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N.J.A.C. 7:26C
ADMINISTRATIVE REQUIREMENTS FOR THE REMEDIATION OF
CONTAMINATED SITES

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

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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope of subchapter

(a) This subchapter establishes the administrative procedures and requirements for the remediation of a contaminated site, including:

1. General requirements, in N.J.A.C. 7:26C-1.2;
2. Definitions, in N.J.A.C. 7:26C-1.3;
3. Applicability and exemptions, N.J.A.C. 7:26C-1.4;
4. Certifications, N.J.A.C. 7:26C-1.5;
5. Forms and submissions, N.J.A.C. 7:26C-1.6;
6. Public notification, N.J.A.C. 7:26C-1.7;
7. Right of entry and inspection, N.J.A.C. 7:26C-1.8;
8. Liberal construction, N.J.A.C. 7:26C-1.9; and
9. Severability, N.J.A.C. 7:26C-1.10.

7:26C-1.2 General requirements

(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with the following:

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;
2. All applicable New Jersey rules, including, without limitation:
 - i. This chapter;
 - ii. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;
 - iii. The Remediation Standards rules at N.J.A.C. 7:26D; and

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- iv. Any other applicable standards adopted pursuant to law; and
3. By applying any available and appropriate technical guidance concerning site remediation as issued by the Department. The Department's technical guidance can be found on the Department's website, www.nj.gov/dep/srp/srra/guidance. When there is no specific technical guidance issued by the Department or in the judgment of a licensed site remediation professional the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements of (a)1 and 2 above, the licensed remediation professional may use the following additional guidance, provided that the person includes in the appropriate report a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements of (a)1 and 2 above, and justifies the use of the guidance or methods that were utilized:
- i. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and
 - ii. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of the public health and safety, and of the environment.

7:26C-1.3 Definitions

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

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

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

“Authority” means the New Jersey Economic Development Authority.

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to N.J.S.A. 58:10B-25.1.

“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.

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“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 that is identical in wording to the model deed notice found N.J.A.C. 7:26C, Appendix D, except where the model deed notice indicates that property-specific information is to be inserted.

“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.

"Environmentally sensitive natural resource" means all resources defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“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.

"Green remediation" means the practice of considering all environmental effects of the remediation and incorporating options that maximize the net environmental benefit of cleanup actions.

"Ground water classification exception area" means any area defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

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“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 any such concern as defined in the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

"Innovative remedial action technology" means a new or alternative method, procedure or process that does not have a substantial operational record. An innovative remedial action technology with a substantial operational record in one field could be considered innovative if it is proposed for a new or different environmental problem.

“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 et 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.

"Linear construction project" means construction and development activities within an area such as a public or private roadway, railroad, or utility line and the rights-of-way thereto that are undertaken to create, maintain or alter the public or private roadway, railroad or utility line that:

1. Includes one or more contaminated properties, or parts of properties; and
2. Will generate more than 200 cubic yards of contaminated soil for fill or disposal during the duration of the linear construction project.

“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

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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.

"Permittee" means the person responsible for conducting the remediation, and includes a statutory permittee.

“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.

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

“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.

“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 conducting the preliminary assessment, site investigation, remedial investigation, feasibility study when applicable, and remedial action, including the development and implementation of a remediation including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs, and costs incurred by a certified public accountant or an independent auditor pursuant to N.J.A.C. 7:26C-4.10. 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 administrative and capital costs. Certain legal costs may be considered remediation costs to the extent that they are directly supporting the remediation, but remediation costs shall not include those legal costs associated with: recovery of costs expended on remediation, compelling a party to take part in the remediation, and defense against a Department enforcement action. Remediation costs do not include interest on monies owed.

“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

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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.

"Sanitary landfill" or "landfill" means a sanitary landfill as defined in the Solid Waste rules at N.J.A.C. 7:26-1.4.

“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.

"State fiscal year" means July 1 through June 30.

"Statutory permittee" means a person who subsequently becomes an owner, operator, or tenant of a site for which the Department has issued a remedial action permit pursuant to this chapter; provided, however, that the Department may terminate a person's status as a statutory permittee if that person follows the applicable procedures in this chapter.

"Technical guidance" means the technical guidance defined as such pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8.

“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.

“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.

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“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.

7:26C-1.4 Applicability and exemptions

(a) Except as provided in (c) and (d) below, each of the following persons shall comply with this chapter:

1. Each person who has executed or is otherwise subject to a judicial or administrative order, a judicial consent judgment, an administrative consent order, a memorandum of understanding, a remediation agreement, or any other legally binding document with the Department for the remediation of a contaminated site;

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

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

4. Each person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, for any hazardous substance that was discharged, including, without limitation:

i. Each owner of the real property where the discharge occurred at the time of the discharge;

ii. Each subsequent owner of the real property where the discharge occurred prior to the filing of a final remediation document with the Department;

iii. A holder of a security interest in the site, who actively participated in the management of the site or regulated underground storage tank that was the subject of a remedial action that includes an engineering and/or institutional control;

iv. A holder of a security interest in the site, who negligently caused a new discharge at the site after the date of foreclosure on a security interest in the site or the regulated underground storage tank that was the subject of the remedial action that includes an engineering and/or institutional control; or

v. A statutory permittee during that person's ownership, tenancy, or operation, depending on that person's continuing liability for the remediation pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g.;

5. The person responsible for conducting the remediation when:

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i. The Department rescinds a no further action letter or invalidates a response action outcome; or

ii. The licensed site remediation professional rescinds his or her own response action outcome; and

6. Any other person who is responsible for remediating a site pursuant to N.J.S.A. 58:10-23.11g.

(b) If more than one person is responsible for conducting the remediation of a contaminated site, each such person is jointly and severally liable for compliance with this chapter.

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

1. Not listed in (a), above, and who is conducting due diligence in accordance with N.J.S.A. 58:10B-1.3d(2);

2. Remediating a sanitary landfill, unless:

i. The sanitary landfill or any portion thereof is slated for redevelopment that includes structures intended for human occupancy;

ii. When sanitary 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. 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.

(d) The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank, is only required to comply with the requirements of N.J.A.C. 7:26C-4 and 13.

(e) Unless notified in writing by the Department that additional remediation is necessary, the person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirements at N.J.A.C. 7:26C-2.3 to use the services of a licensed site remediation professional or to submit documents to the Department:

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1. A petroleum surface spill of less than 100 gallons that does not reach the waters of the State of New Jersey provided that:

i. Any contamination is remediated within 90 days after the occurrence of the spill; and

ii. The person responsible for conducting the remediation documents, at the time of the spill, his or her specific knowledge of the date and volume of the spill;

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.

(f) Any governmental entity that is not liable under N.J.S.A. 58:10-23.11g.d(4) shall be exempt from paying the initial annual remediation fee and subsequent annual remediation fees as required by N.J.A.C. 7:26C-4.3(a)3 through 5, and instead, shall pay annual remediation fees pursuant to N.J.A.C. 7:26C-4.3(a)7.

7:26C-1.5 Certifications

(a) The person responsible for conducting the remediation 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 that person or by a licensed site remediation professional on behalf of that person is certified by a licensed site remediation professional in accordance with the applicable form.

(b) The person responsible for conducting the remediation shall ensure that the certifications required in (a) above, are signed and dated original certifications, and not photocopies.

(c) The person responsible for conducting the remediation shall ensure that the certification required by (a) above 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.

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(d) The person responsible for conducting the remediation may have that person's duly authorized representative sign the certification required in (a) 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 (c) above;
2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
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
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

(b) The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as follows:

1. One electronic copy on compact disk (CD) in Adobe portable document format (PDF), or in another format determined by the Department, of:

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- i. All forms, applications, documents and laboratory data deliverables; and
 - ii. All required maps that are less than or equal to 11 x 17 inches. Maps in excess of this size shall be submitted on paper;
2. One electronic copy of all full laboratory data deliverables on compact disk (CD) in Adobe portable document format (PDF) or in another format determined by the Department, and additionally, one paper copy of all full laboratory deliverables for potable water, vapor intrusion (sub-slab, indoor, and ambient), polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans (PCDDs/PCDFs), and hexavalent chromium soil sample results;
 3. Except where a final remediation document for unrestricted use is filed with the Department within one year after the date of discovery of the discharge, one electronic copy of all sampling data electronically in a summary table using the format in the Electronic Data Interchange Manual in effect as of the date the report is submitted. The Electronic Data Interchange Manual is available at the Department's website at <http://www.nj.gov/dep/srp/hazsite/docs>; and
 4. One electronic copy of all GIS compatible maps prepared in accordance with guidance available at the Department's website at <http://www.nj.gov/dep/srp/guidance/techgis/>.

(c) Within 90 days after the date that the Department informs the public, by a notice in the New Jersey Register, that an electronic portal is available, the person responsible for conducting the remediation shall submit to the Department via the electronic application all forms, applications and documents required by this chapter and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E electronically.

