

CHAPTER 26C

**DEPARTMENT OVERSIGHT OF THE
REMEDICATION OF CONTAMINATED SITES**

Authority

N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq.,
58:10-23.11 et seq., 58:10A-1 et seq., 58:10A-21 et seq.
and 58:10B-1 et seq.

Source and Effective Date

R.2003 d.198, effective April 21, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Chapter Expiration Date

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

Chapter Historical Note

Chapter 26C, Department Oversight of the Remediation of 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. As part of R.1997 d.499, Subchapter 2, Procedures for the Identification of the Appropriate Oversight Document, was renamed Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5, 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Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard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: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was re-adopted as R.2003 d.198, effective April 21, 2003. See: Source and Effective Date. See, also, section annotations.

Subchapter 2, Oversight Documents and No Further Action Letters, was renamed Oversight Documents, No Further Action Letters, and Remediation of Unregulated Heating Oil Tank Systems by R.2008 d.322, effective November 3, 2008. See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Public Notice. See: 41 N.J.R. 4324(a).

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) Certifications, signed as specified in (b) below, shall be submitted to the Department as follows:

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

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein including all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. For remediation funding sources:

"I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-7 shall be maintained until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(b) The certifications required in (a)1 and 2 above shall be signed and dated original certifications, not photocopies, and shall be notarized.

(c) The person submitting the certification required by (a)1 and 2 above shall ensure that they are signed as follows:

1. For a corporation, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

3. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(d) A duly authorized representative of the person described in (c)1 through 3 above may sign the certification required in (a)1 and 2 above. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (c) 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); and

3. The written authorization is submitted to the Department along with the certification.

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).

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

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

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

Rewrote the introductory paragraph of (a)1.

7:26C-1.3 Definitions

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

“Administrative consent order” means an administrative order which is signed by one or more persons and the Department; 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 a loan or grant.

“Area of concern” means any location defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“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 any site defined as a contaminated site pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“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.

“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, at N.J.A.C. 7:26E-1.8.

“Department” means the New Jersey Department of Environmental Protection.

“Directive” means a document the Department issues 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 clean up 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 hazardous substance that was discharged.

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Engineering controls” means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Environmental medium” means any such medium defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“EPA” means the United States Environmental Protection Agency.

“Grace period” means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

“Hazardous substance” means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, at N.J.A.C. 7:1E-1.7.

“Hazardous waste” means any solid waste as defined in the Hazardous Waste Regulations, at N.J.A.C. 7:26G-5.

“Immediate environmental concern” means a condition defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Industrial establishment” means any place defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-8.

“Innovative remedial action technology” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Institutional controls” means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Limited restricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Memorandum of agreement” means a written agreement between the Department and one or more persons to conduct remediation of a site or an area of concern.

“Memorandum of understanding” means an oversight document executed by the Department and a public entity, similar to the form of an administrative consent order.

“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, at N.J.A.C. 7:26E-1.8.

“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 costs” means all cleanup and removal costs as defined by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, that the Department incurs in overseeing the remediation conducted by the person responsible for conducting the remediation, calculated in accordance with the formula included at N.J.A.C. 7:26C-9.3.

“Oversight document” means any document the Department or a court issues to define the role of a person partici-

pating in the remediation of a contaminated site or area of concern, and may include, without limitation, an administrative order, administrative consent order, court order, memorandum of understanding, memorandum of agreement, or remediation agreement.

“Person responsible for conducting remediation” means a person responsible for conducting remediation as defined pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Petroleum” means petroleum defined pursuant to Underground Storage Tanks rules, at 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, at N.J.A.C. 7:26E-3.1.

“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 system” means an underground storage tank system defined pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B.

“Remedial action” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“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, at N.J.A.C. 7:26E-1.8.

“Remediation” or “remediate” means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Remediation agreement” means an agreement defined as such pursuant to the Industrial Site Recovery Act Regulations, at N.J.A.C. 7:26B-1.4.

“Remediation costs” means all costs associated with the remediation, including the Department’s oversight costs.

“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, at N.J.A.C. 7:26E-1.8.

“Restricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Site investigation” means those actions defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

“Underground storage tank” means an underground storage tank defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Unrestricted use remedial action” means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

“Unrestricted use standard” means a numeric remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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”.

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Added definition “Grace period”.

Administrative Correction.

See: 38 N.J.R. 4693(d).

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

In definition “Oversight costs”, deleted “or in overseeing the remediation conducted by a contractor on behalf of the Department” following “conducting the remediation”.

Case Notes

Trial court correctly held that N.J.S.A. 58:10B-3.1 did not authorize the New Jersey Department of Environmental Protection to remove a remediator as the remediating party for a contaminated site that it had previously owned as no oversight document had been executed. *NL Indus., Inc. v. N.J. Dep’t of Env’tl. Prot.*, 397 N.J. Super. 127, 936 A.2d 469, 2007 N.J. Super. LEXIS 368 (App.Div. 2007).

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 certain issues which arise that were not resolved at the case manager level, except as noted in (I) below.

(b) Any person conducting remediation with Department oversight may initiate this process by submitting a written request, to the section chief of the case manager overseeing the remediation of the site, which shall include all of the following:

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 description of previous efforts to resolve the issue;
6. A recommendation for resolution of the issue not resolved; and
7. A request for a meeting with the Department, if appropriate or desired.

(c) The section chief shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after 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 requester is not satisfied with the resolution provided by the section chief, the requester may 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 requester by telephone to provide a response and shall provide a written re-

response within seven calendar days after 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 requester is not satisfied with the resolution provided by the bureau chief, the requester may 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 requester by telephone to provide a response and shall provide a written response within seven calendar days after 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 requester is not satisfied with the resolution provided by the assistant director, the requester may continue the process in (b) through (g) above with the Director, Assistant Commissioner, and Commissioner or his or her designee.

(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 issue. The Commissioner, or his or her designee, shall issue a decision regarding the disputed issues within 21 calendar days after 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;
 - i. Issues regarding oversight costs shall be resolved pursuant to N.J.A.C. 7:26C-9.4;
2. Technical issues which arise during Department oversight of remediation; or
3. Legal issues.

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

7:26C-1.5 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 the remediation of a contaminated site with Department oversight 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 or the environment. The Department may stop any remediation and 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.

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.

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

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

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

7:26C-1.6 Forms and submissions

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

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

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

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

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

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

Rewrote the section.

7:26C-1.7 Liberal construction

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

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

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

7:26C-1.8 Severability

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

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

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

SUBCHAPTER 2. OVERSIGHT DOCUMENTS, NO FURTHER ACTION LETTERS, AND REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-2.1 Scope

(a) This subchapter identifies:

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

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

3. The procedures for owners and operators of unregulated heating oil tank systems to obtain No Further Action letters pursuant to N.J.A.C. 7:26C-2.6 for remediation of discharges from their unregulated heating oil tank system by using an individual or business firm certified in the classification of subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or 16 in lieu of obtaining Department oversight through a memorandum of agreement; and

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

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

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

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

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

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

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

Deleted existing (a)1, (a)3, and (a)4; recodified existing (a)2 as (a)1; inserted new (a)2 and (a)3; and deleted (c) and (c)1 through (c)3.

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

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

In (a), substituted "but not" for "and/or into the waters except" following "lands" in 3, and added 4.

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

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

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

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Rewrote (a)3.

7:26C-2.2 Memorandum of agreement

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

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

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

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

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

Rewrote the section.

7:26C-2.3 Administrative consent order

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

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

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

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

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

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

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

Rewrote (b); inserted new (c); and recodified existing (c) as (d).
Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).

In (b), changed N.J.A.C. reference.
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote (a) and (b).

7:26C-2.4 Administrative order

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

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

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

7:26C-2.5 Remediation of discharges from unregulated heating oil tank systems

(a) Except as provided in (d) below, in order for the person responsible for conducting the remediation of discharges from an unregulated heating oil tank system as defined in the Underground Storage Tank rules at N.J.A.C. 7:14B-1.6, to obtain a no further action letter from the Department as described in N.J.A.C. 7:26C-2.6, that person shall employ an individual working for a business firm certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-13 or 16 to conduct the remediation in lieu of obtaining Department oversight.

(b) The Department will issue a no further action letter in accordance with N.J.A.C. 7:26C-2.6, upon receipt and review of the following:

1. A certification by the individual certified pursuant to N.J.A.C. 7:14B-13 or 16 to perform the remediation that states: "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 may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated does not meet any of the criteria listed at N.J.A.C. 7:26C-2.5(d) and that the remediation performed was pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover contamination, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties";

2. A completed Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire, which includes questions about general information concerning the location of the tank, the site owner, and the documents being submitted, as well as site specific information such as the conditions at the site, the soil and ground water samples taken and the remedial action taken to remediate the site. The questionnaire may be obtained from the Department's website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable fixed oversight cost as set forth at N.J.A.C. 7:26C-9.2; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.7.

(c) All submissions required by this section shall be made to:

Site Remediation Program
New Jersey Department of Environmental
Protection
401 E. State St.
P.O. Box 028
Trenton, NJ 08625-0028

(d) The person responsible for conducting the remediation of the unregulated heating oil system shall obtain Department oversight of the remediation of a discharge from unregulated heating oil tank system in order to obtain a No Further Action letter pursuant to N.J.A.C. 7:26C-2.6 if any of the conditions in (d)1 through 9 below apply. Department oversight shall be through a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order, as applicable pursuant to this chapter.

1. The discharge from the unregulated heating oil tank system results in an immediate environmental concern condition as defined by the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8;

2. Ground water contamination resulting from the discharge from the unregulated heating oil tank system is within 100 feet of a potable well which is located either within the property boundaries or beyond the property boundaries of the property on which the discharge occurred;

3. Ground water contamination resulting from the discharge from the unregulated heating oil tank system has migrated beyond the property boundaries of the property on which the discharge occurred;

4. The discharge from the unregulated heating oil tank system results in conditions which require a vapor intrusion

investigation pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.4(h)3viii;

5. The discharge from the unregulated heating oil tank system impacts any surface water body or wetlands;

6. The person responsible for conducting the remediation is implementing a restricted or limited restricted use remedial action as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8;

7. The remediation of the discharge includes any variance from the Technical Requirements for Site Remediation pursuant to N.J.A.C. 7:26E-1.6(c) or (d);

8. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit-by-rule pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.3(c), or an On-Scene Coordinator Discharge Authorization pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et. seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan (NCP) regulations at 40 CFR Part 300; or

9. The remediation is required by or in the process of being conducted pursuant to an Administrative Consent Order, Administrative Order or a Judicial Order.

Repeal and New Rule, R.2008 d.322, effective November 3, 2008.
See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Section was "Review of a remedial action report for remediation of discharges from an underground storage tank not regulated pursuant to N.J.A.C. 7:14B".

7:26C-2.6 No further action letters

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

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

2. Based upon a person's completion of all applicable requirements in the Technical Requirements for Site

Remediation, N.J.A.C. 7:26E, at the time the no further action letter is issued;

3. For an entire site or one or more areas of concern, including all areas to which a discharge originating at the site or area of concern may have migrated, independent of a person's liability for the contamination or other status as a developer, responsible party, volunteer, or any other alleged status, except as specifically provided in this section; and

4. According to specific tax block and lot or other specific identification of the property that was remediated.

(b) The Department shall issue a no further action letter when the Department determines, based upon either a preliminary assessment or site investigation, that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standard;
2. The ground water remediation standards in the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.13; and
3. All other applicable remediation standards.

(c) The Department shall issue a no further action letter upon the completion of all remediation required by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, including, without limitation, when, as applicable:

1. All contaminated soil has been remediated:
 - i. To the most stringent soil remediation standard; or
 - ii. Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard; and
2. All contaminated groundwater has been remediated:
 - i. To the applicable ground water quality standard; or
 - ii. The Department has:
 - (1) Determined, based upon eight quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards, at N.J.A.C. 7:9C, and approved a natural attenuation ground water remedial action;
 - (2) Estimated the time period during which the concentration of contaminants in the ground water will not meet the applicable remediation standard pursuant to the Ground Water Quality Standards, at N.J.A.C. 7:9C; and

(3) Established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3.

(d) The Department shall require additional remediation after it has issued a no further action letter for a site or area of concern if any of the following occur:

1. A discharge which occurred prior to the issuance of a no further action letter is discovered after the issuance of the no further action letter;
2. The Department adopts an amendment to a remediation standard that decreases the standard by an order of magnitude after the issuance of a no further action letter;
3. A contaminant exposure pathway from a discharge that predates the no further action letter is identified after the issuance of the no further action letter;
4. The person with the obligation to comply with the conditions of the no further action letter fails to do so; or
5. Other factors exist that demonstrate that the approved remediation is no longer protective of public health, safety and the environment.

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

1. Rescind or modify a previously issued no further action letter;
 - i. The Department shall use its best efforts to notify the original recipient of the no further action letter, as well as the current owner and operator of the site that is the subject of the no further action letter, when rescinding or modifying the no further action letter; and
2. Require all additional remediation necessary to:
 - i. Fully implement any site remediation regulatory program; and
 - ii. Protect the public health and safety and the environment.

(f) The Department may rescind a no further action letter for failure to make complete payment of oversight costs due pursuant to N.J.A.C. 7:26C-9, provided such costs are not being contested pursuant to N.J.A.C. 7:26C-9.4.

(g) Pursuant to N.J.S.A. 58:10B-13.1, whenever the Department issues a no further action letter pursuant to this section, the Department shall issue the covenant not to sue included in Appendix C of this chapter, incorporated herein by reference, to the person(s) that conducted the remediation.

Repeal and New Rule, R.1997 d.499, effective November 17, 1997.
See: 29 N.J.R. 46(a), 29 N.J.R. 4957(a).

Section was "Court action".

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

In (a)1iii and (a)2iii, substituted references to deed notices for references to declarations of environmental restrictions; rewrote (d)1; and added (e) and (f).

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

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

Rewrote the section.
Administrative correction.
See: 37 N.J.R. 4245(a).

SUBCHAPTER 3. ADMINISTRATIVE PROCESS FOR VOLUNTARY CLEANUPS

7:26C-3.1 Scope

(a) This subchapter identifies the following:

1. The procedures and requirements for a person to request the Department's oversight of remediation through a memorandum of agreement;
2. The general requirements for a memorandum of agreement;
3. The procedures for termination of a memorandum of agreement; and
4. The procedures by which a person remediating a contaminated site pursuant to a memorandum of agreement, which the Department subsequently schedules for a publicly funded remediation, may continue the remediation of the site under a memorandum of agreement.

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

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

In (a), substituted "request" for "acquire" in 1, added a new 3 and recodified former 3 as 4.

7:26C-3.2 Memorandum of agreement application

(a) Any person not subject to the New Jersey Underground Storage of Hazardous Substances Act or the Industrial Site Recovery Act may request the Department's oversight of remediation or any phase thereof at a site which the Department has not scheduled for publicly funded remediation by submitting a memorandum of agreement application including the following:

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot. In addition, submit the following information if known: Department case name and case manager name, program interest name, program interest number (preferred ID), acreage and geographic boundaries;
2. The name, address, and telephone number of the current property owner;
3. The name, address, and telephone number of the current business operator and/or business owner of the site;
4. A detailed description of the scope of remediation for which Department oversight is being requested, including a detailed schedule pursuant to N.J.A.C. 7:26E;

5. The name, address, email address, and telephone number of the applicant's contact; and

6. A check made payable to the Department in the amount of \$1,000 if the Department has terminated a prior memorandum of agreement with the applicant, for the subject site or for any other site, pursuant to N.J.A.C. 7:26C-3.3(c)1i through iii.

(b) The Department shall review the application and shall respond in writing, within 30 calendar days after receipt of the application, to the contact person identified in the application as follows:

1. The Department has determined that the memorandum of agreement application is administratively complete and the Department has decided:

- i. To accept the applicant's offer to conduct the remediation; or
- ii. Not to accept the applicant's offer to conduct remediation because:

(1) The applicant has not fulfilled its prior agreement to pay the Department's oversight costs for oversight of remediation for another site; or

(2) The Department has otherwise decided not to allow the applicant to conduct the remediation, in which case the Department will list the factors that have aided the Department in making its determination not to accept the applicant's offer.

2. If a memorandum of agreement application is not accepted by the Department in accordance with (b)1ii(1) or (2) above, and the applicant would like the Department to oversee the remediation, the applicant may execute an administrative consent order pursuant to N.J.A.C. 7:26C-5.

3. The Department has determined that the memorandum of agreement application is administratively incomplete and shall inform the applicant of any deficiencies and any additional information necessary for the Department's review.

4. For the purposes of this section, applicant includes any individual or entity, including without limitation, a public or private corporation, company, firm, partnership, joint stock company, the United States and any of its political subdivisions, the State of New Jersey or any of its political subdivisions within the State, or any of the other meanings which apply to the common understanding of the term. Applicant also includes any sibling, spouse, child, parent, grandparent, spouse of the child, child of a sibling, or sibling of a parent of the applicant.

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

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

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

In (a), deleted "information" from the end; in (a)4, deleted "and" from the end; in (a)5, substituted "; and" for a period at the end; added (a)6; in

(b)1ii(1), deleted “or for a previous remediation phase at this site” following “another site”; in (b)1ii(2), deleted “; or” from the end; inserted new (b)2; recodified former (b)2 as present (b)3; and inserted new (b)4.

7:26C-3.3 Memorandum of agreement by rule

(a) Upon the applicant’s receipt of the Department’s written acceptance of the applicant’s offer to conduct the remediation, pursuant to N.J.A.C. 7:26C-3.2(b)1i, the applicant has a memorandum of agreement with the Department which includes:

1. The application;
2. The Department’s written acceptance; and
3. The following provisions:
 - i. The applicant shall pay the Department’s oversight costs pursuant to N.J.A.C. 7:26C-9 and this obligation continues, for those oversight costs that have accrued prior to termination, after the Department’s termination of the memorandum of agreement;
 - ii. The applicant shall submit all data generated or collected while conducting remediation pursuant to the MOA concerning the site and the contaminants at the site, and this obligation continues, for data generated or collected prior to termination, after the Department’s termination of the memorandum of agreement.
 - iii. The applicant shall conduct all remediation pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 - iv. 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 time frame 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; and
 - v. The applicant shall immediately notify the Department in writing of any change of identity, address, or telephone number of the contact;

(b) The procedure for the person responsible for conducting the remediation to have the Department terminate a memorandum of agreement is as follows:

1. The person responsible for conducting the remediation pursuant to a memorandum of agreement may request that the Department terminate the memorandum of agreement by:

- i. Notifying the Department in writing of its request; and
 - ii. Submitting all data that the person has generated or collected concerning the site and contaminants at the site.
2. 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)1i above.
3. Upon receipt of the person’s request, the Department will send the person requesting the termination of a memorandum of agreement a bill for its outstanding oversight costs pursuant to N.J.A.C. 7:26C-9.1.
4. The person requesting termination of the memorandum of agreement shall reimburse the Department in full for all of that person’s outstanding oversight costs.
5. When the Department determines that the person requesting the termination of the memorandum of agreement has complied with the requirements of (b)1 and 4 above, the Department will terminate the memorandum of agreement in a written letter to the person requesting the termination.

