

CHAPTER 26C

**ADMINISTRATIVE REQUIREMENTS FOR THE
REMEDIATION OF CONTAMINATED SITES**

Authority

N.J.S.A. 13:1K-8; 58:10-23.11b, 11e2, 11f, 11g and 16;
58:10B-1 through 4, 8, 11 through 13, 17.1, 20, 26, 28,
29 and 31; and 58:10C-1 et seq.

Source and Effective Date

R.2009 d.361, effective November 4, 2009.
See: 41 N.J.R. 4467(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, the expiration date of Chapter 26C, Administrative Requirements for the Remediation of Contaminated Sites, is extended to October 31, 2011. See: 43 N.J.R. 1077(a).

Chapter Historical Note

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was adopted as R.1993 d.186, effective May 17, 1993. See: 24 N.J.R. 1281(b), 25 N.J.R. 2002(a).

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 28 N.J.R. 5499(a), 29 N.J.R. 704(a).

Pursuant to Executive Order No. 66(1978), Chapter 26C was re-adopted as R.1997 d.499, effective October 23, 1997. 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of the Appropriate Oversight Document, was renamed Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5,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Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard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: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

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).

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).

Chapter 26C, Department Oversight of the Remediation of Contaminated Sites, was repealed and Chapter 26C, Administrative Requirements for the Remediation of Contaminated Sites, was adopted as special new rules by R.2009 d.361, effective November 4, 2009. See: Source and Effective Date.

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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2. Definitions, in N.J.A.C. 7:26C-1.3;
3. Exemptions, N.J.A.C. 7:26C-1.4;
4. Certifications, N.J.A.C. 7:26C-1.5;
5. Forms and submissions, N.J.A.C. 7:26C-1.6;
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(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with all applicable statutes, rules, and guidance, including, but not limited to, the Remediation Standards rules, N.J.A.C. 7:26D, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, this chapter and the Department's guidance at www.nj.gov/dep/srp/srra/guidance.

(b) Any person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. 7:26E-1.4.

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See: 42 N.J.R. 778(a).

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- 7:26C-12.1 Scope
- 7:26C-12.2 Application for loans and grants

“Applicant” means any person that has applied to the Department for a loan or grant.

1. On CD in Adobe Portable Document Format (PDF); and
2. On paper.

(c) Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. The notice shall also include a notice of administrative change that amends this subsection accordingly.

Administrative correction.
See: 42 N.J.R. 778(a).

7:26C-1.7 Liberal construction

These rules, being necessary to promote the public health and welfare, and protect the environment, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., 58:10B-1 et seq. and 58:10C-1 et seq.

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.

SUBCHAPTER 2. OBLIGATIONS OF THE PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION OF A CONTAMINATED SITE

7:26C-2.1 Scope

- (a) This subchapter contains provisions that specify the:
1. Criteria for determining when a person has initiated remediation in N.J.A.C. 7:26C-2.2;
 2. Requirements for a person who initiated remediation prior to November 4, 2009, in N.J.A.C. 7:26C-2.3;
 3. Requirements for a person who initiated remediation on or after November 4, 2009, in N.J.A.C. 7:26C-2.4; and
 4. Requirements for a person to retain records, in N.J.A.C. 7:26C-2.5.

7:26C-2.2 Criteria for determining when a person has initiated remediation

(a) A person has initiated remediation prior to November 4, 2009 only when the criteria in both (a)1 and 2 below have occurred prior to November 4, 2009.

1. A person has notified the Department of a discharge or an obligation to remediate prior to November 4, 2009, pursuant to:

- i. The Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E-5;
- ii. The Underground Storage Tanks rules, N.J.A.C. 7:14B-7.3; or
- iii. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2; and

2. The person has continuously conducted the remediation since the person notified the Department pursuant to one of the rules cited in (a)1 above.

(b) A person initiates remediation on or after November 4, 2009 when a person initiates or resumes remediation in response to any of the following which occur on or after November 4, 2009:

1. The person takes over the remediation from any other person or from the Department;
2. The person submits a document to the Department concerning a site for which the Department has rescinded a no further action letter or has invalidated a response action outcome, prior to the submission of the document;
3. The person discovers or becomes liable in any way for a discharge;
4. The owner or operator of a regulated tank system:
 - i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B; or
 - ii. Is required to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.21;
5. The person is liable for compliance with the Industrial Site Recovery Act rules pursuant to N.J.A.C. 7:26B-1.10; or
6. When additional remediation or other activities would result in the need to file a new deed notice or replace a declaration of environmental restrictions, associated with the real property.

7:26C-2.3 Requirements for a person who initiated remediation prior to November 4, 2009

(a) The person responsible for conducting the remediation who initiated remediation prior to November 4, 2009 shall conduct the remediation pursuant to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order, as applicable, and in accordance with all applicable statutes, rules, and guidance, including this chapter, and shall:

1. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;

2. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;

3. Provide the Department access to the contaminated site;

4. Submit to the Department all applicable documents and forms concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, applicable guidance, or upon request of the Department, and proceed with remediation only upon the Department's approval;

5. Meet the timeframes in this chapter, the Underground Storage Tank rules, N.J.A.C. 7:14B, Industrial Site Recovery Act rules, N.J.A.C. 7:26B, Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or Administrative Order, except that the mandatory remediation timeframes and the expedited site specific remediation time frames established pursuant to N.J.A.C. 7:26C-3 and the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, supersede any other conflicting remediation timeframes; and

6. Obtain and comply with all permits necessary for the remediation.

(b) Any person who initiated remediation prior to November 4, 2009 may elect to perform the remediation pursuant to N.J.A.C. 7:26C-2.4:

1. By submitting a request to the Department, on a Request to Proceed Without Department Pre-Approvals form available from the Department on its website at www.nj.gov/dep/srp/srra/forms, and the Department determines that all outstanding fees and costs not contested have been paid and approves that request;

2. Upon receiving approval from the Department pursuant to (b)1 above, performs the remediation pursuant to N.J.A.C. 7:26C-2.4; and

3. By maintaining any remediation funding source previously required to have been maintained under the applicable administrative consent order, remediation agreement administrative order, court order or directive, and by paying the remediation funding source surcharge, if required.

Administrative correction.
See: 42 N.J.R. 778(a).

7:26C-2.4 Requirements for a person who initiated remediation on or after November 4, 2009

(a) Any person who initiates remediation on or after November 4, 2009 shall:

1. Hire a licensed site remediation professional;

2. Notify the Department, on a Licensed Site Remediation Professional Notification of Retention or Dismissal form available from the Department on its website at www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation. The person shall submit this notification within 45 days after the date:

i. Of the occurrence of the earliest of the events listed at N.J.A.C. 7:26C-2.2(b);

ii. The person receives written approval from the Department of that person's request to continue remediation without the Department's pre-approval pursuant to N.J.A.C. 7:26C-2.3(b); or

iii. The person receives written notification from the Department that the Department is taking direct oversight of the remediation of the site, area of concern, or site condition pursuant to N.J.S.A. 58:10C-27;

3. Conduct the remediation of the discharge:

i. Without prior Department approval, except if the Department has undertaken direct oversight of a site, area of concern or site condition pursuant to N.J.S.A. 58:10C-27;

ii. In accordance with all applicable statutes, rules and guidance; and

iii. Address all deficiencies identified by the Department in any submittals made by the person or by a licensed site remediation professional on behalf of the person;

4. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;

5. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;

6. Provide the Department access to the contaminated site pursuant to N.J.A.C. 7:26C-8;

7. Provide the Department copies of all applicable documents concerning the remediation as required by this chapter, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and guidance, or upon request of the Department;

8. Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E; and

9. Obtain and comply with all permits necessary for the remediation.

Administrative correction.
See: 42 N.J.R. 778(a).

ii. The amount of time beyond the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe needed to complete the required work;

iii. A description of the cause or causes for the extra time needed to complete the work; and

iv. The steps taken to minimize the extra time needed to complete the work; and

2. The person shall provide any other information the Department requests.

(b) The person responsible for conducting the remediation shall continue any remediation during the time that the Department reviews the extension request submitted pursuant to (b) above, unless the Department directs otherwise.

(c) An extension request submitted pursuant to (a) above shall be deemed to be granted in the following circumstances with limitations as indicated:

1. A delay by the Department in reviewing or granting a permit or required submittal, provided that:

i. The person responsible for conducting the remediation timely filed a technically and administratively complete permit application or submittal; and

ii. The period of extension shall equal the actual duration of the delay; or

2. A delay in the provision of Federal or state funding for remediation, provided that the person responsible for conducting the remediation timely filed a technically and administratively complete application for funding and that the period of extension shall equal the actual duration of the delay.

(d) The Department may grant an extension of a mandatory remediation timeframe or of an expedited site specific timeframe by granting the approval in writing if appropriate and adequate rationale has been provided pursuant to (a) above and when an extension is needed as a result of the following:

1. A delay in obtaining access to property in accordance with N.J.A.C. 7:26C-8, provided that the person responsible for conducting the remediation demonstrates that good faith efforts have been undertaken to gain access, access has not been granted by the property owner, and, after good faith efforts have been exhausted, a complaint was filed in the Superior Court to gain access;

2. Other site-specific circumstances that may warrant an extension, as the Department may determine, including but not limited to:

i. On-going litigation, the outcome of which will have a direct bearing on the person's ability to meet the mandatory remediation or expedited site specific timeframe;

ii. The fact that the person is an owner of a small business who can demonstrate to the Department's satisfaction that he or she does not have sufficient monetary resources to meet the mandatory remediation or expedited site specific timeframe; or

3. Other circumstances beyond the control of the person responsible for conducting the remediation, such as fire, flood, riot, or strike.