7:26C-1.7 Notification and public outreach

(a) Immediately after a discharge commences, any person or persons responsible for a discharge who knows or should reasonably know of a discharge shall immediately notify the Department by following the requirements of the Discharge of Petroleum and Other Hazardous Substances rules at N.J.A.C. 7:1E-5.

(b) The person responsible for conducting the remediation shall immediately notify the Department hotline at 1-877 WARNDEP or 1-877-927-6337 when either of the following is identified at a site:

1. Contamination that has been caused by a discharge that is not already known to the Department; or
2. An immediate environmental concern.

(c) The person responsible for conducting the remediation shall notify the Department pursuant to this subsection if that person determines that contamination migrated onto the site

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from another site. The person responsible for conducting the remediation shall notify the Department hotline at 1-877-WARNDEP (1-877-927-6337).

(d) The person responsible for conducting the remediation shall notify the Department in writing, on the Confirmed Discharge Notification form available from the Department at www.nj.gov/dep/srp/srra/forms, within 14 days after the occurrence of any of the following events:

1. A discharge of a hazardous substance, or the discovery of a discharge of a hazardous substance pursuant to N.J.A.C. 7:1E-5.7; or

2. The owner or operator of a regulated underground storage tank:

i. Determines that there has been a known or suspected discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-6 or 7;

ii. Is required to close a regulated underground storage tank, pursuant to N.J.A.C. 7:14B-8.1(b)6, 9.1(d), or 9.2; or

iii. Is otherwise required to conduct a site investigation pursuant to N.J.A.C. 7:14B.

(e) The person responsible for conducting the remediation shall provide the notification and any updates, and the fact sheet and any updates required in (h), (k), (l), (n) and (o) below in English. Additionally, where the person responsible for conducting the remediation determines that a language other than English is predominantly spoken by property owners or tenants in the area within 200 feet of the site boundary, the notification and any updates, and the fact sheet and any updates shall also be provided in that predominant non-English language;

(f) The person responsible for conducting the remediation shall include contact information for the person responsible for conducting the remediation and the name and telephone number for the licensed site remediation professional of record for the site in the notification and any updates, and the fact sheet and any updates required in (h), (k), (l), (n) and (o) below.

(g) To document compliance with this section, the person responsible for conducting the remediation shall submit one copy of each of the following in the subsequent applicable remedial phase report:

1. The notification letter and any updates, and the list of recipients required at (h) below and (l) below;

2. The public notification fact sheet and any updates, and the list of recipients required at (h) below and (l) below;

3. The display advertisement required at (l)3 below or a photograph of the notification sign required in (h) below; and

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4. The appropriate form, found on the Department's website at www.nj.gov/dep/srp/srra/forms.

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

1. Provide site specific information and documents related to the remediation at a site or area of concern when requested by the Department, including information pertaining to field sampling activities; and

2. Within 14 days prior to commencing field activities associated with the remedial action, provide notification to any local property owners and tenants who reside within 200 feet of the contaminated site, and to the government entities noted in (h)2iii below. The notification shall summarize site conditions and describe the activities that are to take place to remediate the site and shall either be in the form of written correspondence or the posting of a sign visible to the public, which shall be located on the boundaries of the contaminated site. The person responsible for conducting the remediation shall also:

i. Send a notification letter to each local property owner and tenant to whom notification was sent pursuant to (h)2 above that describes the current condition and progress of the remediation every two years until the required remediation is completed and the final remediation document is filed with the Department;

ii. If a sign is utilized, post and maintain the sign until such time as the required remediation is completed and the final remediation document is filed with the Department; and

iii. Submit one copy of the notification letter and list of recipients required in (h)2i above or a photograph of the notification sign required in (h)2ii above, and one copy of the fact sheet required in (l)1 below and the display advertisement required in (l)3 below to the local government entities as follows:

(1) The municipal clerk of each municipality in which the site is located; and

(2) The county health department and the local health agency.

(i) The person responsible for conducting the remediation shall provide a copy of the remedial action workplan and any updates or status reports, and a copy of the site health and safety plan to the clerk of the municipality, county health department, and local health agency for the municipality and county in which the site is located, when requested.

(j) The person responsible for conducting the remediation of any unregulated heating oil tank system or the person responsible for conducting an emergency response action shall only comply with the notification requirements of (a) through (d) above.

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(k) If the person responsible for conducting the remediation proposes to bring contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements or to raise the topographic level in a floodplain, the person shall:

1. Obtain the Department's prior written approval;
2. Comply with the N.J.A.C. 7:26E-5.2; and
3. Provide notification, which includes the type and concentrations of contaminants in the fill material, the proposed use of the fill and the controls designed to reduce or eliminate exposure, to the following:
 - i. Each owner of real property and the tenants of those properties, located within 200 feet of the site boundary;
 - ii. The mayor of each municipality where the site located;
 - iii. The county designated solid waste coordinator;
 - iv. The municipal clerk of each municipality in which the site is located; and
 - v. The county health department and local health agency.

(l) Except as provided in (l)4ii and (m) below, if contamination migrates off site in any environmental medium, the person responsible for conducting the remediation shall prepare, distribute and publish a fact sheet, which shall include a description of the site's industrial history, source(s) of contamination, description of contamination, current remedial status, proposed remedial actions with a schedule, extent of contamination, actions performed to minimize the impact to the public, and a list of online resources for information about the contaminants, as follows:

1. Prepare and distribute the fact sheet within 14 days after the determination that contamination has migrated off site;
2. Distribute the fact sheet to each owner of real property, as shown on the current municipal tax duplicate, and the tenants of those properties, located within 200 feet of the site boundary and to the following government entities:
 - i. The municipal clerk of each municipality in which the site is located; and
 - ii. The county health department and local health agency;
3. Publish the fact sheet, or a fact sheet template available at www.nj.gov/dep/srp/srra/guidance that has been updated with site specific information, as a display advertisement in a daily or weekly newspaper of general circulation in the vicinity of the site, within 30 days after the determination that contamination has migrated off site;

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4. For soil contamination:

i. The fact sheet shall be updated to include current contaminant extent, redistributed to the parties listed in (l)2 above and republished as described in (l)3i above within 90 days of complete delineation; and

ii. If the contamination has affected only one adjoining property and the affected contaminated medium is limited to the soil, the person responsible for conducting the remediation shall notify only that adjoining property owner and tenant in writing. The notice shall describe the nature and extent of the contamination; and

5. For ground water contamination, conduct the public notification pursuant to the requirements of N.J.A.C. 7:26C-7.3 when the Department establishes a ground water classification exception area.

(m) If only contamination from historic fill migrates off site onto an adjacent property, the person responsible for conducting the remediation is exempt from the requirements of (l) above.

(n) Unless under direct oversight pursuant to N.J.A.C. 7:26C-14, the person responsible for conducting the remediation may implement a public notification and outreach plan that is different from the requirements set for the in (g), (h) and (l) above if that plan is prepared by a licensed site remediation professional and adequately provides notifications and public outreach substantially equivalent to the public notification otherwise required in (g), (h) and (l) above. The person responsible for conducting the remediation shall include in the applicable remedial phase report that is submitted to the Department the rationale for the alternative plan and a discussion of how the alternative plan provides adequate public notice.

(o) The person responsible for conducting the remediation shall conduct additional public outreach based on the needs expressed by the community if the Department determines that:

1. Additional outreach is needed due to site-specific circumstances. This shall include responding to public inquiries, including inquiries from the news media, either received by the person responsible for conducting the remediation directly or received by the Department and sent to the person responsible for conducting the remediation; or

2. There is substantial public interest based on a petition containing the signatures of 25 or more people who live or work within 200 feet of the extent of contamination or the property boundary, whichever is greater, and the Department notifies the person responsible for conducting the remediation of its determination and posts a summary of this determination on the Department's web site at www.state.nj.us/dep.

(p) If the person responsible for conducting the remediation is in compliance with the public participation requirements applicable to sites subject to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the National

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Contingency Plan regulations, 40 CFR Part 300, then that person shall only comply with (a) through (d) above.

(q) The person responsible for remediating a contaminated site located within the jurisdiction of the Pinelands Commission as defined pursuant to N.J.S.A. 13:18A-1 et seq. shall:

1. Submit copies of all reports or workplans, for preliminary assessments, site investigations, remedial investigations and remedial actions, to the Pinelands Commission concurrently with submission of each such document to the Department;
2. Submit, for approval, a copy of the remedial action workplan or remedial design and construction documents and a completed Pinelands application to the Pinelands Commission prior to implementing a remedial action;
3. Not commence any construction activity at the site until the Pinelands Commission approves the remediation in writing; and
4. Send the information required pursuant to this subsection to the Pinelands Commission at the following address:

The Pinelands Commission
P.O. Box 359
15 Springfield Road
New Lisbon, NJ 08064

7:26C-1.8 Right of entry and inspection

(a) The owner, operator or tenant of a contaminated site shall allow entry to the site by the Department and its authorized representatives, upon the presentation of credentials, to inspect the site, buildings and records related to environmental issues and to take samples from the site, photograph the site and the buildings, and to make copies of the records. If samples are taken, the owner, operator or tenant may request that the Department provide split samples.