(c) The Department may unilaterally terminate a memorandum of agreement pursuant to this section as follows:

1. The Department determines that it is necessary to terminate a memorandum of agreement when the person responsible for conducting the remediation pursuant to the memorandum of agreement:
 - i. Has not made scheduled submissions to the Department pursuant to the schedule set forth in the MOA application which is a part of the MOA;
 - ii. Has failed to pay the Department’s oversight costs pursuant to N.J.A.C. 7:26C-9; or
 - iii. Has failed to submit documents required by a memorandum of agreement in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department’s written comments.
2. When the Department has scheduled the site for publicly funded remediation.
3. The Department may provide the person responsible for conducting the remediation a period of time to correct the deficiency identified in (c)1i through iii, above, in order to achieve compliance with the memorandum of agreement and avoid termination of the memorandum of agreement pursuant to (c)3 below.

4. To terminate a memorandum of agreement pursuant to this section, the Department will issue a notice of termination to the person responsible for conducting the remediation and to the MOA applicant, property owner and all parties designated as a contact on the MOA application or amendments thereto if any of these parties are different from the person responsible for conducting the remediation. The notification shall contain the following:

- i. That the Department is ceasing review of any submittals under the memorandum of agreement;
- ii. That the memorandum of agreement is terminated;
- iii. The reason(s) that the Department is terminating the memorandum of agreement;
- iv. That the person responsible for conducting remediation shall pay the amount of the person's oversight cost when billed by the Department and that the obligation to pay oversight costs continues after the Department's termination of the memorandum of agreement pursuant to (a)3i above; and
- v. That the person responsible for conducting remediation must submit all data generated or collected, concerning the site and the contaminants at the site, that has not already been submitted within 30 calendar days from the date on the Notice of Termination and that the obligation to submit the data continues after the Department's termination of the memorandum of agreement pursuant to 3.3(a)3ii above.

5. If a responsible party's memorandum of agreement is terminated pursuant to this subsection, the Department may pursue an enforcement action against the responsible party for violations of any statute or implementing rule, conduct the remediation using public funds and recover those costs from the responsible party, or any other actions permitted under law.

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.

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Rewrote (a) and (c).

7:26C-3.4 Remediation of a site, scheduled for a publicly funded remediation

(a) The Department will provide written notification to the person responsible for conducting the remediation pursuant to a memorandum of agreement when the Department schedules the site for publicly funded remediation.

(b) 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 if:

1. The person entered into the memorandum of agreement prior to the site being scheduled for publicly funded remediation;
2. That person is conducting remediation in compliance with all applicable regulations and approved schedules;
3. The 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. That person submits to the Department a schedule to complete the remainder of the remediation, and the Department approves that schedule.

(c) Except as provided in (b) above, if the Department chooses to allow a person who has had its MOA terminated pursuant to N.J.A.C. 7:26C-3.3(c)1iv to conduct remediation of a site, such participation shall be governed by an Administrative Consent Order in accordance with N.J.A.C. 7:26C-2.3.

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

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

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

Section was "Remediation of a site, scheduled for a publicly funded remediation, pursuant to a memorandum of agreement". Added (c).

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.

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

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

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 hazardous substance at a site to:

1. Clean up and remove the discharge of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or

any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(b) A directive is intended to constitute a clear, written notice of a 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 provide in the directive 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 each such responsible party to the discharge;
4. The nature of the necessary remediation or the estimated remediation costs;
5. The actions that the responsible parties are directed to take;
6. The manner and timetable for the undertaking of the remediation; and
7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) In those instances where the Department directs a responsible party to clean up and remove a hazardous sub-

stance, the Department will require 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 upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

(g) The responsible party 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 responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party 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 responsible party 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.

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

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

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

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

7:26C-5.2 Types and language of administrative consent orders

(a) The Department may choose to allow a person to participate in the remediation of a site through an administrative consent order as described in (b) through (f) below.

(b) The administrative consent order in Appendix A, incorporated herein by reference, is applicable in all situations, provided, however, that the Department may modify that administrative consent order to allow:

1. Multiple responsible parties to conduct only the remedial investigation phase of the remediation of a contaminated site; and
2. A person to conduct only the remedial action phase of the remediation of a contaminated site when the remedial investigation phase has been completed.
3. For any person implementing the entire remediation at a site for which that person has received approval for a property tax exemption pursuant to P.L. 1995, c.413, the Environment Opportunity Zone Act, the standard administrative consent order shall be used without the remediation funding source requirements.
4. 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.

(c) If a contaminated site does not fit within any of the specific categories described in (b) 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.

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

(e) 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 incorporates the appropriate sections of the remediation phase(s).

(f) 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.

Recodified from N.J.A.C. 7:26C-5.3 and amended by R.2003 d.198, effective May 19, 2003.

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

Rewrote the section. Former N.J.A.C. 7:26C-5.2, Deferral to an existing regulatory or enforcement mechanism, repealed.

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-5.3 Procedures for entry into administrative consent orders

(a) If the Department agrees to allow a person to conduct the remediation of a site pursuant to N.J.A.C. 7:26C-5.2, the Department will provide the person with two copies of the appropriate administrative consent order. The person shall submit two signed originals of the administrative consent order pursuant to this subchapter, to be signed by the Department, within the time period specified below.

1. The Department will notify, in writing, the person of a time period, that shall not exceed 60 calendar days, for that person to comply with (a) above. The Department in the exercise of its enforcement discretion may extend the period for up to 30 calendar days. The Department may extend the period further as needed in instances where a decision regarding award of a grant or loan to fund remediation, pursuant to N.J.A.C. 7:26C-6 or 11, is pending.

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 90 calendar days at the conclusion of which the multiple responsible parties shall comply with (a) above. The Department, in the exercise of its enforcement discretion, may extend the period for up to 30 calendar days. The Department may extend the period further as needed in instances where a decision regarding award of a grant or loan to fund remediation, pursuant to N.J.A.C. 7:26C-6 or 11, is pending.

4. Notwithstanding (a)1, 2, and 3 above, if the Department determines that remediation 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 a person does not execute the appropriate administrative consent order within the time frame the Department establishes pursuant to (a) above, that person may participate in the publicly funded remediation of a contaminated site by paying all or part of the remediation costs. 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.

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.

Recodified from N.J.A.C. 7:26C-5.4 and amended by R.2003 d.198, effective May 19, 2003.

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

Rewrote the section. Former N.J.A.C. 7:26C-5.3, Types and language of administrative consent orders, recodified to N.J.A.C. 7:26C-5.2.

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.

SUBCHAPTER 6. HAZARDOUS DISCHARGE SITE REMEDIATION FUND**7:26C-6.1 Scope and requirements**

(a) This subchapter provides the requirements for any person to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund.

(b) As a condition for receiving a loan or a grant, the applicant must be under the oversight of the Department pursuant to the Industrial Site Recovery Act or the Underground Storage Tank program or an oversight document executed pursuant to this chapter.

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

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

Designated the existing paragraph as (a), deleted "who meets the eligibility requirements of N.J.A.C. 19:13-8" following "for any person" and substituted "a loan" for "financial assistance" preceding "or a grant"; added (b).

7:26C-6.2 Application for loans and grants

(a) A person that elects to apply for a loan or a grant from the Hazardous Discharge Site Remediation Fund shall submit an application on forms available from the Department and a written request, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, to the Department which includes the following information:

1. If known, the name of the Department bureau overseeing the remediation if any, the program interest number (preferred ID) and the name of the assigned Department case manager;

2. A statement by the applicant whether the application is for a loan or a grant, or both, and identification of the provision within the New Jersey Economic Development Authority's Authority Assistance Programs rules, at N.J.A.C. 19:31-8.3, that supports the applicant's request for a loan or grant or both;

3. A detailed description of the remediation to be completed at the site, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, for which the applicant intends to use the loan or grant;

4. A detailed 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 Underground Storage Tanks rules, 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 loan or grant requested;

6. A statement as to whether the applicant has any violations, outstanding fees or penalties with the Department.

i. Any applicant not in compliance with all applicable Department rules shall submit to the Department a written description of, and explanation for, the noncompliance including a list of all violations and outstanding fees, and penalties. The applicant shall specifically state whether the violations, fees, or penalties are currently being contested in a manner prescribed by law and whether the violations, fees and 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 copies of the applicant's last three Federal income tax returns;

9. If an applicant is requesting an innocent party grant:

i. Proof that the Department has approved the remedial investigation;

ii. A copy of the deed to the site;

iii. A statement that:

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

(2) Neither the applicant nor any person authorized by the applicant to use the contaminated site

discharged any hazardous substance at the contaminated site;

10. A statement, with all necessary supporting documentation, 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; and

11. If the applicant is a public entity, the following additional information shall be submitted:

i. For both loans and grants, provide proof that:

(1) The applicant is the current owner of the site;

(2) The applicant holds the tax sale certificate for the site and the date that the certificate was obtained;

(3) The applicant obtained title to the site through foreclosure; or

(4) The applicant passed a resolution or ordinance to acquire title to the site for purposes of redevelopment.

ii. For a grant, the applicant shall submit proof that it passed a resolution or ordinance for the comprehensive development or redevelopment of the site, or other demonstration that a realistic opportunity exists for development or redevelopment within three years.

(b) Any person required to establish a remediation funding source that elects to apply for a loan 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:

1. Submission of a remediation agreement application pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-4; or

2. Submission of a remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-6; or

3. Receipt of an administrative consent order from the Department pursuant to N.J.A.C. 7:26C-5.3.

(c) A person seeking to amend an approved loan or grant award shall submit to the Department the information required in (a) above with respect to the amendment.

(d) The Department shall review the applicant's request for a loan and/or a grant, or amendment thereto, based on the information provided by the applicant in accordance with (a) and (c) 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 a loan and/or a grant, or amendment thereto, 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 New Jersey Economic Development Authority's Authority Assistance Programs rules, at N.J.A.C. 19:31-8;

2. The applicant's request for a loan and/or a grant, or amendment thereto, 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 a loan and/or a grant, or amendment thereto, from the Hazardous Discharge Site Remediation Fund and a statement of the reason(s) therefor.

(e) In the event that 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 New Jersey Economic Development Authority that the application for a loan and/or a grant from the Hazardous Discharge Site Remediation Fund has been denied.

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

7:26C-6.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs that were incurred prior to application provided that:

1. The remediation costs were incurred after June 16, 1993; and
2. The Department has approved the remediation associated with the remediation costs.

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

7:26C-6.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-7.10 for the disbursement of funds.

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

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 pursuant to this subchapter, except as provided in (b) below.

(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, or if a person has received approval for a property tax exemption pursuant to the Environment Opportunity Zone Act, N.J.S.A. 54:4-3.149 et seq.:

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 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, without limitation, the estimated cost of monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8; and
2. For a period not less than the actual time necessary to complete the remediation, including, without limitation monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8.

(d) The person required to establish a remediation funding source may use 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. A loan 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).

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

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

Rewrote the section.

7:26C-7.3 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(a)2, to the Department:

1. Within 30 calendar days after receipt of an administrative consent order from the Department pursuant to N.J.A.C. 7:26C-5.3;
2. Upon submission to the Department of an application for a remediation agreement pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4; or
3. Upon submission to the Department of a remedial action workplan for an industrial establishment pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-6.

(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 with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(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.

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

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

Rewrote the section.

7:26C-7.4 Remediation trust fund requirements

(a) Any person who chooses to establish a remediation trust fund agreement as a remediation funding source pursuant to this subchapter shall submit the original remediation trust fund agreement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to 13, 14 calendar days after:

- i. The receipt of the Department's approval of the remedial action workplan; or

- ii. The execution of a remediation agreement;

2. Along with the signed copies of an administrative consent order; or

3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The remediation trust fund agreement shall be executed by an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency and shall specify the following:

1. The applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

2. That the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;

3. That the trustee may 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;

4. 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; and

5. That the Department is the sole beneficiary of the remediation trust fund.

(c) Any person using a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least

30 calendar days prior to the anniversary date of establishment of the remediation trust fund, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved, and continuation of the trust for the next 12-month period.

(d) 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 this subchapter. The Department shall return the original remediation trust fund agreement to the trustee for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

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

7:26C-7.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source pursuant to this subchapter shall submit an original environmental insurance policy pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 30 calendar days after:
 - i. The receipt of the Department's approval of the remedial action workplan; or
 - ii. The execution of a remediation agreement;
2. Along with the signed copies of an administrative consent order; or
3. As provided in an administrative order, directive, court order, or other judicial settlement.

(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 program interest name, program interest number (preferred ID), site name, and site address;
2. That the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department;
3. That the insurer may 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; and

5. That the Department is the sole beneficiary of the environmental insurance policy.

(c) Any person using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of establishment of the environmental insurance policy, submit to the Department a written statement from the insurance company confirming the value of the environmental insurance policy in an amount that the Department has approved, and renewal of the environmental insurance policy for the next 12-month period.

(d) 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 this subchapter. The Department shall return the original environmental insurance policy to that person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

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

7:26C-7.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit agreement as a remediation funding source pursuant to this subchapter shall submit an original line of credit agreement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 14 calendar days after:
 - i. The receipt of the Department's approval of the remedial action workplan; or
 - ii. The execution of a remediation agreement;
2. Along with the signed copies of an administrative consent order; or
3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The line of credit agreement 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, or by a Federally regulated bank, and shall specify the following:

1. The applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

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 the Department may access the line of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-7.12(c) and (d).

(c) Any person using a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of establishment of the line of credit, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved, and renewal of the line of credit for the next 12-month period.

(d) 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 this subchapter. The Department shall return the original line of credit agreement to that person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

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

7:26C-7.7 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall submit a written statement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a), to the Department:

1. Upon submission to the Department of an application for a remediation agreement pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-4; or

2. Upon submission to the Department of a remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-6;

3. Along with the signed copies of an administrative consent order; or

4. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The person requesting the Department's approval to use a self-guarantee pursuant to this subchapter shall include the following in the written statement required by (a) above:

1. Information that demonstrates that the estimated cost of the remediation that the Department has approved does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;

2. Information that demonstrates that the individual or entity has sufficient net cash provided by operating activities, as defined by the American Institute for Certified Public Accountants, to pay for the remediation during the next 12-month period;

3. Audited financial statements for the preceding fiscal year that ended closest in time to the date of the self-guarantee statement, prepared in accordance with the American Institute for Certified Public Accountants guidelines, including but not limited to income statement, balance sheet and consolidated statement of cash flow, that demonstrates that the individual or entity has sufficient cash flow to pay for the remediation during the next 12-month period;

4. The applicable case number, the program interest name, program interest number (preferred ID), site name, site address, and the estimated cost of remediation determined in accordance with N.J.A.C. 7:26C-7.3(b); and

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

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

(d) The self-guarantee shall be valid for one year from the date of the Department's written approval of the self-guarantee. Thereafter, the person shall:

1. Comply with the requirements of (a) and (b) above, annually, to provide a self-guarantee for each successive year that that 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) and (b) above to the Department 30 calendar days prior to the date of expiration of the existing statement.

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

7:26C-7.8 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, pursuant to (a) above, shall submit the remediation funding source surcharge to the Department and shall:

1. Pay, by cashier's or certified check payable to the New Jersey Economic Development Authority, a remediation funding source surcharge in an amount equal to one percent of the Department approved amount of the remediation funding source; and

2. Submit the remediation funding source surcharge 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 being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 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.

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

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

(a) The person required to establish a 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 (a) above within 90 calendar days after the Department's receipt of such request.

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

(d) The person required to establish the remediation funding source shall increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation within 30 calendar days after:

1. Completion of the remediation cost review required pursuant to N.J.A.C. 7:26C-5;
2. Execution of a remediation agreement pursuant to the Industrial Site Recovery Act rules, N.J.A.C. 7:26B; or
3. Receipt of written notice from the Department that the cost of the remediation has increased.

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

In (a), substituted "required to establish a" for "that has established the"; in (b), substituted "(a) above" for "N.J.A.C. 7:26C-7.9(a)"; in (c), substituted "required to establish" for "that has established"; rewrote (d).

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

(a) A person who has established either a remediation trust fund, an environmental insurance policy or a line of credit in satisfaction of the requirements of this subchapter may submit to the Department once every three months a written request to use the remediation funding source to pay for the actual remediation costs, which includes the following information:

1. Identification of the site, including name, address, case number (if applicable), program interest name and program interest number (preferred ID), and status of the remediation;
2. An updated, detailed estimate of implementing the remediation including without limitation the estimated cost of maintaining and monitoring all necessary engineering and institutional controls;
3. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed;
4. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request; and
5. The amount of the disbursement requested based on (a)3 and 4 above and the remediation 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 remediation costs therefore the disbursement is approved;

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1999 d.241, effective August 2, 1999.
See: 30 N.J.R. 2373(a), 31 N.J.R. 2167(a).
Rewrote (b); and added (c).

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

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

7:26C-7.12 Failure to perform the remediation

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

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

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

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

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

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

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

7:26C-8.2 Site access

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

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

1. A copy of the oversight document or a description of the regulatory program pursuant to which remediation is being conducted;
2. A site map indicating each area for which access is needed;

3. A description of the reason access is needed and the extent of access needed;

4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and

5. A request that the site owner respond in writing to the person requesting access within 30 calendar days after receipt of the written request.

