

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

"Authority" means the New Jersey Economic Development Authority.

"Child care center" means a facility, as defined at N.J.S.A. 30:5B-3.

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

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

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

"Contamination" or "contaminant" means any discharged hazardous substance, hazardous waste or pollutant defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Day" shall mean a calendar day.

"Deed notice" means a document defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

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

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

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

"Engineering control" means a physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

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

"Environmental opportunity zone" means any qualified real property that has been designated by the governing body as an environmental opportunity zone pursuant to N.J.S.A. 54:4-3.153.

"Final remediation document" means a no further action letter or a response action outcome.

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

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

"Hazardous waste" means any hazardous waste as defined in the Hazardous Waste rules, at N.J.A.C. 7:26G-5.

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

"Industrial establishment" means any place defined as such pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-1.4.

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

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

"Licensed site remediation professional" means an individual who has been issued a license pursuant to N.J.S.A. 58:10C-1 seq.

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

"Natural resources" means all resources defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

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

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

"Oversight costs" means all cleanup and removal costs as defined by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, that the Department incurs in overseeing the remediation conducted by the person responsible for conducting the remediation or in overseeing the remediation conducted by a contractor on behalf of the Department, established pursuant to N.J.A.C. 7:26C-4.

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

"Person responsible for conducting the remediation" means:

1. Any person who executes or is otherwise subject to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order to remediate a contaminated site;
2. The owner or operator of an industrial establishment subject to N.J.S.A. 13:1K-6 et seq. for the remediation of a discharge;
3. The owner or operator of an underground storage tank subject to N.J.S.A. 58:10A-21 et seq. for the remediation of a discharge;
4. Any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance, pursuant to N.J.S.A. 58:10-23.11g, that was discharged at a contaminated site, or
5. Any other person who is remediating a site.

"Petroleum" means petroleum defined pursuant to the Underground Storage Tanks rules, at N.J.A.C. 7:14B-1.6.

"Pollutant" means any substance defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Preliminary assessment" means a preliminary assessment as defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

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

"Regulated tank system" means an underground storage tank system defined pursuant to Underground Storage Tank rules, N.J.A.C. 7:14B.

"Remedial action" means an action defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Remedial action workplan" or "RAW" means a plan defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

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

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

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

"Remediation certification" means a certification defined as such pursuant to the Industrial Site Recovery Act rules, at N.J.A.C. 7:26B-1.4.

"Remediation costs" means all costs associated with the development and implementation of a remediation including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and legal, administrative and capital costs.

"Response action outcome" or "RAO" means a written determination by a licensed site remediation professional that the site was remediated in accordance with all applicable statutes, rules and guidance, and based upon an evaluation of the historical use of the site, or of any area of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no contaminants present at the site, at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations have been obtained.

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

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

"Sanitary landfill" or "landfill" means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that the term sanitary

landfill shall not include any waste facility approved for disposal of hazardous waste regulated pursuant to N.J.A.C. 7:26G. A facility is a sanitary landfill regardless of when solid waste was deposited or whether the facility was properly registered, permitted, approved or otherwise authorized to conduct such activity, by the Department or other State agency.

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

“Small business” means a business entity that does not acquire property for development or redevelopment, and that, during the prior three tax years, employed not more than 50 full-time employees or the equivalent thereof, and qualifies as a small business concern within the meaning of the Federal “Small Business Act,” 15 U.S.C. §§631 et seq.

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

“Timely filing” means an application filed within the review time goals as set forth in the Permit Activity Report published on the Department’s website at <http://www.nj.gov/dep/opppc/reports.html> or in the specific rule concerning an application for a grant or loan.

“Underground storage tank” means an underground storage tank defined as such pursuant to the Underground Storage Tank rules, at N.J.A.C. 7:14B-1.6.

“Unregulated heating oil tank” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

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

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

7:26C-1.4 Exemptions

(a) The requirements of this chapter do not apply to any person who is:

1. Conducting due diligence in accordance with N.J.S.A. 58:10B-1.3d(2);
2. Remediating a landfill, unless:
 - i. The landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;

- ii. When landfill remediation activities are funded, in whole or part, by the Hazardous Discharge Site Remediation Fund pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-4 through 9, A Brownfield Redevelopment agreement pursuant to the Brownfield and Contaminated Site Remediation Act at N.J.S.A. 58:10B-27 through 31, or the Municipal Landfill Closure and Remediation Reimbursement Program pursuant to the Solid Waste Management Act at N.J.S.A. 13:1E-116.1 through 116.7; or

- iii. The person conducting the remediation wants a final remediation document;

3. Responding to a discharge pursuant to a discharge prevention, containment, and countermeasures plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility;

4. Remediating a discharge pursuant to a New Jersey Pollutant Discharge Elimination System Underground Injection Control permit issued pursuant to N.J.A.C. 7:14A; or

5. Remediating a discharge from an unregulated heating oil tank, except that the requirements of N.J.A.C. 7:26C-4 and 13 shall apply to a person responsible for remediating a discharge from an unregulated heating oil tank.

(b) Unless notified in writing by the Department that additional remediation is necessary, a person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirement at N.J.A.C. 7:26C-2.4 to use the services of a licensed site remediation professional or to submit documents to the Department:

1. A petroleum surface spill of less than 100 gallons that does not reach the waters of the State of New Jersey;
2. A discharge that results from a passenger motor vehicle accident; or
3. A discharge that the Department refers to its Bureau of Emergency Response, to the New Jersey Office of Emergency Management, or to a County Environmental Health Agency.

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

7:26C-1.5 Certifications

(a) The person responsible for conducting the remediation of a site pursuant to N.J.A.C. 7:26C-2.3(b) and 2.4 shall:

1. Certify all submissions in accordance with certification instructions on the applicable form; and
2. Ensure that each form submitted to the Department by the person or by a licensed site remediation professional on behalf of the person is certified by a licensed site remediation professional in accordance with the applicable form.

(b) The person responsible for conducting the remediation pursuant to N.J.A.C. 7:26C-2.3(a) shall certify all submissions as follows:

1. For all documents that are required to be certified pursuant to the applicable provisions of the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, the person responsible for conducting the remediation shall include the following certification with the document.

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

2. In addition to the certification requirement in (b)1 above, the person responsible for conducting the remediation of a site who is required to establish a remediation funding source pursuant to N.J.A.C. 7:26C-5 shall include the following certification with the remediation funding source instrument:

"I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties."