(b) The owner, operator or tenant of a contaminated site, a party to a remediation agreement, or a person who has submitted a remediation certification shall, as necessary:

1. Have appropriate technical, scientific, and engineering representatives accompany the Department and its authorized representative during the inspection; and
2. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection.

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7:26C-1.9 Liberal construction

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

7:26C-1.10 Severability

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

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

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

1. Criteria for determining when a person is required to remediate a site, in N.J.A.C. 7:26C-2.2; and
2. Requirements for a person who is responsible for conducting remediation in N.J.A.C. 7:26C-2.3.

7:26C-2.2 Criteria for determining when a person is required to remediate a site

(a) Unless exempted pursuant to N.J.A.C. 7:26C-1.4(c) or (d), a person shall remediate a site in accordance with this chapter when:

1. The person discharges a hazardous substance or otherwise becomes in any way responsible pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10.23-11g for a discharge;
2. The owner or operator of a regulated underground storage tank:
 - i. Determines there has been a discharge or suspects there has been a discharge from the regulated underground storage tank, pursuant to N.J.A.C. 7:14B-7.2; or
 - ii. Undertakes closure of a regulated underground storage tank pursuant to N.J.A.C. 7:14B-8.1(b)6, 9.1(d) and 9.2(a)2; or

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iii. Is required to conduct an unknown source investigation pursuant to N.J.A.C. 7:14B-7.4;

3. Any of the events described in the Industrial Site Recovery Act Rules at N.J.A.C. 7:26B-3.2(a) occurs;

4. The person discovers a discharge on property that person owns;

5. A no further action letter is rescinded or a response action outcome is invalidated;

6. The Department determines that additional remediation is necessary after the Department has issued a remedial action permit for a remedial action; or

7. The person has executed or is otherwise subject to a judicial or administrative order, a judicial consent judgment, an administrative consent order, a memorandum of understanding, a remediation agreement, or any other oversight document for the remediation of a contaminated site.

7:26C-2.3 Requirements for the person responsible for conducting the remediation

(a) Upon the occurrence of any of the events listed in 2.2(a) above, the person who is responsible for conducting the remediation at a site pursuant to N.J.A.C. 7:26C-1.4(a) shall:

1. Hire a licensed site remediation professional, unless:

i. The remediation is being conducted partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation;

ii. The remediation is being conducted on a site that is listed on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the U.S. Environmental Protection Agency is the lead agency for the remediation; or

iii. The remediation is being conducted at a Federal facility.

2. Notify the Department, on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, of the name and license information of the licensed site remediation professional hired to conduct or oversee the remediation and the scope of the remediation, including the number of contaminated areas of concern and impacted media known at the time the form is submitted and determined pursuant to N.J.A.C. 7:26C-4.2, within 45 days after:

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i. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurred prior to November 4, 2009, May 7, 2012;

ii. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurred between November 4, 2009 and May 7, 2012, the date of that occurrence;

iii. If the earliest of the events listed at N.J.A.C. 7:26C-2.2(a) occurs after May 7, 2012, the date of that occurrence; or

iv. If a different licensed site remediation professional is hired to replace the licensed site remediation professional about whom the person notified the Department pursuant to (a)2i. through iii. above prior to the issuance of a response action outcome, the date of hiring of the new licensed site remediation professional;

3. Conduct the remediation:

i. Without prior Department approval, except:

(1) If the Department directs otherwise;

(2) If the person is remediating the site, area of concern or site condition pursuant to N.J.A.C. 7:26C-14;

(3) If the remediation is being conducted pursuant to (a)1ii or iii above, or the site is being remediated partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. and is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq., regardless of whether the U.S. Environmental Protection Agency or the Department is the lead agency for the remediation; or

(4) If the site is suspected or known to be contaminated with anthropogenic radionuclide contamination of any media;

ii. In accordance with N.J.A.C. 7:26C-1.2(a); and

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

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

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

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

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

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

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

(b) A person responsible for conducting the remediation who has been conducting the remediation without a licensed site remediation professional prior to May 7, 2012 and is required to conduct the remediation using a licensed site remediation professional as of the effective date of this chapter shall comply with (a) above.

7:26C-2.4 (Repealed)

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 one electronic copy of all records referenced in (a) above, to the Department at the time of the issuance of a final remediation document.

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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 who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 5 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 form, found on the Department's website 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

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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.

1. If the Department denies the extension request, the period between the date the Department received the extension request and the date the Department denies the request shall not be considered when determining whether the person responsible for conducting the remediation is in compliance with any regulatory timeframe.

(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 who meets the criteria in N.J.A.C. 7:26C-1.4(a)1 through 5 shall:

1. If required to conduct a preliminary assessment and site investigation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or a site investigation pursuant to the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., submit the preliminary assessment and/or site investigation report, as applicable, within two years from the later of the following dates:

- i. March 1, 2010; or
- ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(a)1 through 6 occurs;

2. Submit the initial receptor evaluation report containing the information required by N.J.A.C. 7:26E-1.12 through 1.16 known at the time the report is submitted within two years from the later of the following dates:

- i. March 1, 2010; or
- ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(a)1 through 6 occurs;

3. Initiate immediate environmental concern contaminant source control and submit an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the

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Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.11, no later than two years from the later of the following dates:

i. March 1, 2010; 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-1.11;

4. Complete a remedial investigation for the delineation of light non-aqueous phase liquid (LNAPL), initiate implementation of an LNAPL interim remedial measure, initiate monitoring, and submit an LNAPL interim remedial measure report with a form available from the Department's website at www.nj.gov/dep/srp/srra/forms, pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.10, within two years from the later of the following dates:

i. March 1, 2010; or

ii. The date the person identified the presence of LNAPL pursuant to N.J.A.C. 7:26E-1.10;

5. Complete the remedial investigation of the contaminated site and submit the remedial investigation report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.10; and

6. Complete the remedial action of the contaminated site and submit the remedial action report, with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as described at N.J.A.C. 7:26E-1.6(a)1, by the date which is two years after the date of the regulatory timeframes established pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.8.

(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.

(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.

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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 form found on the Department's website 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;

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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 (a) above, unless the Department directs otherwise.

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

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

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

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

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

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

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

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

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

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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.

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

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

1. The formula the Department uses to calculate the annual remediation fee for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.2;

2. The payment of an annual remediation fee for the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.3, pursuant to N.J.A.C. 7:26C-4.3;

3. The payment of the applicable individual document review fees for the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-4.4;

4. The formula the Department uses to calculate the remedial action permit fees for the person responsible for permit fees pursuant to N.J.A.C. 7:26C-4.5;

5. The payment of remedial action permit fees, pursuant to N.J.A.C. 7:26C-4.6;

6. The methodology the Department uses to calculate its costs in overseeing remediation and the payment of those costs, pursuant to N.J.A.C. 7:26C-4.7;

7. 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-4.8;

8. 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-4.9; and

9. The procedures for a person to apply for the application of the 7.5 percent cap on fees and costs applicable in this subchapter, pursuant to N.J.A.C. 7:26C-4.10.

(b) The fees to be paid by a person conducting a linear construction project are set forth at N.J.A.C. 7:26C-16.3.

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7:26C-4.2 Annual remediation fee formula

(a) The Department shall calculate the annual remediation fee in accordance with (b) below and assess the annual remediation fee in accordance with N.J.A.C. 7:26C-4.3.

(b) The Department shall calculate annual remediation fees for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year as follows:

1. Utilizing the information contained in the annual budget submission to the Department of Treasury for the upcoming fiscal year, the Department shall set its Site Remediation Reform Act Program budget by determining the dollar amount needed to accomplish all tasks associated with administering the Site Remediation Reform Act. The Department shall not include in its Site Remediation Reform Act Program budget any costs associated with any other program area within the Department's Site Remediation Program that is funded by a source outside of the Site Remediation Reform Act Program budget.

2. The Department shall calculate the percentage of its Site Remediation Reform Act Program budget that shall be offset by the collection of contaminated area of concern fees and contaminated media fees by multiplying the total Site Remediation Reform Act Program budget by:

i. Sixty-five percent, which shall be the total amount of revenue that is to be collected through the assessment of contaminated area of concern fees; and

ii. Thirty-five percent, which shall be the total amount of revenue that is to be collected through the assessment of contaminated media fees.

3. The Department shall calculate the base contaminated area of concern fee by dividing the total contaminated area of concern revenue calculated pursuant to (b)2i above by either:

i. The number of contaminated areas of concern reported to the Department pursuant to N.J.A.C. 7:26C-4.3(a) in the previous calendar year; or

ii. Where the number of contaminated areas of concern is, in the Department's opinion, underreported such that the resultant fee calculated pursuant to (b)4 below would result in an unnecessarily elevated base contaminated area of concern fee, the estimated total number of contaminated areas of concern for each category defined in (b)4 below. The estimated total number of contaminated areas of concern for each category shall be determined based on the information available to the Department regarding the number of sites undergoing remediation in the previous calendar year.