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

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

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

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

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

SUBCHAPTER 9. OVERSIGHT COSTS

7:26C-9.1 Scope

(a) This subchapter provides:

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

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

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

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

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

7:26C-9.2 Fixed oversight costs

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

1. Preliminary assessment report	\$375.00
2. Site investigation report	\$750.00
3. Unregulated Heating Oil Tank System Remediation Questionnaire and remedial action report	\$400.00
i. This is limited to underground storage tanks not regulated by N.J.A.C. 7:14B.	
4. Biennial Certification	\$375.00

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

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

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

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

(e) The person responsible for conducting the remediation who submits any of the reports listed at (a) above for Department review shall submit the applicable fixed cost along with

each report. The Department shall not review a preliminary assessment report, site investigation report, biennial certification, or remedial action report for remediation of a discharge from an underground storage tank not regulated by N.J.A.C. 7:14B, unless and until the Department receives the fixed cost as listed in (a) above.

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

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

Rewrote the section.

Amended by R.2007 d.274, effective August 20, 2007.

See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).

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

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (a)3, substituted "Unregulated Heating Oil Tank System Remediation Questionnaire and remedial action report" for "Remedial action report for tanks not regulated by N.J.A.C. 7:14B"; and added (a)3i.

7:26C-9.3 Oversight cost formula

(a) Oversight costs are due to the Department, at the address provided at N.J.A.C. 7:26C-9.5, within 30 calendar days after receipt from the Department of a bill for the Department's oversight costs for the period being charged.

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

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

(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 upon the following formulas:

Oversight Costs = direct program costs + indirect program costs + expenses; or for persons signing the Developer's Certification found in Appendix D and for persons responsible for conducting the remediation of discharged substances at their primary residence, Oversight Costs = direct program costs + expenses, where:

1. Direct program costs = (number of coded hours x hourly salary rate) x (1 + salary additive factor) x (1 + fringe benefit factor)

i. Number of coded hours represents the sum of hours each NJDEP employee has coded to the site specific job number. Actual hours for all NJDEP 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. Indirect program costs = (number of coded hours x hourly salary rate) x (1 + indirect program cost factor)

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments";

ii. The components of the indirect program cost rate include the Department's operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Site Remediation Program. In addition, the indirect cost rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, the Division of Financial Management and General Services, and the Division of Personnel;

iii. The total of these indirect costs is divided by the total costs of the Site Remediation Program to determine the indirect cost rate; and

3. Expenses represent any other site specific costs including, but not limited to, laboratory analysis or contractor expenses. These expenses 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) Failure to pay oversight costs may result in the Department:

1. Not issuing a no further action letter pursuant to N.J.A.C. 7:26C-2.6;

2. Ceasing all further oversight of the remediation; and

3. Taking enforcement action to compel compliance.

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".

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

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

Rewrote the section.

7:26C-9.4 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 deny 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
New Jersey Department of Environmental Protection
Division of Remediation Support
Office of Fiscal Support Services
401 E. State Street
PO Box 413
Trenton, NJ 08625-0413

(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; and
7. A request for an informal meeting with Department representatives, if appropriate and desired.

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

In (b), substituted "deny" for "not accept" preceding "an oversight" in the introductory paragraph; in (d), rewrote 7 and deleted 8.

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

(a) This subchapter governs the Department's assessment of civil administrative penalties for a person's failure to remediate a discharge as required by:

1. Administrative orders issued pursuant to any of the Department's statutory authorities;
2. Administrative consent orders issued pursuant to N.J.A.C. 7:26C-5;
3. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B;
4. Industrial Site Recovery Act remediation agreements issued pursuant to the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
5. The Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1, 3 and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; and
7. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(b) This subchapter:

- i. Identifies those violations where a grace period will be afforded for correction of the violation;
- ii. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period; and
- iii. Governs the procedures for requesting an adjudicatory hearing on enforcement actions the Department takes pursuant to this subchapter.

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

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

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

Rewrote the section.

7:26C-10.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, or a requirement of any of the rules listed in N.J.A.C. 7:26C-10.1(a) constitutes an additional, separate and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Except as provided in N.J.A.C. 7:26C-10.3(d) or 10.5, each day during which a violation continues constitutes an additional, separate, and distinct offense.

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

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty

provisions may request in writing that the Department amend their document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-10. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

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

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

Rewrote the section.

Amended by R.2006 d.328, effective September 18, 2006.

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

Rewrote (a); in (b), substituted "Except as provided in N.J.A.C. 7:26C-10.3(d) or 10.5, each" for "Each"; in (c), inserted "or rule"; and added (d).

7:26C-10.3 Grace period applicability; procedures

(a) Each violation identified in the penalty table at N.J.A.C. 7:26C-10.4(c) by an "M" in the Type of Violation column, for which conditions at (c) below are satisfied, is a violation and is subject to a grace period, the length of which is indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty table at N.J.A.C. 7:26C-10.4(c) by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department shall provide a grace period for any violation identified as minor under this section, provided that the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department;

3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for a violation of the same requirement within the preceding 12-month period; and

4. The person responsible for the violation has not been identified by the Department as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department will issue a notice of violation to the person responsible for a minor violation that:

- i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation and in addition, shall not consider the minor violation as an offense pursuant to N.J.A.C. 7:26C-10.2.

3. The person responsible for a violation shall submit to the Department, at the address indicated in the notice of violation, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, and signed by the person responsible for conducting the remediation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, certified in accordance with N.J.A.C. 7:26C-1.2, no later than one week before the end of the specified grace period and shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. If the person is unable to meet this deadline due to extenuating circumstances, the person may still request the extension, which request shall explain the reason for the delay in requesting the extension. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;
- iii. Whether the delay will pose an additional risk to the public health, safety and natural resources; and
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within the approved extension, if any, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(e) The provisions of this subchapter, including the penalty provisions of N.J.A.C. 7:26C-10.4, do not apply to persons remediating sites pursuant to a Memorandum of Agreement.

New Rule, R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Former N.J.A.C. 7:26C-10.3, Procedures for assessment and payment of civil administrative penalties, recodified to N.J.A.C. 7:26C-10.8.

7:26C-10.4 Civil administrative penalty determination

(a) The amount of a civil administrative penalty shall be determined as follows:

1. The Department shall identify the violation listed in the table in (c) below;

2. The Department shall determine whether the violation is identified by an "M" or "NM" in the "Type of Violation" column;

3. For a violation identified by an "M" as minor in the "Type of Violation" column, the Department shall apply the provisions of N.J.A.C. 7:26C-10.3.

4. For a violation identified by an "NM" as non-minor in the "Type of Violation" column, or for a violation that is identified by an "M" as minor in the "Type of Violation" column, but for which the conditions at N.J.A.C. 7:26C-10.3 are not satisfied, the Department shall:

- i. Identify the corresponding base penalty dollar amount for the rule violated as listed in (c) below; and
- ii. Adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-10.5(a), as applicable.

(b) The Department may multiply the penalty calculated pursuant to (a)4 above by the number of days the violation existed.

(c) The following summary of rules contained in the "Subchapter and Violation" column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The "Citation" column lists the citation and shall be used to determine the specific rule to which the violation applies. In the "Type of Violation" column, "M" identifies a violation as minor and "NM" identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the "Grace Period" column. The "Base Penalty" column indicates the applicable base penalty for each violation.

1. Discharges of Petroleum and Other Hazardous Substances N.J.A.C. 7:1E

<u>Subchapter and Violation</u>	<u>Citation</u> 7:1E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
5 Discharge Notification, Response and Reporting				
Failure to conduct remediation in accordance with N.J.A.C. 7:26E.	7:1E-5.7(a)2i and 3	NM		\$20,000