Amended by R.2011 d.072, effective February 22, 2011.

See: 42 N.J.R. 2297(a), 42 N.J.R. 2360(a), 43 N.J.R. 389(c).

In the introductory paragraph of (a)1, substituted "form found on the Department's website" for "Remediation Timeframe Extension Request Form available from the Department".

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

(a) This subchapter contains provisions that specify the requirements for:

1. The payment of an annual remediation fee for the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4, pursuant to N.J.A.C. 7:26C-4.2;

2. The payment of the applicable individual fees for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.3;

3. The payment of remedial action permit fees, pursuant to N.J.A.C. 7:26C-4.4;

4. The methodology the Department will use to calculate its costs in overseeing remediation and the payment of those costs, pursuant to N.J.A.C. 7:26C-4.5;

5. The procedures by which a person may request a review of an oversight cost invoice from the Department, pursuant to N.J.A.C. 7:26C-4.6; and

6. How a person is to make payments to the Department of the fees and costs in this subchapter, pursuant to N.J.A.C. 7:26C-4.7.

7:26C-4.2 Annual remediation fee for a person initiating remediation on or after November 4, 2009

(a) Except as provided in (h) below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.4 shall submit the applicable annual remediation fee to the Department pursuant to this section.

1. A person subject to this section shall pay a non-refundable annual remediation fee, which shall be the sum of the applicable category fee as determined pursuant to (a)2 below, and the total contaminated media fee as calculated pursuant to (a)3 below.

2. The applicable category fee shall be assessed as follows:

i. The fee for zero to one contaminated areas of concern where the number of contaminated areas of concern is undetermined, determined to be one, or where the site is limited to historic fill: \$450.00;

ii. The fee for:

(1) Two through 10 contaminated areas of concern: \$900.00; and

(2) Any number of contaminated regulated underground storage tank system areas, excluding regulated heating oil tank systems, provided there are no other contaminated areas of concern at the site: \$900.00;

iii. The fee for 11 through 20 contaminated areas of concern, or one or more landfills: \$5,000; and

iv. The fee for more than 20 contaminated areas of concern: \$9,500.

3. The total contaminated media fee is as follows. A fee shall be assessed for each separate contaminated medium that is present at the site as determined from the following list. The total contaminated media fee shall be the sum of the individual contaminated medium fees.

- | | |
|---|--------------|
| i. Ground water | \$1,400; |
| ii. Surface water sediment | \$1,400; and |
| iii. Ground water contaminated above an applicable Surface Water Quality Standard that is an unpermitted discharge to surface water | \$1,400. |

4. The person responsible for conducting the remediation shall submit the first annual remediation fee and a completed Annual Remediation Fee Reporting form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to the address noted on the form upon the earliest of the following:

- i. The submittal of a preliminary assessment report;
- ii. The submittal of a site investigation report;
- iii. The submittal of the first remedial phase document; or
- iv. Two hundred and seventy days after any event listed at N.J.A.C. 7:26C-2.2(b).

5. For each subsequent year, the Department shall invoice the person responsible for conducting the remediation for the annual remediation fee on the anniversary date of the first year that the annual fee was submitted pursuant to (a)4 above.

(b) The person responsible for conducting the remediation shall identify all contaminated areas of concern individually

and shall not combine contaminated areas of concern or contaminated media for the purpose of determining the amount of the annual remediation fee.

(c) The person responsible for conducting the remediation that receives an RAO for a contaminated area of concern may submit a new Annual Remediation Fee Reporting form 90 days prior to the annual remediation fee anniversary date.

(d) The person responsible for conducting the remediation that discovers an additional contaminated area of concern shall submit a new Annual Remediation Fee Reporting form 90 days prior to the annual remediation fee anniversary date.

(e) The person responsible for conducting the remediation shall continue to pay an annual remediation fee to the Department until a response action outcome for all of the contaminated areas of concern and contaminated media at the site have been filed with the Department.

(f) If the Department makes a determination that it will undertake direct oversight of a portion or condition of the site pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall pay the annual remediation fee every year and the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.5.

(g) If the Department makes a determination that it will undertake direct oversight of the entire site pursuant to N.J.S.A. 58:10C-27, the person responsible for conducting the remediation shall continue to pay the annual remediation fee until it submits the first direct oversight document required by the Department and at that point shall pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.5.

(h) The person responsible for conducting the remediation does not have to pay the annual remediation fee in the following circumstances:

1. Upon receipt of notice from the Department that it has assigned a full time case manager to the entire site;
2. If that person is remediating a child care center; or
3. If that person is the owner or operator of an unregulated heating oil tank system.

7:26C-4.3 Individual review fees

(a) The person responsible for conducting the remediation shall submit to the Department, at the address noted on the appropriate document submission form or questionnaire, provided by the Department at www.nj.gov/dep/srp/srra/forms, the applicable nonrefundable document review fee pursuant to this section each time that the person submits any of the following documents to the Department unless the person is subject to an annual remediation fee:

(b) Any person responsible for conducting the remediation using a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding, 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 or a licensed site remediation professional has certified, and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.

7:26C-5.7 Letter of credit

(a) Any person who chooses to provide a letter of credit as a remediation funding source to guarantee the availability of funds pursuant to this subchapter shall submit to the Department an original letter of credit. The letter of credit must:

1. Be issued by an entity that is 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;
2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
3. Indicate that letter of credit is irrevocable, issued for a period of at least one year, and that it will be automatically extended for a period of at least one year;
4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and
5. Indicate that the Department may access the letter of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-5.13(d).

7:26C-5.8 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall complete and submit to the Department a Self-guarantee Remediation Funding Source Form available on the Department's website at www.nj.gov/dep/srp/srra/forms that contains the following information:

1. The applicable case number, the program interest name, and program interest number (preferred ID), site name and site address;
2. Information that demonstrates that the estimated cost of the remediation that the Department has approved or that a licensed site remediation professional has certified

does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;

3. Information that demonstrates that the individual or entity possesses the required cash flow and 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. Cash flow and net cash will be deemed sufficient if:

- i. The individual's or entity's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made; and
- ii. The individual or entity possess a net cash provided by operating activities in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made;

4. Audited financial statements, in which the auditor expresses an unqualified opinion 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; and

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

(b) A parent company may provide a self guarantee for a wholly owned subsidiary that is the person responsible for conducting the remediation when the wholly owned subsidiary does not have its own audited financial statements and its financial statements are reported through that parent company. The parent company must comply with all the requirements of this section.

(c) In the case of a special purpose entity created specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant.

(d) The self-guarantee shall be valid for one year from the date of the submittal required in (a) above. Thereafter, the person shall:

1. Comply with the requirements of (a) above, and if applicable (b) and (c) 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) above, and if applicable (b) and (c) above, to the Department 30 days prior to the date of expiration of the existing statement.

7:26C-5.9 Remediation funding source surcharge

(a) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter that elects to establish the remediation funding source by one or any combination of the following shall submit to the Department a remediation funding source surcharge pursuant to (b) below:

1. A remediation trust fund pursuant to N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy pursuant to N.J.A.C. 7:26C-5.5;
3. A line of credit pursuant to N.J.A.C. 7:26C-5.6; or
4. A letter of credit pursuant to N.J.A.C. 7:26C-5.7.

(b) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter and who is required to pay a surcharge 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 Treasurer, State of New Jersey, a remediation funding source surcharge in an amount equal to one percent of the amount of the remediation funding source; and
2. Submit the remediation funding source surcharge with the remediation funding source as required in N.J.A.C. 7:26C-5.2 and annually thereafter on the same date until the Department or a licensed site remediation professional issues a final remediation document.

7:26C-5.10 Remediation cost review

(a) The person responsible for conducting the remediation shall submit to the Department 365 days after the date that that person is required to submit a remediation funding source pursuant to N.J.A.C. 7:26C-5.2(h), and annually thereafter on the same calendar day, a detailed cost review on a Remediation Cost Review Form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that is certified by the person responsible for conducting the remediation and by the licensed site remediation professional if applicable, that includes the following:

1. A detailed summary of all monies spent to date to remediate the contaminated site;
2. A detailed estimate of the remaining costs to complete the remediation pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, excluding the cost to operate, maintain and inspect

engineering controls as part of a remedial action permit pursuant to N.J.A.C. 7:26C-7; and

3. An explanation of any changes from the most recently submitted cost review.

7:26C-5.11 Changes in the remediation funding source amount or type and return of the remediation funding source

(a) A person required to establish a remediation funding source pursuant to this subchapter who wishes to decrease the amount of the remediation funding source shall submit a Remediation Cost Review Form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, that provides a revised estimate of the cost of the remediation and that indicates why that cost is less than previously estimated.