4. Using the base contaminated area of concern fee calculated in (b)3 above, the Department shall establish the contaminated area of concern fee for each of the four Categories described below as follows:

i. Category 1: The fee for category 1 is the base fee. This category applies where:

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- (1) There are zero or one areas of concern, and there are no contaminated regulated underground storage tanks;
 - (2) Historic fill is the only contaminated area of concern; or
 - (3) The number of contaminated areas of concern has not been determined based on the information known at the time the fee is calculated;
- ii. Category 2: The fee for category 2 is two times the base fee. This category applies where:
- (1) There are two through 10 contaminated areas of concern; or
 - (2) The areas of concern are limited to any number of contaminated regulated underground storage tanks except a single regulated heating oil tank system, and there are no other contaminated areas of concern;
- iii. Category 3: The fee for category 3 is 11 times the base fee. This category applies where:
- (1) There are 11 through 20 contaminated areas of concern;
 - (2) There are 11 through 20 contaminated areas of concern, at least one of which is a contaminated regulated underground storage tank area of concern; or
 - (3) There is at least one sanitary landfill area of concern, whether by itself or with any other contaminated areas of concern; and
- iv. Category 4: The fee for category 4 is 22 times the base fee. This category applies where:
- (1) There are more than 20 contaminated areas of concern; or
 - (2) There are more than 20 contaminated areas of concern, at least one of which is a contaminated regulated underground storage tank area of concern;
5. The Department shall calculate the contaminated media fee by dividing the total contaminated media revenue calculated pursuant to (b)2ii above by either:
- i. The number of contaminated media reported to the Department pursuant to N.J.A.C. 7:26C-4.3(a) in the previous calendar year; or
 - ii. Where the number of contaminated media is, in the Department's opinion, underreported such that the resultant fee calculated pursuant to (b)6 below would result in an unnecessarily elevated base contaminated media fee, the estimated total number of

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contaminated media for each media type defined in (b)6 below shall be determined based on the information available to the Department regarding the number of sites and the number of contaminated media; and

6. For the purposes of calculating the contaminated media fee, contaminated media means any or all of the following:

- i. Contaminated ground water;
- ii. Contaminated sediment; and
- iii. Contaminated ground water contaminated above a Surface Water Quality Standard as defined in N.J.A.C. 7:9B that is migrating into surface water.

(c) Each year, the Department shall prepare an Annual Site Remediation Reform Act Program Fee Calculation Report based on the prior calendar year data, including the information contained in the annual budget submission to the Department of the Treasury, and the numbers of contaminated areas of concern and of contaminated media, the base contaminated area of concern fee, the contaminated area of concern fee for each of the four categories described at N.J.A.C. 7:26C-4.2(b)4, and the contaminated media fee that shall be due and payable for that calendar year. Beginning March 2013 and each March thereafter, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and its Site Remediation Reform Act Program budget. The Department shall also post this report on its website at www.nj.gov/dep/srp/fees.

7:26C-4.3 Annual remediation fee

(a) Except as provided in (i) below, the person responsible for conducting the remediation that is subject to N.J.A.C. 7:26C-2.3 shall submit the applicable annual remediation fee to the Department pursuant to this section.

1. A person subject to this section shall pay a nonrefundable annual remediation fee, which shall be the sum of the applicable contaminated area of concern fee and the total contaminated media fee. The person shall use the description of the categories at N.J.A.C. 7:26C-4.2(b)4 to determine the applicable contaminated area of concern category and the description of contaminated media at N.J.A.C. 7:26C-4.2(b)6 to determine the number of contaminated media at the site.

2. Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report in accordance with N.J.A.C. 7:26-4.2(c), the person responsible for conducting the remediation shall pay an annual remediation fee, which shall be calculated by multiplying the number of contaminated media by \$1,400, and adding to the resultant dollar amount the fee listed at (a)2 i through iv

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below, for the applicable contaminated area of concern category as determined pursuant to N.J.A.C. 7:26C-4.2(b):

- i. Category 1: \$450;
- ii. Category 2: \$900;
- iii. Category 3: \$5,000; and
- iv. Category 4: \$9,500.

3. Except as provided in (a)4 and 7 below, each 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. Forty-five days after the date the person responsible for conducting the remediation is required to submit the notification required pursuant to N.J.A.C. 7:26C-2.3(a)2;

4. The person responsible for conducting the remediation who was conducting the remediation without a licensed site remediation professional prior to May 7, 2012 and who is continuing on or after that date to conduct the remediation using a licensed site remediation professional shall submit the annual remediation fee, and the appropriate form found on the Department's website at www.nj.gov/dep/srp/srra/forms, as follows:

i. The first annual remediation fee shall be due on or before June 20, 2012, and the amount shall be based on the county in which the site is located as indicated in lines 1 through 4 of Table 4-1 below, as follows:

(1) Each person whose site is located in Hudson, Middlesex and Monmouth counties shall pay the amount indicated on line 1 of Table 4-1 below;

(2) Each person whose site is located in Atlantic, Hunterdon, Morris, Passaic and Union counties shall pay the amount indicated on line 2 of Table 4-1 below;

(3) Each person whose site is located in Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem, Somerset, Sussex and Warren counties or out-of-State shall pay the amount indicated on line 3 of Table 4-1 below; and

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(4) Each person whose site is located in Bergen, Burlington, Camden or Essex counties shall pay the amount indicated on line 4 of Table 4-1 below;

ii. The second annual remediation fee:

(1) Shall be due based on the county in which the site is located as indicated in lines 1 through 4 of Table 4-1 below, as follows:

(A) On September 1, 2012 for each person whose site is located in Hudson, Middlesex and Monmouth counties;

(B) On December 1, 2012 for each person whose site is located in Atlantic, Hunterdon, Morris, Passaic and Union counties;

(C) On March 1, 2013 for each person whose site is located in Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem, Somerset, Sussex and Warren counties or out-of-State; and

(D) On June 1, 2013 for each person whose site is located in Bergen, Burlington, Camden or Essex counties; and

(2) Shall be the full amount as indicated on line 4 of Table 4-1 below, irrespective of the county in which the site is located;

iii. If the site is located in more than one county, the date that the annual remediation fee is due shall be based on the county that appears first in Table 4-1 below; and

iv. Where the columns in Table 4-1 specify the following:

(1) Column I specifies the county in which the site is located;

(2) Column II specifies the fee amount due that all persons responsible for conducting the remediation who meet the criteria in (a)4i shall pay, calculated as the pro-rated percentage of the annual remediation fee based on the assigned anniversary month (for example, if the assigned anniversary month is September, the pro-rated percentage is 25 percent, June to September);

(3) Column III specifies the number of contaminated media at the site;

(4) Columns IV through VII specify the specific dollar amount (rounded to the nearest dollar) the person responsible for conducting the remediation owes based on category and number of contaminated media at the site;

(5) Column VIII specifies the date that the second and subsequent annual remediation fee shall be due.

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Table 4-1

			Initial Fee Amount By Category				Full Fee Due
I. County of Origin of Site	II. Fee Amount Due June 20, 2012	III. Number of Contaminated Media	IV. 0-1 Contaminated Areas of Concern Cat. 1	V. 2-10 Contaminated Areas of Concern Cat. 2	VI. 11-20 Contaminated Areas of Concern Cat. 3	VII. >21 Contaminated Areas of Concern Cat. 4	VIII. Anniversary Date for Second and Subsequent Annual Remediation Fees
1. Hudson, Middlesex, Monmouth	25% of Full Annual Remediation Fee	No Contaminated Media	\$ 113	\$ 225	\$ 1,250	\$ 2,375	September 1, 2012 and each September 1 thereafter
		1 Contaminated Media	\$ 463	\$ 575	\$ 1,600	\$ 2,725	
		2 Contaminated Media	\$ 813	\$ 925	\$ 1,950	\$ 3,075	
		3 Contaminated Media	\$ 1,163	\$ 1,275	\$ 2,300	\$ 3,425	
2. Atlantic, Hunterdon, Morris, Passaic, Union	50% of Full Annual Remediation Fee	No Contaminated Media	\$ 225	\$ 450	\$ 2,500	\$ 4,750	December 1, 2012 and each December 1 thereafter
		1 Contaminated Media	\$ 925	\$ 1,150	\$ 3,200	\$ 5,450	
		2 Contaminated Media	\$ 1,625	\$ 1,850	\$ 3,900	\$ 6,150	
		3 Contaminated Media	\$ 2,325	\$ 2,550	\$ 4,600	\$ 6,850	
3. Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem, Somerset, Sussex, Warren, Out-of-State	75% of Full Annual Remediation Fee	No Contaminated Media	\$ 338	\$ 675	\$ 3,750	\$ 7,125	March 1, 2013 and each March 1 thereafter
		1 Contaminated Media	\$ 1,388	\$ 1,725	\$ 4,800	\$ 8,175	
		2 Contaminated Media	\$ 2,438	\$ 2,775	\$ 5,850	\$ 9,225	
		3 Contaminated Media	\$ 3,488	\$ 3,825	\$ 6,900	\$ 10,275	
4. Bergen, Burlington, Camden, Essex	100% of Full Annual Remediation Fee	No Contaminated Media	\$ 450	\$ 900	\$ 5,000	\$ 9,500	June 1, 2013 and each June 1 thereafter
		1 Contaminated Media	\$ 1,850	\$ 2,300	\$ 6,400	\$ 10,900	
		2 Contaminated Media	\$ 3,250	\$ 3,700	\$ 7,800	\$ 12,300	
		3 Contaminated Media	\$ 4,650	\$ 5,100	\$ 9,200	\$ 13,700	