2. The Technical Requirements for Site Remediation N.J.A.C. 7:26E

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to immediately notify the Department of contamination that is caused by a discharge that is not already known to the Department.	7:26E-1.4(b)1	NM		\$8,000
Failure to immediately notify Department of immediate environmental concern conditions.	7:26E-1.4(b)2	NM		\$8,000
Failure to notify the Department of contamination that has migrated onto the site.	7:26E-1.4(c)	M	30	\$3,000
Failure to provide a copy of the remedial action workplan or updates or status reports if requested by the municipality.	7:26E-1.4(d)	M	30	\$3,000
Failure to identify and document sensitive populations and resources.	7:26E-1.4(f)1	M	30	\$3,000
Failure to determine whether the site is located in the same municipality as an Environmental Justice neighborhood.	7:26E-1.4(f)2	M	30	\$3,000
Failure to determine whether any non-English speaking people inhabit or use each residential area, school, child care facility, park, playground, surface water and potable wells.	7:26E-1.4(f)3	M	30	\$3,000
Failure to generate a sensitive population and resource map.	7:26E-1.4(f)4	M	30	\$3,000
Failure to submit a Sensitive Population and Resource Checklist as required.	7:26E-1.4(f)5	M	30	\$3,000
Failure to provide public notice of remediation activities at the site using either a sign or notification letters.	7:26E-1.4(g)	NM		\$8,000
Failure to post a sign two weeks prior to the initiation of field activities for the remedial investigation or single phase remediation.	7:26E-1.4(h)	M	30	\$3,000
Failure to maintain a sign as required.	7:26E-1.4(h)3	M	30	\$3,000
Failure to ensure that the sign is of the proper size, is legible and contains the proper information.	7:26E-1.4(h)4	M	30	\$3,000
Failure to submit a photograph of the sign as required.	7:26E-1.4(h)5	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to provide public notice by sending letters as required.	7:26E-1.4(i)	M	30	\$3,000
Failure to send additional notification of excess fill material as required.	7:26E-1.4(j)	NM		\$8,000
Failure to send fact sheet as required.	7:26E-1.4(k)	M	30	\$3,000
Failure to publish fact sheet as display advertisement in local newspaper.	7:26E-1.4(k)6	M	30	\$3,000
Failure to submit copy of fact sheet and display advertisement as required.	7:26E-1.4(k)6	M	30	\$3,000
Failure to publish an updated fact sheet as display advertisement in local newspaper.	7:26E-1.4(k)7	M	30	\$3,000
Failure to submit copy of an updated fact sheet and display advertisement as required.	7:26E-1.4(k)7	M	30	\$3,000
Failure to conduct notification to the owner of the affected adjoining property as required.	7:26E-1.4(l)	M	30	\$3,000
Failure to conduct additional public outreach when the Department determined there is substantial public interest.	7:26E-1.4(o)	NM		\$8,000
Failure to make submissions to, and/or get approvals from, Pinelands Commission.	7:26E-1.4(q)	M	30	\$4,000
Failure to submit work plans or reports in a timely manner per schedule applicable pursuant to N.J.A.C. 7:26C, oversight document or ISRA or UST rules.	7:26E-1.6(b)	M	30	\$8,000
Failure to comply with format and content requirements of N.J.A.C. 7:26E-2 through 8 for work plans and reports submitted.	7:26E-1.6(b)	M	30	\$4,000
Failure to prepare or implement health and safety plan.	7:26E-1.9	NM		\$8,000
Failure to implement an interim response action to contain or stabilize contamination.	7:26E-1.11(a)	NM		\$20,000
Failure to conduct interim response action for Immediate Environmental Concern condition.	7:26E-1.11(b)	NM		\$20,000
Failure to submit written documentation of all interim response action to the Department.	7:26E-1.11(c)	NM		\$20,000
Failure to conduct remediation with Department oversight in situations where such oversight is required.	7:26E-1.12	NM		\$5,000
2 Quality Assurance for Sampling and Laboratory Analysis				
Failure to use laboratory that has appropriate certification.	7:26E-2.1(a)1	NM		\$5,000
Failure to use appropriate analytical method.	7:26E-2.1(a)3	M	60	\$4,000
Failure to use required sampling procedures and analytical methods for volatile organics.	7:26E-2.1(a)4	M	60	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to select and document appropriate alternate analytical method, where method does not exist for specific parameter/matrix.	7:26E-2.1(a)5	M	30	\$4,000
Failure to follow QA/QC procedures specified in analytical method.	7:26E-2.1(a)7	M	60	\$4,000
Failure to report solid analyses in a dry weight basis.	7:26E-2.1(a)8	M	30	\$4,000
Failure to perform sample matrix cleanup when required.	7:26E-2.1(a)9	M	60	\$4,000
Failure to perform required sample matrix cleanup using acceptable matrix cleanup methods.	7:26E-2.1(a)10	M	60	\$4,000
Failure to ensure use of acceptable method to detect free and/or residual product.	7:26E-2.1(a)11	M	30	\$4,000
Failure to use GC/MS for volatile/semi-volatile contaminants as required.	7:26E-2.1(a)12	M	60	\$4,000
Failure to provide Appendix A laboratory deliverables, as specified.	7:26E-2.1(a)13	M	30	\$4,000
Failure to use applicable industry methods for sample collection and handling.	7:26E-2.1(a)14	M	60	\$4,000
Failure to comply with time constraints for sample preservation and delivery to laboratory.	7:26E-2.1(a)15	M	60	\$4,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	M	30	\$4,000
Failure to collect samples from each AOC for contaminants which may be present, or to analyze for Target Compound List plus TICs/Target Analyte List, hexavalent chromium, petroleum hydrocarbons, and pH in areas where contaminants are unknown or not well documented.	7:26E-2.1(c)	M	60	\$4,000
Failure to analyze samples from petroleum storage and discharge areas for required parameters.	7:26E-2.1(d)	M	60	\$4,000
Failure to further address tentatively identified compounds as required.	7:26E-2.1(e)	M	60	\$4,000
Failure to submit quality assurance project plan, as required.	7:26E-2.2(a)	M	30	\$8,000
3 Preliminary Assessment and Site Investigation				
Failure to conduct a preliminary assessment	7:26E-3.1(c)	NM		\$8,000
Failure to investigate historical information	7:26E-3.1(c)1	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to conduct a site visit.	7:26E-3.1(c)2	M	30	\$4,000
Failure to submit preliminary assessment report in required format.	7:26E-3.2(a)1 and 2	M	30	\$4,000
Failure to include maps and plans in preliminary assessment report.	7:26E-3.2(a)3	M	30	\$4,000
Failure to include a recommendation for each area of concern.	7:26E-3.2(a)4	M	30	\$4,000
Failure to include a recommendation for each area of concern for which a no further action letter was previously issued.	7:26E-3.2(a)5	M	30	\$4,000
Failure to include required documentation to support recommendations for each area of concern for which a no further action letter was previously issued.	7:26E-3.2(b)	M	30	\$4,000
Failure to conduct a site investigation that satisfies listed requirements.	7:26E-3.3(b)	NM		\$8,000
Failure to submit site investigation report as required.	7:26E-3.3(c)	M	30	\$8,000
Failure to properly locate samples, including biasing as required, and obtaining Department approval to modify sampling locations.	7:26E-3.4(a)	M	30	\$4,000
Failure to collect and analyze site investigation samples pursuant to N.J.A.C. 7:26E-2.	7:26E-3.4(b)	M	60	\$4,000
Submitting site investigation data generated from composite samples.	7:26E-3.4(c)	M	60	\$4,000
Failure to conduct necessary site investigation of building interiors.	7:26E-3.5	M	30	\$4,000
Failure to conduct site investigation of soil according to general technical requirements.	7:26E-3.6(a)	M	30	\$4,000
Failure to conduct a soil investigation survey.	7:26E-3.6(a)1	M	30	\$4,000
Failure to collect soil samples for analysis & subsurface profiling.	7:26E-3.6(a)2	M	30	\$4,000
Failure to collect soil samples for initial characterization at 0-6 inches.	7:26E-3.6(a)3	M	30	\$4,000
Failure to properly collect soil samples for volatile organic analysis.	7:26E-3.6(a)4	M	30	\$4,000
Failure to properly collect soil samples in six-inch increments or to document sample recovery problems.	7:26E-3.6(a)5	M	30	\$4,000
Failure to collect and document additional samples below specified depths upon encountering filling or regrading.	7:26E-3.6(a)6	M	30	\$4,000
Failure to collect soil sample in saturated zone.	7:26E-3.6(a)7	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to conduct site investigation of soil according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.	7:26E-3.6(c)2	M	60	\$4,000
Failure to conduct site investigation of ground water when required by measured soil contamination at an area of concern.	7:26E-3.7(a)	M	60	\$5,000
Failure to implement QA/QC requirements as part of site investigation of ground water.	7:26E-3.7(c)1	M	60	\$4,000
Failure to utilize proper sampling methods in the collection of ground water samples.	7:26E-3.7(c)2	M	30	\$4,000
Failure to properly locate ground water sampling points.	7:26E-3.7(c)3	M	30	\$4,000
Failure to collect the required number of ground water samples.	7:26E-3.7(d)	M	30	\$4,000
Failure to properly evaluate ground water site investigation sampling results.	7:26E-3.7(e)	M	30	\$4,000
Failure to resample ground water to confirm the presence of contamination.	7:26E-3.7(e)2	M	60	\$4,000
Failure to take required actions upon confirmation of ground water contamination including conduct well search, notify the Department, determine ground water flow, or sample potable wells.	7:26E-3.7(e)3	NM		\$20,000
Failure to commence a potable water investigation within 30 calendar days after property acquisition.	7:26E-3.7(f)	NM		\$20,000
Failure to conduct a background investigation that supports a position that the presence of a ground water contaminant in excess of the applicable remediation standard is due to background ground water contamination.	7:26E-3.7(g)	M	90	\$4,000
Failure to evaluate evidence of discharges to surface water or sediment.	7:26E-3.8(a)	M	30	\$5,000
Failure to properly conduct site investigation of surface water and sediment.	7:26E-3.8(b)	M	60	\$4,000
Failure to properly conduct site investigation of above ground tanks over unpaved soil.	7:26E-3.9(a)1	M	30	\$4,000
Failure to properly conduct site investigation of above ground tanks over paved surfaces.	7:26E-3.9(a)2	M	30	\$4,000
Failure to properly conduct site investigation of underground storage tanks.	7:26E-3.9(a)3	M	30	\$4,000
Failure to properly conduct site investigation of all above grade piping.	7:26E-3.9(a)4	M	30	\$4,000
Failure to properly conduct site investigation of all below grade piping.	7:26E-3.9(a)5	M	30	\$4,000
Failure to properly conduct site investigation of loading and unloading areas.	7:26E-3.9(a)6	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to properly conduct site investigation of all pads.	7:26E-3.9(b)1	M	30	\$4,000
Failure to properly conduct site investigation of all storage and staging areas over permeable cover.	7:26E-3.9(b)2	M	30	\$4,000
Failure to properly conduct site investigation of all surface impoundments.	7:26E-3.9(c)	M	30	\$4,000
Failure to properly conduct site investigation of all drainage systems.	7:26E-3.9(d)	M	30	\$4,000
Failure to properly conduct site investigation of all discharge and waste disposal systems and areas.	7:26E-3.9(e)	M	30	\$4,000
Failure to properly conduct site investigation of any area of concern not addressed pursuant to previous requirements.	7:26E-3.9(f)	M	30	\$4,000
Failure to conduct a baseline ecological evaluation according to general technical requirements.	7:26E-3.11(a)	M	60	\$5,000
Failure to evaluate all data collected in the preliminary assessment and site investigation to identify site-specific contaminants of ecological concern.	7:26E-3.11(a)1	M	30	\$4,000
Failure to identify environmentally sensitive natural resources.	7:26E-3.11(a)2	M	30	\$4,000
Failure to identify potential contamination migration pathways.	7:26E-3.11(a)3	M	30	\$4,000
Failure to draw accurate conclusions regarding the need for further ecological investigation based on the requirements in this section.	7:26E-3.11(a)4	M	60	\$4,000
Failure to conduct a site investigation of historic fill as required.	7:26E-3.12(a)	M	30	\$5,000
Failure to demonstrate that historic fill is not contaminated above the applicable residential soil remediation standards.	7:26E-3.12(b)	M	60	\$4,000
Failure to conduct required ground water sampling when a site with historical fill is in an area where ground water is used for potable water.	7:26E-3.12(c)	M	60	\$4,000
Failure to present and discuss all of the information identified and collected in the site investigation report.	7:26E-3.13(a)	M	30	\$4,000
Failure to include historical information in the site investigation report.	7:26E-3.13(b)1	M	30	\$4,000
Failure to include a description of the site's physical setting in the site investigation report.	7:26E-3.13(b)2	M	30	\$4,000
Failure to include an overview of site investigation execution and results in the site investigation report.	7:26E-3.13(b)3	M	30	\$4,000
Failure to include findings and recommendations in the site investigation report.	7:26E-3.13(b)4	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include all analytical data as required in the site investigation report.	7:26E-3.13(c)1	M	30	\$4,000
Failure to include a summary table of analytical methods and quality assurance indicators in the site investigation report.	7:26E-3.13(c)2	M	30	\$4,000
Failure to include a summary results table in the site investigation report.	7:26E-3.13(c)3	M	30	\$4,000
Failure to include stratigraphic logs in the site investigation report.	7:26E-3.13(c)4	M	30	\$4,000
Failure to include stratigraphic cross sections in the site investigation report.	7:26E-3.13(c)5	M	30	\$4,000
Failure to include soil borings, piezometer or monitoring well records in the site investigation report.	7:26E-3.13(c)6	M	30	\$4,000
Failure to include information for each monitoring well sampled for each ground water sampling event in the site investigation report.	7:26E-3.13(c)7	M	30	\$4,000
Failure to include in the site investigation report any other data obtained pursuant to N.J.A.C. 7:26E-3.3 through 3.12.	7:26E-3.13(c)8	M	30	\$4,000
Failure to include any required map or diagram in the site investigation report.	7:26E-3.13(d)	M	30	\$4,000
4 Remedial Investigations				
Failure to delineate the horizontal and vertical extent of contamination to the applicable remediation standard, including the extent to which contamination has migrated off the property.	7:26E-4.1(b)	M	90	\$5,000
Failure to submit a remedial investigation workplan that conforms to the general requirements of this section.	7:26E-4.2(a)	M	30	\$8,000
Failure to include in the remedial investigation workplan a detailed schedule.	7:26E-4.2(b)1	M	30	\$4,000
Failure to include in the remedial investigation workplan a description of the role of the principal personnel.	7:26E-4.2(b)2	M	30	\$4,000
Failure to include in the remedial investigation workplan the required historical information.	7:26E-4.2(b)3	M	30	\$4,000
Failure to include in the remedial investigation workplan the required site description.	7:26E-4.2(b)4	M	30	\$4,000
Failure to include in the remedial investigation workplan a description of each area of concern.	7:26E-4.2(b)5	M	30	\$4,000
Failure to include in the remedial investigation workplan a sampling summary table for each area of concern.	7:26E-4.2(b)6	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to include in the remedial investigation workplan a map of the proposed sampling locations.	7:26E-4.2(b)7	M	30	\$4,000
Failure to include in the remedial investigation workplan other sampling proposals for treatability, bench scale or pilot studies, data for permit effluent limits or ecological investigations.	7:26E-4.2(b)8	M	30	\$4,000
Failure to include in the remedial investigation workplan a quality assurance project plan.	7:26E-4.2(b)9	M	30	\$4,000
Failure to include in the remedial investigation workplan a health and safety plan.	7:26E-4.2(b)10	M	30	\$4,000
Failure to conduct a remedial investigation of soil at a contaminated site.	7:26E-4.3(a)	NM		\$5,000
Failure to conduct the remedial investigation of soil according to general technical requirements.	7:26E-4.3(b)	M	90	\$4,000
Failure to conduct a remedial investigation of ground water when required.	7:26E-4.4(a)	NM		\$8,000
Failure to provide information necessary to support a position that ground water sampling is not necessary.	7:26E-4.4(b)	M	30	\$4,000
Failure to conduct a remedial investigation of ground water according to general technical requirements.	7:26E-4.4(c)	M	90	\$4,000
Failure to collect ground water samples using acceptable professional methods such as those described in the then effective NJDEP Field Sampling Procedures Manual, or to gain Department approval of an alternate method.	7:26E-4.4(d)	M	30	\$4,000
Failure to properly locate all ground water sampling points.	7:26E-4.4(e)	M	30	\$4,000
Failure to collect the appropriate number of ground water samples.	7:26E-4.4(f)	M	30	\$4,000
Failure to comply with requirements for monitoring wells and piezometers.	7:26E-4.4(g)	M	30	\$4,000
Failure to evaluate the results of the initial ground water analyses.	7:26E-4.4(h)	M	30	\$4,000
Failure to properly perform confirmation ground water sampling.	7:26E-4.4(h)2	M	60	\$4,000
Failure to fully investigate confirmed groundwater contamination and potential impacts, or to conduct a background investigation that supports a position that groundwater contamination is from an offsite source.	7:26E-4.4(h)3	M	30	\$5,000
Failure to delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including free and residual product.	7:26E-4.4(h)3i	M	90	\$4,000
Failure to confirm ground water flow direction.	7:26E-4.4(h)3ii	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to adequately characterize the impacted aquifer.	7:26E-4.4(h)3iii	M	60	\$4,000
Failure to provide documentation for ground water flow system model.	7:26E-4.4(h)3iv	M	30	\$4,000
Failure to properly perform a well search.	7:26E-4.4(h)3v	NM		\$20,000
Failure to properly sample potable and supply wells which are suspected to be contaminated.	7:26E-4.4(h)3vi	NM		\$20,000
Failure to properly evaluate any surface water body potentially impacted by contaminated ground water.	7:26E-4.4(h)3vii	NM		\$20,000
Failure to properly evaluate any subsurface utilities, basements or other structures potentially impacted by vapor hazards related to contaminated ground water.	7:26E-4.4(h)3viii	NM		\$20,000
Failure to properly evaluate current and potential ground water uses for the 25-year planning horizon.	7:26E-4.4(h)3ix	M	30	\$4,000
Failure to properly conduct soil gas studies when required.	7:26E-4.4(i)	M	30	\$4,000
Failure to properly conduct a remedial investigation of surface water, wetlands and sediment.	7:26E-4.5(a)	NM		\$8,000
Failure to properly conduct the remedial investigation of surface water, wetlands and sediment in accordance with the general technical requirements.	7:26E-4.5(b)	M	30	\$4,000
Failure to properly document a position that a remedial investigation of surface water is not necessary.	7:26E-4.5(c)	M	30	\$4,000
Failure to conduct a surface water investigation as required.	7:26E-4.5(d)	M	30	\$4,000
Failure to include in the remedial investigation an investigation of all landfills.	7:26E-4.6(a)	NM		\$8,000
Failure to conduct an investigation of all landfills as required.	7:26E-4.6(a)1 through 4	M	90	\$4,000
Failure to conduct the remedial investigation of historic fill according to the general technical requirements.	7:26E-4.6(b)	M	30	\$4,000
Failure to conduct ground water sampling when required to document that ground water is not contaminated in an area of historic fill.	7:26E-4.6(b)6	M	60	\$4,000
Failure to conduct an ecological risk assessment according to general technical requirements.	7:26E-4.7(a)	M	60	\$5,000
Failure to present the results of an ecological risk assessment in a ecological risk assessment report that conforms to the specific requirements.	7:26E-4.7(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to include in the remedial investigation report the requirements of N.J.A.C. 7:26E-3.13, and the results of additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the approved remedial investigation workplan.	7:26E-4.8(a)	M	30	\$4,000
Failure to include in the remedial investigation report the historical information described in N.J.A.C. 7:26E-4.2(b)3.	7:26E-4.8(b)1	M	30	\$4,000
Failure to include in the remedial investigation report a description of the physical setting pursuant N.J.A.C. 7:26E-4.2(b)4.	7:26E-4.8(b)2	M	30	\$4,000
Failure to include in the remedial investigation report a technical overview as described in N.J.A.C. 7:26E-3.13(b)3 and this section.	7:26E-4.8(b)3	M	30	\$4,000
Failure to include in the remedial investigation report findings and recommendations pursuant to N.J.A.C. 7:26E-3.13(b)4 as updated by the remedial investigation requirements of N.J.A.C. 7:26E-4.	7:26E-4.8(b)4	M	30	\$4,000
Failure to include in the remedial investigation report the analytical results and laboratory deliverables.	7:26E-4.8(c)1	M	30	\$4,000
Failure to include in the remedial investigation report a summary table of analytical methods and quality assurance indicators.	7:26E-4.8(c)2	M	30	\$4,000
Failure to include in the remedial investigation report a sampling results summary table that conforms to the requirements of this section.	7:26E-4.8(c)3	M	30	\$4,000
Failure to include in the remedial investigation report the stratigraphic logs.	7:26E-4.8(c)4	M	30	\$4,000
Failure to include in the remedial investigation report the stratigraphic cross sections.	7:26E-4.8(c)5	M	30	\$4,000
Failure to include in the remedial investigation report all of the soil boring, piezometer, and monitoring well records.	7:26E-4.8(c)6	M	30	\$4,000
Failure to include in the remedial investigation report the required information for each monitoring well sampled.	7:26E-4.8(c)7	M	30	\$4,000
Failure to include in the remedial investigation report the ground water elevation of each monitoring well.	7:26E-4.8(c)8	M	30	\$4,000
Failure to include in the remedial investigation report the summary of inventory control records review.	7:26E-4.8(c)9	M	30	\$4,000
Failure to include in the remedial investigation report the results of treatability, bench scale or pilot studies or other data collected to support the remedy selection.	7:26E-4.8(c)10	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to include in the remedial investigation report data necessary to develop permit limitations.	7:26E-4.8(c)11	M	30	\$4,000
Failure to include in the remedial investigation report the results of ecological assessments and evaluations.	7:26E-4.8(c)12	M	30	\$4,000
Failure to include in the remedial investigation report a summary of records pertaining to the nature of landfill waste and to submit copies of such records.	7:26E-4.8(c)13	M	30	\$4,000
Failure to include in the remedial investigation report the description of the historic fill material.	7:26E-4.8(c)14	M	30	\$4,000
Failure to include in the remedial investigation report all other data and information obtained pursuant to N.J.A.C. 7:26E-4.	7:26E-4.8(c)15	M	30	\$4,000
Failure to include in the remedial investigation report any of the required maps or diagrams in the prescribed formats.	7:26E-4.8(d)	M	30	\$4,000
5 Remedial Action Selection				
Failure to establish remedial action objectives/goals as required.	7:26E-5.1(b)	M	30	\$4,000
Failure to select a remedial action which is protective of public health and safety and the environment.	7:26E-5.1(c)1	M	30	\$4,000
Failure to select a remedial action which is implementable.	7:26E-5.1(c)2	M	30	\$4,000
Failure to select a remedial action which is consistent with other applicable Federal, State and local laws and regulations.	7:26E-5.1(c)3	M	30	\$4,000
Failure to select a remedial action which takes into account the community responses and the local land use Master Plan.	7:26E-5.1(c)4	M	30	\$4,000
Failure to select a remedial action free of potential to cause injury to natural resources.	7:26E-5.1(c)5	M	30	\$4,000
Failure to include in an application for use of an innovative remedial action technology any of the required information.	7:26E-5.1(d)	M	30	\$4,000
Failure to comply with the Department's requirements for use of engineering and institutional controls at N.J.A.C. 7:26E-8.	7:26E-5.1(e)	NM		\$8,000
Failure to submit for approval a Remedial Action Selection Report for a restricted use remedial action.	7:26E-5.2(a)1	M	30	\$8,000
Failure to submit for approval a Remedial Action Selection Report for a remedial action that utilizes an innovative remedial action technology.	7:26E-5.2(a)2	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit for approval a Remedial Action Selection Report for a remedial action that will take longer than five years to complete.	7:26E-5.2(a)3	M	30	\$8,000
Failure to submit for approval a Remedial Action Selection Report for a remedial action that is being implemented to address ground water, surface water, sediment contamination or ecological impact.	7:26E-5.2(a)4	M	30	\$8,000
Failure to present the Remedial Action Selection Report in a format that complies to N.J.A.C. 7:26E-5.2(c).	7:26E-5.2(c)	M	30	\$4,000
Failure to submit the Remedial Action Selection Report with the Remedial Investigation Report or the Remedial Action Workplan as required.	7:26E-5.2(d)	M	30	\$4,000
Failure to submit the Remedial Action Selection Report with the Remedial Action Report.	7:26E-5.2(e)	M	30	\$4,000
6 Remedial Action				
Failure to notify the Department and the local governing body pursuant to N.J.A.C. 7:26E-1.4.	7:26E-6.1(a)	NM		\$8,000
Implementation of a remedial action that has not been approved by the Department when such approval is required.	7:26E-6.1(b)1	NM		\$5,000
Implementation of a remedial action that fails to comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department.	7:26E-6.1(b)2	NM		\$5,000
Implementation of a remedial action that fails to comply with all applicable Federal, State and local laws, regulations and requirements.	7:26E-6.1(b)3	NM		\$5,000
Implementation of a remedial action that caused an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another.	7:26E-6.1(b)4	NM		\$20,000
Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.	7:26E-6.1(d)	NM		\$20,000
Failure to establish institutional controls for a restricted use or a limited use remedy.	7:26E-6.1(e)	NM		\$8,000
Failure to conduct the remediation of historic fill pursuant to N.J.A.C. 7:26E-6.2(c), or for other fill material pursuant to N.J.A.C. 7:26E-5.1.	7:26E-6.1(f)	M	30	\$5,000
Failure to submit a Remedial Action Workplan when required, according to the applicable schedule and which complies to the specified format.	7:26E-6.2(a)	M	30	\$8,000
Failure to submit the Remedial Investigation Report, or a summary if previously submitted, as the first section of the Remedial Action Workplan.	7:26E-6.2(a)1	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the Remedial Action Workplan a sampling summary table.	7:26E-6.2(a)2	M	30	\$4,000
Failure to include in the Remedial Action Workplan a proposal to complete all the requirements at N.J.A.C. 7:26E-6.	7:26E-6.2(a)3	M	30	\$4,000
Failure to include in the Remedial Action Workplan the identification of all applicable remediation standards.	7:26E-6.2(a)4	M	30	\$4,000
Failure to include in the Remedial Action Workplan a detailed description of the remedial action and the remedial technology to be conducted for each area of concern.	7:26E-6.2(a)5	M	30	\$4,000
Failure to include in the Remedial Action Workplan a map that identifies all areas where remedial action will be conducted, and provides information about the remedial action to be taken at each area, as specified.	7:26E-6.2(a)6	M	30	\$4,000
Failure to include in the Remedial Action Workplan a quality assurance project plan.	7:26E-6.2(a)7	M	30	\$4,000
Failure to include in the Remedial Action Workplan a list of all required permits.	7:26E-6.2(a)8	M	30	\$4,000
Failure to include in the Remedial Action Workplan required information regarding construction activity.	7:26E-6.2(a)9	M	30	\$4,000
Failure to include in the Remedial Action Workplan a description of soil and sediment erosion control and monitoring, and dust and odor control and monitoring procedures to be implemented during remedial activities.	7:26E-6.2(a)10	M	30	\$4,000
Failure to include in the Remedial Action Workplan a health and safety plan.	7:26E-6.2(a)11	M	30	\$4,000
Failure to include in the Remedial Action Workplan a detailed description of site restoration plans.	7:26E-6.2(a)12	M	30	\$4,000
Failure to include in the Remedial Action Workplan a description of procedures for dismantling and removal of remedial structures and equipment from the site.	7:26E-6.2(a)13	M	30	\$4,000
Failure to include in the Remedial Action Workplan a cost estimate for the remedial action.	7:26E-6.2(a)14	M	30	\$4,000
Failure to include in the Remedial Action Workplan a proposed completion date and a schedule of the remedial action.	7:26E-6.2(a)15	M	30	\$4,000
Failure to include in the Remedial Action Workplan the documentation required for the establishment of a deed notice.	7:26E-6.2(a)16	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to include in the Remedial Action Workplan the documentation required for the establishment of a classification exception area.	7:26E-6.2(a)17	M	30	\$4,000
Failure to include in the Remedial Action Workplan a plan for maintenance and evaluation of all engineering and institutional controls.	7:26E-6.2(a)18	M	30	\$4,000
Failure to conduct an evaluation pursuant to N.J.A.C. 7:26E-6.4(d) and submit a soil reuse proposal.	7:26E-6.2(b)	M	60	\$4,000
Failure to propose engineering and institutional controls when historic fill material will not be treated or removed.	7:26E-6.2(c)	M	30	\$4,000
Failure to contain or stabilize contaminants in all media, as a first priority, to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.	7:26E-6.3(a)	NM		\$20,000
Failure to properly drain piping and pump out and clean tanks during tank closure.	7:26E-6.3(b)1	NM		\$8,000
Failure to plug openings of tank as required during tank closure.	7:26E-6.3(b)2	NM		\$8,000
Failure to excavate the soil around the tank and remove and secure the tank as required.	7:26E-6.3(b)3	M	30	\$5,000
Failure to inspect the tank for holes and report the findings to DEP as required.	7:26E-6.3(b)4	NM		\$8,000
Failure to properly label a tank for disposal.	7:26E-6.3(b)5	M	30	\$4,000
Failure to remove and dispose of a tank in accordance with all applicable laws and regulations.	7:26E-6.3(b)6	NM		\$8,000
Failure to remediate piping systems associated with an underground storage tank in accordance with N.J.A.C. 7:26E-3.9(a)5.	7:26E-6.3(b)6v	M	30	\$5,000
Failure to conduct the required investigation or take the required actions, and to provide all the information necessary, to support the proposal of a natural ground water remediation.	7:26E-6.3(d)	M	30	\$4,000
Failure to meet the monitoring and performance requirements for natural remediation.	7:26E-6.3(e)	M	30	\$4,000
Failure to document the effectiveness of the remedial action.	7:26E-6.4(a)	M	30	\$4,000
Failure to restore all areas subject to remediation to pre-remediation conditions.	7:26E-6.4(b)	M	30	\$4,000
Failure to decommission all monitoring and extraction wells after completion of remediation.	7:26E-6.4(c)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to conduct a soil reuse evaluation and submit a proposal for soil reuse to the Department prior to the reuse of any soils, and to satisfy the required sampling requirements related to soil reuse.	7:26E-6.4(d)	NM		\$8,000
Failure to remediate property not owned by the person conducting the remediation to the applicable unrestricted use standard if the property owner does not consent in writing to implement the institutional or engineering controls and to record a deed notice.	7:26E-6.4(e)	NM		\$8,000
Failure to prepare a schedule of the remedial action when required.	7:26E-6.5(a)	M	30	\$8,000
Failure to prepare a schedule of the remedial action that includes the information specified in this section.	7:26E-6.5(b)	M	30	\$4,000
Failure to revise the remedial action schedule and submit it to the Department.	7:26E-6.5(c)	M	30	\$4,000
Failure to submit remedial action progress reports as required.	7:26E-6.6(a)	M	30	\$8,000
Failure to include the required information in the remedial action progress report.	7:26E-6.6(b)	M	30	\$4,000
Failure to submit a Remedial Action Report that complies with the content and format requirements specified by this section.	7:26E-6.7(a)	M	30	\$8,000
Failure to include as the first section of the Remedial Action Report the Remedial Investigation Report, or a summary if previously submitted.	7:26E-6.7(b)1	M	30	\$4,000
Failure to include in the Remedial Action Report a summary of all remedial actions completed, by area of concern.	7:26E-6.7(b)2	M	30	\$4,000
Failure to include in the Remedial Action Report a list of the remediation standards achieved for each remedial action.	7:26E-6.7(b)3	M	30	\$4,000
Failure to include in the Remedial Action Report "as-built" diagrams for any permanent structures.	7:26E-6.7(b)4	M	30	\$4,000
Failure to include in the Remedial Action Report a detailed description of site restoration activities.	7:26E-6.7(b)5	M	30	\$4,000
Failure to include in the Remedial Action Report a report of remedial action costs, including an estimate to monitor and maintain and certify the protectiveness of each engineering and/or institutional control.	7:26E-6.7(b)6	M	30	\$4,000
Failure to include in the Remedial Action Report the required information concerning soils and sediments.	7:26E-6.7(c)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to include in the Remedial Action Report graphs depicting changes in contaminant concentrations over time in all monitoring wells.	7:26E-6.7(d)	M	30	\$4,000
Failure to include in the Remedial Action Report the information required for natural remediation ground water remedial action.	7:26E-6.7(e)	M	30	\$4,000
7 Permit Identification and Application Schedule				
Failure to identify all relevant Federal, State and local permits of permit modifications or certifications needed to implement the selected remedial action.	7:26E-7.1(a)	M	30	\$4,000
Failure to apply for and obtain all required permits prior to initiating the remedial action.	7:26E-7.1(b)	M	30	\$5,000
Failure to develop a permit application schedule when required.	7:26E-7.1(c)	M	30	\$4,000
8 Engineering and Institutional Controls				
Failure to propose a deed notice, pursuant to N.J.A.C. 7:26E-8.2.	7:26E-8.1(b)1	M	30	\$4,000
Failure to demonstrate in the Remedial Action Workplan that the selected remedial action will remain protective, that contamination exposure can be controlled, and all current and future uses of the site will be consistent with the remedial action.	7:26E-8.1(b)2	M	30	\$4,000
Failure to monitor each engineering and institutional control.	7:26E-8.1(b)3	NM		\$8,000
Failure to record a deed notice for the site pursuant to N.J.A.C. 7:26E-8.2(c) and (d).	7:26E-8.2(a)1	NM		\$8,000
Failure to provide the Department documentation of the owner's consent to record the necessary deed notice pursuant to N.J.A.C. 7:26E-8.2(b).	7:26E-8.2(a)2	NM		\$8,000
Failure to provide the Department with a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16.	7:26E-8.2(b)	M	60	\$4,000
For a property that is owned by a local, county, state or federal government agency, failure to submit a draft notice worded pursuant to N.J.A.C. 7:26E-8.2(d).	7:26E-8.2(c)1	M	30	\$4,000
For a property that is owned by the U.S. Department of Defense, failure to draft an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to N.J.A.C. 7:26E-8.2(d).	7:26E-8.2(c)2	M	30	\$4,000
Failure to provide the Department with a draft deed notice pursuant to N.J.A.C. 7:26E-8.2(d).	7:26E-8.2(c)3	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit a draft deed notice to the Department, as part of the remedial action work plan, that is worded exactly as the model document in N.J.A.C. 7:26E, Appendix E, and includes copies of all required maps.	7:26E-8.2(d)	M	30	\$4,000
Failure to submit a final draft of the deed notice to the Department as part of the remedial action report.	7:26E-8.2(e)	M	30	\$8,000
Failure to have the owner of the property record the deed notice at the proper county office within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(f)1	NM		\$8,000
Failure to provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the road department of each municipality and county in which the site is located, the NJ Department of Transportation, and utility companies with easements on the roadway.	7:26E-8.2(f)2	NM		\$5,000
Failure to provide a copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1 to the necessary recipients within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(g)	M	30	\$4,000
Failure to submit a MOA, remedial action workplan, and request to modify the DER or deed notice prior to redeveloping or changing the use of a site in a manner inconsistent with a remedial action, or conducting additional remediation or other activities.	7:26E-8.2(h)	NM		\$8,000
Failure to submit a list of all contaminants and their concentrations that do not meet the GWQS from the most recent 24 months of ground water sampling for each ground water sampling point with the remedial action workplan.	7:26E-8.3(b)1	M	30	\$4,000
Failure to submit with the remedial action workplan, a description of the fate and transport of the contaminant plume.	7:26E-8.3(b)2	M	30	\$4,000
Failure to submit the required ground water classification exception area maps with the remedial action workplan.	7:26E-8.3(b)3	M	30	\$4,000
Failure to submit, with the remedial action workplan, information regarding current and projected use of the ground water in the aquifer(s) in which the ground water classification exception area is located.	7:26E-8.3(b)4	M	30	\$4,000
Failure to submit copies of notification letters sent to the required recipients, with the remedial action workplan.	7:26E-8.3(b)5	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit to the Department a monitoring/maintenance certification, for a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded.	7:26E-8.4(c)1	NM		\$8,000
Failure to submit to the Department a monitoring/maintenance certification, for a ground water classification exception area, every two years on the anniversary of the date that the Department established the ground water classification exception area.	7:26E-8.4(c)2	NM		\$8,000
Failure to submit to the Department a monitoring/maintenance certification, for all other engineering and institutional controls (besides a deed notice or ground water classification exception area), every two years on the anniversary of when the engineering or institutional control was in place.	7:26E-8.4(c)3	NM		\$8,000
Failure to submit a biennial certification for all remedial actions and all engineering and institutional controls for the site to the Department in accordance with N.J.A.C. 7:26E-8.4(c) and biennially thereafter on that same date.	7:26E-8.4(d)	NM		\$8,000
Failure to determine whether any actual or pending zoning or land use change is consistent with the deed notice or declaration of environmental restriction, or could undermine the protectiveness of the remedial action.	7:26E-8.5(a)1	NM		\$8,000
Failure to conduct periodic site inspections to determine whether any disturbances of the soil have resulted in unacceptable exposure.	7:26E-8.5(a)2	NM		\$8,000
Failure to compare laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations or standards to determine whether changes have occurred and whether each control complies with changes.	7:26E-8.5(a)3	NM		\$8,000
Failure to develop a detailed log of how the RP has maintained and evaluated the engineering control in compliance with this section.	7:26E-8.5(a)4	NM		\$8,000
Failure to prepare a monitoring report that includes the information listed at N.J.A.C. 7:26E-8.5(b)1 through 10.	7:26E-8.5(b)	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26E-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to certify to the Department that the deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained, and the remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of public health and the environment.	7:26E-8.5(c)1	M	30	\$3,000
Failure to submit a written and electronic version of the monitoring report along with the certification.	7:26E-8.5(c)2	NM		\$8,000
Failure to submit the monitoring report and the certification in accordance with the schedule in N.J.A.C. 7:26E-8.4(c), to the municipal and county clerks; the local, county and regional health department; each owner of the property; or the Department.	7:26E-8.5(c)3	NM		\$8,000
Failure to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)1	NM		\$8,000
Failure to notify the Department of a change in obligations within 30 days of the effective date of the change.	7:26E-8.5(d)2	NM		\$8,000
Failure to compare the laws, Ground Water Quality Standards, and other regulations, applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws or regulation.	7:26E-8.6(a)1	NM		\$8,000
Failure to determine whether there are any planned changes within the 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located.	7:26E-8.6(a)2	NM		\$8,000
Failure to identify whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed biennial review.	7:26E-8.6(a)3	NM		\$8,000
Failure to inspect all ground water monitoring wells associated with the ground water classification exception area, maintain a log for each monitoring well, repair or replace damaged wells as needed, and decommission wells as required by this section.	7:26E-8.6(a)4	NM		\$8,000
Failure to identify any land use disturbance that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water.	7:26E-8.6(a)5	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to determine whether any of the actual or proposed changes in the ground water use identified pursuant to N.J.A.C. 7:26E-8.6(a)2 and 3, have influenced or may influence the protectiveness of the remedial action that includes the ground water classification area.	7:26E-8.6(a)6i	NM		\$8,000
Failure to determine whether there is a need to reevaluate the fate and transport of the ground water contamination plume and to revise the ground water classification exception area to ensure that the remedial action remains protective of the public health, safety and the environment.	7:26E-8.6(a)6ii	NM		\$8,000
Failure to assess ground water quality within 120 calendar days after the projected expiration of the ground water classification exception area.	7:26E-8.6(a)7	M	90	\$5,000
Failure to submit a monitoring report that includes all of the criteria outlined in N.J.A.C. 7:26C-8.6(b)1 through 13.	7:26E-8.6(b)	NM		\$8,000
Failure to certify that the ground water classification exception area continues to provide notice of the ground water contamination and the remedial action continues to be protective of the public health and safety and the environment.	7:26E-8.6(c)1	M	30	\$3,000
Failure to submit a report pursuant to N.J.A.C. 7:26E-8.6(b), in both paper copy and in electronic format acceptable to the Department.	7:26E-8.6(c)2	NM		\$8,000
Failure to submit a ground water classification exception area certification in accordance with the schedule in N.J.A.C. 7:26E-8.4 to the Department, property owner, and each external agency.	7:26E-8.6(c)3	NM		\$8,000
Failure to conduct a periodic inspection of a site with an institutional control.	7:26E-8.7(a)1i	NM		\$8,000
Failure to evaluate any actual or pending zoning or land use changes that could undermine the remedial action.	7:26E-8.7(a)1ii	NM		\$8,000
Failure to monitor each engineering control by periodically reviewing O&M records.	7:26E-8.7(a)2i	NM		\$8,000
Failure to monitor each engineering control by conducting periodical inspections of each engineering control.	7:26E-8.7(a)2ii	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26E-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to compare the laws, remediation standards and other regulations applicable at the time the engineering or institutional control was established, with any relevant subsequently promulgated or modified laws or regulations to determine whether any subsequently promulgated or modified laws or regulations apply to the site, and whether each engineering and/or institutional control meet those new laws and regulations.	7:26E-8.7(a)3	NM		\$8,000
Failure to develop a detailed log of how the RP has maintained and evaluated the engineering control in compliance with this section.	7:26E-8.7(a)4	NM		\$8,000
Failure to prepare a monitoring report that includes all the information listed at N.J.A.C. 7:26E-8.7(b)1 through 9.	7:26E-8.7(b)	NM		\$8,000
Failure to certify to the Department that each engineering or institutional control is being properly maintained.	7:26E-8.7(c)1	M	30	\$3,000
Failure to include a monitoring report required by N.J.A.C. 7:26E-8.7(b) with the certification.	7:26E-8.7(c)2	NM		\$8,000
Failure to submit the certification to the Department pursuant to the schedule and address in N.J.A.C. 7:26E-8.4(e)1.	7:26E-8.7(c)3	NM		\$8,000