(b) The person required to establish a remediation funding source pursuant to this subchapter may reduce the amount of the remediation funding source to the amount of the estimate submitted to the Department pursuant to (a) above upon either:

1. Receipt from the Department of written approval in response to a request submitted pursuant to (a) above provided, however, that the Department will respond to requests within 45 calendar days after the Department's receipt of the request; or
2. Submission to the Department of a Remediation Cost Review Form pursuant to (a) above, but only if that submission includes a certification by the licensed site remediation professional justifying the revised cost estimate.

(c) The person required to establish the remediation funding source pursuant to this subchapter shall increase the remediation funding source amount within 30 days after:

1. Submission to the Department of any remediation cost review, required pursuant to N.J.A.C. 7:26C-5.10, that indicates that the cost of remediation has increased to an amount greater than the existing remediation funding source;
2. Receipt of a demand from the Department to increase the amount of the remediation funding source to match the amount of the estimated costs; or
3. Receipt of written certification, with a copy provided to the Department, from a licensed site remediation professional that the estimated cost of the remediation has increased.

(d) The person responsible for conducting the remediation may decrease the amount of the remediation funding source, pursuant to (a) above, to the extent that the remediation includes:

1. An innovative remedial action technology;

2. A limited restricted use remedial action; or
3. An unrestricted use remedial action.

(e) The person responsible for conducting remediation that is required to establish a remediation funding source pursuant to this subchapter may at any time submit a written request to the Department on a Remediation Cost Review Form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, to substitute another type of remediation funding source specified in this subchapter for the existing remediation funding source. The Department shall return the original remediation funding source documents after such proof is provided that an acceptable alternate mechanism has been established.

(f) The Department shall return the remediation funding source to the person responsible for conducting the remediation when either the Department or a licensed site remediation professional has issued a final remediation document for the entire site pursuant to N.J.A.C. 7:26C-6.

7:26C-5.12 Disbursements from the remediation funding source

(a) Except those persons subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27, a person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter, and who has established a remediation trust fund, an environmental insurance policy or a line of credit, in satisfaction of the requirements of this subchapter, may submit, no more frequently than once every three months, a written request to use the remediation funding source to pay for the actual cost of remediation. The request may be submitted to the Department, or directly to the provider of the remediation funding source with a copy provided to the Department if the information specified in (a)2i through iv below is prepared and certified by a licensed site remediation professional if applicable, and must include the following information:

1. Identification of the site, including name, address, case number (if applicable), program interest name, program interest number (preferred ID), and status of the remediation;
2. Information related to remediation costs, prepared and certified by a licensed site remediation professional, if applicable, including:
 - i. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed under this request;
 - ii. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request;
 - iii. The total amount of disbursement being requested; and

iv. An updated, detailed estimate of the cost of implementing the remaining remediation; and

3. A certification by the person responsible for conducting the remediation, and by the licensed site remediation professional, if applicable, that the disbursement request represents actual remediation costs of the subject site, incurred or to be incurred, and does not include legal fees.

(b) If the disbursement request is submitted to the Department rather than directly to the provider of the remediation funding source, within 30 days after the Department's receipt of the written request submitted pursuant to (a) above, the Department will respond to a disbursement request as follows:

1. The information submitted is complete and the disbursement amount represents actual remediation costs and, therefore, the disbursement is approved;

2. The information submitted is complete; however, the requested disbursement amount includes remediation costs that has neither been approved by the Department nor has been certified by a licensed site remediation professional, and therefore, the Department will only allow disbursement of funds for the approved remediation costs; or

3. The information submitted is incomplete, including a list of the missing information and a statement that the Department shall give no further consideration to the disbursement request until the requestor submits all the required information.

(c) If the disbursement request is submitted directly to the provider of the remediation funding source in accordance with (a) above, the person responsible for conducting the remediation shall provide the Department with notice of the disbursement or denial and the amount of the remaining remediation funding source within 30 days of disbursement or denial.

7:26C-5.13 Failure to perform the remediation

(a) The Department shall notify in writing the person required to establish a remediation funding source pursuant to this subchapter if the Department determines that the person has failed to perform the remediation as required. The person shall have 30 days after receipt of such notice, unless otherwise extended in writing by the Department, to perform any obligation not performed.

(b) The Department shall provide a copy of the notification required 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) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the moneys in the remediation funding source established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the moneys to the petitioner.

Administrative correction.
See: 42 N.J.R. 1862(a).

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.1 Scope

(a) This subchapter establishes the requirements for:

1. Response action outcomes, in N.J.A.C. 7:26C-6.2;
2. No further action letters, in N.J.A.C. 7:26C-6.3;
3. Modification, rescission, and invalidation of final remediation documents, in N.J.A.C. 7:26C-6.4; and
4. Scope of a final remediation document and covenant not to sue, in N.J.A.C. 7:26C-6.5.

7:26C-6.2 Response action outcomes

(a) The licensed site remediation professional shall issue a response action outcome:

1. To the person who has conducted the remediation when, in the opinion of the licensed site remediation professional, the site or area of concern has been remediated pursuant to all applicable statutes, rules, and guidance, including, but not limited to, this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and the Remediation Standards rules, N.J.A.C. 7:26D;
2. After the Department has issued all remedial action permits required for the remedial action;
3. After all fees and oversight costs have been paid to the Department;
4. 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; and
5. According to specific tax block and lot or, if no block and lot are available, then other specific identification of the property that was remediated.

(b) The licensed site remediation professional shall:

1. Prepare the response action outcome pursuant to:
 - i. This section; and
 - ii. The Guidance for the Issuance of Response Action Outcomes (RAO) found on the Department's website at www.nj.gov/dep/srp/srra/guidance; and

2. File each response action outcome with the Department:

- i. With a Response Action Outcome form available from the Department at www.nj.gov/dep/srp/srra/forms, when the licensed site remediation professional issues the response action outcome to the person who has conducted the remediation; and
- ii. Three electronic copies, pursuant to N.J.A.C. 7:26C-1.6, of all data, documents and information concerning remediation, including but not limited to, technical records and contractual documents, raw sampling and monitoring data, whether or not the data and information relate in any way to the site or area of concern, including technical records and contractual documents, developed by the licensed site remediation professional, the licensee's divisions, employees, agents, accountants, contractors, or attorneys, or a prior licensed site remediation professional for the remediation to the extent that the subsequent licensed site remediation professional relied on the work of the earlier licensed site remediation professional.

(c) The licensed site remediation professional shall base his or her opinion as to whether to issue the response action outcome on the following, in effect at the time of the response action outcome:

1. All applicable New Jersey statutes, including:
 - i. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; and
 - ii. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4; and
2. All applicable New Jersey rules, including, without limitation:
 - i. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
 - ii. The Remediation Standards rules at N.J.A.C. 7:26D; and
 - iii. Any other applicable standards adopted pursuant to law;
3. The Department's technical guidelines concerning site remediation at www.nj.gov/dep/srp/srra/guidance; and
4. If there is no specific requirement provided by any technical standard the Department has adopted, or the Department's guidance is not appropriate or necessary, the licensed site remediation professional may use the following additional technical guidance to make decisions regarding remediation, and shall specifically identify all such guidance used and set forth the rationale for such use:
 - i. Relevant guidance from the United States Environmental Protection Agency or other states; and

ii. Other relevant, applicable, and appropriate methods and practices that ensure the protection of the public health and safety, and of the environment.

(d) The licensed site remediation professional may rely on a remedial action workplan or other equivalent plan the Department has approved for a site for the remedial action to be implemented at that site.

(e) The licensed site remediation professional shall correct all deficiencies identified by the Department in the Department's inspection and review findings.

(f) If the licensed site remediation professional issues a response action outcome that is based upon either a preliminary assessment or site investigation, the licensed site remediation professional shall certify that the contaminants at the site or area of concern meet all of the following, as applicable:

1. The most stringent soil remediation standards in the Remediation Standards rules, at N.J.A.C. 7:26D;
2. The applicable ground water remediation standards in the Remediation Standards rules, at N.J.A.C. 7:26D; and
3. All other applicable remediation guidance, criteria, and standards.

(g) The licensed site remediation professional shall issue a response action outcome after the licensed site remediation professional has determined that the remediation has been completed pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, including, without limitation, the following, 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 the Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and
2. All contaminated groundwater has been remediated:
 - i. To the applicable ground water quality standard;
 - ii. The licensed site remediation professional has:
 - (1) Determined, based upon the most recent eight consecutive 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, N.J.A.C. 7:7C, and that a natural attenuation ground water remedial action is therefore appropriate;

(2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;

(3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and

(4) Determined that the Department has issued a ground water remedial action permit for the remediation, unless the site is in an area of regional historic fill; or

iii. The licensed site remediation professional has:

(1) Approved a ground water remedial action that utilizes an engineering control:

(2) Estimated the time period during which the concentration of contaminants in the ground water will exceed the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C;

(3) Determined that the Department established a ground water classification exception area pursuant to N.J.A.C. 7:26E-8.3; and

(4) Determined that the Department has issued a ground water remedial action permit for the remediation.

7:26C-6.3 No further action letters

(a) The Department will issue a no further action letter to the person responsible for conducting the remediation when that person is:

1. Remediating an unregulated heating oil tank; or
2. Subject to N.J.A.C. 7:26C-2.3 and completes the remedial action prior to May 7, 2012.