5. For each subsequent year, the person responsible for conducting the remediation shall pay an annual remediation fee in response to a Department invoice as follows:

i. For a person paying the fee pursuant to (a)3 above, on the anniversary date of the first year that the annual remediation fee was submitted; or

ii. For a person paying the fee pursuant to (a)4 above, on the month and day indicated in Column VIII of Table 4-1 above;

6. If a person responsible for conducting the remediation does not submit the initial annual remediation fee pursuant to (a)3 or (a)4 above by the time the subsequent year's annual remediation fee is due pursuant to (a)4 above, and does not provide any information required in N.J.A.C. 7:26E-4.2(b)3 and (b)5 so that the Department cannot otherwise calculate the annual remediation fee, that person shall:

i. For each year the Department is not able to calculate the annual remediation fee, pay the applicable Category 2 annual remediation fee as amended annually pursuant to

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N.J.A.C. 7:26C-4.2(c) until that person provides the information required by N.J.A.C. 7:26E-4.2(b)3 and (b)5; and

ii. On the anniversary date subsequent to the year in which the information is provided, the person responsible for conducting the remediation shall pay:

(1) The correct annual remediation fee for the applicable category and number of contaminated media; and

(2) The difference between the correct annual remediation fee for the applicable category and number of contaminated media and the Category 2 fee for each year the Category 2 fee was paid; and

7. Any governmental entity that is not liable under N.J.S.A. 58:10-23.11g.d(4) shall pay an annual remediation fee determined pursuant to N.J.A.C. 7:26C-4.2(b) for any 12 month period during which the governmental entity performs any type of remediation as defined pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8, within 45 days of commencing remediation pursuant to the following:

i. The date on which the governmental entity pays the first annual remediation fee becomes that governmental entity's anniversary date on which each subsequent annual remediation fee shall be due;

ii. If the governmental entity determines to stop remediation for any reason, the governmental entity shall notify the Department 90 days prior to the governmental entity's anniversary date and shall not be required to pay subsequent annual remediation fees until such time as the governmental entity determines to resume remediation; and

iii. When the governmental entity determines to resume remediation, the governmental entity shall notify the Department, and shall determine the annual remediation fee pursuant to N.J.A.C. 7:26C-4.2(b); the date of this notification shall become the governmental entity's new anniversary date.

(b) Except as provided in (c) below, 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) Where a public entity, or a non-profit organization that meets the definition set forth at 26 U.S.C. §501(c)3, is the person responsible for conducting the remediation of a brownfield development area, the person responsible for conducting the remediation shall pay an annual remediation fee in an amount that equals the sum of the applicable contaminated area of concern fee and the total contaminated media fee as may be amended pursuant to N.J.A.C. 7:26C-4.2(c), except that, regardless of the number of sites within each brownfield development area:

1. The entire brownfield development area may be considered as a single site; and

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2. The total contaminated media fee shall be calculated by determining the number of contaminated media, listed at N.J.A.C. 7:26C-4.2(b)6i through iii, that are present across the entire brownfield development area, rather than for each site within the brownfield development area.

(d) The person responsible for conducting the remediation that receives a response action outcome for a contaminated area of concern or a contaminated medium, but other contaminated areas of concern or contaminated media remain at the site, may request an adjusted annual remediation fee by submitting a new form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, at least 90 days prior to the annual remediation fee anniversary date described at (a)5 above. Information to be supplied by filling out the form includes:

1. The site name and location;
2. Information concerning a fee billing contact;
3. The applicable category fee and the subtotal category fee;
4. The applicable contaminated media fee(s), the subtotal of the contaminated media fee(s) and the total fee paid which is the sum of the category fee and the applicable contaminated media fee(s);
5. A list of the contaminated areas of concern;
6. The name and contact information for the person responsible for conducting the remediation and the Licensed Site Remediation Professional remediating the site; and
7. The signatures and certifications of the person responsible for conducting the remediation and the Licensed Site Remediation Professional.

(e) The person responsible for conducting the remediation that discovers any additional contaminated areas of concern or contaminated media shall submit a new annual remediation fee and a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, as described in (d) above, at least 90 days prior to the annual remediation fee anniversary date described at (a)5 above. If the Department determines that any additional contaminated areas of concern are present at a site, the Department shall increase the next annual remediation fee, if the new total number of contaminated areas of concern changes the fee category in (b)3, above. If the Department determines that any additional contaminated media are present at a site, the Department shall increase the next annual remediation fee for each additional contaminated medium listed at N.J.A.C. 7:26C-4.2(b)6.

(f) The person responsible for conducting the remediation shall continue to pay an annual remediation fee to the Department until a final remediation document is on file for all of the contaminated areas of concern and contaminated media at the site with the Department.

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(g) When a portion or a condition of the remediation becomes subject to direct oversight 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-4.7.

(h) When the entire remediation becomes subject to direct oversight 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 its next remedial phase document to the Department and from that point on, shall only pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-4.7 as long as the entire remediation is in direct oversight.

(i) 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-4.4 Individual document 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. Remedial action report for unregulated heating oil tank system \$400.00;
2. Re-issuance of no further action letter for unregulated heating oil tank system \$100.00;
3. Biennial certification, unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification \$375.00;
4. Child care center renewal certification \$225.00; and
5. Confidentiality claim \$500.00

(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.

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(c) The person responsible for conducting the remediation shall pay a \$350.00 fee for a discharge to ground water proposal.

(d) The person responsible for conducting the remediation who is remediating a discharge from an unregulated heating oil tank system shall pay a \$400.00 fee for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3.

7:26C-4.5 Remedial action permit fee formula

(a) The Department shall annually calculate remedial action permit fees for the remedial action permit types and activities listed at (b) below in accordance with (c) below.

(b) The Department shall annually calculate the remedial action permit fee for the upcoming State fiscal year, as of the December 1 that precedes the upcoming State fiscal year, for the following remedial action permit types and activities:

1. Remedial action permit types include:

- i. Deed notice with no engineering control;
- ii. Deed notice with engineering control(s);
- iii. Natural attenuation ground water remedial action; and
- iv. Any other ground water remedial action;

2. Remedial action permit fee activities include:

- i. Reviewing the remedial action permit application and issuing the remedial action permit;
- ii. Modifying the remedial action permit;
- iii. Transferring the remedial action permit; and
- iv. Terminating the remedial action permit;

(c) The Department shall determine the annual remedial action permit fee by:

1. Calculating the average number of hours required by permit program staff to accomplish the activities at (b)2 above for each remedial action permit type at (b)1 above; and

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2. Multiplying the average number of hours calculated pursuant to (c)1 above by the remedial action permit program staff hourly rate derived pursuant to (d) below to derive the annual remedial action permit fee for each type of remedial action permit.

(d) The Department shall calculate the remedial action permit program staff hourly rate for the upcoming State fiscal year as of the December 1 that precedes the upcoming State fiscal year as follows:

$$\text{Hourly Rate} = \frac{AS + FB + IC + OE}{BH}$$

Where:

AS = The average annual salary of the program staff full time equivalents directly assigned to the activity, plus a component that reflects the salaries for program overhead staff who perform functions related to the fee activity. To calculate the overhead component of AS, the Department divides the number of program staff full time equivalents directly assigned to the activity by the total number of program staff full time equivalents, and the resulting percentage is multiplied by the program overhead staff salaries. To calculate AS, these two components are then added together.

FB = The fringe benefit rate, which 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

IC = The indirect costs, which are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, program indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for program overhead staff and direct support personnel. Indirect costs involve a rate negotiated annually between the Department and the U.S. Environmental Protection Agency that is multiplied by the sum of AS and FB.

OE = The average annual operational expenses attributable to a program staff full time equivalent directly assigned to the activity. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management

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(internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

BH = 1,428. The billable hours, which is the average number of hours each program staff full time equivalent directly assigned to the activity spends annually performing activities for which fees are assessed, and is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives.

(e) Each year, the Department shall include in the Annual Site Remediation Reform Act Program Fee Calculation Report that it prepares pursuant to N.J.A.C. 7:26C-4.2(c), the factors used to calculate the remedial action permit fee for each remedial action permit activity.

