

CHAPTER 26C**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., 58:10B-1 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., and 58:10A-21 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).

Executive Order No. 66(1978) Expiration Date

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, expires on October 23, 2002.

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of the Appropriate Oversight Document, was re-named Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5,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Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard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

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.

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

"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.

"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 Re-

covery Act, N.J.S.A. 13:1K-6 et seq., "contamination" or "contaminant" means only any discharged hazardous substance or hazardous waste.

"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.

"Declaration of environmental restrictions" means a document which shall be identical in wording to N.J.A.C. 7:26E, Appendix F and which provides notice of the following for a specific real property:

1. That contamination exists on the property at a level above the applicable unrestricted use soil remediation standards;
2. The restrictions applicable to the property due to contamination; and
3. The engineering controls and institutional controls applicable to the property;

"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.

"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.

“Institutional controls” means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a contaminated site at levels above the remediation standard which would allow for the unrestricted use of the property. Institutional controls may include, without limitation, structure, land, and natural resource use restrictions, well restriction areas, classification exception areas, deed notices, and declaration of environmental restrictions.

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

“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.

“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 Federal, State or county agency, commission or authority, any municipality or municipal authority or any body corporate and politic created by the act or acts of the Federal government, the State Legislature or any county or municipal government.

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

“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 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.

“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”.

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.

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

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].