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

(d) The person submitting a certification required by either (a) or (b) above shall ensure that the certification is signed as follows:

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

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

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

(e) A duly authorized representative of the person described in (d)1 through 3 above may sign the certification required in (a) or (b) above. A person is deemed to be a duly authorized representative only if:

1. The authorization is made in writing by a person described in (d) above;

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

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

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

7:26C-1.6 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, by downloading it from the Department's website at www.nj.gov/dep/srp/srra/forms or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the address indicated on the form. If no address is indicated, then submit the form to the following address:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment and Initial Notice
401 East State Street, 5th floor
PO Box 434
Trenton, New Jersey 08625-0434
Telephone: (609) 292-2943

(b) Except as provided at N.J.A.C. 7:26E-1.9(d), the person responsible for conducting the remediation shall make all submissions to the Department as follows:

7:26C-2.5 Record retention

(a) The person responsible for conducting the remediation shall maintain and preserve all data, documents and information concerning remediation of a contaminated site, including, but not limited to, technical records and contractual documents, and raw sampling and monitoring data, whether or not the data and information, including technical records and contractual documents, were developed by the licensed site remediation professional or that person's divisions, employees, agents, accountants, contractors, or attorneys, that relate in any way to the contamination at the site.

(b) Upon the receipt of a written request from the Department, the person responsible for conducting the remediation shall submit to the Department all data and information, including technical records and contractual documents concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information were developed as part of the remediation. The person responsible for conducting the remediation may reserve its right to assert a privilege regarding such documents, except that no claim of confidentiality or privilege may be asserted with respect to any data related to site conditions, sampling or monitoring.

(c) The person responsible for conducting the remediation shall submit three electronic copies of all records referenced in (a) above, to the Department at the time of the issuance of a final remediation document.

SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION REQUESTS

7:26C-3.1 Scope

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

1. Complying with, and requesting an extension from, regulatory timeframes pursuant to N.J.A.C. 7:26C-3.2;
2. Complying with mandatory remediation timeframes pursuant to N.J.A.C. 7:26C-3.3;
3. Complying with expedited site specific remediation timeframes pursuant to N.J.A.C. 7:26C-3.4; and
4. Requesting an extension of mandatory or site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.2 Regulatory timeframes

(a) The person responsible for conducting the remediation shall comply with the regulatory timeframes established by all applicable statutes, rules and guidance, including, but not limited to, the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C.

7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter.

(b) The person responsible for conducting the remediation may request an extension of a regulatory timeframe by complying with the following:

1. Complete a Remediation Timeframe Extension Request form, available from the Department at www.nj.gov/dep/srp/srra/forms, and submit the form to the address noted on the form no later than 30 days prior to the end date of the regulatory timeframe. The following information shall be included:

- i. The end date of the regulatory timeframe;
- ii. The amount of time beyond the end date of the regulatory timeframe needed to complete the required work, but not in an amount that would exceed any mandatory remediation timeframe in N.J.A.C. 7:26C-3.3 or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4;
- iii. A description of the cause or causes of the need 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. Submit any additional information the Department requests.

(c) The request for an extension of a regulatory timeframe submitted in accordance with (b) above shall be deemed to be approved by the Department unless the Department notifies the person in writing that the extension request is denied.

(d) If the person responsible for conducting the remediation expects to or has missed a regulatory timeframe that may result in the person exceeding a mandatory remediation timeframe as established in N.J.A.C. 7:26C-3.3, or an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4, the regulatory timeframe extension request shall not be deemed to be approved pursuant to (c) above.

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation shall:

1. Submit the preliminary assessment, site investigation report, as applicable, and the initial receptor evaluation within one year from the later of the following dates:

- i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or
- ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b) occurs;

2. Complete the delineation of the immediate environmental concern contaminant source, initiate immediate environmental concern contaminant source control and

submit to the Department an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14, no later than one year from the later of the following dates:

i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or

ii. The date the person was required to report the immediate environmental concern to the Department pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14; and

3. Complete the installation of a light non-aqueous phase liquid (LNAPL) recovery system, initiate operational monitoring and submit an interim remedial action report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.12(b), no later than one year from:

i. March 1, 2010 if remediation was initiated prior to November 4, 2009; or

ii. The date the person identified the presence of LNAPL free product.

(b) The timeframes set forth in (a) above shall not be extended based on the fact that a person other than the person who initiated the remediation assumes responsibility for the remediation pursuant to N.J.A.C. 7:26C-2.2(b)1.

(c) When the Department determines that a person responsible for conducting the remediation has failed to meet a mandatory remediation timeframe, that person shall become subject to direct oversight of the Department pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the mandatory remediation timeframe applies.

(d) A person responsible for conducting the remediation may request an extension of a mandatory remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.4 Expedited site specific remediation timeframes

(a) The Department may establish an expedited site specific remediation timeframe that shall apply to a particular site, based upon the following criteria:

1. The risk to the public health and safety, or to the environment; and

2. The compliance history of the person responsible for conducting the remediation.

(b) The Department shall notify in writing the person responsible for conducting the remediation when the Department has established an expedited site specific remediation timeframe for a site for which the person is responsible for conducting the remediation.

(c) The person responsible for conducting the remediation shall comply with every expedited site specific remediation timeframe.

(d) When the Department determines that a person responsible for conducting the remediation has failed to meet an expedited site specific remediation timeframe, that person shall be subject to the direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the expedited site specific remediation timeframe applies.

(e) A person responsible for conducting the remediation may request an extension of an expedited site specific remediation timeframe pursuant to N.J.A.C. 7:26C-3.5.

7:26C-3.5 Extension of a mandatory or an expedited site specific remediation timeframe

(a) The person responsible for conducting the remediation who wants an extension from the mandatory or expedited site specific remediation timeframe shall request an extension of a timeframe as follows:

1. The person shall provide a written rationale for the request in a completed Remediation Timeframe Extension Request Form available from the Department at www.nj.gov/dep/srp/srra/forms and submit the form to the Department at the address noted on the form no later than 60 days prior to the end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe. The following information shall be included:

i. The end date of the mandatory remediation timeframe or the expedited site specific remediation timeframe;

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 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.

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

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

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:

- | | |
|---|---------------|
| 1. Preliminary assessment report | \$375.00; |
| 2. Site investigation report | \$750.00; |
| 3. Remedial action report for unregulated heating oil tank system | \$400.00; |
| 4. Biennial certification, unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification | \$375.00; and |
| 5. Child care center remedial action outcome or child care center renewal certification | \$225.00. |

(b) If the person responsible for conducting the remediation does not submit a document review fee with a document pursuant to this section, the Department will not review, or otherwise process, the submitted document.