7:26C-4.6 Payment of Remedial action permit fees

(a) Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c), the permittee shall submit to the Department the applicable remedial action permit activity fees pursuant to the following table. Thereafter, the permittee shall pay the applicable remedial action permit activity fees as published in the Annual Site Remediation Reform Act Program Fee Calculation Report:

<u>Remedial Action Permit Fees</u>	<u>Soil Remedial Action Permit</u>	<u>Ground Water - Natural Attenuation Remedial Action Permit</u>	<u>Ground Water - Active System Remedial Action Permit</u>
Remedial Action Permit Application Fee	\$600.00	\$800.00	\$1,000.00
Remedial Action Permit Modification Fee	\$400.00	\$600.00	\$800.00
Remedial Action Permit Transfer Fee	\$300.00	\$300.00	\$300.00
Remedial Action Permit Termination Fee	\$600.00	\$800.00	\$1,000.00

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(b) Until the first day of the State fiscal year following the Department's publication of the first Annual Site Remediation Reform Act Program Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.2(c) and 4.5(e), the permittee shall pay an annual remedial action permit fee in response to a Department invoice, on the anniversary date of the Department issuing the remedial action permit, as follows. Thereafter, the permittee shall pay the annual remedial action permit fee as published in the Annual Site Remediation Reform Act Program Fee Calculation Report:

1. The annual soil remedial action permit fee for a remedial action:
 - i. With a deed notice without engineering controls: \$300.00; and
 - ii. With a deed notice and engineering controls: \$320.00.
2. The annual ground water remedial action permit fee:
 - i. For a natural attenuation remedial action: \$550.00; and
 - ii. For any other ground water remedial action: \$650.00.

7:26C-4.7 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:

1. The provisions of N.J.A.C. 7:26C-2.3(a)3i;
2. The Department assigns a case manager pursuant to the criteria in the Site Remediation Reform Act at N.J.S.A. 58:10C-21b or c; or
3. The provisions of N.J.A.C. 7:26C-4.3(i)1 or 2.

(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:

1. The case Program Interest ID and associated Job Code(s);
2. The name of each staff member performing work on the site during the respective two week pay period, with a work activity description;
3. The number of hours spent by each staff member working on the site; and

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4. 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:

$$OC = DPC + IPC + E;$$

$$DPC = (CH)*(HSR)*(1 + SAR)*(1 + FBC);$$

$$IPC = (CH)*(HSR)*(IPCRF)$$

Where:

OC = oversight costs

DPC = direct program costs, where:

CH = The number of coded hours, which 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, shall be included in the formula calculations;

HSR = The hourly salary rate, which is an employee's annual salary divided by the number of working hours in a year (1,820 hours);

SAR = The salary additive rate, which represents the prorated percentage of charges attributable to each Department employee's 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

FBC = The fringe benefit rate, which 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

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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

IPC = Indirect program costs, where:

IPCRF = The indirect program cost rate factor, which 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

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

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;

Site Remediation indirect expenditures identified above are adjusted for any expenses not allowed by the Federal Cost Principles such as interest expense;

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

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.

E = expenses, which includes non-salary direct costs specific to the site such as sampling, analytical, equipment, or supply costs, contractor expenses, and Emergency Response overtime hours. These costs are not subject to additive, fringe, or indirect multipliers.

(f) The person responsible for conducting the remediation:

1. Is exempt from paying the indirect program costs if the person is responsible for conducting the remediation of discharged substances at their primary residence; or

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2. May be exempt prospectively from paying the indirect program costs if:

i. The person meets the criteria in the Developer Certification form in Appendix A of this chapter and submits the completed form to the Department to the address in N.J.A.C. 7:26C-1.6(a); and

ii. The person requests a statutory exemption pursuant to N.J.S.A. 58:10B-2.1 from the obligation to reimburse the Department for its indirect costs, by following the procedures in (g), below.

(g) To request the prospective application of the statutory exemption for which the person qualifies pursuant to (f)2 above, the person responsible for conducting the remediation shall submit the following to the Department within 60 calendar days after the person initiates remediation at the site or area of concern:

1. An executed Developer Certification, found in Appendix A of this chapter, that establishes that that person is neither:

i. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., nor

ii. A discharger, or a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g, and who does not have a defense to liability pursuant to N.J.S.A. 58:10-23.11g.d; and

2. A form found on the Department's website at www.nj.gov/dep/srp/srra/forms, that requires the person(s) completing the form to describe information concerning the acquisition of the site and that person's liability for the discharge at the site, including the name and address of the site and the person responsible for conducting the remediation, that person's signature, when and how the person either acquired or plans to acquire the site, a statement that the person exercised the appropriate due diligence at the site, the type of due diligence the person conducted, when the discharge occurred, and that the person is not liable for the discharge;

(h) When the Department determines that a person who has complied with (g) above meets the statutory exemption, the Department shall calculate that person's prospective oversight costs, beginning on the date of the requested exemption, using the following alternative oversight cost formula; however, the Department may only offset any future costs by the exempted amount, and shall not offset or pay any rebates of such costs prior to either the May 7, 2012 or the date the requested exemption is submitted to the Department.

$$OC (NI) = DPC + E$$

where

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OC (NI) = oversight costs without indirect program costs included;

DPC = direct program costs as defined in (e) above; and

E = expenses, as defined in (e) above.

7:26C-4.8 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-4.7, by submitting a written request to the Department, pursuant to (c) and (d) below, within 45 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;
3. Management decisions of the Department, including decisions regarding who to assign to the case, how to oversee the case or how to allocate resources for case review; or
4. Receipt of the request after the 45-day period established in (a) above.

(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
Office of Direc Billing and Cost Recovrey
Mail Code 401-061
401 East State Street, 6th floor
PO Box 420
Trenton, New Jersey 08625-0420

(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;

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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 45 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-4.9.

7:26C-4.9 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

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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 and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

(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.

7:26C-4.10 Seven and one-half percent of the cost of the remediation

(a) The person responsible for conducting the remediation may request that the Department determine whether the applicable costs in this subchapter have exceeded 7.5 percent of the total remediation costs for a site as provided pursuant to the Brownfield Act at N.J.S.A. 58:10B-2.1d, by following the procedures outlined in this section.

(b) A person may make a request pursuant to this section by submitting the information required in (c) below, to the Department within 90 calendar days after the later of:

1. [The effective date of this section];

2. The issuance of the final remediation document for all of the discharges at the site, for which that person is responsible, issued after [the effective date of this section]; or

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3. The resolution of all oversight cost reviews pursuant to N.J.A.C. 7:26C-4.6.

(c) A person may make a request pursuant to this section by submitting the following to the Department:

1. The appropriate form found on the Department's website at www.nj.gov/dep/srp/srra/forms, which contains the information as described in (c)2 through 6 below;

2. A narrative summary of the remediation of the site;

3. A narrative statement that all reviews of any oversight cost invoice pursuant to N.J.A.C. 7:26C-4.6 have been either settled or resolved;

4. A narrative statement that includes the date of each oversight cost invoice received, and indicates the date that the full payment was made for each such invoice the Department has issued pursuant to:

i. This subchapter; and

ii. The applicable rules at N.J.A.C. 7:14B, N.J.A.C. 7:26B, and N.J.A.C. 7:26C in effect prior to [the effective date of this section];

5. A detailed description of all of the remediation costs as defined in N.J.A.C. 7:26C-1.3, prepared by a certified public accountant or an independent auditor, including, as applicable:

i. The costs of all correspondence and other communication with the Department concerning the remediation, including, without limitation, the costs of preparing all letters, email and other correspondence, whether by the person, or any other person acting of behalf of that person, such as a consultant, licensed site remediation professional, or attorney;

ii. All remediation costs incurred by any other person, including any other person responsible for conducting the remediation and the Department;

iii. The future costs of compliance with a remedial action permit, if applicable, prepared by a licensed site remediation professional; and

6. The date and scope of each final remediation document issued for the site.

(d) The Department shall only approve a request pursuant to this section:

1. After a final remediation document has been issued for all areas of concern at the site;

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2. If the person responsible for conducting the remediation has paid each cost invoice within 60 calendar days after the later of:

- i. [The effective date of this section];
- ii. The receipt by the person responsible for conducting the remediation of each oversight cost invoice; or
- iii. The resolution of all oversight cost reviews pursuant to N.J.A.C. 7:26C-4.6;

3. If the Department has not addressed an earlier such request for a particular site; and

4. For a rebate of costs paid, if the Legislature has specifically provided the funds to the Department to make such payments.

(e) Upon receipt of a request pursuant to this section, the Department shall:

1. Review the request to determine compliance with (b) through (d), above;
2. Inform the requester in writing of any noncompliance with (b) through (d), above. The requester shall have 30 days to respond to the Department and resubmit missing information;
3. Deny the request if the requester does not resubmit information within 30 days, or the request is again found to be incomplete;
4. If full compliance with (b) through (d) above is determined, recalculate fees and any costs related to remediation permits, and, if applicable, one or a combination of the following:
 - i. The amount of credit that could be applied to future costs to offset any prior payment above the statutory maximum; or
 - ii. Rebate any prior payment above the statutory maximum, subject to the legislative authorization specified in (d)4 above.