3. The Industrial Site Recovery Act Regulations N.J.A.C. 7:26B

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to submit certifications and signatories.	7:26B-1.6(a)	M	30	\$3,000
Failure to submit certifications and signatories for a Remediation Agreement of Remediation Agreement Amendment.	7:26B-1.6(b)	M	30	\$3,000
Failure to have all certifications notarized.	7:26B-1.6(f)	M	30	\$3,000
Failure to complete additional remediation and address deficiencies in submittals.	7:26B-1.7(b)	M	30	\$5,000
Failure of owner or operator to give consent to right of entry and inspection by the Department.	7:26B-1.9(a)	NM		\$12,000
Failure of buyer or transferee to give consent to right of entry and inspection by the Department.	7:26B-1.9(b)1	NM		\$12,000
Failure of buyer or transferee to give consent to right of entry for implementation of a remedial action workplan or compliance with the conditions of a remediation agreement.	7:26B-1.9(b)2	M	30	\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to provide assistance to the Department during any site inspection.	7:26B-1.9(c)	M	30	\$5,000
Failure to obtain a no further action letter, remedial action workplan approval, remediation agreement or Departmentally issued authorization letter prior to the transfer of an industrial establishment.	7:26B-1.10(c)	NM		\$5,000
Failure to amend a General Information Notice for any subsequent transfers of ownership or operations.	7:26B-1.10(d)	M	30	\$4,000
3 General Information Notice				
Failure to submit a General Information Notice within five calendar days after the occurrence of a transaction event.	7:26B-3.2(a)	NM		\$5,000
Failure to remediate a site in accordance with ISRA when a written notice is required to be submitted.	7:26B-3.2(b)	NM		\$8,000
Failure to submit a complete and accurate General Information Notice.	7:26B-3.3(a)	M	30	\$4,000
Failure to submit revisions to the General Information Notice within 30 calendar days of discovery that the original General Information Notice is incorrect, inaccurate, or incomplete.	7:26B-3.4(b)	M	30	\$4,000
4 Remediation Agreement				
Failure to submit a Remediation Agreement application prior to the transfer of the industrial establishment without the Department's approval of a negative declaration or remedial action workplan.	7:26B-4.1(a)	NM		\$5,000
6 Remediation Procedures				
Failure to submit a Preliminary Assessment Report within the required timeframe.	7:26B-6.1(b)	M	30	\$8,000
Failure to submit a Site Investigation Report within 120 calendar days after the date the submission of written notice is required.	7:26B-6.1(c)	M	30	\$8,000
Failure to submit a Remedial Investigation Workplan within 180 calendar days after the date the submission of written notice.	7:26B-6.1(d)	M	30	\$8,000
Failure to submit a Remedial Investigation Report within 300 calendar days after the date the submission of written notice, or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan.	7:26B-6.1(e)	M	30	\$8,000
Commenced a remedial action, which does not meet the criteria in N.J.A.C. 7:26B-6.2(b), without the Department's approval of a remedial action workplan.	7:26B-6.2(a)	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit, within 420 days after the date of submission of written notice, a certification that there are no areas of concern at the industrial establishment where hazardous substances have migrated or are migrating from, involving remediation of groundwater or surface water, and a summary and schedule of completed and proposed soil remedial actions.	7:26B-6.2(c)	M	30	\$8,000
Failure to certify the notification referenced in N.J.A.C. 7:26B-6.2(c).	7:26B-6.2(d)	M	30	\$3,000
Failure to submit a notification in accordance with N.J.A.C. 7:26E-1.4.	7:26B-6.2(e)	NM		\$8,000
Failure to submit progress reports when required.	7:26B-6.2(f)	M	30	\$8,000
Failure to submit a Remedial Action Workplan within 420 days after the date of the submission of the written notice, or within 120 days after approval of the Remedial Investigation Report.	7:26B-6.2(g)	M	30	\$8,000
Failure to submit a Ground water or Surface Water Remedial Action Workplan within 420 days after the date of the submission of the written notice, or within 120 days after approval of the Remedial Investigation Report.	7:26B-6.3	M	30	\$8,000
Failure to submit a Remediation Funding Source upon the Department's approval of a remedial action workplan.	7:26B-6.4	NM		\$5,000
Failure to remediate a site in accordance with a schedule.	7:26B-6.5(a)	M	30	\$4,000
Failure to submit all workplans and reports documenting the completion of remediation.	7:26B-6.6	M	30	\$8,000
Failure to submit a negative declaration subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment.	7:26B-6.7(a)	NM		\$5,000
Failure to submit a negative declaration.	7:26B-6.7(b)	M	30	\$4,000
Failure to include all required information in the submission for a negative declaration.	7:26B-6.7(c)	M	30	\$4,000
Failure to certify a Negative Declaration in accordance with N.J.A.C. 7:26B-1.6.	7:26B-6.7(d)	M	30	\$3,000
8 Fee Schedule and Direct Billing Fees				
Failure to pay fees in accordance with Fee Schedule.	7:26B-8.1(a)	M	30	20% of outstanding fee
Failure to pay oversight costs.	7:26B-8.2	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
A Appendix A: Standard ISRA Remediation Agreement				
Failure to submit a Remedial Investigation Work Plan including a baseline ecological evaluation and all other required work that the Department has not already approved.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Investigation Work Plan to conform to the Department's comments and re-submit.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct the remedial investigation in accordance with the approved Remedial Investigation Work Plan and schedule.	7:26B, Appendix A	NM		\$8,000
Failure to submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E and the Remedial Investigation Work Plan and schedule.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct additional remedial investigation as required, including submission of another Remedial Investigation Work Plan and schedule, and another Remedial Investigation Report.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Investigation Report to conform to the Department's comments re-submit.	7:26B, Appendix A	M	30	\$8,000
Failure to submit a Remedial Action Work Plan.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Work Plan to conform to the Department's comments and re-submit.	7:26B, Appendix A	M	30	\$8,000
Failure to implement the approved Remedial Action Work Plan in accordance with the schedule.	7:26B, Appendix A	NM		\$8,000
Failure to submit to the Department a Remedial Action Report in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan and schedule.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as directed and submit subsequent Remedial Investigation Report and Remedial Action Report as applicable.	7:26B, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Report to conform the Department's comments and agrees to submit the modified Remedial Action Report to the Department.	7:26B, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as required.	7:26B, Appendix A	NM		\$8,000
Failure to submit a negative declaration as required.	7:26B, Appendix A	M	30	\$4,000
Failure to submit quarterly progress reports.	7:26B, Appendix A	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit all documents required by the Remediation Agreement, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department.	7:26B, Appendix A	M	30	\$4,000
Failure to submit the name, title, address and telephone number of the technical contact.	7:26B, Appendix A	M	30	\$4,000
Failure to submit all required payments and required number of copies of all documents.	7:26B, Appendix A	M	30	\$4,000
Failure to notify the Department's contact person at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.	7:26B, Appendix A	M	30	\$3,000
Failure to submit an extension request two weeks prior to any applicable deadline to which the extension request refers.	7:26B, Appendix A	M	30	\$4,000
Failure to establish and maintain a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs, including all operation, maintenance and monitoring costs of all engineering and institutional controls.	7:26B, Appendix A	NM		\$5,000
Failure to pay an annual remediation funding source surcharge when required.	7:26B, Appendix A	M	30	\$4,000
Failure to annually submit a detailed review of all remediation costs as required.	7:26B, Appendix A	M	30	\$4,000
Failure to increase the amount of the remediation funding source within thirty (30) calendar days after receipt of written notice from the Department.	7:26B, Appendix A	NM		\$5,000
Failure to maintain the remediation funding source in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.	7:26B, Appendix A	NM		\$5,000
Failure to submit appropriate fees.	7:26B, Appendix A	M	30	20% of outstanding fee
Failure to submit a check for the full amount of the Department's oversight costs, for the period invoiced.	7:26B, Appendix A	M	30	\$4,000
Failure to pay oversight costs accrued prior to termination	7:26B, Appendix A	M	30	\$4,000
Failure to pay interest on the unpaid balance of oversight costs.	7:26B, Appendix A	M	30	\$4,000