(c) The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system shall pay the following fees, as applicable:

1. \$350.00 fee for a discharge to ground water proposal pursuant to N.J.A.C. 26C-13.5(b)1;
2. \$400.00 for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3; and
3. All applicable fees pursuant to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A.

7:26C-4.4 Remedial action permit fees

(a) The person responsible for conducting remediation shall submit to the Department the applicable remedial action permit fees as required by this chapter and the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, pursuant to the following table:

Remedial Action Permit Fees	Soil Remedial Action Permit	Ground Water Remedial Action Permit
Remedial Action	\$550.00	\$750.00
Permit Application Fee		
Remedial Action Per- mit Modification Fee	\$550.00	\$750.00
Remedial Action	\$100.00	\$100.00
Permit Transfer Fee		
Remedial Action	\$550.00	\$750.00
Permit Termination Fee		

(b) For each year after it issues a remedial action permit, the Department shall invoice the permittees the amount of the annual remedial action permit fee.

1. The annual soil remedial action permit fee for a remedial action:

- With a deed notice without engineering controls: \$100.00; and
- With a deed notice and engineering controls: \$250.00.

2. The annual ground water remedial action permit fee is as follows:

- For a natural attenuation remedial action: \$250.00; and
- For any other ground water remedial action: \$750.00.

(c) The permittees shall continue to pay the annual remedial action permit fee to the Department until the Department terminates the permit.

7:26C-4.5 Oversight costs

(a) The person responsible for conducting the remediation shall pay the Department's oversight costs pursuant to this section whenever the Department assesses those costs against the person responsible for conducting the remediation that is subject to any of the following circumstances:

- N.J.A.C. 7:26C-2.4, and the Department incurs those costs when a case manager is assigned pursuant to the criteria in N.J.S.A. 58:10C-21b or c;
- N.J.A.C. 7:26C-2.3, unless an individual review fee applies pursuant to N.J.A.C. 7:26C-4.3 or other applicable rules; or
- N.J.S.A. 58:10C-27.

(b) The person responsible for conducting the remediation shall pay the Department's oversight costs by the date indicated on the invoice for the Department's oversight costs.

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

- The case Program Interest ID and associated Job Code(s);
- The name of each staff member performing work on the site during the respective two week pay period, with a work activity description;
- The number of hours spent by each staff member working on the site; and
- The dollar amount of the oversight costs calculated pursuant to (e) below.

(d) The Department shall send a bill based on the formula in (e) below to the designated fee billing contact for the person responsible for conducting the remediation periodically throughout the remediation.

(e) The Department shall calculate its oversight costs based upon the following:

Oversight Costs = direct program costs + indirect program costs + expenses

or for persons signing the Developer's Certification found in chapter Appendix A, incorporated herein by reference, and for persons responsible for conducting the remediation of discharged substances at their primary residence:

Oversight Costs = direct program costs + expenses

where:

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

- Number of coded hours represents the sum of hours each Departmental employee has coded to the site specific job number. Actual hours for all Departmental employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;
- The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;
- The salary additive rate represents the prorated percentage of charges attributable to Departmental employees' reimbursable "down time" salary expenses. Reimbursable "down time" expenses includes costs for vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing,

jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive rate is the sum of the reimbursable "down time" expenses divided by the net Department regular salary for a given fiscal year. The net Department regular salary cost is calculated by subtracting the Department employees' reimbursable "down time" expenses from the Department's regular salary; and

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

2. Indirect program costs = (number of coded hours X hourly salary rate) X (indirect program cost rate factor), where:

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in Site Remediation. This indirect rate is developed by the Department on an annual basis in accordance with the applicable New Jersey Department of Treasury OMB Circular Letters and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments" (2 CFR Part 225); and

ii. The methodology for computing the indirect program cost rate involves the following basic processes:

(1) Identification of Site Remediation expenditures that cannot be assigned directly to a specific Site Remediation cost objective. These expenditures include indirect labor coded as such by employees, and approved by supervisors, on their timesheets. Also included are expenses such as the Site Remediation's proportionate share of costs associated with upper management offices, and individual costs such as rent, general equipment use charges, office supplies, training, etc. that cannot be identified to a specific Site Remediation cost objective;

(2) Site Remediation indirect expenditures identified above are adjusted for any expenses not allowed

by the Federal Cost Principles such as interest expense;

(3) The adjusted Site Remediation's indirect expenditures are then reduced by the amount of any funds received by the Program from Federal Grants or New Jersey State Fee Reimbursements; and

(4) The resulting total unreimbursed Site Remediation indirect expenditures is then divided by the total unreimbursed Site Remediation direct labor expenditures to arrive at the indirect program cost rate.

7:26C-4.6 Oversight cost review

(a) The person responsible for conducting the remediation may contest an oversight cost the Department has assessed, pursuant to N.J.A.C. 7:26C-4.5, by submitting a written request to the Department, pursuant to (c) and (d) below, within 30 days after the billing date indicated on the oversight cost invoice that person received from the Department.

(b) The Department shall deny an oversight cost review request if the request is based on the following:

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

(c) The person responsible for conducting the remediation shall submit an oversight cost review request to the Department at the following address:

New Jersey Department of Environmental
Protection
Site Remediation
Office of Direct Billing and Cost Recovery
401 East State Street
PO Box 413
Trenton, NJ 08625-0413

(d) The person responsible for conducting the remediation shall include the following information in a request for an oversight cost review:

1. A copy of the invoice;
2. Payment of all uncontested charges, including salary, additives, and fringe and indirect rate calculations, as applicable, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;

5. The name, mailing address, email address, and telephone number of the person making the request; and

6. Information supporting the request or other written documents relied upon to support the request.

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

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a corrected invoice or have the revision in the next invoice, which shall be due and payable according to the corrected or next invoice.

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

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

(i) If the objector does not file a request for an oversight cost review within 30 days after the billing date shown on the invoice for the Department's oversight costs, the full amount of the oversight costs shall be due and owing. If the invoice is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-4.7.

7:26C-4.7 Payment of fees and oversight costs

(a) The person responsible for conducting the remediation shall pay all fees and costs pursuant to an invoice the Department issues or as otherwise required pursuant to this chapter.