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

7:26C-5.1 Scope of subchapter

(a) This subchapter establishes the requirements for:

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

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2. The dollar amount that the person responsible for conducting the remediation has to establish and maintain in a remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.3
3. The requirements related to each of the financial mechanisms available as remediation funding sources or financial assurance, 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 or financial assurance and for returning the remediation fund source or financial assurance, in N.J.A.C. 7:26C-5.11;
6. The disbursement of funds from a remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.12; and
7. The procedures the Department will use to draw on the funding in the remediation funding source or financial assurance when a person has failed to perform the remediation, in N.J.A.C. 7:26C-5.13.

7:26C-5.2 Establishing a remediation funding source and financial assurance

(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:

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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 in a timely manner 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) Except as provided in (d) below, the person responsible for conducting the remediation who is implementing an engineering control as part of a remedial action shall establish and maintain financial assurance pursuant to this subchapter.

(d) The owner or operator of a small business and the persons listed at (b)4 through 7 above are not required to establish financial assurance pursuant to this subchapter.

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

1. For a remediation funding source, the licensed site remediation professional issues an unrestricted use or limited restricted use response action outcome for the site;
2. For financial assurance, the Department either:
 - i. Terminates the remedial action permit, pursuant to N.J.A.C. 7:26C-7.13; or
 - ii. For a statutory permittee only, transfers the remedial action permit, pursuant to N.J.A.C. 7:26C-7.11.

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(f) Any person required to establish a remediation funding source or financial assurance 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 or financial assurance requirements shall submit all the information required in N.J.A.C. 7:26C-11.2 to the Department.

(g) 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 source or financial assurance shall establish the full amount of the remediation funding source or the financial assurance 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.

(h) Except as provided in (k) 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 financial mechanisms:

1. A remediation trust fund 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 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 loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12; or
6. A self-guarantee in accordance with N.J.A.C. 7:26C-5.8.

(i) Any person may establish, on behalf of any person required to establish a remediation funding source, any of the mechanisms listed at (h) above except for a self-guarantee.

(j) The person responsible for conducting the remediation may use any one or any combination of the financial mechanisms listed in (h)1 through (h)5 above, to satisfy the financial assurance requirement in N.J.A.C. 7:26C-5.3. The financial mechanism listed at (h)6 above shall not be used to satisfy the financial assurance requirement in N.J.A.C. 7:26C-5.3.

(k) Notwithstanding (h) or (j) above, a person responsible for conducting the remediation that is subject to direct oversight pursuant to N.J.S.A. 58:10C-27 shall establish and maintain a remediation trust fund in accordance with N.J.A.C. 7:26C-5.4.

(l) The person responsible for conducting the remediation required to establish and maintain a remediation funding source or financial assurance shall submit evidence of the establishment of a remediation funding source or financial assurance to the Department no later than the following deadlines as applicable, unless the Department approves an extension of that deadline:

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1. The owner or operator of an industrial establishment or any other person required to perform remediation pursuant to ISRA, N.J.S.A. 13:1K-6 et seq., shall submit evidence of the remediation funding source:

i. No more than 14 days after either Department approval of a remedial action workplan or Department receipt of a remedial action workplan certified by a licensed site remediation professional; or

ii. Upon submission to the Department of a remediation certification pursuant to N.J.A.C. 7:26B-4;

2. A discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., shall submit evidence of the remediation funding source according to the following:

i. As required by a directive the Department issues pursuant to the Spill Compensation and Control Act, at N.J.S.A. 58:10-23.11f;

ii. As required by an order the Department issues pursuant to the Spill Compensation and Control Act, at N.J.S.A. 58:10-23.11u, or the Water Pollution Control Act, N.J.S.A. 58:10A-10;

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

iv. As required by a court;

3. A person responsible for conducting the remediation shall submit evidence of a remediation trust fund established in accordance with N.J.A.C. 7:26C-5.4, no later than 30 days after:

i. The occurrence of any of the events listed at N.J.A.C. 7:26C-14.2; or

ii. Receipt of notice from the Department pursuant to N.J.A.C. 7:26C-14.3(c); and

4. The person responsible for conducting the remediation shall submit evidence of financial assurance as part of a remedial action permit application required pursuant to N.J.A.C. 7:26C-7.5.

7:26C-5.3 Determination of remediation funding source and financial assurance amount

(a) The person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter shall establish and maintain the remediation funding source in an amount that is equal to or greater than:

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1. The amount calculated in a cost estimate for the remediation, including the estimated cost to operate, maintain and inspect engineering controls, and the Department's fees and oversight costs, as certified by the licensed site remediation professional and the person responsible for conducting the remediation;
2. The amount to which the person responsible for conducting the remediation has agreed in an administrative consent order, remediation agreement, or remediation certification;
3. The amount that the Department has required in an order or directive;
4. The amount that the Department requires when it undertakes direct oversight of remediation pursuant to N.J.S.A. 58:10C-27; or
5. The amount that a court has required.

(b) The person responsible for conducting the remediation may reduce the amount of the remediation funding source by an amount equal to the costs to operate, maintain and inspect engineering controls when the person has submitted to the Department a complete remedial action permit application, including evidence of the establishment of financial assurance pursuant to N.J.A.C. 7:26C-5.2.

(c) The person responsible for conducting the remediation implementing a remedial action that includes an engineering control shall establish and maintain the financial assurance in an amount that is equal to or greater than the full cost to operate, maintain and inspect all engineering controls that are part of any remedial action over the life of the permit as estimated at the time the person submits the complete remedial action permit application.

(d) The person responsible for conducting the remediation shall, within 30 days after a request from the Department, submit a revised cost estimate if the Department determines that the documentation offered to support the cost estimate is incomplete, inaccurate or deficient, and shall submit any additional documentation that the Department requests to enable the Department to evaluate the cost of the remediation, including, but not limited to, any workplans or reports that were used to determine the cost estimate submitted pursuant to (a)1 above.

(e) If the person responsible for conducting the remediation pursuant to a remedial action permit is a residential condominium association, the financial assurance amount requirements at (c) above may be met by submitting an annual budget approved by the governing body of the residential condominium association that reflects an amount dedicated to the operation, maintenance and inspection of engineering controls which is equal to the annual estimated amount required.

7:26C-5.4 Remediation trust fund requirements

(a) Any person who is required or chooses to establish a remediation trust fund as a remediation funding source or financial assurance pursuant to this subchapter shall submit to the

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Department the original remediation trust fund agreement. The remediation trust fund agreement must:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;
2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
3. Specify that the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;
4. Indicate that the trustee may only disburse those funds from the remediation trust fund:
 - i. If the remediation of the site is under direct oversight by the Department pursuant to N.J.S.A. 58:26C-27, the Department shall approve in writing the amount to be disbursed; or
 - ii. For all other sites, the licensed site remediation professional shall approve in writing the amount to be disbursed;
5. Specify that the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation approved by either the Department or the licensed site remediation professional; and
6. Identify the Department as the sole beneficiary of the remediation trust fund.

(b) Any person responsible for conducting the remediation that uses a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source or financial assurance, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved or a licensed site remediation professional has certified, and confirming that the trust shall continue to exist for the next consecutive 12-month period.

7:26C-5.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source or financial assurance pursuant to this subchapter shall submit to the Department the original insurance policy. The environmental insurance policy must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey;

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2. Include the applicable case number, the program interest name and program interest number (preferred ID), site name, and site address;
3. Indicate that the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department except for failure to pay the premium;
4. Specify that the issuer of the environmental insurance policy may revoke or terminate the policy for failure to pay the premium, but only after notifying the person who established the remediation funding source and the Department by certified mail of the decision to revoke or terminate the policy at least 120 days before termination, beginning from the date of receipt by the Department as shown on the signed return receipt;
5. Indicate that the insurer may only disburse those funds from the environmental insurance policy that the licensed site remediation professional approves in writing may be disbursed pursuant to N.J.A.C. 7:26C-5.12;
6. Indicate the funds in the environmental insurance policy will be utilized solely for the purposes of conducting the remediation; and
7. Specify that the Department, or another party that may subsequently be designated by the Department pursuant to N.J.A.C. 7:26C-5.13(d), may access the environmental insurance policy to pay for the cost of conducting the remediation.

(b) Any person responsible for conducting the remediation using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least 30 days prior to the anniversary date of when that person was obligated to establish a remediation funding source or financial assurance, submit to the Department a written statement from the insurance company confirming the value of the environmental insurance policy in an amount that the licensed site remediation professional has certified, and that the environmental insurance policy has been renewed for the next consecutive 12-month period.