7:26C-6.4 Modification, rescission and invalidation of a final remediation document

(a) The Department may modify or rescind a no further action letter or invalidate a response action outcome under the following circumstances if it determines that the remedial action is no longer protective of public health and safety:

1. A discharge that occurred prior to the issuance of a final remediation document is discovered after the issuance of the final remediation document and the remediation of that discharge should have been addressed in the remediation to which the final remediation document pertains;
2. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the new remediation standard and the level or concentration of a contaminant at the property

differs by an order of magnitude and the person responsible for conducting the remediation fails to conduct further remediation;

3. A contaminant exposure pathway from a discharge that predates the final remediation document is identified after the issuance of the final remediation document and was not addressed in the remediation to which the final remediation document pertains;

4. Any person who is obligated to comply with the conditions of the final remediation document fails to do so;

5. The permittees fail to comply with a remedial action permit;

6. The Department concludes that the remediation was not performed in compliance with applicable statutes, rules and guidance; or

7. Other factors exist that demonstrate that the remediation is not protective of the public health, safety and the environment.

(b) The Department may invalidate a response action outcome when it determines that the person responsible for conducting the remediation:

1. Implemented a remedial action that will render the property unusable for future redevelopment or recreational use; or

2. Failed to implement a presumptive remedy or alternative presumptive remedy when required.

(c) Upon the Department's rescission of a no further action letter or the invalidation of a response action outcome, the person responsible for conducting the remediation shall perform all additional remediation, according to expedited site specific remediation timeframes, as the Department may require.

7:26C-6.5 Scope of final remediation document and covenant not to sue

(a) The scope of a final remediation document is limited by the scope of the remediation addressed in that document. Likewise, the scope of a covenant not to sue that accompanies a final remediation document is also limited by the scope of the remediation addressed in the final remediation document.

(b) Any covenant not to sue that accompanies a final remediation document is without prejudice to any rights that the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund may have against the person responsible for conducting the remediation and any person in any way responsible for a discharge, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, with respect to liability for:

1. Cleanup and removal costs, damages (including primary and compensatory restoration damages and the costs of any natural resource damage assessments) and

injunctive relief, for injury to, destruction of, or loss of natural resources;

2. Cleanup and removal costs, damages, and injunctive relief available to the Plaintiffs in the United States District Court for the District of New Jersey, in the case captioned *NJDEP et al. v. Amerada Hess Corp. et al.*, C.A. No. 3:07-5284, and subsequently pending in the United States District Court for the Southern District of New York, captioned as *In Re; Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, MDL No. 1358; and

3. Cleanup and removal costs, damages, and injunctive relief available to the Department, the Commissioner, and the Administrator of the New Jersey Spill Compensation Fund in any litigation or claim pending as of the date of a final remediation document.

Administrative correction.
See: 42 N.J.R. 1862(a).

SUBCHAPTER 7. REMEDIAL ACTION PERMITS

7:26C-7.1 Purpose and scope

(a) The purpose of this subchapter is to establish a permit program for implementing remedial actions that require institutional or engineering controls, or that include operation and maintenance systems.

(b) More specifically, this subchapter establishes:

1. A regulatory mechanism for the:

i. Operation and maintenance of certain remedial actions;

ii. Monitoring the effectiveness of certain remedial actions; and

iii. Submission of biennial certifications of engineering and institutional controls;

2. The permittees of a remedial action permit, pursuant to N.J.A.C. 7:26C-7.2;

3. Remedial action permits, pursuant to N.J.A.C. 7:26C-7.3;

4. The general conditions that apply to each remedial action permit, pursuant to N.J.A.C. 7:26C-7.4;

5. The specific conditions that apply to each soil remedial action permit involving a deed notice, pursuant to N.J.A.C. 7:26C-7.5;

6. The specific conditions that apply to each ground water remedial action permit, pursuant to N.J.A.C. 7:26C-7.6;

7. The financial assurance requirements for a remedial action permit that include an engineering control, pursuant to N.J.A.C. 7:26C-7.7;

8. The procedures for transferring a remedial action permit, pursuant to N.J.A.C. 7:26C-7.8;

9. The procedures for the Department to modify a remedial action permit, pursuant to N.J.A.C. 7:26C-7.9; and

10. The procedures for the Department to terminate a remedial action permit, pursuant to N.J.A.C. 7:26C-7.10.

(c) A remedial action permit pursuant to this subchapter does not:

1. Authorize any person to discharge any pollutant or hazardous substance; or

2. Relieve any person from the obligation to comply with all other applicable Federal, State, and local laws, rules, and regulations.

7:26C-7.2 Permittees of remedial action permits

(a) Each of the following persons shall comply with this subchapter, including any applicable remedial action permit the Department issues pursuant to this subchapter:

1. The permittees for a remedial action permit include, without limitation, each of the following statutory permittees:

i. Each owner and operator of an underground storage tank facility who is liable for the remediation pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;

ii. Each owner and operator of an industrial establishment who is liable for the remediation pursuant to Industrial Site Remediation Act, N.J.S.A. 13:1K-6 et seq.; and

iii. Any other person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for any hazardous substance that was discharged; and

iv. Any other person who is remediating a site; and

2. The permittees for a remedial action permit also include certain persons due to their position as owners, operators, or tenants of the property that is being, or has been remediated, including, without limitation, each of the following:

i. Each owner of the property, where the discharge occurred, at the time of implementation of the remedial action that includes an engineering or institutional control or operation and maintenance requirements for the remedial action; and

ii. Each subsequent owner, operator and tenant of the property of the discharge during that person's ownership or operation.

(b) If there is more than one person responsible for compliance with a remedial action permit pursuant to (a) above,

each such person, as a co-permittee, is jointly and severally liable for:

1. Compliance with the conditions of a remedial action permit pursuant to this subchapter;

2. Payment of all remedial action permit fees pursuant to N.J.A.C. 7:26C-4;

3. Payment of penalties for violations of a remedial action permit pursuant to N.J.A.C. 7:26C-9; and

4. Maintenance of financial assurance for engineering controls pursuant to N.J.A.C. 7:26C-7.7.

Administrative correction.
See: 42 N.J.R. 1862(a).

7:26C-7.3 Remedial action permits

(a) The Department will issue a remedial action permit pursuant to this subchapter whenever the Department receives, after January 15, 2010, any of the following as part of a remedial action:

1. A copy of a deed notice stamped as being properly recorded and a completed Soil Remedial Permit Application Form available from the Department at www.nj.gov/dep/srp/srra/forms; and

2. A ground water workplan that includes:

i. Natural attenuation as part of the remedial action;

ii. An engineering control as part of the remedial action; or

iii. Requirements for monitoring, maintenance and evaluation of any institutional or engineering control as part of the remedial action.

7:26C-7.4 General conditions applicable to all remedial action permits

(a) The permittees for a remedial action permit shall comply with all maintenance, monitoring, and evaluation requirements in any or all of the following that pertain to the remediation that is the subject of the permit:

1. Every remedial action workplan and remedial action report that either the Department or a licensed site remediation professional has approved;

2. Every final remediation document that either the Department or a licensed site remediation professional has approved; and

3. Any subsequent modification of any document referenced in (a)1 or 2 above, that either the Department or a licensed site remediation professional approves.

(b) The permittees shall:

1. Prepare and submit to the Department a biennial certification as required by this subchapter every two years

following the anniversary of the date of the earliest of the following:

- i. The date the owner of property records a deed notice as part of a remedial action;
 - ii. The date the Department establishes a ground water classification exception area pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-8.3; or
 - iii. The date the Department or the licensed site professional approves a ground water remedial action report for a ground water remedial action;
2. If there is more than one remedial action permit for a site:
- i. Submit a separate biennial certification for each remedial action permit; and
 - ii. Submit all of the biennial certifications at the same time, when the first biennial certification is due to the Department pursuant to (b)1 above, and biennially thereafter on that same date;
3. Maintain financial assurance, if applicable pursuant to N.J.A.C. 7:26C-7.7; and
4. Pay all applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.5 Specific conditions applicable to soil remedial action permits

(a) The permittees of a soil remedial action permit shall comply with:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.4;
2. The conditions in each deed notice recorded for the property pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
3. The biennial certification requirements pursuant to N.J.A.C. 7:26E-8.5(a) through (d); and
4. All other conditions that the Department includes in the soil remedial action permit.

7:26C-7.6 Specific conditions applicable to ground water remedial action permits

(a) The permittees of a ground water remedial action permit shall comply with:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.4;
2. The ground water monitoring reporting requirements in any remedial action workplan or remedial action report approved by either the Department or a licensed site remediation professional;

3. The well restrictions associated with each ground water classification exception area for the site;
4. The biennial certification pursuant to N.J.A.C. 7:26E-8.6; and
5. All other conditions that the Department includes in the ground water remedial action permit.

