

CHAPTER 26C

ADMINISTRATIVE REQUIREMENTS FOR THE
REMEDICATION 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, 12, 13, 17.1, 20, 26,
28, 29 and 31; and 58:10C-1 et seq.

Source and Effective Date

R.2011 d.251, effective September 8, 2011.
See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

Chapter Expiration Date

Chapter 26C, Administrative Requirements for the Remediation of Contaminated Sites, expires on September 8, 2018.

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of the Appropriate Oversight Document, was renamed Oversight Documents; Subchapter 3, Memorandum of Agreement, was repealed and a new Subchapter 3, Administrative Process for Voluntary Cleanups was adopted; Subchapter 4, Spill Compensation and Control Act Directive; Subchapter 5,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Standard Fully Funded Trust Agreement; Appendix H, Standard Surety Bond; and Appendix I, Oversight Cost Formula, were repealed; Appendix C, Standard Responsible Party Oversight Document, was recodified as Appendix A, Standard Administrative Consent Order; and Appendix D, Standard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 readopted 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: 41 N.J.R. 4467(a). Provisions of R.2009 d.361 were readopted with changes incorporated at 42 N.J.R. 778(a), 42 N.J.R. 1862(a), 42 N.J.R.

2620(a) and 43 N.J.R. 389(c) as R.2011 d.251, effective September 8, 2011. As a part of R.2011 d.251, Appendix A, Developer Certification, was renamed Indirect Cost Exemption Certification, effective October 3, 2011. See: Source and Effective Date. See, also, section annotations.

Subchapter 5, Remediation Funding Source, was renamed Remediation Funding Source and Financial Assurance; Subchapter 7, Remedial Action Permits, was renamed Deed Notices, Ground Water Classification Exceptions Areas and Remedial Action Permits; Subchapter 14, Direct Oversight, Subchapter 15, Confidentiality, Subchapter 16, Linear Construction Projects, and Appendices B and D were adopted as new rules; and Appendix C was recodified from former Appendix B by R.2012 d.095, effective May 7, 2012. See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

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).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL INFORMATION

- 7:26C-1.1 Scope of subchapter
- 7:26C-1.2 General requirements
- 7:26C-1.3 Definitions
- 7:26C-1.4 Applicability and exemptions
- 7:26C-1.5 Certifications
- 7:26C-1.6 Forms and submissions
- 7:26C-1.7 Notification and public outreach
- 7:26C-1.8 Right of entry and inspection
- 7:26C-1.9 Liberal construction
- 7:26C-1.10 Severability

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

- 7:26C-2.1 Scope
- 7:26C-2.2 Criteria for determining when a person is required to remediate a site
- 7:26C-2.3 Requirements for the person responsible for conducting the remediation
- 7:26C-2.4 (Repealed)
- 7:26C-2.5 Record retention

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND
EXTENSION REQUESTS

- 7:26C-3.1 Scope
- 7:26C-3.2 Regulatory timeframes
- 7:26C-3.3 Mandatory remediation timeframes
- 7:26C-3.4 Expedited site specific remediation timeframes
- 7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

- 7:26C-4.1 Scope
- 7:26C-4.2 Annual remediation fee formula
- 7:26C-4.3 Annual remediation fee
- 7:26C-4.4 Individual document review fees

- 7:26C-4.5 Remedial action permit fee formula
- 7:26C-4.6 Payment of remedial action permit fees
- 7:26C-4.7 Oversight costs
- 7:26C-4.8 Oversight cost review
- 7:26C-4.9 Payment of fees and oversight costs
- 7:26C-4.10 Seven and one-half percent of the cost of the remediation

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

- 7:26C-5.1 Scope
- 7:26C-5.2 Establishing a remediation funding source and financial assurance
- 7:26C-5.3 Determination of remediation funding source and financial assurance amount
- 7:26C-5.4 Remediation trust fund requirements
- 7:26C-5.5 Environmental insurance policy requirements
- 7:26C-5.6 Line of credit requirements
- 7:26C-5.7 Letter of credit
- 7:26C-5.8 Self-guarantee requirements
- 7:26C-5.9 Remediation funding source surcharge
- 7:26C-5.10 Remediation cost review
- 7:26C-5.11 Changes in the remediation funding source or financial assurance amount or type and return of the remediation funding source or financial assurance
- 7:26C-5.12 Disbursements from the remediation funding source
- 7:26C-5.13 Failure to perform the remediation