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

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

<u>Subchapter and Violation</u>	<u>Citation 7:26C-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to submit the signatures and certifications specified in N.J.A.C. 7:26C-1.2(a) through (c)1.	7:26C-1.2	M	30	\$3,000
Failure to submit payment of the applicable oversight costs to the Department.	7:26C-1.5(b)	M	30	\$4,000
Failure to notify the Department immediately upon knowledge of a condition that posed an immediate environmental concern to the public health and safety and to the environment.	7:26C-1.5(c)	NM		\$8,000
2 Oversight Documents and No Further Action Letters				
Failure to employ an individual working for a business firm certified by the Department in the category of underground storage tank subsurface evaluation to conduct the remediation of an unregulated heating oil tank system.	7:26C-2.5(a)	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that is required by an Administrative Consent Order, an Administrative Order or a Judicial Order.	7:26C-2.5(d)1	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that is impacting any surface water body or wetlands.	7:26C-2.5(d)2	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that results in an Immediate Environmental Concern condition.	7:26C-2.5(d)3	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that results in conditions which require a vapor intrusion investigation.	7:26C-2.5(d)4	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system which causes ground water contamination that has migrated beyond the property boundaries of the property on which the discharge has occurred.	7:26C-2.5(d)5	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that requires any variance from the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.6(c) or (d).	7:26C-2.5(d)6	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that implements a restricted or limited restricted use remedial action.	7:26C-2.5(d)7	NM		\$5,000
Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system for which a NJPDES permit-by-rule is required for the remediation pursuant to N.J.A.C. 7:26E-6.3(c).	7:26C-2.5(d)8	NM		\$5,000
7 Remediation Funding Sources				
Failure to establish and maintain a remediation funding source.	7:26C-7.2(a)	NM		\$5,000
Failure to establish and maintain a remediation-funding source in an amount equal to the estimated cost of the remediation.	7:26C-7.2(c)1	NM		\$5,000
Failure to establish and maintain a remediation-funding source for a period of not less than the actual time necessary to complete the remediation.	7:26C-7.2(c)2	NM		\$5,000
Failure to submit information regarding areas of concern and cost estimate.	7:26C-7.3(a)	M	30	\$3,000
Failure to submit information required by the Department pursuant to N.J.A.C. 7:26C-7.3(b).	7:26C-7.3(b)	M	30	\$4,000
Failure to submit the required remediation trust fund agreement along with signed copies of the ACO, directive, court order or other judicial settlement.	7:26C-7.4(a)	M	30	\$4,000
Failure to submit the required remediation trust fund information pursuant to N.J.A.C. 7:26C-7.4(b).	7:26C-7.4(b)	M	30	\$4,000
Failure to submit to the Department, 30 days prior to the anniversary date of remediation trust fund, a written statement from the trustee confirming the value of the trust in an amount the Department approved.	7:26C-7.4(c)	M	30	\$4,000
Failure to submit an environmental insurance policy.	7:26C-7.5(a)	M	30	\$4,000
Failure to obtain an environmental insurance policy issued by an entity licensed by the State of New Jersey Dept. of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.5(b)1 through 5.	7:26C-7.5(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to submit to the Department, 30 days prior to the anniversary date of the environmental insurance policy, a written statement from the insurance company confirming the value of the environmental insurance policy in an amount the Department approved and renewal of the policy for the next 12-month period.	7:26C-7.5(c)	M	30	\$4,000
Failure to submit the line of credit agreement pursuant to N.J.A.C. 7:26C-7.6(b).	7:26C-7.6(a)	M	30	\$4,000
Failure to obtain a line of credit issued by an entity licensed by the State of New Jersey Dept. of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.6(b)1 through 5.	7:26C-7.6(b)	M	30	\$4,000
Failure to submit to the Department, 30 days prior to the anniversary date of the establishment of the line of credit, a written statement from the lender confirming the value of the line of credit in an amount the Department approved and renewal of the line of credit for the next 12-month period.	7:26C-7.6(c)	M	30	\$4,000
Failure to submit the required remediation funding source surcharge.	7:26C-7.8(a)	M	30	\$4,000
Failure to increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation pursuant to N.J.A.C. 7:26C-7.	7:26C-7.9(d)	NM		\$5,000
8 Site Access				
Failure to send a written request for access as required to each property owner.	7:26C-8.2(b)	M	30	\$4,000
Failure to send a second written request for access as required to each property owner.	7:26C-8.2(c)	M	30	\$4,000
Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.	7:26C-8.2(e)	M	30	\$4,000
9 Oversight Costs				
Failure to submit the payment of applicable fixed cost fees.	7:26C-9.2(a)	M	30	20 percent of outstanding fee
Failure to submit the payment of the Department's oversight costs.	7:26C-9.3(a)	M	30	\$4,000
A Appendix A: Standard Administrative Consent Order				
Failure to submit a Remedial Investigation Work Plan including a baseline ecological evaluation and all other required work that the Department has not already approved.	7:26C, Appendix A	M	30	\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26C-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to modify the Remedial Investigation Work Plan to conform to the Department's comments and re-submit.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct the remedial investigation in accordance with the approved RI Work Plan and schedule.	7:26C, Appendix A	NM		\$8,000
Failure to submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E and the RI Work Plan and schedule.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct additional remedial investigation as required, including submission of another RI Workplan and schedule, and another RI Report.	7:26C, Appendix A	M	30	\$8,000
Failure to modify the RI Report to conform to the Department's comments re-submit.	7:26C, Appendix A	M	30	\$8,000
Failure to submit a Remedial Action Work Plan.	7:26C, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Work Plan to conform to the Department's comments and re-submit.	7:26C, Appendix A	M	30	\$8,000
Failure to implement the approved Remedial Action Work Plan in accordance with the schedule.	7:26C, Appendix A	NM		\$8,000
Failure to submit to the Department a Remedial Action Report in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan and schedule.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as directed and submit subsequent Remedial Investigation Report and Remedial Action Report as applicable.	7:26C, Appendix A	M	30	\$8,000
Failure to modify the Remedial Action Report to conform the Department's comments and agrees to submit the modified Remedial Action Report to the Department.	7:26C, Appendix A	M	30	\$8,000
Failure to conduct additional remediation as required.	7:26C, Appendix A	NM		\$8,000
Failure to submit quarterly progress reports.	7:26C, Appendix A	M	30	\$8,000
Failure to submit all documents required by the Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department.	7:26C, Appendix A	M	30	\$4,000
Failure to submit the name, title, address and telephone number of the technical contact.	7:26C, Appendix A	M	30	\$4,000
Failure to submit all required payments and required number of copies of all documents.	7:26C, Appendix A	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to notify the Department's contact person at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.	7:26C, Appendix A	M	30	\$3,000
Failure to submit an extension request two weeks prior to any applicable deadline to which the extension request refers.	7:26C, Appendix A	M	30	\$4,000
Failure to establish and maintain a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs, including all operation, maintenance and monitoring costs of all engineering and institutional controls.	7:26C, Appendix A	NM		\$5,000
Failure to pay an annual remediation funding source surcharge when required.	7:26C, Appendix A	M	30	\$4,000
Failure to annually submit a detailed review of all remediation costs as required.	7:26C, Appendix A	M	30	\$4,000
Failure to increase the amount of the remediation funding source within thirty (30) calendar days after receipt of written notice from the Department.	7:26C, Appendix A	NM		\$5,000
Failure to maintain the remediation funding source in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.	7:26C, Appendix A	NM		\$5,000
Failure to submit a check for the full amount of the Department's oversight costs, for the period invoiced.	7:26C, Appendix A	M	30	\$4,000
Failure to pay oversight costs accrued prior to termination.	7:26C, Appendix A	M	30	\$4,000
Failure to pay interest on the unpaid balance of oversight costs.	7:26C, Appendix A	M	30	\$4,000
Failure to notify the Department as required in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay and to take all necessary action to prevent or minimize any such delay.	7:26C, Appendix A	M	30	\$3,000
Failure to submit a certified check made payable to the "Treasurer, State of New Jersey" for \$[penalty amount].00, upon submittal of executed Administrative Consent Order.	7:26C, Appendix A	M	30	\$4,000
Failure to pay penalties for violations of the Administrative Consent Order, or for failure to implement and maintain institutional controls that are part of a remedial action implemented pursuant to the Administrative Consent Order.	7:26C, Appendix A	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:26C-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to allow the Department and its authorized representatives access to all areas of the Site as required.	7:26C, Appendix A	NM		\$12,000
Failure to provide a copy of the Administrative Consent Order to contractors and subcontractors as required, to condition all contracts and subcontracts as required, and to ensure that contractors and subcontractors perform the work in accordance with the Administrative Consent Order.	7:26C, Appendix A	M	30	\$4,000
Failure to submit all data and information developed pursuant to the Administrative Consent Order as required.	7:26C, Appendix A	M	30	\$8,000
Failure to comply with the Administrative Consent Order.	7:26C, Appendix A	NM		\$8,000
Failure to record a copy of the Administrative Consent Order with the County Clerk and to provide the Department with written verification of filing as required.	7:26C, Appendix A	M	30	\$3,000
Failure to preserve and submit all data and information, as required.	7:26C, Appendix A	NM		\$3,000
Failure to provide written notice of dissolution of identity, liquidation of assets or the closure, termination or transfer of operations prior to such action; submit a cost review; provide written notice of a filing of a petition for bankruptcy, and when requested, within fourteen (14) days increase the remediation funding source.	7:26C, Appendix A	NM		\$5,000
Failure to submit two original copies of the signed Administrative Consent Order, documentary evidence that the signatory has the authority to commit to the terms of the Administrative Consent Order, and proof that the remediation funding source has been established.	7:26C, Appendix A	M	30	\$4,000

5. The Underground Storage Tank Regulations N.J.A.C. 7:14B

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
1 General Information				
Failure to include signatures and certifications when making a submission to the Department pursuant to N.J.A.C. 7:14B.	7:14B-1.7(a)	M	30	\$3,000
Failure to sign requisite certification by the appropriate party.	7:14B-1.7(b)2	M	30	\$3,000
Failure of a New Jersey professional engineer to sign and submit the requisite certification when submitting plans in accordance with N.J.A.C. 7:14B-10.3(b)1.	7:14B-1.7(c)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure of an individual certified in the classification of subsurface evaluator to sign and submit the requisite certification when submitting documents in accordance with N.J.A.C. 7:14B-10.3(b)9.	7:14B-1.7(d)	M	30	\$3,000
Failure of an individual to sign and submit the requisite certification when submitting documents in accordance with N.J.A.C. 7:14B-13.3(c).	7:14B-1.7(e)	M	30	\$3,000
Failure of an individual certified as a subsurface evaluator to sign, date and submit the requisite certification when submitting a cathodic protection permit application in accordance with N.J.A.C. 7:14B-10.3(b)5.	7:14B-1.7(f)	M	30	\$3,000
Failure of an individual certified as a subsurface evaluator who conducts or directs activities and prepares documents in accordance N.J.A.C. 7:14B-8.5 or 9.5 to sign, date and submit the requisite certification.	7:14B-1.7(g)	M	30	\$3,000
Failure of an individual certified as a subsurface evaluator who prepares documents in accordance with N.J.A.C. 7:14B-8.5 or 9.5 for another certified subsurface evaluator who conducted or directed on-site activities, to sign, date and submit the requisite certification.	7:14B-1.7(h)	M	30	\$3,000
3 Fees				
Failure to pay fees for tank registration, renewal & permit activity as required.	7:14B-3	M	30	20% of outstanding fee
Failure to submit oversight costs as required by N.J.A.C. 7:26C-9.3 and 9.5.	7:14B-3.5(d)	M	30	\$4,000
7 Release Reporting and Investigation				
Failure of an owner/operator to perform an investigation of a suspected release within seven days of the discovery of the suspected release.	7:14B-7.1(a)	NM		\$8,000
Failure to perform an investigation of a suspected release in accordance with all required procedures.	7:14B-7.2(a)	M	30	\$4,000
Failure to perform a Site Investigation within 60 calendar days of discovery of a suspected release, in accordance with N.J.A.C. 7:26E-3.3, when the seven-day investigation was inconclusive in confirming or disproving a suspected release.	7:14B-7.2(b)	NM		\$8,000
Failure to immediately report a confirmed discharge to the appropriate local health agency and the Department's Environmental Action Hotline.	7:14B-7.3(a)	NM		\$8,000
Failure to perform the remedial actions set forth in N.J.A.C. 7:14B-8.	7:14B-7.3(c)	NM		\$8,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to implement the release response plan when a discharge was identified.	7:14B-7.3(d)	NM		\$8,000
Failure to report a discharge of a reportable quantity of hazardous substances other than petroleum or waste oil to the National Response Center per 40 CFR Part 302.	7:14B-7.3(e)	M	30	\$3,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3.3 and/or submit a site investigation report in accordance with N.J.A.C. 7:26E-3.13 when required by the Department due to a suspected discharge.	7:14B-7.4	NM		\$8,000
8 Remediation Activities				
Failure to take immediate action upon confirming a release.	7:14B-8.1(a)	NM		\$8,000
Failure to take immediate action to determine the source of the discharge upon confirming a release.	7:14B-8.1(a)1	NM		\$8,000
Failure to take immediate action to cease use of the underground storage tank system upon confirming a release.	7:14B-8.1(a)2	NM		\$8,000
Failure to take immediate action to mitigate any fire, safety or health hazard upon confirming a release.	7:14B-8.1(a)3	NM		\$20,000
Failure to take immediate action to conduct a visual inspection to detect and mitigate the effects of evident discharges upon confirming a release.	7:14B-8.1(a)4	NM		\$8,000
Failure to take immediate action to properly remove all hazardous substances from the underground storage tank system upon confirming a release.	7:14B-8.1(a)5	NM		\$20,000
Failure to take immediate action to repair, replace or close the underground storage tank system upon confirming a release.	7:14B-8.1(a)6	NM		\$8,000
Failure to take immediate action to comply with the reporting requirements at N.J.A.C. 7:14B-7.3 upon confirming a release.	7:14B-8.1(a)7	NM		\$8,000
Failure to perform a remedial investigation in accordance with N.J.A.C. 7:26E-4.	7:14B-8.2(a)1	Defer to specific 7:26E-4 violations		Defer to specific 7:26E-4 penalties
Failure to perform a remedial action in accordance with the requirements of N.J.A.C. 7:26E-6.	7:14B-8.2(a)2	Defer to specific 7:26E-6 violations		Defer to specific 7:26E-6 penalties
Failure to determine the classification of any wastes that are generated during the remedial investigation or remedial action.	7:14B-8.2(a)3	M	60	\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to remove all non-hazardous wastes from the site or treat soils on site in accordance with N.J.A.C. 7:26E-5 and 6, or reuse soils in accordance with N.J.A.C. 7:26E-6.2(b) upon Department approval, within six months after generation.	7:14B-8.2(a)4	M	90	\$5,000
Failure to remove all hazardous wastes from the site within 90 days of generation.	7:14B-8.2(a)5	M	30	\$5,000
Failure to submit the Remedial Investigation Report to the Department and local health agencies within 120 days after notification to the Department of the discharge.	7:14B-8.3(a)	M	30	\$8,000
Failure to submit a Remedial Action Selection report prepared in accordance with N.J.A.C. 7:26E within 120 days after notification to the Department of the discharge.	7:14B-8.3(a)1	M	30	\$8,000
Failure to have a remedial investigation report prepared by a Department Certified Subsurface Evaluator.	7:14B-8.3(b)	M	30	\$3,000
Failure to submit a request for No Further Action, a remedial investigation workplan, or a remedial action workplan with the remedial investigation report.	7:14B-8.3(c)	M	30	\$8,000
Failure to submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8, within 90 days of the approval of the remedial investigation workplan.	7:14B-8.3(d)	M	30	\$8,000
Failure to conduct additional sampling and analysis as required by the Department and/or submit a remedial investigation workplan in the timeframe required by the Department.	7:14B-8.3(e)	M	60	\$8,000
Failure to revise inadequate or incomplete submittals and resubmit the required information to the Department within 30 days or in the timeframe specified.	7:14B-8.3(f)	M	30	\$8,000
Failure to accept or reject in writing the Department's conditions for approved remedial investigation or remedial action workplans. Failure to submit a revision to said remedial investigation or remedial action workplan within 30 calendar days or in the timeframe specified.	7:14B-8.3(g)	M	30	\$8,000
Failure to provide the Department with 14 calendar days notice prior to initiation of remedial activities.	7:14B-8.3(i)	M	30	\$3,000
Failure to allow the Department site access to observe remedial activities.	7:14B-8.3(i)	NM		\$12,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to submit a remedial action workplan, for a portion of the facility that is determined to present an immediate threat to health and the environment, to the Department within 45 days of the Department's request.	7:14B-8.3(k)	NM		\$20,000
Failure to implement the remedial action workplan within the timeframes approved by the Department and/or obtain all necessary permits to perform the remedial action workplan.	7:14B-8.4(a)	M	30	\$5,000
Failure to submit a revised remedial action workplan upon discovery of new information available which was not adequately addressed in the original workplan.	7:14B-8.4(c)	M	30	\$8,000
Failure to submit progress reports, prepared in accordance with N.J.A.C. 7:26E-6.5, within the time schedule approved in the remedial action workplan.	7:14B-8.4(d)	M	30	\$8,000
Failure to submit a complete remedial action report, prepared in accordance with N.J.A.C. 7:26E-6.6, upon full implementation of the remedial action workplan.	7:14B-8.5(a)	M	30	\$8,000
Failure to submit an amended Remedial Action Report, in the time frame specified by the Department, that addresses the deficiencies of the initial Remedial Action Report.	7:14B-8.5(b)	M	30	\$8,000
Failure to remediate a discharge of hazardous substances in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E.	7:14B-8.6	M	30	\$5,000
Failure to conduct all remedial investigation and remedial action activities in accordance with N.J.A.C. 7:26E-1.9.	7:14B-8.7	NM		\$8,000
Failure to empty and repair or close a tank system which has leaked a hazardous substance into the annular space created by the secondary containment system.	7:14B-8.8(a)	M	30	\$5,000
Failure to submit to the Department a report which documents the investigation of the tank leak and it's repair.	7:14B-8.8(b)	M	30	\$8,000
9 Out-of-Service UST Systems and Closure of UST Systems				
Failure to notify the Department within 30 days that a tank system is out of service.	7:14B-9.1(a)	M	30	\$3,000
Failure to follow the requirements of API Bulletin No. 1604 when a tank system is out of service for greater than three months.	7:14B-9.1(b)	M	30	\$4,000