(b) The person responsible for conducting the remediation shall make all payments of fees and oversight costs required by this chapter:

1. By either:

i. Certified check, attorney check, money order, or personal check made payable to "Treasurer, State of New Jersey"; or

ii. E-check or credit card after the Department posts a notice for either on its website at www.nj.gov/dep/srp/srra or in the New Jersey Register that the Department's

portal for making payments by E-check or credit card is available; and

2. By mailing payments to the following address unless otherwise indicated on the first page of a billing invoice:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment & Initial Notice
401 East State Street
PO Box 434
Trenton, NJ 08625-0434

(c) If the person responsible for conducting the remediation fails to pay any fee or cost pursuant to this chapter, the person responsible for conducting the remediation:

1. Shall pay interest on the unpaid fees beginning at the end of the period when payment is due as stated in an invoice issued by the Department, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey;

2. May be subject to enforcement pursuant to N.J.A.C. 7:26C-9, including penalties for each day the fee is not paid;

3. May have its property subject to a lien on all real and personal property of the person responsible for conducting the remediation, including a first priority lien on the property subject of the remediation; and

4. Shall not receive a final remediation document until all the costs and fees are paid in full.

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE

7:26C-5.1 Scope

(a) This subchapter establishes the requirements for:

1. Who has the obligation to establish and maintain a remediation funding source, in N.J.A.C. 7:26C-5.2;

2. The dollar amount that the person responsible for conducting the remediation has to establish and maintain in a remediation funding source, in N.J.A.C. 7:26C-5.3;

3. The financial mechanisms available as remediation funding sources, in N.J.A.C. 7:26C-5.4 through 5.9;

4. The annual cost reviews, in N.J.A.C. 7:26C-5.10;

5. The procedures for adjusting the amount of the remediation funding source, in N.J.A.C. 7:26C-5.11;

6. The disbursement of funds from a remediation funding source, in N.J.A.C. 7:26C-5.12;

7. The return of the remediation funding source, in N.J.A.C. 7:26C-5.13; and

8. The procedures the Department will use to draw on the funding in the remediation funding source when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.14.

7:26C-5.2 Establishing a remediation funding source

(a) Except provided in (b), below, the following persons responsible for conducting the remediation shall establish and maintain a remediation funding source pursuant to this subchapter:

1. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq.;

2. A person liable for cleanup and removal costs pursuant to the Spill Act, N.J.S.A. 58:10-23.11 et seq., if:

- i. The Department has issued a Spill Act directive to that person;
- ii. A State agency has issued an order to that person; or
- iii. That person has entered into an administrative consent order with a State Agency; and

3. A person who has been ordered by a court to clean up and remove a discharge pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

(b) The following persons are not required to establish a remediation funding source pursuant to this subchapter:

1. A person who performs a remediation in an environmental opportunity zone;

2. A person who uses an innovative remedial action technology, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the innovative technology;

3. A person who implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action, provided that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the unrestricted use remedial action or the limited restricted use remedial action;

4. A government entity;

5. A person who undertakes a remediation at their primary or secondary residence;

6. The owner or operator of a child care center licensed pursuant to N.J.S.A. 30:5B-1 et seq. who performs a remediation at the licensed child care center; or

7. The person responsible for conducting a 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.

(c) Any person who is required to establish a remediation funding source shall establish and maintain a remediation funding source in an amount specified in N.J.A.C. 7:26C-5.3, until:

1. The Department or the licensed site remediation professional issues an unrestricted use or limited restricted use final remediation document for the site; or

2. The person responsible for conducting the remediation obtains a remedial action permit for an engineering control and submits to the Department evidence of compliance with the requirement to establish financial assurance pursuant to N.J.A.C. 7:26C-7 prior to the termination of the existing remediation funding source.

(d) Any person required to establish a remediation funding source that elects to apply for a loan and/or a grant from the Hazardous Discharge Site Remediation Fund to satisfy all or a portion of the remediation funding source requirements shall submit all the information required in N.J.A.C. 7:26C-11.2 to the Department.

(e) In the event the New Jersey Economic Development Authority denies the application for a loan and/or grant from the Hazardous Discharge Site Remediation Fund, the person required to establish a remediation funding shall establish the full amount of the remediation funding source in accordance with this subchapter within 14 days after the person's receipt of notice from the New Jersey Economic Development Authority that the application has been denied.

(f) Except as provided in (g) below, the person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter may use any one or any combination of the following instruments:

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4;

2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-5.5;

3. A line of credit agreement in accordance with N.J.A.C. 7:26C-5.6;

4. A letter of credit in accordance with N.J.A.C. 7:26C-5.7;

5. A self-guarantee in accordance with N.J.A.C. 7:26C-5.8; or

6. A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12.

(g) Notwithstanding (f) above, any person subject to the Department's direct oversight pursuant to N.J.S.A. 58:10C-27 shall establish and maintain a remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4.

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 monies to the petitioner.

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 web-site 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.

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-7.8.