7:26C-7.7 Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided in (b) below, the permittees for a remedial action permit for a remedial action that includes an engineering control shall:

1. Submit to the Department, on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.4(b)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls part of any remedial action at the site; and
2. Maintain financial assurance in accordance with the remediation funding source options established in N.J.A.C. 7:26C-5.4, 5.5, 5.6, and 5.7:
 - i. In an amount equal to or greater than the most recent estimated full cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit as most recently estimated based upon applicable guidance published by the Department or other sound basis for estimating those costs; and
 - ii. Until the Department terminates the permit pursuant to N.J.A.C. 7:26C-7.10.

(b) The following persons are not required comply with this section:

1. A government entity;
2. A person who is not otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, who purchased a contaminated site prior to May 7, 2009, and is remediating, or has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g.d;
3. A person who undertakes remediation at that person's primary or secondary residence;
4. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs remediation at the licensed child care center;
5. The person responsible for performing remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.; and

6. The owner or operator of a small business who is responsible for performing a remediation at his or her business property.

(c) The remediation funding source surcharge payable in accordance with N.J.A.C. 7:26C-5.9 is not applicable to the financial assurance posted pursuant to this subsection.

(d) A permittee may change the amount of the financial assurance in accordance with N.J.A.C. 7:26C-5.11.

(e) A permittee may disburse monies from the funding posted in accordance with N.J.A.C. 7:26C-5.12.

(f) If any permittee fails to comply with the actions required pursuant to a remedial action permit or this subchapter, the Department, or another party as the Department may authorize, may draw on the financial assurance to achieve compliance.

7:26C-7.8 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.2(a)2) may, prior to changing such status, request that the Department transfer the permit to a new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-4.4 and has the burden of showing that its permittee status is so limited by law.

(b) In order for a permittee to request that the Department rescind its status as a permittee pursuant to (a) above, the permittee shall, at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease, notify the Department and the prospective permittee, if any, in writing, of the permittee's intention to transfer the permit by providing the following information on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department at www.nj.gov/dep/srp/srra/forms:

1. Contact information of the current permittee intending to transfer the permit;
2. Contact information of the prospective permittee, if any;
3. Site identification;
4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and
5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:
 - i. Is the new owner, operator, or tenant of or at the contaminated site;
 - ii. Has acknowledged in writing that it accepts its responsibility as a permittee; and

iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.8, if applicable.

(c) The Department shall not rescind a person's status as a permittee until all of the following occur:

1. The permittee requesting transfer of the permit complies with the notice requirements in (b) above;
2. The permittee requesting transfer of the permit actually terminates its status as subsequent owner, operator, or tenant; and
3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.7.

7:26C-7.9 Modification of specific requirements in a remedial action permit

(a) The Department may modify a remedial action permit as needed to protect the public health and safety and the environment.

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after any of the following, by submitting a completed Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, which includes the following:

1. A statement that the permittee has completed a protectiveness evaluation required in its permit and has determined that the remedial action is not adequately protective of the public health and safety and of the environment, and stating the reasons for coming to this conclusion;
2. The size, duration, or contaminants of a classification exception area need to be modified;
3. Any person proposes to change the engineering controls applicable to the site, as described in the deed notice filed for the property;
4. The municipality has revised the lot and block designations of the property; or
5. The permittee changes its name or address.

(c) To request modification of any remedial action permit pursuant to (b) above, or for any other reason, the permittee shall submit to the Department an application for a remedial action permit modification to the Department as follows:

1. The Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, which includes:
 - i. Identification of the contaminated site; and
 - ii. Identification and contact information of the applicant;

2. A copy of the following as applicable:
 - i. The filed copy of a new deed notice;
 - ii. A revised ground water classification exception area application; or
 - iii. A revised remedial action workplan; and
3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.10 Termination of a remedial action permit

(a) The Department may terminate a remedial action permit upon request of a permittee if the Department finds that the remedial action:

1. Meets all applicable remediation standards without the need for the remedial action permit; and
2. Is protective of the public health and safety and of the environment without the presence of the remedial action permit.

(b) A permittee may request that the Department terminate a remedial action permit by submitting, on the Remedial Action Permit Form appropriate for the specific remedial action permit, available from the Department on its website at www.nj.gov/dep/srp/srra/forms, the following:

1. The name, address and telephone number of the permittee requesting termination of the permit;
2. The name, address and telephone number of the prospective permittee;
3. Site identification;
4. A detailed written rationale on why the permittee believes that the engineering or institutional controls, the remediation systems, or the remedial action implemented for the site no longer require oversight over time in order to be protective of the public health and safety and the environment;
5. If the permit is for a deed notice, a draft copy of a termination of deed notice in accordance with Appendix B to this chapter, incorporated herein by reference; and
6. Confirmation that the permittee requesting termination of the remedial action permit does not have any outstanding fees pursuant to N.J.A.C. 7:26C-4.

(c) Upon written notice that the Department has terminated a remedial action permit, the permittee may cease compliance with the remedial action permit that the Department has terminated and have the owner of the property file the termination of deed notice, if applicable.

Administrative correction.
See: 42 N.J.R. 778(a).

SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

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

7:26C-8.2 Site access

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

(b) The person responsible for conducting the remediation that requires access to the property of another shall send to each owner a written request, via certified mail, for access to the property. The person responsible for conducting remediation shall include the following information in the written request:

1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;
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 property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

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

(d) If the property owner does not grant access, 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. The person responsible for conducting the remediation shall provide written confirmation to the Department of the filing 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.

(e) The person responsible for conducting the remediation shall provide to the Department all appropriate information as detailed in this section when applying for an extension of a regulatory, mandatory, or expedited site specific timeframe, pursuant to N.J.A.C. 7:26C-3.

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

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.1 Scope

(a) This subchapter governs administrative enforcement actions the Department may take for a person's violation of any of the following:

1. An administrative order issued pursuant to any of the Department's statutory authorities;
2. An administrative consent order;
3. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., including any of the following:
 - i. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; and
 - ii. A remediation agreement issued pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
4. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and this chapter;
5. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and 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; or
7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.

(b) This subchapter:

1. Identifies those violations where a grace period will be afforded;
2. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period;
3. Governs the procedures the Department will follow when it issues an administrative order;

4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; and

5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.

7:26C-9.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a rule, or a remedial action permit 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) 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 provision 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 its document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-9. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

Case Notes

Where respondents failed to immediately mitigate vapor and groundwater hazards down-gradient at a nearby property, and failed to perform proper remedial investigations, most particularly by not delineating the horizontal and vertical extent of groundwater contamination, respondents' liability was clear; contrary to respondents' allegations, the penalty was not duplicative where one penalty was for failing to immediately mitigate the effects of a discharge on a specific neighbor and the other was for delaying the remedial investigation of all potential impacts (adopting 2007 N.J. AGEN LEXIS 149). N.J. Dep't of Env'tl. Prot. v. Foster, OAL Dkt. No. EHW 83-06, 2007 N.J. AGEN LEXIS 505, Final Decision (May 4, 2007).

7:26C-9.3 Administrative orders

(a) Whenever the person responsible for conducting the remediation fails to comply with any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial action permit, or guidance the Department may issue an administrative order that:

1. Specifies the provision or provisions of any statute, administrative order, administrative consent order, remedi-

ation agreement, remediation certification, rule, remedial permit or guidance of which that person is in violation;

2. Cites the action or omission that caused the violation;

3. Requires compliance with such provision or provisions; and

4. Gives notice to that person of a right to an administrative hearing to contest a notice of an administrative order issued pursuant to this subchapter.

7:26C-9.4 Grace period applicability; procedures

(a) Each violation identified in the penalty table at (c) below by an "M" in the Type of Violation column, for which conditions at (c) below are satisfied, is a minor 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 (c) below 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-9.2(b).

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-1.5(b)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-1.5, 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 the environment; 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 was issued pursuant to (d)1 above.

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.

7:26C-9.5 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-9.4; and

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-9.3 are not satisfied, the Department:

- i. Shall identify the corresponding base penalty dollar amount for the rule violated as listed in (c) below;
- ii. Shall adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-9.6(a), as applicable; and
- iii. May multiply the penalty calculated pursuant to subparagraph (a)4 above by the number of days the violation existed.

(b) 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.