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

- 7:26C-6.1 Scope
- 7:26C-6.2 Response action outcomes
- 7:26C-6.3 No further action letters
- 7:26C-6.4 Modification, rescission and invalidation of a final remediation document
- 7:26C-6.5 Scope of final remediation document and covenant not to sue

SUBCHAPTER 7. DEED NOTICES, GROUND WATER CLASSIFICATION EXCEPTIONS AREAS AND REMEDIAL ACTION PERMITS

- 7:26C-7.1 Purpose and scope
- 7:26C-7.2 Administrative requirements for using a deed notice in a remedial action
- 7:26C-7.3 Administrative requirements for establishing and removing a ground water classification exception area in a remedial action
- 7:26C-7.4 Permittees of remedial action permits
- 7:26C-7.5 Application for a remedial action permit
- 7:26C-7.6 Remedial action permit application schedule
- 7:26C-7.7 General conditions applicable to all remedial action permits
- 7:26C-7.8 Specific conditions applicable to soil remedial action permits
- 7:26C-7.9 Specific conditions applicable to ground water remedial action permits
- 7:26C-7.10 Financial assurance for remedial action permits for remedial actions that include engineering controls
- 7:26C-7.11 Transfer of a remedial action permit
- 7:26C-7.12 Modification of specific requirements in a remedial action permit
- 7:26C-7.13 Termination of a remedial action permit

SUBCHAPTER 8. SITE ACCESS

- 7:26C-8.1 Scope
- 7:26C-8.2 Site access

SUBCHAPTER 9. ENFORCEMENT

- 7:26C-9.1 Scope
- 7:26C-9.2 Applicability

- 7:26C-9.3 Administrative orders
- 7:26C-9.4 Grace period applicability; procedures
- 7:26C-9.5 Civil administrative penalty determination
- 7:26C-9.6 Penalty adjustment factors
- 7:26C-9.7 Civil administrative penalty for submitting inaccurate or false information
- 7:26C-9.8 Civil administrative penalty for economic benefit
- 7:26C-9.9 Procedures for assessment and payment of civil administrative penalties
- 7:26C-9.10 Procedures for requesting and conducting adjudicatory hearings
- 7:26C-9.11 Spill Compensation and Control Act directive

SUBCHAPTER 10. TECHNICAL ASSISTANCE GRANTS

- 7:26C-10.1 Scope
- 7:26C-10.2 General requirements
- 7:26C-10.3 Eligibility
- 7:26C-10.4 Pre-application process
- 7:26C-10.5 Application for technical assistance grant
- 7:26C-10.6 Eligible technical assistance grant activities
- 7:26C-10.7 Reporting requirements

SUBCHAPTER 11. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

- 7:26C-11.1 Scope and requirements
- 7:26C-11.2 Application for loans and grants
- 7:26C-11.3 Grants for reimbursement of prior remediation costs
- 7:26C-11.4 Disbursements of grants and loans

SUBCHAPTER 12. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

- 7:26C-12.1 Scope
- 7:26C-12.2 Application for loans and grants
- 7:26C-12.3 Grants for reimbursement of prior remediation costs
- 7:26C-12.4 Disbursements of grants and loans

SUBCHAPTER 13. REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

- 7:26C-13.1 Scope
- 7:26C-13.2 General requirements
- 7:26C-13.3 Person responsible for conducting the remediation of an unregulated heating oil tank system using a certified subsurface evaluator
- 7:26C-13.4 Person responsible for conducting the remediation of an unregulated heating oil tank system using a licensed site remediation professional
- 7:26C-13.5 Special conditions

SUBCHAPTER 14. DIRECT OVERSIGHT

- 7:26C-14.1 Scope
- 7:26C-14.2 Compulsory direct oversight
- 7:26C-14.3 Discretionary direct oversight
- 7:26C-14.4 Adjustments in direct oversight

SUBCHAPTER 15. CONFIDENTIALITY

- 7:26C-15.1 Scope
- 7:26C-15.2 General information
- 7:26C-15.3 Process for submitting confidentiality claims
- 7:26C-15.4 Confidentiality determination
- 7:26C-15.5 Exchange of confidential information between the Department and other public agencies
- 7:26C-15.6 Disclosure of confidential information to contractors
- 7:26C-15.7 Disclosure by consent
- 7:26C-15.8 Imminent and substantial danger
- 7:26C-15.9 Security procedures
- 7:26C-15.10 Wrongful access or disclosure remedies