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

<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to include a copy of the Department notification with the application for a local demolition permit prior to closing an underground storage tank system.	7:14B-9.2(a)3	M	30	\$4,000
Failure to submit a completed New Jersey Underground Storage Tank Registration Questionnaire and fees, if the tank is not already registered, at least 60 days prior to closing an underground storage tank system.	7:14B-9.2(a)4	M	30	\$8,000
Failure to develop and implement a closure plan pursuant to the procedures set forth in N.J.A.C. 7:26E-6.3(b).	7:14B-9.2(b)	NM		\$8,000
Failure to follow the closure requirements set forth in N.J.A.C. 7:26-9 for underground storage tank systems regulated by the New Jersey Hazardous Waste rules.	7:14B-9.3(a)	Defer to specific N.J.A.C. 7:26-9 violations and penalties		
Failure to follow the closure requirements set forth in N.J.A.C. 7:14B-9.2 for underground storage tank systems containing hazardous wastes which are not subject to the New Jersey Hazardous Waste rules.	7:14B-9.3(b)	M	30	\$8,000
Failure to ensure the underground storage tank system is closed by an individual certified for closure per N.J.A.C. 7:14B-13 or a licensed site remediation professional, as required, depending upon the date that closure was initiated.	7:14B-9.3(c)	NM		\$8,000
Failure to ensure that an individual certified in subsurface evaluation is on site during the removal or abandonment-in-place of the underground storage tank system and makes all observations and decisions regarding site investigation and remedial investigation activities when required.	7:14B-9.3(d)1	NM		\$8,000
Failure to ensure that all tank closure and site investigation activities were conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-2.4, including using a licensed site remediation professional, when required.	7:14B-9.3(d)2	NM		\$8,000
Failure to empty and clean a tank prior to storing a non-hazardous substance.	7:14B-9.4(a)1	NM		\$8,000
Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3, before the substance being stored was changed to a non-hazardous substance.	7:14B-9.4(a)2	NM		\$8,000
Failure to submit a site investigation report, prepared and presented in accordance with N.J.A.C. 7:26E-3.13, within the required timeframe.	7:14B-9.4(a)3	NM		\$8,000
Failure to immediately notify the Department upon identification of a discharge during activities associated with N.J.A.C. 7:14B-9.4(a), and to conduct remediation.	7:14B-9.4(b)	NM		\$8,000
Failure to submit a New Jersey Underground Storage Tank Facility Certification Questionnaire that reflects the change of substance.	7:14B-9.4(c)	M	30	\$8,000
Failure to submit a site investigation report to the Department within the required timeframe.	7:14B-9.5(a)	M	30	\$8,000
Failure to insure the site investigation report is prepared by individual certified in subsurface evaluation per	7:14B-9.5(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>
N.J.A.C. 7:14B-13 or a licensed site remediation professional, as required, depending upon the date that closure was initiated.				
Failure to maintain and make available to the Department upon request all records generated per N.J.A.C. 7:14B-9.	7:14B-9.5(c)	M	30	\$4,000
10 Permitting Requirements for Underground Storage Tanks				
Failure to obtain a permit from the Department prior to the repair, installation, substantial modification or upgrade of an underground storage tank system.	7:14B-10.1(a)1	NM		\$8,000
Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.	7:14B-10.1(a)2	M	30	\$4,000
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$4,000
Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.	7:14B-10.2(a)	NM		\$8,000
Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.	7:14B-10.2(b)	M	60	\$4,000
Failure to submit a permit application on forms provided by the Department.	7:14B-10.3(a)	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or upgrade which are signed and sealed by a New Jersey profession engineer.	7:14B-10.3(b)1	M	30	\$4,000
Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system indicating the size and location of the tank systems, existing structures on the site, and distances from lot lines.	7:14B-10.3(b)2	M	30	\$4,000
Failure to submit information documenting soil permeability.	7:14B-10.3(b)3	M	30	\$4,000
Failure to submit required documentation of the depth to ground water.	7:14B-10.3(b)4	M	30	\$4,000
Failure to submit corrosion system designs which are properly certified.	7:14B-10.3(b)5	M	30	\$4,000
Failure to submit a detailed description of the upgrade, installation, or repair that is to be performed.	7:14B-10.3(b)6	M	30	\$4,000
Failure to submit documentation of the precision of the performance of the release detection monitoring method chosen pursuant to N.J.A.C. 7:14B-6.1, 6.2 and 6.3.	7:14B-10.3(b)7	M	30	\$4,000
Failure to submit a scaled site diagram accurately indicating the locations of all sampling and monitoring points in relation to all underground storage tank systems at the facility.	7:14B-10.3(b)8	M	30	\$4,000

	<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
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
Administrative Consent Orders				
Failure to submit workplans and reports that comply with N.J.A.C. 7:26E and that conform to the Department's comments, in accordance with an administrative consent order.	specific administrative consent order paragraphs	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 approved workplans in accordance with approved schedule and the conduct of additional work required by the Department, in accordance with an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
	Failure to comply with RFS requirements in an administrative consent order.	specific administrative consent order paragraphs	NM		\$8,000
	Failure to comply with any other administrative requirements of an administrative consent order, including but not limited to payment of oversight costs and fees; payment of RFS surcharge; submittal of cost review.	specific administrative consent order paragraphs	M	30	\$4,000
<u>Technical Requirements for Site Remediation N.J.A.C. 7:26E</u>					
1	General Information				
	Failure to comply with this chapter and guidance when conducting remediation pursuant to any of the applicable statutes.	7:26E-1.3(a)	NM		\$8,000
	Failure to remediate to the applicable standards.	7:26E-1.3(c)	NM		\$8,000
	Failure to conduct remediation consistent with the requirements of Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and any rules promulgated pursuant thereto, and with section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §4711.	7:26E-1.3(d)	NM		\$8,000
	Failure to comply with notification requirements.	7:26E-1.4(a) through (e)	NM		\$8,000
	Failure to provide a copy of the remedial action workplan or updates or status reports if requested by the municipality.	7:26E-1.4(f)	M	30	\$4,000
	Failure to provide public notice of remediation activities at the site using either a sign or notification letters.	7:26E-1.4(h)	NM		\$8,000
	Failure to comply with all requirements when using a sign for public notification.	7:26E-1.4(i)	M	30	\$4,000
	Failure to comply with all requirements when using notification letters for public notification.	7:26E-1.4(j)	M	30	\$4,000
	Failure to obtain the Department's prior approval, comply with guidance, and send additional notification of excess fill material as required.	7:26E-1.4(k)	NM		\$8,000
	Failure to send, update, publish fact sheet, and notify affected property owner as required, when contamination migrates off site.	7:26E-1.4(l)	M	30	\$4,000
	Failure to notify adjoining property owner of soil contamination via certified mail.	7:26E-1.4(m)	M	30	\$4,000
	Failure to include the rationale for an alternative public notification plan with the applicable remedial phase report.	7:26E-1.4(p)	M	30	\$4,000
	Failure to conduct additional public outreach when the Department determined there is substantial public interest.	7:26E-1.4(q)	NM		\$8,000
	Failure to make submissions to, and/or get approvals from, Pinelands Commission.	7:26E-1.4(s)	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 proper certifications and to submit forms and submissions as required.	7:26E-1.5	M	30	\$4,000
Failure to submit workplans and reports in the proper format and in a timely manner.	7:26E-1.6	M	30	\$4,000
Failure to include in the applicable remedial phase report the rationale for varying from a technical requirement or guidance.	7:26E-1.7(a)	NM		\$8,000
Failure to conduct remediation pursuant to the regulatory timeframes established in this chapter and submit all documents, forms, and other submissions as required in this chapter.	7:26E-1.9(a)	NM		\$8,000
Failure to comply with the Site Remediation Program's guidance documents in effect at the time that the work was conducted.	7:26E-1.9(b)	NM		\$8,000
Failure to properly submit required documents.	7:26E-1.9(d)	M	30	\$4,000
Failure to prepare or implement a health and safety plan.	7:26E-1.10	NM		\$8,000
Failure to implement an interim response measure to contain or stabilize contamination.	7:26E-1.12(a)	NM		\$20,000
Failure to notify the Department of the discovery of light nonaqueous phase liquid (LNAPL) and initiate free product recovery as required.	7:26E-1.12(b)1	NM		\$20,000
Failure to complete LNAPL delineation, installation of recovery system, and submit report within the required timeframe.	7:26E-1.12(b)2	NM		\$20,000
Failure to complete the installation of a recovery system, initiate operational monitoring, and submit required information concerning LNAPL recovery within required timeframe.	7:26E-1.12(b)4	NM		\$20,000
Failure to conduct remediation with the Department's oversight in situations where such oversight is required.	7:26E-1.13	NM		\$8,000
Failure to address an immediate environmental concern (IEC) condition in accordance with the Department's IEC Guidance.	7:26E-1.14(a)	NM		\$20,000
Failure to immediately notify the Department upon the discovery of an IEC condition.	7:26E-1.14(b)1	NM		\$20,000
Failure to mitigate the IEC impacts within the required timeframe.	7:26E-1.14(b)2	NM		\$20,000
Failure to submit the required information within the required timeframe.	7:26E-1.14(b)3	NM		\$20,000
Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.14(b)4	NM		\$20,000
Failure to submit an IEC engineered system response action report with the required form within the required timeframe.	7:26E-1.14(c)	NM		\$20,000
Failure to initiate control of the IEC contaminant source using the Department's guidance, complete the delineation of the IEC contaminant source, and submit an IEC contaminant source control report with the required form within the required timeframe.	7:26E-1.14(d)	NM		\$20,000