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to properly submit documentation to the Department for the extension of the 12-month out of service period.	7:14B-9.1(c)	M	30	\$4,000
Failure to close a tank system after it has been out of service for more than 12 months without the approval of the Department.	7:14B-9.1(d)	NM		\$8,000
Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities.	7:14B-9.1(e)	NM		\$12,000
Failure to notify the Department and all applicable local and county health departments in writing at least 30 days prior to closing an underground storage tank system.	7:14B-9.2(a)1	M	30	\$3,000
Failure to comply with all applicable requirements of the New Jersey Uniform Constriction Code regarding closing an underground storage tank system.	7:14B-9.2(a)2	M	30	\$4,000
Failure to include a copy of the Department notification with the application for a local demolition permit prior to closing an underground storage tank system.	7:14B-9.2(a)3	M	30	\$4,000
Failure to submit a completed New Jersey Underground Storage Tank Registration Questionnaire and fees, if the tank is not already registered, at least 60 days prior to closing an underground storage tank system.	7:14B-9.2(a)4	M	30	\$4,000
Failure to develop and implement a closure plan pursuant to the procedures set forth in N.J.A.C. 7:26E-6.3(b).	7:14B-9.2(b)	Defer to specific 7:26E-6 violations		Defer to specific 7:26E-6 penalties
Failure to submit a closure plan to the Department when a variance from N.J.A.C. 7:26E is necessary.	7:14B-9.2(c)	M	30	\$8,000
Failure to follow the closure requirements set forth in N.J.A.C. 7:26-9 for underground storage tank systems regulated by the New Jersey Hazardous Waste Regulations.	7:14B-9.3(a)	Defer to specific N.J.A.C. 7:26-9 violations		Defer to specific N.J.A.C. 7:26-9 penalties
Failure to follow the closure requirements set forth in N.J.A.C. 7:14B-9.2 for underground storage tank systems containing hazardous wastes which are not subject to the New Jersey Hazardous Waste Regulations.	7:14B-9.3(b)	Defer to specific N.J.A.C. 7:14B-9.2 violations		Defer to specific N.J.A.C. 7:14B-9.2 penalties

<u>Subchapter and Violation</u>	<u>Citation</u> 7:14B-	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to insure the underground storage tank system is closed by an individual certified for closure per N.J.A.C. 7:14B-13.	7:14B-9.3(c)	NM		\$12,000
Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities.	7:14B-9.3(d)	NM		\$12,000
Failure to empty and clean a tank prior to storing a non-hazardous substance.	7:14B-9.4(a)1	NM		\$8,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3, before the substance being stored was changed to a non-hazardous substance.	7:14B-9.4(a)2	NM		\$8,000
Failure to submit a site investigation report, prepared and presented in accordance with N.J.A.C. 7:26E-3.13, within 120 calendar days after the tank cleaning.	7:14B-9.4(a)3	M	30	\$8,000
Failure to immediately notify the Department upon identification of a discharge during activities associated with N.J.A.C. 7:14B-9.4(a), and to conduct a remedial investigation.	7:14B-9.4(b)	NM		\$8,000
Failure to submit to the Department a site investigation report within 120 days of the initiation of breaking ground for closure activities.	7:14B-9.5(a)	M	30	\$8,000
Failure to have an individual certified in subsurface evaluation prepare the site investigation report required at N.J.A.C. 7:14B-9.5(a).	7:14B-9.5(b)	M	30	\$3,000
Failure to maintain and make available to the Department upon request all records generated per N.J.A.C. 7:14B-9.	7:14B-9.5(c)	M	30	\$3,000
10 Permitting Requirements for UST Systems				
Failure to obtain a permit from the Department prior to the repair, installation, substantial modification or upgrade of an underground storage tank system.	7:14B-10.1(a)1	NM		\$8,000
Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.	7:14B-10.1(a)2	M	30	\$5,000
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$3,000
Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.	7:14B-10.2(a)	NM		\$8,000

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

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection by an authorized local, State or Federal representative.	7:14B-10.5(b)	M	30	\$3,000
Failure to contact the Department as required to obtain an emergency permit, and to submit a permit application within 14 calendar days of receipt of the emergency permit.	7:14B-10.6(b)	NM		\$8,000
Failure to provide required information when requesting an emergency permit.	7:14B-10.6(c)	M	30	\$4,000
Failure to make the Department issued emergency permit number available for inspection by an authorized local, State or Federal representative and prominently display the emergency permit number at the facility site during the course of the permitted activity.	7:14B-10.6(d)	M	30	\$3,000
Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.	7:14B-10.8(e)	NM		\$8,000
11 Municipal Ordinances				
Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.	7:14B-11.1(b)	M	30	\$4,000
Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.	7:14B-11.2(a)	M	30	\$4,000
Failure to submit to the Department a copy of the final ordinance.	7:14B-11.3(d)	M	30	\$4,000
13 Certification of Individuals and Business Firms				
Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.	7:14B-13.1(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-13.1(b)	M	30	\$3,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-13.1(c)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation 7:14B-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-13.1(d)	NM		\$5,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-13.1(e)1	NM		\$5,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)2	NM		\$5,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-13.1(h)	M	30	\$3,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-13.1(j)	M	30	\$3,000
Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.	7:14B-13.1(k)	M	30	\$3,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-13.1(l)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to comply with the professional business practices described in N.J.A.C. 7:14B-13.9.	7:14B-13.1(m)	NM		\$5,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).	7:14B-13.6(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-13.6(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-13.6.	7:14B-13.7(f)	M	30	\$3,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-13.9(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-13.9(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-13.9(a)3	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to enter into a written contract with a client that contains all of the provisions of N.J.A.C. 7:14B-13.9(b).	7:14B-13.9(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide a standard price list of the services that it provides upon request of the client.	7:14B-13.9(c)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-13.9(d)1	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-13.9(d)2	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation 7:14B-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-13.9(e)	NM		\$5,000
16 Certification Of Individuals And Business Firms For Unregulated Underground Storage Tank Systems				
Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tank systems.	7:14B-16.2(a)	NM		\$5,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.	7:14B-16.2(b)	M	30	\$3,000
Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.	7:14B-16.2(c)	M	30	\$3,000
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tank systems are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-16.2(d)	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tank systems to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-16.2(e)1	NM		\$5,000
Failure of an individual performing services on unregulated heating oil tank systems to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-16.2(e)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.	7:14B-16.2(f)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to comply with the professional business practices described in N.J.A.C. 7:14B-16.10.	7:14B-16.2(g)	NM		\$5,000

<u>Subchapter and Violation</u>	<u>Citation 7:14B-</u>	<u>Type of Violation</u>	<u>Grace Period (Days)</u>	<u>Base Penalty</u>
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit a list of the maximum price that they will charge to perform those services for which he or she or it is certified.	7:14B-16.2(g)1	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to cooperate in any audit of their pricing and business practices.	7:14B-16.2(g)2	M	30	\$3,000
Failure of an individual or business firm performing services on unregulated heating oil tanks to submit documentation of the cost to provide the services for which the Petroleum Underground Storage Tank Remediation and Upgrade Closure Fund is providing financial assistance.	7:14B-16.2(g)3	M	30	\$3,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification other than those created by passing an examination.	7:14B-16.2(i)	M	30	\$3,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-16.2(j)	M	30	\$3,000
Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.	7:14B-16.2(k)	M	30	\$3,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-16.2(l)	M	30	\$3,000
Failure to attend annual eight-hour health and safety refresher courses as required by 26 CFR 1910.120(e)(8).	7:14B-16.7(a)	M	30	\$4,000
Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.	7:14B-16.7(b)	M	30	\$4,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$5,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7.	7:14B-16.8(f)	M	30	\$3,000

<u>Subchapter and Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-16.9(a)	NM		\$5,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-16.9(b)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations.	7:14B-16.10(a)1	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.	7:14B-16.10(a)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide all prospective clients with a list of the standard price for the services provided.	7:14B-16.10(a)3	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to enter into a written contract with a client that contains all of the provisions of N.J.A.C. 7:14B-16.10(b).	7:14B-16.10(b)	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide a standard price list of services to the client.	7:14B-16.10(c)	M	30	\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.	7:14B-16.10(d)1	M		\$3,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-16.10(d)2	NM		\$5,000
Failure of an individual or business firm certified pursuant to N.J.A.C. 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-16.10(e)	NM		\$5,000

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

Former N.J.A.C. 7:26C-10.4, Procedures for requesting and conducting adjudicatory hearings, recodified to N.J.A.C. 7:26C-10.6.
Repeal and New Rule, R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Section was "Amount of a civil administrative penalty".
Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).
See: 38 N.J.R. 4748(a).
In (c)5 table, added subchapter 16 references.

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

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

In (c)2, rewrote the table.

Provisions of R.2006 d.383 were readopted without change by R.2008 d.322, effective September 30, 2008; and rewrote the tables in (c)4 and (c)5, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

7:26C-10.5 Penalty adjustment factors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. All other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;

2. The amount of one-time nondepreciable expenditures;

3. The amount of annual expenses;

4. The useful life of capital;

5. Applicable tax, inflation and discount rates;

6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it

was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

New Rule, R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Recodified from N.J.A.C. 7:26C-10.5 by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

7:26C-10.8 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations of an administrative order, an administrative consent order, a remediation agreement, a requirement of the Industrial Site Recovery Act Rules, a requirement of the Underground Storage Tanks rules, a requirement of the Discharges of Petroleum and Other Hazardous Substances rules, a declaration of environmental restrictions, or a deed notice, the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. In each notice of civil administrative penalty assessment, the Department shall:

1. Identify the provisions violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty assessed pursuant to N.J.A.C. 7:26C-10.4; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-10.6.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a notice of civil administrative penalty becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:26C-10.6, a notice of civil administrative penalty assessment becomes a Final Order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a notice of civil administrative penalty assessment becomes a Final Order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a Final

Order upon receipt by the violator of a Final Order in a contested case.

(c) If the violator does not pay a civil administrative penalty within 30 calendar days after the date of a Final Order, and the penalty is not contested pursuant to N.J.A.C. 7:26C-10.6, or if the violator does not make a required payment pursuant to a payment schedule entered into with the Department, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing and continue until the violator pays the penalty in full.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-10.6, and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.

(e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The Department may assess and recover, by civil administrative order, the reasonable cost of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, in addition to the penalty assessment.

Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.
Recodified from N.J.A.C. 7:26C-10.3 by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

7:26C-10.9 Procedures for requesting and conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest a notice of civil administrative penalty assessment or an administrative order assessed or issued pursuant to this chapter, the violator shall submit an original request in writing to the Department at the address in (d) below, within 20 calendar days after the violator's receipt of the notice of civil administrative penalty assessment or an administrative order. The violator shall include the following information in each hearing request:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;
3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;

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

5. An admission or denial of each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;

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

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

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

(b) The Department shall deny the hearing request if:

1. The violator fails to include all the information required by (a) above; or

2. The Department does not receive the request within 20 calendar days after the violator received the enforcement document being contested.

(c) The Department shall conduct all adjudicatory hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The violator shall send the request for an adjudicatory hearing to:

1. The Office of Legal Affairs

New Jersey Department of Environmental
Protection
PO Box 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request; and

2. New Jersey Department of Environmental Protection

Division of Remediation Support
PO Box 028
Trenton, New Jersey 08625-0028
Attention: Hearing Request.

Recodified from N.J.A.C. 7:26C-10.4 by R.2003 d.198, effective May 19, 2003.

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

Rewrote the section.

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

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

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

7:26C-11.1 Scope

This subchapter sets forth the requirements for any person to apply for a loan and/or grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, to fund projects eligible pursuant to the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.

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

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

Rewrote the section.

7:26C-11.2 Application for loans and grants

(a) An applicant for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund shall submit an application on forms available from the Department and a written request, certified in accordance with N.J.A.C. 7:26C-1.2(a)1, to the Department which includes the following information:

1. If the application is for a loan and/or grant that concerns the upgrade or closure of an underground storage tank regulated pursuant to N.J.A.C. 7:14B, a statement that the upgrade or closure is being conducted pursuant to N.J.A.C. 7:14B. The statement shall include, as applicable, the name of the Department bureau overseeing the remediation, the program interest name and program interest number (preferred ID), if known, and the name of the assigned Department case manager;

2. For tanks regulated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-23, a statement by the applicant that the underground storage tank has been properly registered pursuant to N.J.A.C. 7:14B-2;

3. For underground storage tanks regulated pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-23, the registration number;

4. A statement by the applicant as to whether the application is for a loan, a grant, or both;

5. A statement by the applicant as to which of the following provisions of the Underground Storage Tank Finance Act, N.J.S.A. 58:10A-37.1 et seq., apply to the applicant's request:

- i. A discharge of petroleum has occurred which poses an imminent and significant threat to drinking water sources, human health or to environmentally sensitive areas as defined pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 - ii. The regulated tank is required to be upgraded pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 et seq., including necessary remediation;
 - iii. The regulated tank is required to be closed pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991 et seq., including necessary remediation;
 - iv. The regulated tank is required to be upgraded pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., but not pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991, including necessary remediation;
 - v. The regulated tank requires the remediation of a discharge other than those given priority above;
 - vi. The regulated tank is required to be closed pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., but not pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991, including necessary remediation; or
 - vii. The underground storage tank requires the remediation of a discharge of heating oil from an underground storage tank used to store oil for on-site consumption in a residential building;
6. A statement by the applicant whether an application has been made to any other funding source for a loan or grant, such as the Hazardous Discharge Site Remediation Fund or the New Jersey Spill Compensation Fund;
 7. A statement as to whether the applicant has previously received monies from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund for the remediation, or the closure or upgrade of an underground storage tank;
 8. A detailed description of the work to be completed under the loan and/or grant in accordance with the requirements of the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
 9. A detailed cost estimate for the completion of work listed at (a)8 above. For an underground storage tank regulated pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B, a contractor certified pursuant to Underground Storage Tanks rules, at N.J.A.C. 7:14B-13, shall provide the cost estimate;
 10. The total amount of loan or grant requested;
 11. A statement as to whether the applicant is in violation of any Department requirements, or owes the Department any outstanding fees or penalties.
 - i. Any applicant not in compliance with all applicable Department rules and regulations shall submit a written description of, and explanation for such non-compliance, including a list of violations and outstanding fees, or penalties. The applicant shall specifically state whether the violations, fees, or penalties are currently being contested in a manner prescribed by law and whether the violations, fees or penalties resulted from a lack of financial resources to perform the required remediation;
 12. For applicants other than public entities or owners or operators of an underground storage tank used to store heating oil for on-site consumption in a residential building, a statement that the applicant has applied to a bank, insurance company or other financial institution and has been rejected for a loan, grant or coverage. The applicant shall supply a copy of the rejection letter to the Department.
 13. The last three annual financial statements of the applicant. An applicant who is a homeowner applying to remediate discharges at the applicant's domicile shall submit the applicant's last three Federal income tax returns; and
 14. A certification by an applicant who is requesting a conditional hardship grant which states the following:
 - i. "I certify that I owned or operated the subject petroleum underground storage tank system(s) as of December 1, 1996 and continually thereafter or inherited the property from a person who owned the petroleum underground storage tank system(s) as of that date; and
 - (1) I have a taxable income less than \$100,000 per year;
 - (2) My net worth, exclusive of my primary residence, is less than \$100,000; or
 - (3) The net worth of my business that owns or operates less than 10 underground storage tank systems is less than \$2,000,000.
 - (b) A person seeking to amend their approved loan or grant award shall submit to the Department the information required in (a) above with respect to the amendment.
 - (c) The Department shall review the applicant's request for a loan and/or a grant, or amendment thereto, based on the information provided by the applicant in accordance with (a) above and shall notify the applicant in writing within 30 calendar days after receipt of the application as follows:
 1. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively and technically complete and the Department has referred the request to

the Authority for financial review in accordance with N.J.A.C. 19:31-11.

