduct a [remedial phase] of hazardous substances, as defined by the Spill Compensation and Control Act, and all pollutants, as defined by the Water Pollution Control Act, discharged at, emanating from, or which have emanated from the Site. The [remediation phase] will be performed in accordance with N.J.A.C. 7:26E.

2. [Person] shall pay for all of the Department's costs in its preparation and performance of the [remedial phase] described above, including contracting costs and the cost of the Department's administration and supervision of the performance of the [remedial phase] as follows (hereinafter collectively "cost of the [remedial phase]"):

(a) Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay the sum of \$[amount] to the Department to pay the costs of the [remedial phase]. The Department shall deposit this payment in a separate interest bearing account (hereinafter "Account"). The Department will draw on the Account to pay the costs of the [remedial phase]. All interest earned upon the Account shall be credited to the Account.

(b) Within thirty (30) calendar days after payment of the invoices by the Department, the Department to its contractors, the Department will provide [Person] with copies of all invoices submitted to the Department by its contractors. Within thirty (30) calendar days after the Department draws down on the Account the Department will provide [Person] with a statement showing that the Department has paid the invoices from the Account.

(c) Funds remaining in the Account upon the Department's completion of the remedial phases described

in this administrative consent order shall be promptly returned to [Person] by the Department.

## III. Exchange of Information

1. The Department will provide [Person] with final copies of [remedial phase] documents defined as Deliverables in the approved contract between the Department and its contractor(s), which include: Work Plan and Sampling Plans; Quality Assurance/Quality Control ("QA/QC") Protocols; [remedial phase] Reports; Endangerment or Risk Assessment Reports; and Data Reports that include all data that have passed or failed QA/QC. For any data that fails QA/QC, the reasons for such failure will be explained in the data report.

2. [Person] may submit written comments to the Department on the Deliverables. The Department will review all such comments submitted by [Person], but is under no obligation to incorporate [Person's] comments in the Deliverables.

3. The Department will schedule meetings concerning the [remedial phase] with [Person] as necessary.

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

## IV. General Provisions

1. [Person] hereby consents to and agrees to comply with this administrative consent order which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

2. No modification or waiver of this administrative consent order shall be valid except by written amendment to this administrative consent order duly executed by [Person] and the Department. Any amendment to this administrative consent order shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules or this administrative consent order prior to executing any such amendment.

3. [Person] waives its rights to an administrative hearing concerning the entry of this administrative consent order.

4. This administrative consent order shall be governed and interpreted under the laws of the State of New Jersey.

5. This administrative consent order shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signa-

tory or of the facility or site shall alter signatory's responsibilities under this administrative consent order.

6. Except as otherwise provided, the requirements of this administrative consent order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this administrative consent order. Such written notice shall not relieve [Person] from the obligation to conduct future remediation pursuant to Federal, State or local laws for matters not addressed by this administrative consent order.

7. By entering into this Administrative Consent Order, the Department does not waive its right to assess or collect civil or civil administrative penalties for past, present and future violations by [Person] of any New Jersey environmental statutes or regulations.

8. Except as otherwise stated in this [Order], nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this [Order], [Person] reserves any defenses which the Spill Compensation and Control Act, (Matter of Kimber Petroleum Corp., 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

9. This administrative consent order shall be effective upon the execution of this administrative consent order by the Department and [Person]. [Person] shall return executed [Order] to the Department for Department signature within five (5) calendar days from the effective date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Full Name Signed Above  
\_\_\_\_\_  
Title  
[Print Name of Company executing Order]

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Full Name Signed Above  
\_\_\_\_\_  
Title

Recodified from N.J.A.C. 7:26C App. D and 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.1999 d.241, effective August 2, 1999.  
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

APPENDIX C

COVENANT NOT TO SUE

The standard covenant not to sue contains matter in brackets [ ]. Upon the Department's issuance of a covenant not to sue, the Department will choose the matter in brackets which is applicable to the specific circumstances of the particular site. The Department may elect to issue a covenant not to sue in one or more parts. The Department may modify this document to address the unique circumstances of a publicly conducted remediation.

COVENANT NOT TO SUE

The Department issues this Covenant Not to Sue (Covenant) pursuant to N.J.S.A. 58:10B-13.1. That statute requires a Covenant with each no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and the Department makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

The Department covenants, except as provided in the preceding paragraph, that it will not bring any civil action against:

- (a) the person who undertook the remediation;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property;

for the purposes of requiring remediation to address contamination which existed prior to the date of the [Select one: final certified report (including the report date and title), or affidavit (including the date and the name of the person who signed the affidavit)] for the real property at [Select one: industrial establishment, site or area(s) of concern] identified above, payment of compensation for damages to, or loss of, natural resources, or payment of cleanup and removal costs for such additional remediation.

[Include the following paragraph if either engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern:

The person who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain all applicable engineering and institutional controls and conduct periodic compliance monitoring in the manner the Department requires.]

[Include the following paragraph if a restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, pursuant to N.J.A.C. 7:1I-2.6 and N.J.A.C. 7:1J-2.7, respectively for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

[Include the following paragraph if a limited restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, pursuant to N.J.A.C. 7:1I-2.6 and N.J.A.C. 7:1J-2.7 for any costs or damages relating to the remediation covered by this Covenant if the Department requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

Pursuant to N.J.S.A. 58:10B-13.1d, this Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. The Department reserves its right to take all appropriate enforcement for any failure to do so.

The Department may revoke this Covenant at any time after providing notice upon its determination that either:

(a) any person with the legal obligation to comply with any condition in this No Further Action Determination has failed to do so; or

(b) [include the following language if engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern: any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so.]

This Covenant, which the Department has executed in duplicate, shall take effect immediately once the person who undertook the remediation has signed and dated the Covenant on the lines supplied below and the Department has received one copy of this document bearing original signatures of the Department and the person who undertook the remediation.

[Insert Name of Person who undertook the remediation]

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Recodified to N.J.A.C. 7:26C App. A by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Responsible Party Oversight Document".  
New Rule, R.1999 d.241, effective August 2, 1999.  
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).  
Amended by R.2003 d.29, effective February 3, 2003.  
See: 34 N.J.R. 170(a), 35 N.J.R. 710(a).

In (d), inserted "payment for compensation for damages to, or loss of, natural resources," following "identified above".

**APPENDIX D**

(RESERVED)

Recodified to N.J.A.C. 7:26C App. B by R.1997 d.499, effective November 17, 1997.

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Publicly Conducted Administrative Consent Order".

**APPENDIX E**

(RESERVED)

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

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Letter of Credit".

**APPENDIX F**

(RESERVED)

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

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Standby Trust Agreement".

**APPENDIX G**

(RESERVED)

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

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Fully Funded Trust Agreement".

**APPENDIX H**

(RESERVED)

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

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Standard Surety Bond".

**APPENDIX I**

(RESERVED)

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

See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).  
Appendix was, "Oversight Cost Formula".