<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 standard based on the current and future land use for the site and all listed standards rule 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 prepare a soil reuse plan pursuant to the Department's Guidance for Remediation of Contaminated Soils that complies with the required sampling requirements.	7:26E-6.4(d)	NM	\$8,000	
Failure to remediate property not owned by the person conducting the remediation to the applicable residential use standard if the property owner does not consent in writing to implement the institutional or engineering controls and to record a deed notice.	7:26E-6.4(e)	NM		\$8,000
Failure to implement a post remedial action implementation monitoring plan to determine whether the achieved ground water remediation standards are sustainable and not subject to concentration rebound after remediation standards are met, when contaminant levels in the source monitoring wells are at or below the applicable standards for two consecutive high seasonal water table monitoring events.	7:26E-6.4(f)	M	90	\$8,000
Failure to prepare a schedule of the remedial action that includes the information specified in this section and to revise/resubmit it as required.	7:26E-6.5(a), (b) and (c)	M	30	\$8,000
Failure to submit a remedial action progress report that includes the required information, when required.	7:26E-6.6	M	30	\$8,000
Failure to submit a Remedial Action Report that complies with the content and format requirements specified by this section.	7:26E-6.7(a)	NM		\$8,000
Failure to include all the required information in the Remedial Action Report.	7:26E-6.7(b) through (f)	M	30	\$4,000
7 Permit identification, permit application schedule and discharge to ground water and surface water permits				
Failure to identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action.	7:26E-7.1(a)	M	30	\$4,000
Failure to apply for and obtain all required permits prior to initiating the remedial action.	7:26E-7.1(b)	M	30	\$4,000
Failure to develop a permit application schedule when required.	7:26E-7.1(c)	M	30	\$4,000
Failure to comply with this section and the Department's Guidance NJPDES Discharges To Ground Water Technical Manual For The Site Remediation Program for each discharge to ground water (DGW) that is subject to the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-7.5(d).	7:26E-7.2(a)	NM		\$8,000
Failure to submit a DGW proposal with the required form, including the required detailed description of the DGW proposal.	7:26E-7.2(b)	M	30	\$8,000
Failure to comply with requirements related to public notice of the DGW proposal.	7:26E-7.2(c)	NM		\$8,000
Failure to comply with the applicable requirements of N.J.A.C. 7:14A-6, this section, and the Department's guidance NJPDES Discharges To Ground Water Technical Manual For The Site Remediation Program.	7:26E-7.2(e)	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>
8 Engineering and Institutional Controls				
Failure to prepare a deed notice, pursuant to N.J.A.C. 7:26E-8.2.	7:26E-8.1(b)1	M	30	\$4,000
Failure to demonstrate in the remedial action workplan that the selected remedial action will remain protective, that contamination exposure can be controlled, and all current and future uses of the site will be consistent with the remedial action.	7:26E-8.1(b)2	M	30	\$4,000
Failure to monitor each engineering and institutional control.	7:26E-8.1(b)3	NM		\$8,000
Failure to document in the remedial action workplan, how each of the specified criteria has been factored in to ensure that the remedial action is protective of the public health and safety and of the environment.	7:26E-8.1(c)	M	30	\$8,000
Failure to record a deed notice for the site pursuant to N.J.A.C. 7:26E-8.2(c) and (d).	7:26E-8.2(a)1	NM		\$8,000
Failure to document the owner's consent to record the necessary deed notice pursuant to N.J.A.C. 7:26E-8.2(b).	7:26E-8.2(a)2	NM		\$8,000
Failure to include a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16.	7:26E-8.2(b)	M	60	\$4,000
Failure to prepare the required draft notice, draft amendment to the Base Master Plan or Land Use Control Assurance Plan, or draft deed notice, worded pursuant to N.J.A.C. 7:26E-8.2(d), as required by this section.	7:26E-8.2(c)	M	30	\$4,000
Failure to prepare a deed notice as part of the remedial action report, that is worded exactly as the model document in N.J.A.C. 7:26E Appendix E, and includes copies of all required maps.	7:26E-8.2(d)	M	30	\$4,000
Failure to have the owner of the property record the deed notice at the proper county office within 45 days of the Department's approval of the final deed notice.	7:26E-8.2(e)1	NM		\$8,000
Failure to provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the road department of each municipality and county in which the site is located, the New Jersey Department of Transportation, and utility companies with easements on the roadway.	7:26E-8.2(e)2	NM		\$8,000
Failure to include a copy of the recorded deed notice, stamped "Filed," or notice, as applicable, with the Remedial Action Outcome and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in N.J.A.C. 7:26E-8.2(g).	7:26E-8.2(e)3	NM		\$8,000
Failure to provide a copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1 to the specified recipients.	7:26E-8.2(f)	M	30	\$4,000
Failure to comply with N.J.A.C. 7:26C-2.4 when redeveloping or changing the use of a site in a manner inconsistent with a remedial action such that modification of the declaration of environmental restriction (DER) or deed notice is necessary.	7:26E-8.2(g)	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 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

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, rep-

resentation or certification in any application, record or other document required to be submitted or maintained pursuant to this chapter.

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

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

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

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

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

7:26C-9.8 Civil administrative penalty for economic benefit

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

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

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
2. The return earned or that may be earned on the amount of the avoided costs;
3. All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
4. All other benefits resulting from the violation.