2. The applicant's request for a loan and/or a grant, or amendment thereto, is administratively or technically incomplete and the Department cannot take further action on the application until the deficiencies listed in the Department's notification are corrected; or

3. The applicant is not eligible for a loan or grant, or amendment thereto, from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund and a statement of the reason(s) therefor.

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

Rewrote the section.

Amended by R.2008 d.322, effective November 3, 2008.
See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (a)1, substituted "If the application is for a loan and/or grant that concerns" for "A statement by the applicant that the remediation is being conducted in accordance with an oversight document executed pursuant to N.J.A.C. 7:26C or that" and inserted "regulated pursuant to N.J.A.C. 7:14B, a statement that the upgrade or closure".

7:26C-11.3 Grants for reimbursement of prior remediation costs

(a) A person responsible for conducting remediation may apply for a grant for reimbursement of remediation costs which occurred prior to application provided:

1. The remediation costs were incurred after August 30, 1997; and
2. The remediation associated with the remediation costs was conducted with Department oversight.

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

7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation of a site using a loan or a grant shall comply with N.J.A.C. 7:26C-7.10 for the disbursement of funds.

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

APPENDIX A

STANDARD ADMINISTRATIVE CONSENT ORDER

The standard administrative consent order contains references to [Person], [amount], and other blank brackets [].

Upon the Department's issuance or entry of an Administrative Consent Order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document. The matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF THE:
[Site name] :
ADMINISTRATIVE
CONSENT ORDER

AND :
[Name of Person] :
PROGRAM INTEREST :
NUMBER :

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "DEP") by N.J.S.A. 13:1D-1 through 19, the Solid Waste Management Act, N.J.S.A. 13:1E-1 through 91, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [], Lot [] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter "Property"), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").
2. [The full name and mailing address of each party executing the Administrative Consent Order.]
3. [The regulatory and enforcement history of the site.]
4. By entering this Administrative Consent Order, [Person] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Administrative Consent Order.
5. The scope of the investigation and remediation required by this Administrative Consent Order will include all

contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

6. [Additional findings to be added at the Department's discretion].

ORDER

I. Remedial Investigation Requirements

7. Within [] calendar days after the effective date of this Administrative Consent Order as set forth in paragraph 70 below (hereinafter, "the effective date of the Administrative Consent Order"), or as otherwise approved in writing by the Department, [Person] agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E, including a schedule pursuant to N.J.A.C. 7:26E-4.2(b). [Person] agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

8. Within [] calendar days after receipt of the Department's written comments on the RI Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the RI Work Plan to conform to the Department's comments and agrees to 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 Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Work Plan.

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

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

11. If upon review of the RI Report the Department determines that additional remedial investigation is required, the Department shall notify [Person] of the additional work that is required. [Person] agrees to submit to the Department another RI Workplan and schedule for the additional work. Upon approval of the RI Workplan for the additional required work, [Person] agrees to conduct additional remedial investigation and submit another RI Report pursuant to the approved schedule.

12. Within [] calendar days after receipt of the Department's written comments on the RI Report, or longer as authorized by the Department, [Person] agrees to modify the RI Report to conform to the Department's comments and agrees to submit the modified RI Report to the Department. The determination as to whether or not the modified RI Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RI Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RI Report.

II. Remedial Action Requirements

13. Within [] calendar days after receipt of the Department's written approval of the RI Report, [Person] agrees to submit to the Department a Remedial Action Work Plan in accordance with N.J.A.C. 7:26E.

14. Within [] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the Department's comments and agrees to 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 Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Work Plan.

15. Upon receipt of the Department's written final approval of the Remedial Action Work Plan, [Person] agrees to implement the approved Remedial Action Work Plan in accordance with the schedule therein.

16. [Person] agrees to submit to the Department a Remedial Action Report (hereinafter "RA Report") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the RA Work Plan and the schedule therein.

17. If upon review of the RA Report, the Department determines that additional remediation is required, [Person] agrees to conduct additional remediation as required by the Department including submission of additional workplans and reports, and schedules as applicable.

18. Within [] calendar days after receipt of the Department's written comments on the RA Report, or longer as authorized by the Department, [Person] agrees to modify the RA Report to conform to the Department's comments, and agrees to submit the modified RA Report to the Department.

The determination as to whether or not the modified RA Report, as resubmitted, conforms to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's written comments, and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Report conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Report.

III. Additional Remedial Investigation and Remedial Action Requirements

19. If at any time that this Administrative Consent 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 remediation is required to protect the public health and safety and the environment, [Person] agrees to conduct such additional remediation as the Department directs.

IV. Progress Reports

20. [Person] agrees to submit quarterly progress reports which detail the status of [Person's] compliance with this Administrative Consent Order to the Department in accordance with N.J.A.C. 7:26E-6.6(b). [Person] agrees to submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this Administrative Consent Order. [Person] agrees to submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported. [Person] may request that the Department allow progress reports be submitted semi-annually or annually.

V. Project Coordination

21. [Person] agrees to submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues pursuant to Section X. of this Administrative Consent Order, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine [Person's] compliance with the requirements of this Administrative Consent Order for purposes of assessing penalties and availing itself of any other applicable remedies.

22. Within seven (7) calendar days after the effective date of this Administrative Consent Order, [Person] agrees to 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 Administrative Consent Order. In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to [Person's] agent, identified in paragraph 49. below, of the date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

23. Within seven (7) days after the effective date of this Administrative Consent Order the Department will identify the individual who will be the Department's contact for all matters concerning this Administrative Consent Order. Unless the Department otherwise directs in writing, [Person] agrees to submit all payments and [number of copies] copies of all documents required by this Administrative Consent Order to the Department's contact.

24. [Person] agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to paragraph 23. above at least fourteen (14) calendar days prior to the initiation of any field activities at the site which are related to remediation, development or redevelopment.

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

VI. Remediation Funding Source and Remediation Funding Source Surcharge

26. [Person] agrees to establish and maintain for the duration of this Administrative Consent Order a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs related to compliance with this Administrative Consent Order, including all operation, maintenance and monitoring costs of all engineering and institutional controls, pursuant to N.J.A.C. 7:26E-8, used to remediate the Site, pursuant to N.J.A.C. 7:26C-7. [Person] agrees that the initial remediation funding source amount is \$[].

27. [Person] agrees to pay an annual remediation funding source surcharge if required to do so pursuant to N.J.A.C. 7:26C-7.8.

VII. Project Cost Review

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

- (a) A detailed summary of all monies spent to date pursuant to this Administrative Consent Order;
- (b) The detailed estimated remediation costs required to comply with this Administrative Consent Order, including all operation, maintenance and monitoring costs; and
- (c) The reason for any changes from the previously submitted cost review.

29. 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 remediation costs necessary to comply with obligations under this Administrative Consent Order. If the Department grants written approval to such a request, [Person] may amend the amount of the then existing remediation funding source consistent with that approval.

30. If the estimated costs of meeting [Person's] obligations in this Administrative Consent Order at any time increase to an amount greater than the remediation funding source, [Person] agrees to 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 an additional remediation funding source such that the total amount equals the Department's approved estimated cost.

31. 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 operation maintenance and monitoring of the engineering and institutional controls.

VIII. Oversight Cost Reimbursement

32. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph 34., determined pursuant to N.J.A.C. 7:26C-9.3, [Person] agrees to 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 invoiced in the Department's summary.

33. [Person] agrees that its agreement here to pay the Department's oversight costs will continue after the Department's termination of this Administrative Consent Order as provided herein for those oversight costs that have accrued prior to that termination.

34. [Person] also agrees to pay interest 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.

IX. Reservation of Rights

35. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event that the Department determines that [Person] has violated the terms of this Administrative Consent Order. Before the Department unilaterally terminates this Administrative Consent Order, 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 to perform such obligation(s).

36. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent 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 Administrative Consent 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 Administrative Consent 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 Administrative Consent Order, except as provided in paragraph 48. of this Administrative Consent Order. Under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

37. This Administrative Consent Order shall not be construed 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.

38. Except as otherwise stated in this Administrative Consent 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 Administrative Consent 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.

39. Except as otherwise set forth herein, by the execution of this Administrative Consent 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.

X. Force Majeure

40. 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 Administrative Consent Order, [Person]

agrees to 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] agrees to take all necessary action to prevent or minimize any such delay.

41. The Department will extend in writing the time for compliance 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.

42. 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].

43. "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 Administrative Consent 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 Administrative Consent Order, unless denied by a court of competent jurisdiction.

XI. Penalties

44. [OPTIONAL--[Person(s)] shall submit to the Department a certified check made payable to the "Treasurer, State of New Jersey" for \$[] .00, no later than [Person(s)] execution and submittal to the Department of this Administrative Consent Order. The Department's acceptance of the penalty shall not be construed as a waiver of the Department's right to compel [Person(s)] to specifically perform their obligations under this Administrative Consent Order.]

45. [Person] agrees to pay penalties for its violations of this Administrative Consent Order, or for its failure to implement and maintain institutional controls including by way of example, a deed notice or declaration of environmental restriction that are part of a remedial action

implemented pursuant to the order, according to the amounts and conditions in N.J.A.C. 7:26C-10.

46. [Person] agrees that its payment of a penalty pursuant to N.J.A.C. 7:26C-10 does not alter [person's] responsibility to complete any requirement of this Administrative Consent Order.

47. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement] [List each non-DEP party to this Administrative Consent Order] are jointly and severally liable for penalties for violations of this Administrative Consent Order.

XII. Dispute Resolution

48. 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

49. [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Administrative Consent Order. Unless and until [Person] provides the Department with the name, title address and telephone number of [Person's] new agent.

[Name, title, address and telephone number of [Person's] agent]

50. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site [Person] has access to, at all times, for the purpose of monitoring [Person's] compliance with this Administrative Consent Order and/or to perform any remedial activities [Person] fails to perform as required by this Administrative Consent Order. [Person] agrees that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph 35, above.

51. [Person] agrees to 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.

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

53. Nothing in this Administrative Consent Order relieves [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this Administrative Consent 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 Administrative Consent Order. This Administrative Consent 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 Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent 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] agrees to obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

54. All work plans, schedules, and other documents required by this Administrative Consent Order and approved in writing by the Department are incorporated herein and made a part hereof.

55. Upon the receipt of a written request from the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, [was] were developed pursuant to this Administrative Consent 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.

56. [Person] agrees to comply with this Administrative Consent Order, which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

57. 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 applicable regulations or this Administrative Consent Order prior to executing any such amendment.

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

59. This Administrative Consent Order shall be governed and interpreted under the laws of the State of New Jersey.

60. If any provision of this Administrative Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Administrative Consent 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 Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law.

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

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

63. This Administrative Consent 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 Administrative Consent Order.

64. [Person's] document retention policy notwithstanding, [Person] agrees to preserve, during the pendency of this Administrative Consent 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 [Person's] divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site. 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] agrees to 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 data related to site conditions, sampling, or monitoring.

65. [Person] agrees to 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] agrees to submit a cost review pursuant to this Administrative Consent Order to the Department. [Person] agrees to 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] agrees to obtain and submit to the Department additional financial assurance pursuant to this Administrative Consent Order.

66. If [Person] remediates the Site to a restricted use standard and [Person] implements institutional and engineering controls, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source until the Department determines that the site is remediated to the applicable unrestricted use standard.

67. If [Person] remediates contaminated soil at the Site to the Department's unrestricted use soil standard and any other contaminated media to the applicable remediation standard, the requirements of this Administrative Consent 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 Administrative Consent Order in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Administrative Consent 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 Administrative Consent 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 Administrative Consent Order.

68. Except as provided in paragraph 55 above, [Person] may assert a claim of confidentiality for any information

submitted by [Person] pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

69. [Person] agrees to submit to the Department, two copies of the executed original Administrative Consent Order, each with the original signature of [Person] or its authorized representative, and 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 Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

70. This Administrative Consent Order shall be effective upon the execution of this Administrative Consent Order by the Department and [Person].

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. 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 II3 through II10 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.
Amended by R.2003 d.198, effective May 19, 2003.
See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).
Rewrote the section.
Amended by R.2006 d.328, effective September 18, 2006.
See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).
Rewrote the appendix.

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
 CONSENT ORDER
 AND :
 [Name of Person] :
 [Program Interest Number] :

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.

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 the Department's 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 [remedial 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 signatory 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 Administrative Consent 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 Administrative Consent 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 the executed Administrative Consent Order to the Department for Department signature within five (5) calendar days from the effective date.

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

In I1, substituted "the Department's" for "NJDEPE"; in III, substituted "remedial" for "remediation" in the last sentence; in IV8, substituted "Administrative Consent Order" for "[Order]" throughout; in IV9, substituted "[Person] shall return the executed Administrative Consent Order to the Department" for "[Person] shall return executed [Order] to the Department".

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, 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:

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

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. 7:11-2.6 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. 7:11-2.6 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:

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

(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:

i. any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so; or

ii. any person with the legal obligation to submit, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and continue to be protective of the public health and safety and of the environment 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".

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

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

Under the second Covenant not to Sue heading, rewrote the second (b).

APPENDIX D

DEVELOPER CERTIFICATION

IN THE MATTER OF THE :

[Insert Site Name, : DEVELOPER

KCSL#, and :

NJDEP Case Number] : CERTIFICATION

AND :

[Insert Name of Person] :

Name of Authorized Individual

Authorized Individual's Title

Name of Person

Address of Person

hereby certifies, on behalf of [insert name of person], that he or she is authorized to make this binding Certification for the [describe here the real property that [insert name of person] is remediating, including any name by which the Site is known, the street address, all blocks and lots, the municipality, county and the DEP Known Contaminated Site List Number] [(the Site)], and, with regard to that Site, [insert name of person] further certifies as follows:

1. If person is an owner of the site, or a prospective purchaser of the site: [Insert name of person] insert one of the following:

purchased the Site on [insert date];

acquired title to the Site by devise or succession on [insert date];

intends to acquire the Site after the date of this Certification.

2. If person is an owner of the site, or a prospective purchaser of the site insert one of the following unless the person acquired the site on or after January 6, 1998 and entered into an oversight document with the Department prior to acquiring ownership of the Site:

If person acquired title to the Site on or after September 14, 1993, insert the following:

[Insert name of person] has undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the Site, including the performance of a preliminary assessment and a site investigation, if necessary pursuant to N.J.A.C. 7:26E. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(2).

If person acquired title to the Site prior to September 14, 1993, insert the following:

At the time of acquisition, [Insert name of person] undertook all appropriate inquiry on the previous ownership and uses of the Site based upon generally accepted good and customary standards, and, as result of that inquiry, did not know and had no reason to know that any hazardous substances had been discharged at the Site. After acquiring title to the Site, [Insert name of person] submitted to the Department, on [insert date], a prelimi-

nary assessment report prepared pursuant to N.J.A.C. 7:26E-3.2, and, if necessary pursuant to N.J.A.C. 7:26E-3, a site investigation report prepared pursuant to N.J.A.C. 7:26E-3.13. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(5).]

3. If the person acquired title to the Site on or after January 6, 1998 and entered into an oversight document with the Department prior to acquiring ownership of the Site, insert the following:

[Insert name of person] has:

a. Within 10 days after acquiring title to the Site, agreed in writing (a copy of which is attached hereto) to give the Department access to the Site to oversee the remediation and to perform any remediation that [insert name of person] does not perform; and

b. Within 30 days after acquiring title to the Site, commenced remediation of the Site, including any migration, pursuant to a Department oversight document executed on [insert date, which must be prior to date of acquisition] and is presently in compliance with all of the Department's remediation requirements.

4. [Insert the following if person executing this Certification is an owner of the Site and has discovered a discharge at the Site.] Concerning discharges at the site which occurred prior to [insert name of person]'s acquiring title, where applicable, to the Site:

a. [Insert name of person] discovered the discharges at the Site on [insert date]; and

b. [Insert name of person] reported these discharges to the Department on [insert date] via [insert one of the following:

telephone call to the DEP Hotline,

written documentation, or

describe other means of providing the Department notice of the discharges].

5. [Insert name of person], at any time up to the date of this Certification:

a. Has not discharged, at the Site, any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Has not been in any way responsible, pursuant to any law, for any contaminant at or emanating from the Site, or contamination that has emanated from the Site, other than by acquiring ownership of the Site, if applicable, after all of the discharges occurred at the Site;

c. Has not aggravated or contributed to contamination at or emanating from the Site, or contamination that has emanated from the Site;

d. Has not, as a holder of a security interest in a facility or underground storage tank facility, actively participated in the management of a facility or underground storage tank facility at the Site, as those terms are defined in N.J.S.A. 58:10-23.11a et seq.;

e. Has not negligently caused a new discharge at the Site, after the date of *[insert name of person]*'s foreclosure on a security interest in the Site, pursuant to N.J.S.A. 58:10-23.11g.6.e(1); and

f. Is not at the time of this certification, and has never been, an owner or operator of an industrial establishment at the Site pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

6. *[Insert name of person]* is not a corporate successor to, affiliated with, or otherwise related to any person described below such that *[insert name of person]* would be liable for the contamination other than by acquiring title to the site:

a. Any entity that the *[Insert name of person]* has reason to believe has discharged at the Site any hazardous substance as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant defined pursuant to N.J.S.A. 58:10A-3;

b. Any entity that *[Insert name of person]* has reason to believe is in any way responsible, pursuant to any law, for contamination at or emanating from the Site, or contamination that has emanated from that Site, other than by acquiring ownership, if applicable, of the Site after all of the discharges occurred at the Site; or

c. Any person that *[Insert name of person]* has reason to believe is liable, pursuant to N.J.S.A. 58:10-23.11g, for cleanup and removal costs, as that phrase is defined at N.J.S.A. 58:10-23.11b, for the Site.

7. *[Insert name of person]* agrees that until the remediation is complete, *[insert name of person]* is under a continuing obligation to inform in writing the applicable Case Manager at the New Jersey Department of Environmental Protection, within thirty (30) calendar days after any of the above facts or circumstances change and the date of such change.

8. *[Insert name of person]* is familiar with the Site and with all matters addressed in this Certification.

9. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment, and that I will also forfeit developer status, for the purposes of the Department's oversight cost formula, in that event.

[Type or Print Full Name of Person]

Date: _____ BY: _____
Signature of Authorized Individual
*[Type or Print Name and Title of
Authorized Individual]*

Dated: _____ Witness: _____
Signature of Witness
[Type or Print Name of Witness]

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".

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

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

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".