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
<u>Discharges of Petroleum and Other Hazardous Substances N.J.A.C. 7:1E</u>				
Failure to conduct remediation in accordance with N.J.A.C. 7:26C.	7:1E-5.7(a)2ii	NM		\$20,000
<u>Underground Storage Tanks N.J.A.C. 7:14B</u>				
1 General Information				
Failure to submit proper certifications.	7:14B-1.7(a)	M	30	\$4,000
Failure to conduct all site investigation and tank closure activity, using an individual certified in subsurface evaluation and/or closure in accordance with N.J.A.C. 7:14B-13 when required.	7:14B-1.8(a)1	NM		\$8,000
Failure to conduct all site investigation and tank closure activities in accordance with N.J.A.C. 7:26C-2.4, including using a licensed site remediation professional, when required.	7:14B-1.8(a)2	NM		\$8,000
Failure to comply with the regulatory timeframes in this chapter.	7:14B-1.8(a)3	NM		\$8,000
3 Fees				
Failure to pay fees or oversight costs.	7:14B-3.5(a)	M	30	20 percent of outstanding amount; \$1,000 minimum
7 Release Reporting and Investigation				
Failure to perform an investigation of a suspected release, in accordance with N.J.A.C. 7:14B-7.2(a) within seven days of discovery of the suspected release.	7:14B-7.1(a)	NM		\$8,000
Failure to perform a Site Investigation within the required timeframe, 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 as required.	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>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to implement the release response plan when a discharge has been confirmed.	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	\$4,000
Failure to perform a site investigation within the required timeframe in accordance with N.J.A.C. 7:26E-3.3 and submit a site investigation report in accordance with N.J.A.C. 7:26E-3.13 when required 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	NM		\$8,000
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	NM		\$8,000
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	\$4,000
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	\$4,000
Failure to remove all hazardous wastes from the site within 90 days of generation.	7:14B-8.2(a)5	M	30	\$4,000
Failure to submit the remedial investigation Report to the Department and local health agencies within the required timeframe.	7:14B-8.3(a)	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 submit a Remedial Action Selection report prepared in accordance with N.J.A.C. 7:26E within the required timeframe.	7:14B-8.3(a)1	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 comply with an expedited site-specific timeframe established by the Department.	7:26C-3.4(c)	NM		\$20,000
4 Fees and Oversight Costs				
Failure to pay the annual remediation fee.	7:26C-4.2(a)	NM		20 percent of outstanding amount; \$1,000 minimum
Failure to accurately identify contaminated areas of concern/media for the purpose of determining the amount of the annual remediation fee.	7:26C-4.2(b)	NM		\$4,000
Failure to submit a new Annual Remediation Fee Reporting Form within the required timeframe prior to the annual remediation fee anniversary date, when additional contaminated areas of concern/media are discovered.	7:26C-4.2(d)	NM		\$4,000
Failure to pay the annual remediation fee every year and the Department oversight costs per N.J.A.C. 7:26C-4.5, as required, when the Department has determined that it will undertake direct oversight of a portion or condition of the site pursuant to N.J.S.A. 58:10C-27.	7:26C-4.2(f) and (g)	NM		20 percent of outstanding amount; \$1,000 minimum
Failure to pay document review fees as required.	7:26C-4.3(a)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to pay the required fee related to a discharge from an unregulated heating oil tank system.	7:26C-4.3(c)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to submit the required remedial action permit annual fee.	7:26C-4.4(b)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to pay annual remedial action permit fee	7:26C-4.4(c)	M	30	20 percent of outstanding amount; \$1,000 minimum
Failure to pay oversight costs as required.	7:26C-4.5	M	30	20 percent of outstanding amount; \$1,000 minimum
5 Remediation Funding Source Requirements				
Failure to establish and maintain a remediation funding source in an amount equal to the cost of the remediation for a period of not less than the actual time to complete the remediation when required.	7:26C-5.2(c)	NM		\$8,000
Failure to submit the required confirmation of the value of the RFS, or renew a self guarantee, when required 30 days prior to expiration.	7:26C-5.4(b), 5.5(b), 5.6(b), 5.8(d)	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 pay the annual RFS surcharge.	7:26C-5.9(b)	M	30	\$4,000
Failure to submit an annual cost review.	7:26C-5.10(a)	M	30	\$4,000
Failure to increase the RFS within 30 days of a determination that remediation costs are greater than the amount of the established RFS.	7:26C-5.11(c)	NM		\$4,000
Failure to submit information regarding disbursements.	7:26C-5.12(c)	M	30	\$4,000
6 Final Remediation Documents				
Failure to conduct additional remediation when required by the Department subsequent to the rescission of a no further action letter or the invalidation of a response action outcome.	7:26C-6.4(b)	NM		\$8,000
7 Remedial Action Permits				
Failure to comply with general conditions applicable to all remedial action permits including the submittal of a biennial certification, maintenance of a RFS, if applicable, and payment of applicable fees.	7:26C-7.4(a)-(b)	NM		\$8,000
Failure to comply with conditions applicable to a soil remedial action permit, including general conditions, deed notice conditions, and biennial certification requirements.	7:26C-7.5	NM		\$8,000
Failure to comply with conditions applicable to a ground water remedial action permit, including general conditions, ground water monitoring reporting requirements, well restrictions associated with each ground water classification exception area, and biennial certification requirements.	7:26C-7.6	NM		\$8,000
Failure to submit to the Department, on the same schedule as biennial certification submittal, an estimate of the future costs to operate, maintain, and inspect all engineering controls.	7:26C-7.7(a)1	NM		\$8,000
Failure to maintain financial assurance as required pursuant to a remedial action permit.	7:26C-7.7(a)2	NM		\$8,000
8 Access				
Failure to send written requests for access as required to each property owner.	7:26C-8.2(b) and (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(d)	M	30	\$4,000
13 Remediation of Unregulated Heating Oil Tank Systems				
Failure to use either an appropriately certified subsurface evaluator or a licensed site remediation professional to perform the remediation of a discharge from an unregulated heating oil tank system.	7:26C-13.2(a)	NM		\$8,000
Failure to submit the required information.	7:26C-13.3	M	30	\$4,000
Failure to obtain the required approvals when conducting remediation of an unregulated heating oil system	7:26C-13.5(b)	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 conduct an initial receptor evaluation, pursuant to N.J.A.C. 7:26E-1.15(a) within the applicable required timeframe.	7:26E-1.15(c)	NM		\$20,000
Failure to update a receptor evaluation and submit it as required.	7:26E-1.15(d)	NM		\$20,000
Failure to send a copy of each receptor evaluation to local officials as required.	7:26E-1.15(e)	NM		\$20,000
Failure to properly conduct a receptor evaluation concerning land use, ground water use, vapor intrusion and ecological receptors.	7:26E-1.16-1.19	NM		\$20,000
2 Quality Assurance for Sampling and Laboratory Analysis				
Failure to use a laboratory that has the appropriate certification and capabilities.	7:26E-2.1(a)1	NM		\$8,000
Failure to use appropriate methods for sampling, sample management, sample matrix cleanup, analysis and reporting as required.	7:26E-2.1(a)3 through 18	M	60	\$4,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	M	30	\$4,000
Failure to analyze samples for contaminants which may be present, or to analyze for the Target Compound List (TCL) plus tentatively identified compounds (TICs)/Target Analyte List (TAL) (TCL + TICs/TAL), hexavalent chromium, petroleum hydrocarbons (PHC), and pH when contaminants are unknown or not well documented.	7:26E-2.1(c)1	M	60	\$4,000
Failure to analyze samples for parameters as needed to develop a site-specific standard or criterion and an alternative remediation standard for the soil inhalation pathway.	7:26E-2.1(c)3	M	60	\$4,000
Failure to conduct sampling pursuant to Department's Guidance for Characterization of Concrete and Clean Material Certification for concrete and other building material that will be recycled.	7:26E-2.1(c)4	M	60	\$4,000
Failure to analyze samples for petroleum hydrocarbons contamination (PHC) pursuant to the Department's guidance and as required.	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 prepare a quality assurance project plan, as required.	7:26E-2.2(a)	M	30	\$8,000
3 Preliminary Assessment and Site Investigation				
Failure to properly conduct preliminary assessment in accordance with N.J.A.C. 7:26E-3.	7:26E-3.1(b)	NM		\$8,000
Failure to conduct a preliminary assessment and/or site assessment pursuant to the Department's Environmental Guidance for Licensing of Proposed Child Care Centers when conducting an evaluation of a child care center pursuant to N.J.S.A. 52:27D-130.4.	7:26E-3.1(c)	NM		\$8,000
Failure to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.13 when potentially contaminated areas of concern are identified.	7:26E-3.1(d)	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 of a person who is required to submit an Industrial Site Recovery Act general information notice, pursuant to N.J.A.C. 7:26B-3 within the required timeframe.	7:26E-3.1(e)	NM		\$8,000
Failure to submit a preliminary assessment report that conforms to N.J.A.C. 7:26E-3.2	7:26E-3.2	NM		\$8,000
Failure to conduct a site investigation that satisfies all the listed requirements	7:26E-3.3(b)	NM		\$8,000
Failure to conduct a comparison of all site data with the Department's applicable remediation standards pursuant to the Department's guidance, to determine if contaminated areas of concern are present.	7:26E-3.3(d)	NM		\$8,000
Failure to complete the site investigation and submit a site investigation report with the required form within the applicable required timeframe.	7:26E-3.3(e)	NM		\$8,000
Failure to properly select sample locations, and to properly collect and analyze samples pursuant to N.J.A.C. 7:26E-2.	7:26E-3.4	M	60	\$4,000
Failure to conduct necessary site investigation of building interiors.	7:26E-3.5	M	30	\$4,000
Failure to satisfy site investigation requirements for soil sampling, as listed.	7:26E-3.6(a)	M	30	\$4,000
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	\$4,000
Failure to properly locate ground water sampling points, implement quality assurance/quality control measures, and utilize proper sampling methods when conducting a site investigation of ground water.	7:26E-3.7(c)1-3	M	60	\$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 determine ground water flow direction upon the confirmation of ground water contamination.	7:26E-3.7(e)3	M		\$4,000
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	\$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 conduct a surface water investigation as required.	7:26E-4.5(d)	M	30	\$4,000
Failure to conduct the remedial investigation of landfills as required.	7:26E-4.6(a)	NM		\$8,000
Failure to conduct the remedial investigation of historic fill as required.	7:26E-4.6(b)	M	30	\$4,000
Failure to conduct an ecological risk assessment according to general technical requirements.	7:26E-4.7(a)	M	60	\$4,000
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
Failure to submit a complete remedial investigation report.	7:26E-4.8	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 that reduces contamination to below all applicable remediation standards or eliminates exposure to contamination above the applicable remediation standards based on the current and future land use for the site and all listed standards, rules and guidelines.	7:26E-5.1(c)	NM		\$8,000
Failure to select a remedial action that also considers other listed factors.	7:26E-5.1(d)	NM		\$8,000
Failure to include in a report information that supports the use of an innovative remedial action technology.	7:26E-5.1(e)	M	30	\$4,000
Failure to submit a feasibility study instead of a remedial action selection report when the person responsible for conducting the remediation that is remediating a site is subject to direct Department oversight.	7:26E-5.1(f)	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(g)	NM		\$8,000
Failure to select the required remedial action if new construction of, or a change in use to, a residence, a school or child care center will occur at a site that is undergoing remediation.	7:26E-5.1(i)	NM		\$8,000
Implemented an alternative remedy for a site that will be used as a residence, a school, or a child care center without the Department's prior written approval.	7:26E-5.1(j)	NM		\$8,000
Failure to submit a remedial action selection report with the remedial action workplan when required.	7:26E-5.2(a)	M	30	\$4,000
Failure to include all required information in the remedial action selection report.	7:26E-5.2(b)	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
Failure to ensure that each remedial action implemented at a contaminated site meets all listed requirements.	7:26E-6.1(b)	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 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	\$4,000
Failure to prepare and submit a remedial action workplan that includes all required information in the required format.	7:26E-6.2(a)	M	30	\$8,000
Implemented a soil remedial action without the prior Department approval of a remedial action workplan when such approval is required.	7:26E-6.2(b)	NM		\$8,000
Failure to include in the remedial action workplan a reuse soil plan pursuant to the Department's Guidance for Remediation of Contaminated Soils when reuse of contaminated soil is planned as part of a remedial action.	7:26E-6.2(c)	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(d)	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 follow requirements related to closure of underground storage tanks.	7:26E-6.3(b)	NM		\$8,000
Failure to properly conduct remediation of a landfill.	7:26E-6.3(c)	M	60	\$4,000
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 comply with the monitoring and performance requirements for natural remediation.	7:26E-6.3(e)	M	30	\$4,000
Failure to include in a remedial action workplan a proposal to monitor an active ground water remedial system as required.	7:26E-6.3(f)	M	30	\$4,000
Failure to include a groundwater monitoring plan for an active groundwater remedial action.	7:26E-6.3(g)	M	30	\$4,000
Failure to include a completed classification exception area (CEA)/Well Restriction Area (WRA) Fact Sheet Form as part of an application for a ground water remedial action permit.	7:26E-6.3(h)	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>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to submit a completed CEA/Well Restriction Area (WRA) Fact Sheet Form, and the required information.	7:26E-8.3(b)	M	30	\$4,000
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 monitor the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions as required, including evaluation of land use changes; conducting site inspections; comparing laws and standards; keeping a maintenance log.	7:26E-8.5(a)	NM		\$8,000
Failure to prepare a biennial certification report and/or a remedial action protectiveness certification form 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
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	NM		\$8,000
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 of the person who is relinquishing the obligation 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 of the person who is assuming the obligation 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