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

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time nondepreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and
7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

7:26C-9.9 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty for violations listed in N.J.A.C. 7:26C-10.1(a), the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil ad-

ministrative penalty assessment. In each notice of civil administrative penalty assessment the Department shall:

1. Identify the provision violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty assessed pursuant to N.J.A.C. 7:26C-9.5; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure in N.J.A.C. 7:26C-9.6.

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

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:26C-9.10, a notice of civil administrative penalty assessment becomes a final order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) If the violator does not pay a civil administrative penalty within 30 calendar days after the date of a final order, and the penalty is not contested pursuant to N.J.A.C. 7:26C-9.6, or if the violator does not make a required payment pursuant to a payment schedule entered into with the Department, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing and continue until the violator pays the penalty in full.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:26C-9.10 and the amount of the penalty is upheld, in whole or in part, interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing and continue until the violator pays the penalty in full.

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

(f) The Department may assess and recover, by civil administrative order, the reasonable cost of preparing and successfully enforcing a civil administrative penalty. The

assessment may be recovered at the same time as a civil administrative penalty, in addition to the penalty assessment.

7:26C-9.10 Procedures for requesting and conducting adjudicatory hearings

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

1. The name, address, and telephone number, and if available, the fax number and email address, of the violator and its authorized representative;
2. The date the violator received the notice of civil administrative penalty assessment or administrative order being contested;
3. A copy of the notice of civil administrative penalty assessment or an administrative order and a list of all issues being appealed;
4. The violator's defenses to each of the Department's findings of fact in the notice of civil administrative penalty assessment or administrative order stated in short and plain terms;
5. An admission or denial of each of the Department's findings of fact in the notice of administrative penalty assessment or administrative order. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall state the fact or facts as the violator believes it or them to be;
6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
7. An estimate of the time required for the hearing (in days and/or hours); and
8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

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

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

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

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

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

1. The Office of Legal Affairs
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request; and
2. New Jersey Department of Environmental Protection
Bureau of Enforcement and Investigations
PO Box 028
Trenton, New Jersey 08625-0028
Attention Hearing Request

7:26C-9.11 Spill Compensation and Control Act directive

(a) A Spill Compensation and Control Act directive is a clear, written notice that the Department has determined that it is necessary to cleanup and remove discharges, and that notifies the respondents that the Department believes them to be responsible for the hazardous substances that were discharged.

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

1. Clean up and remove the discharge or threatened of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(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.

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.

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-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) therefore.

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

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 re-

mediation, 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

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 :
 [Insert Name of Person] :

 Name of Authorized Individual

 Authorized Individual's Title

 Name of Person

 Address of Person

hereby certifies, on behalf of [insert name of person], that he or she is authorized to make this binding Certification for the [describe here the real property that [insert name of person] is remediating, including any name by which the Site is known, the street address, all blocks and lots, the municipality, county and the DEP 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 pursuant to N.J.A.C. 7:26E-3.13. A copy of which is attached hereto. See, N.J.S.A. 58:10-23.11gd(5).

3. If the person acquired title to the Site on or after January 6, 1998, insert the following:

[Insert name of person] has:

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

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

4. [Insert the following if the person executing this Certification is an owner of the Site and has discovered a discharge at the Site.] Concerning discharges at the site

which occurred prior to [insert name of person]'s acquiring title, where applicable, to the Site:

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

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

telephone call to the DEP Hotline,

written documentation, or

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

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

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

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

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

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

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

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

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

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

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

ownership, if applicable, of the Site after all of the discharges occurred at the Site; or

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

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

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

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

[Type or Print Full Name of Person]

Dated: _____ By: _____

Signature of Authorized Individual

[Type or Print Name and Title of
Authorized Individual]

Dated: _____ Witness: _____

Signature of Witness

[Type or Print Name and Title of Witness]

APPENDIX B

MODEL TERMINATION OF DEED NOTICE

FILED AT THE OFFICE OF THE
REGISTER OF
[county] COUNTY

IN DEED BOOK

[volume], Pages [pages]

AS TO

BLOCK(S) _____, LOT(S) _____, TAX MAP OF THE [county]
County

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____

Recorded by: _____

[Signature, Officer of County
Recording Office]

[Print name below signature]

This Termination of Deed Notice is made as of [month day, year] by [name of property owner].

1. DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [county] COUNTY, AT BOOK [book number/vol.], PAGES [page numbers]. By way of a Declaration of Environmental Restriction (DER) or Deed Notice (hereinafter collectively Deed Notice) dated [month day, year], [name of the original responsible party(s) that filed the DER or Deed Notice] advised of: (a) the existence of soil contamination in concentrations at the real property situated in the [city/town/borough name] and designated as Block(s) [see example above for multiples], Lot(s) [see example above for multiples] ("the Property") on the Tax Map of [city/town/borough name] that do not allow for the unrestricted use of the Property; (b) the existence of institutional and/or engineering controls selected as part of the remedial action for the Property; and (c) the continuing obligation of [name of original responsible party(s) that filed the DER or Deed Notice], subsequent owners, and others to monitor and maintain those institutional and/or engineering controls. The Deed Notice was part of the remediation of contamination at the Property and was recorded in the Office of the Register of [county] County on [month day, year] in Deed Book [book number/volume], Pages [page numbers] by [name of original responsible party(s) that filed the DER or Deed Notice], the then owner of the Property. Pursuant to Paragraph 10, the Deed Notice was to remain in effect until such time as the Department approved the termination of the Deed Notice by executing a document expressly terminating the Deed Notice.

2. TRANSFER OF THE PROPERTY. By Deed dated [month day, year] and recorded in the Office of the Register of [county] County on [month day, year] in Book [book number/vol.], Pages [page numbers], [name of person appearing on deed] transferred ownership of Block(s) _____, Lot(s) _____ subject to the Deed Notice.

3. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF [county] COUNTY AT BOOK _____, PAGES _____ AS TO BLOCK(S) _____, LOT(S) _____. By way of letter dated [month day, year], [name of person/corporation etc.] requested approval from the Department to terminate the Deed Notice because conditions that required the execution and recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated [month day, year]. Accordingly, the Department hereby executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed Notice recorded in the Office of the Register of [county] County in Deed Book _____, Pages _____ shall be terminated and discharged. A metes and bounds description of Block(s) _____, Lot(s) _____ and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

4. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____,

Lot(s) _____, the Department also has determined that soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by [name of person or corporation etc. filing new Deed Notice].

5. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice or the date the new Deed Notice for Block(s) _____, Lot(s) _____ is recorded in the Office of the Register of [county], whichever is later, or, if this Termination of Deed Notice and the new Deed Notice are simultaneously recorded in the Office of the Register of [county], on the date of such simultaneous recording.

[Note: The language of the following two (2) consecutive paragraphs shall be substituted for the language of paragraphs 3 and 4 above where the subject property is proposed to be subdivided]

{Appropriate consecutive paragraph number}. TERMINATION OF DEED NOTICE RECORDED IN THE OFFICE OF THE REGISTER OF _____ AT BOOK _____, PAGE _____ AS TO BLOCK(S) _____, LOT(S) _____. By way of letter dated, [name of person /corporation etc.] requested approval from the Department to terminate the Deed Notice as to Block(s) _____, Lot(s) _____ because Block(s) _____, Lot(s) _____, has been subdivided from the Property, and the conditions that required the execution and recording of the Deed Notice no longer exist on Block(s) _____, Lot(s) _____. The Department approved the request by way of letter dated _____. Accordingly, the Department hereby executes this Termination of Deed Notice. Subject to the provisions of paragraph 5 below, the Department directs that the Deed Notice recorded in the Office of the Register of _____ in Deed Book _____, Page _____ shall be terminated and discharged as it applies to Block(s) _____ Lot(s) _____. Such termination, however, is limited to Block(s) _____, Lot(s) _____, and the Deed Notice remains in full force and effect as to such other portions of the Property for which the Department has not approved termination of the Deed Notice. A metes and bounds description of Block(s) _____, Lot(s) _____ and a scaled map showing the boundaries of Block(s) _____, Lot(s) _____ are attached hereto as Exhibits A and B, respectively.

{Appropriate consecutive paragraph number}. EXECUTION OF NEW DEED NOTICE FOR BLOCK(S) _____, LOT(S) _____. Although the Department has determined that a change in conditions warrants the termination of the Deed Notice as to Block(s) _____, Lot(s) _____, soil contamination remains on Block(s) _____, Lot(s) _____, in concentrations that do not allow for the unrestricted use of the Property. Thus, the approved remedial action includes a new Deed Notice for Block(s) _____, Lot(s) _____. The new Deed Notice shall be executed and recorded by

[Note: The language of the following paragraph shall be substituted for that of paragraph number 5 above where no new Deed Notice would be filed for the subject property]

{Appropriate consecutive paragraph number}. EFFECTIVE DATE OF TERMINATION OF DEED NOTICE. This Termination of Deed Notice shall take effect on the date this Termination of Deed Notice is recorded in the Office of the Register of [county].

[Note: The following paragraph is required for all versions of this form]

{Appropriate consecutive paragraph number}. SIGNATURES IN WITNESS WHEREOF, [name of person/corporation etc. executing the Termination of Deed Notice] and the New Jersey Department of Environmental Protection have executed this Termination of Deed Notice, as of the date first written above.

A. [If Owner is an individual]

WITNESS:

_____ [Signature]	_____ [Signature]
_____ [Print name]	_____ [Print name]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [name of owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public
[Signature]

[Print name]

B. [If owner is a corporation]

WITNESS: [Name of corporation]

_____ [Signature]	By: _____ [Signature]
_____ [Print name and title]	_____ [Print name]
	_____ [Print title]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [name of witness] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [name of corporate owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[Signature]

[Print Name and Title of Attesting Witness], Notary Public

[Signature]

[Print Name]

C. [If owner is a general or limited partnership]

WITNESS: [name of partnership]

_____ By: _____, General Partner
_____ [Signature] [Signature]
_____ [Print name and title] [Print name]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on [month day, year], [name of person executing document on behalf of owner partnership] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [name of partnership owner], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [name of partnership owner]; and

(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public
[Signature]

[Print name]

D. *[If Owner is a Limited Liability Company]*

WITNESS: [Name of Limited Liability Company]

By: [Signature]
[Signature]
[Print name and title of witness] [Print name and title]

STATE OF *[State where document is executed]* SS.:
 COUNTY OF *[County where document is executed]*

I certify that on *[month day, year]*, *[Name of Witness]* personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) This person is the *[insert either secretary/assistant secretary of the owner limited liability company]* of *[insert full name of limited liability company]*;

(b) This person is the attesting witness to the signing of this document by the proper officer who is the *[insert title of person signing on behalf of limited liability company]* of the *[insert name of owner limited liability company]*;

(c) This document was signed and delivered by the limited liability company as its voluntary act and was duly authorized;

(d) This person knows the proper seal of the limited liability company which was affixed to this document; and

(e) This person signed this proof to attest to the truth of these facts.

[Signature]
[Print Name and Title of Attesting Witness]
[Signature], Notary Public
[Print Name]

[Note: In situations where the person signing the document on behalf of the owner limited liability company is a member of the limited liability company, the attesting witness shall certify under oath that he/she knows that the document was signed and delivered by the owner limited liability company as its voluntary act, that the member is authorized to execute the document on behalf of the owner limited liability company, and that the person signing the document is authorized to sign the document on behalf of the member. Where the member is a partnership, corporation or other limited liability company, the attesting witness shall also certify that the person signing the document is authorized to sign on behalf of the corporation, partnership or limited liability company,

as the case may be. To the extent that such corporation, partnership, or limited liability company, in turn, is directly or indirectly controlled by another corporation, limited liability company, or partnership, and the person signing the document is an officer of that corporation or limited liability company or a partner of that partnership, the attesting witness shall also certify under oath that such person is authorized to sign on behalf of the corporation, limited liability company, or partnership, as the case may be.]

WITNESS: New Jersey Department of Environmental Protection

By: [Signature]
[Signature]
[Print name and title] [Print name and title]

STATE OF NEW JERSEY SS.:
 COUNTY OF MERCER

I certify that on *[month day, year]*, *[Insert name of person executing document on behalf of the New Jersey Department Environmental Protection]* personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is *[insert title]* and is authorized to execute this document on behalf of the New Jersey Department of Environmental Protection;

(b) Signed, sealed and delivered this document as his or her act and deed in his capacity as *[title]* of the New Jersey Department of Environmental Protection; and

(c) This document was signed and delivered by the New Jersey Department of Environmental Protection as its voluntary act, duly authorized.

[Signature], Notary Public
[Signature]
[Print name]

RECORD AND RETURN TO:

[Name of person who prepared the Termination of Deed Notice]

[Address]

EXHIBIT A

Metes and Bounds Description

EXHIBIT B

Scaled Tax Map of the Property and Institutional/Engineering Control Boundaries