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to conduct the monitoring and maintenance of a ground water remedial action, and submit a biennial certification, as required.	7:26E-8.6(a)	NM		\$8,000
Failure to monitor the protectiveness of a remedial action that includes a ground water classification exception area.	7:26E-8.6(b)	NM		\$8,000
Failure to prepare a Biennial Certification Report using the required form that includes all of the criteria outlined in N.J.A.C. 7:26E-8.6(b)1 through 14.	7:26E-8.6(c)	NM		\$8,000
Failure to submit the required certification and form to the listed entities according to the schedule at N.J.A.C. 7:26E-8.4(c), including a statement that the biennial certification report supporting the certification is available upon request and including contact information.	7:26E-8.6(d)	NM		\$8,000
Failure to monitor the protectiveness of a remedial action that includes any other engineering or institutional control.	7:26E-8.7(a)	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 submit the required certification and monitoring report concerning proper maintenance of each engineering or institutional control.	7:26E-8.7(c)	NM		\$8,000

Administrative correction.

See: 42 N.J.R. 1862(a).

Amended by R.2011 d.072, effective February 22, 2011.

See: 42 N.J.R. 2297(a), 42 N.J.R. 2360(a), 43 N.J.R. 389(c).

In (b), rewrote the table.

7:26C-9.6 Penalty adjustment factors

(a) For violations that meet the criteria set forth at N.J.A.C. 7:26C-9.5(a)4, the Department may adjust the base penalty listed in the table at N.J.A.C. 7:26C-9.5(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.

7:26C-9.7 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

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

1. The location 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 hazardous substances at the site;
4. The scope 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 action pursuant to the directive; 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) 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.

(f) 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 (g) 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 comply with (g) below, indicating in writing that it chooses not to take any actions to comply with the directive.

(g) 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 to the directive.

Administrative correction.
See: 42 N.J.R. 1862(a).

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

7:26C-10.1 Scope

(a) This subchapter contains provisions that:

1. Establish the eligibility requirements for technical assistance grants, at N.J.A.C. 7:26C-10.3;
2. Establish the pre-application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.4;
3. Establish the application requirements for a technical assistance grant, at N.J.A.C. 7:26C-10.5;
4. Establish the eligible technical assistance grant activities, at N.J.A.C. 7:26C-10.6; and
5. Establish the reporting requirements for a community group receiving a technical assistance grant, at N.J.A.C. 7:26C-10.7.

7:26C-10.2 General requirements

(a) The Department shall award a technical assistance grant in an amount not to exceed \$10,000 per remediation phase for each of the following phases of remediation:

1. The remedial investigation phase; and
2. The remedial action phase.

(b) The money awarded in a technical assistance grant shall be used for the limited purposes of hiring a licensed site remediation professional to support and advise a grant recipient concerning the technical assistance grant activities described at N.J.A.C. 7:26C-10.6(b).

(c) The Department shall not award a technical assistance grant to more than one community group at any one time for any contaminated site.

(d) The Department may provide reimbursement to any community group for costs incurred pursuant to N.J.A.C. 7:26C-10.4(d).

7:26C-10.3 Eligibility

(a) A community group is eligible for a technical assistance grant if it meets the following criteria:

1. One or more members of the community group lives near the site;
2. No member of the community group is associated with any person responsible for conducting the remediation of the site;
3. No person responsible for conducting the remediation of the site established or is currently supporting the community group;

4. The community group must not be affiliated with a national organization;
5. The community group is not an academic institution;
6. The community group does not consist of a political subdivision (example: township or municipality);
7. The community group is incorporated or in the process of incorporating;
8. The community group must be:
 - i. A non-profit organization pursuant to the Internal Revenue Code, 26 U.S.C. §501(c)3;
 - ii. In the process of obtaining status pursuant to 26 U.S.C. §501(c)3 status; or
 - iii. Be affiliated with a local organization that has obtained status under 26 U.S.C. §501(c)3 as a non-profit organization for the specific purpose of representing the community;
9. The community group must have established procedures for recordkeeping and financial accounting in managing the technical assistance grant; and
10. The community group must have a commercial bank account in the name of the community group or the name of the 501(c)3 organization with which the community group has affiliated.

7:26C-10.4 Pre-application process

- (a) A community group may request that the Department make a finding of substantial public interest in a particular contaminated site, as a condition of seeking a technical assistance grant, by submitting to the Department a petition containing the signatures of 25 or more people who live or work near the site.
- (b) The Department will respond to a petition and inform the community group of whether or not it has met the requirements of a substantial public interest.
- (c) Within 30 days after receiving the Department's response, the community group shall submit to the Department's Office of Community Relations a Letter of Intent that includes the following information:
 1. The name of the community group;
 2. A description of the composition of the group;
 3. A statement of the group's intent to apply for a technical assistance grant;

4. The program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking the grant; and

5. The name and address of a contact person for the group and his or her daytime phone number.

(d) Upon receipt of the Letter of Intent, the community group will publish a public notice in a daily or weekly newspaper of general circulation in the vicinity of the contaminated site which includes the following information:

1. The program interest name and program interest number (preferred ID) of the contaminated site for which the group is seeking a technical assistance grant;

2. A statement that the community group has submitted a Letter of Intent to the Department as part of the process to acquire a technical assistance grant for the contaminated site;

3. The name of the community group, seeking the technical assistance grant, and its contact; and

4. A statement that any other community groups interested in a technical assistance grant for the same contaminated site has 30 days after the publication of the notice in the newspaper to submit its own Letter of Intent to the Department.

(e) If the Department does not receive an additional Letter of Intent within the prescribed time period, the Department will advise the community group in writing that it has 60 days to file an application for a technical assistance grant pursuant to N.J.A.C. 7:26E-10.5.

(f) If the Department receives additional Letters of Intent, all community groups filing letters will have an additional 30 days from the publication of the public notice to attempt to form a coalition. The Department's website at www.nj.gov/dep/srp/srra/community/ provides guidance about the coalition process.

(g) If multiple community groups apply for a grant for the same site and phase and no coalition is formed, the Department will not award a grant.

7:26C-10.5 Application for technical assistance grant

(a) An applicant for a technical assistance grant shall submit an application, on a Technical Assistance Grant Form available from the Department at www.nj.gov/dep/srp/srra/community/, which includes the following information:

1. A description of the community group, including:

- i. The bylaws established by the community group;
 - ii. An explanation of how the community group is organized, including officers and purpose;
 - iii. An explanation of how the community group's board of directors, technical advisors, and project manager will interact with each other; and
 - iv. The name and address of contact person for the community group and his/her daytime phone number;
2. Documentation that the community group meets the eligibility requirements outlined in N.J.A.C. 7:26C-10.3(a); and
3. A financial plan, including:
- i. The total amount of money being requested in the technical assistance grant;
 - ii. A budget that describes how the community group will spend the money;
 - iii. A description of the work that will be undertaken with the assistance of a licensed site remediation professional;
 - iv. An outline of how the community group will share information with the community in which the site is located; and
 - v. A list of project milestones and a schedule for meeting those milestones;

(b) After reviewing the application for eligibility, administrative completeness, and technical acceptability, the Department will notify the contact person for the community group in writing as follows:

- 1. The community group is eligible, the application is administratively complete, technically acceptable and the Department approves the application for all or part of the amount requested, provided there are sufficient funds in the Remediation Guarantee Fund;
- 2. The application is administratively incomplete or technically unacceptable and the Department cannot take further action until the deficiencies listed in the Department's notification are corrected; or
- 3. The community group is not eligible for a technical assistance grant, with a statement of the reason(s) therefor.

(c) The Department reserves the right to deny any and all technical assistance grant applications.

Administrative correction.
See: 42 N.J.R. 1862(a).

7:26C-10.6 Eligible technical assistance grant activities

(a) The community group shall use the technical assistance grant to hire a licensed site remediation professional that is

not associated with any person responsible for conducting the remediation of the contaminated site.

(b) The community group shall use the technical assistance grant to offset the costs of the licensed site remediation professional to:

- 1. Interpret and comment on remediation documents, including technical reports and analytical data prepared by the person responsible for conducting the remediation;
- 2. Participate in public meetings concerning the contaminated site;
- 3. Evaluate the potential impacts of the remediation on the community based upon the information provided by the person responsible for conducting the remediation; and
- 4. Interpret site information that is ancillary to the remediation, including, but not limited to, public health and redevelopment information, as these issues may be relevant.

(c) The community group shall not use the technical assistance grant to fund:

- 1. Lawsuits or other legal actions, including payment of attorney fees for advice related to any kind of legal action or any activities that would result in an attorney/client relationship;
- 2. Political activity or lobbying;
- 3. Social, ceremonial or amusement activities and related costs, including meals, lodging, rentals, transportation, and tips;
- 4. Training or travel for any group member or the licensed site remediation professional;
- 5. Generation of new site-specific environmental data, such as soil and water data;
- 6. Resolving disputes with the Department; or
- 7. Epidemiological or health studies, such as urine or blood testing.

(d) The Department will issue payments upon the submission of invoices up to the amount of the technical assistance grant to the community group for documented technical assistance costs that are identified in the community group's approved budget and scope of work.

(e) If the community group or its licensed site remediation professional uses technical assistance grant funds for activities not identified in the approved budget and scope of work or for activities listed in (c) above:

- 1. The Department may revoke the technical assistance grant and require reimbursement; and
- 2. The community group shall repay all of the grant.

7:26C-10.7 Reporting requirements

(a) The community group shall submit the following reports to the Department for the duration of the technical assistance grant:

1. Annual progress reports which include the following information:
 - i. Invoices associated with the services provided by the licensed site remediation professional;
 - ii. A project summary sheet prepared in accordance with the Department's Cost Guide at www.nj.gov/dep/srp/srra/community;
 - iii. A list of technical assistance grant project milestones;
 - iv. A description of the community group's progress towards completing its technical assistance grant project;
 - v. A description of any problems the community group encountered that prevented progress toward completing the technical assistance grant project; and
 - vi. Annual financial status reports;
2. An electronic copy of each final written product the licensed site remediation professional prepares for the group within 30 days after the community group's receipt of the document;
3. A final report, submitted to the Department within 180 days after the date of termination of the technical assistance grant, which shall include:
 - i. A description of project goals and objectives;
 - ii. Activities undertaken to achieve goals and objectives;
 - iii. Difficulties encountered;
 - iv. Successes achieved; and
 - v. Technical advisor's work products; and
4. A final financial report, submitted to the Department 180 days after the date of the termination of the technical assistance grant, which shall include a detailed description of all funds spent.

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND
7:26C-11.1 Scope and requirements

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

7:26C-11.2 Application for loans and grants

(a) A person or public entity as defined pursuant to N.J.S.A. 58:10B-1 may apply for financial assistance from the Hazardous Discharge Site Remediation Fund by submitting a completed Hazardous Discharge Site Remediation Fund Application Form available from the Department at www.nj.gov/dep/srp/srra/forms and by following the Hazardous Discharge Site Remediation Fund Application Guidance.

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 that were incurred prior to an application pursuant to this subchapter 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.

7:26C-11.4 Disbursements of grants and loans

A person responsible for conducting remediation using a loan or a grant as part of the remediation funding source requirement shall comply with N.J.A.C. 7:26C-5.12 for the disbursement of funds.

SUBCHAPTER 12. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND
7:26C-12.1 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.

7:26C-12.2 Application for loans and grants

A person may apply for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund by submitting to the Department a completed Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Form available from the Department at www.nj.gov/dep/srp/finance/ustfund and by following the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund Application Instructions and Cost Guide, both of which are a part of the application package.

7:26C-12.3 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.

7:26C-12.4 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-5.12 for the disbursement of funds.

SUBCHAPTER 13. REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS
7:26C-13.1 Scope

(a) This subchapter contains provisions that specify the:

1. General requirements for a person responsible for conducting the remediation of an unregulated heating oil tank system, in N.J.A.C. 7:26C-13.2;
2. Requirements for a person responsible for conducting the remediation using a certified subsurface evaluator to conduct the remediation, in N.J.A.C. 7:26C-13.3; and
3. Requirements for a person responsible for conducting the remediation using a licensed site remediation professional to conduct the remediation, in N.J.A.C. 7:26C-13.4.

7:26C-13.2 General requirements

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall hire either a subsurface evaluator certified pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16 or a licensed site remediation professional to perform the remediation of the discharge.

(b) If a person responsible for conducting the remediation uses a certified subsurface evaluator to perform the remediation, upon completion of the remediation the Department will issue a no further action letter pursuant to N.J.A.C. 7:26C-13.3(b).

(c) If a person responsible for conducting the remediation uses a licensed site remediation professional to perform the remediation, upon the completion of the remediation the licensed site remediation professional will issue a response action outcome pursuant to N.J.A.C. 7:26C-13.3.

7:26C-13.3 Person responsible for conducting the remediation of an unregulated heating oil tank system using a certified subsurface evaluator

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system who uses a certified subsurface evaluator to remediate the discharge 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-16.

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation in accordance with N.J.A.C. 7:26C-6, upon receipt and review of the following:

1. A certification by the subsurface evaluator 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 was remediated 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 evidence of a discharge of a hazardous substance, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery and to the Department pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.4. 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. The questionnaire may be obtained from the Department's website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable review fee as set forth at N.J.A.C. 7:26C-4.3; 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:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
401 E. State St.
P.O. Box 434
Trenton, NJ 08625-0434

[Insert Name of Person] :

Name of Authorized Individual

Authorized Individual's Title

Name of Person

Address of Person

7:26C-13.4 Person responsible for conducting the remediation of an unregulated heating oil tank system using a licensed site remediation professional

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil system who uses a licensed site remediation professional to conduct the remediation shall submit the applicable review fee as set forth at N.J.A.C. 7:26C-4.3.

(b) Upon a determination by the licensed site remediation professional that the discharge has been remediated in accordance with all applicable rules, standards and guidance, the licensed site remediation professional shall issue a response action outcome pursuant to N.J.A.C. 7:26C-6 to the person responsible for conducting the remediation.

7:26C-13.5 Special conditions

(a) The person responsible for conducting the remediation of the unregulated heating oil system shall comply with N.J.A.C. 7:26E-1.14 when the discharge from the unregulated heating oil tank system results in an immediate environmental concern condition.

(b) The person responsible for conducting the remediation shall obtain the appropriate Departmental approvals when:

1. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit pursuant to N.J.A.C. 7:26E-7.2;
2. The remedy includes a discharge to surface water requiring a New Jersey Pollution Discharge Elimination System General Permit pursuant to N.J.A.C. 7:14A-6.13; or
3. The remedy requires 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 30.

APPENDIX A

DEVELOPER CERTIFICATION

IN THE MATTER OF THE :
[Insert Site Name, : DEVELOPER
Program Interest Number (Preferred ID)] : CERTIFICATION
AND :

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 program interest name and program interest number (preferred ID)] [(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, 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 preliminary 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