7:26C-5.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit as a remediation funding source or financial assurance pursuant to this chapter shall submit to the Department an original of a line of credit. The line of credit must:

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;
2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended for a period of at least one year;

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4. Indicate that, if the issuer of the line of credit decides not to extend the line of credit beyond the then current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of a decision not at least 120 days before the current expiration date beginning from the date of receipt by the Department as shown on the signed return receipt;

5. Indicate that the person providing the line of credit shall only disburse those funds from the line of credit that the licensed site remediation professional approves in writing to be disbursed pursuant to N.J.A.C. 7:26C- 5.12;

6. Indicate that the funds in the line of credit shall be utilized solely for the purposes of conducting the remediation; and

7. Specify that the Department, or another party that may subsequently be designated by the Department pursuant to N.J.A.C. 7:26C-5.13(d), may access the line of credit to pay for the cost of remediation.

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

7:26C-5.7 Letter of credit

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

1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;

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

3. Indicate that letter of credit is irrevocable, issued for a period of at least one year, and that it will be automatically extended for a period of at least one year;

4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and

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5. Indicate that the Department may access the letter of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-5.13(d).

7:26C-5.8 Self-guarantee requirements

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

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

2. Information that demonstrates that the estimated cost of the remediation that the Department has approved or that a licensed site remediation professional has certified does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;

3. Information that demonstrates that the individual or entity possesses the required cash flow and has sufficient net cash provided by operating activities to pay for the remediation during the next 12-month period. Cash flow and net cash will be deemed sufficient if:

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

ii. The individual or entity possess a net cash provided by operating activities in an amount at least equal to the estimated costs of completing the remediation activities in the 12-month period following the date the application is made;

4. Audited financial statements for the preceding fiscal year that ended closest to the date of the self-guarantee statement, including, but not limited to, an income statement, a balance sheet and a consolidated statement of cash flow, in which the auditor expresses an unqualified opinion. This information must be prepared in accordance with Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board Accounting Standards Codification or the International Accounting Standards Board International Financial Reporting Standards. This information must be audited in accordance with the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board's auditing standards; and

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

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

(c) In the case of a special purpose entity created specifically for the purpose of acquiring and redeveloping a contaminated site, and for which a statement of income and expenses is not available, the documentation shall include a statement of assets and liabilities certified by a certified public accountant that the statement is prepared in accordance with the Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board's Accounting Standards Codification or the International Accounting Standards Board's International Financial Reporting Standards.

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

1. Comply with the requirements of (a) above, and if applicable (b) and (c) above, annually, to provide a self-guarantee for each successive year that that person is required to maintain a remediation funding source and wishes to continue to provide a self-guarantee; and

2. Submit the information required by (a) above, and if applicable (b) and (c) above, to the Department 30 days prior to the date of expiration of the existing statement.

7:26C-5.9 Remediation funding source surcharge

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

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

(b) A person responsible for conducting the remediation who is required to establish and maintain a remediation funding source pursuant to this subchapter and who is required to pay a surcharge pursuant to (a) above, shall submit the remediation funding source surcharge to the Department, and shall:

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

2. Submit the remediation funding source surcharge with the remediation funding source as required in N.J.A.C. 7:26C-5.2 and annually thereafter on the same date or within 30 days after receipt of an invoice from the Department, whichever date occurs sooner, and until the Department or a licensed site remediation professional issues a final remediation document.

(c) The surcharge is not applicable to the financial assurance established for a remedial action permit.

7:26C-5.10 Remediation cost review

(a) The person responsible for conducting the remediation shall submit to the Department 365 days after the date that that person is required to submit a remediation funding source pursuant to N.J.A.C. 7:26C-5.2(1), and annually thereafter on the same calendar day, a detailed cost review on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that is certified by the person responsible for conducting the remediation and by the licensed site remediation professional, that includes the following:

1. A summary of all monies spent to date to remediate the contaminated site;

2. An estimate of the remaining costs to complete the remediation pursuant to the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and this chapter, including the cost to operate, maintain and inspect engineering controls and the Department's fees and oversight costs pursuant to N.J.A.C. 7:26C-5.3; and

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

(b) The person responsible for conducting the remediation who is subject to a remedial action permit shall submit to the Department, on the same schedule that the person is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.7(a)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls, on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. A summary of all monies spent as of the date of the estimate to comply with the remedial action permit;

2. An estimate of the remaining costs to comply with the remedial action permit; and

3. An explanation of any changes from the most recently submitted cost review for implementing the remedial action that is the subject of a remedial action permit.

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

(a) A person required to establish a remediation funding source or financial assurance pursuant to this subchapter who wishes to decrease the amount of the remediation funding source shall submit a form, available on the Department's website at www.nj.gov/dep/srp/srra/forms, that provides a revised estimate of the cost of the remediation and that indicates why that cost is less than previously estimated, and is certified by the person responsible for conducting the remediation and by the licensed site remediation professional.

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

1. For cases where the person responsible for conducting the remediation is subject to direct oversight, receipt from the Department of written approval in response to a request submitted pursuant to (a) above provided, however, that the Department will respond to requests within 45 calendar days after the Department's receipt of the request; or

2. Submission to the Department of a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, pursuant to 5.10 above.

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

1. Submission to the Department of any remediation cost review, required pursuant to N.J.A.C. 7:26C-5.10, that indicates that the cost of remediation has increased to an amount greater than the existing remediation funding source;

2. For cases where the person responsible for conducting the remediation is subject to direct oversight, receipt of a demand from the Department to increase the amount of the remediation funding source or financial assurance to match the amount of the estimated costs; or

3. Receipt of written certification, with a copy provided to the Department, from a licensed site remediation professional that the estimated cost of the remediation has increased.

(d) The person responsible for conducting the remediation that is required to establish a remediation funding source or financial assurance pursuant to this subchapter may at any time submit a written request to the Department on a form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, to substitute another type of financial mechanism specified in this subchapter for the existing financial mechanism. The Department shall return the original

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financial mechanism after such proof is provided that an acceptable alternate mechanism has been established.

(e) The Department shall return:

1. The remediation funding source when:
 - i. A person has substituted another form of remediation funding source; or
 - ii. When another person has established a remediation funding source; or
 - iii. 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; and
2. The financial assurance when:
 - i. A permittee has substituted another form of financial assurance;
 - ii. When another permittee has established financial assurance; or
 - iii. The Department has terminated the remedial action permit, pursuant to N.J.A.C. 7:26C-7.13.

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

(a) Except as provided in (b) below, a person 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, letter of credit or a line of credit, in satisfaction of the requirements of this subchapter, may submit to the provider, with a copy to the Department, 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 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);
2. The amount of the disbursement request; and
3. A certification by the person responsible for conducting the remediation and by the licensed site remediation professional, that the disbursement request represents actual remediation costs of the subject site, incurred or to be incurred.

(b) For sites where the person responsible for conducting the remediation is subject to direct oversight, within 30 days after the Department's receipt of the written request submitted on a

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form, found on the Department's website at www.nj.gov/dep/srp/srra/forms, 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; or

2. The information submitted is incomplete, and the disbursement is not approved. The Department shall include 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 and the licensed site remediation professional shall provide the Department with notice of the disbursement and the amount of the remaining remediation funding source within 30 days after disbursement on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms.

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 or financial assurance pursuant to this subchapter if the Department determines that the person has failed to perform the remediation as required.

(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 or financial assurance has failed to remediate the site.

(c) The Department may, in its sole discretion, avail itself of the funds in the remediation funding source or financial assurance and perform the remediation of a site using the funds in the remediation funding source or financial assurance.

(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 or financial assurance 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;

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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 to the person who has conducted the remediation:

1. When, in the opinion of the licensed site remediation professional, the site or area of concern has been remediated pursuant to (c), (f), and (g), below;

2. After the Department has issued all remedial action permits required for the remedial action;

3. After the person responsible for conducting the remediation has paid to the Department all fees and oversight costs;

4. For an entire site or one or more areas of concern, including all areas to which contamination 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 and issue a response action outcome pursuant to:

i. The requirements of this section; and

ii. The Model Response Action Outcome included in Appendix D of this chapter, including all applicable inserts; and

2. File each response action outcome with the Department, within 30 days after issuing the response action outcome, with:

i. A form found on the Department's website at www.nj.gov/dep/srp/srra/forms; and

ii. One copy, 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, raw sampling and monitoring data, whether the data and information relate in any way to the site or area of

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concern, and any contractual documents specifically requested by the Department, 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 hierarchy in N.J.A.C. 7:26C-1.2(a).

(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, pursuant to N.J.A.C. 7:26C-6.4(e).

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

(g) The licensed site remediation professional shall only issue a response action outcome after the licensed site remediation professional has determined that the remediation has been completed pursuant to (c), above, including, without limitation, the following, as applicable:

1. All contaminated soil has been remediated:
 - i. To the most stringent soil remediation standard; or
 - ii. The Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and
2. All contaminated ground water has been remediated:
 - i. To the applicable ground water remediation standard; or

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ii. The Department has issued a ground water remedial action permit pursuant to N.J.A.C. 7:26C-7.

7:26C-6.3 No further action letters

The Department will issue a no further action letter to the person responsible for conducting the remediation when that person is remediating an unregulated heating oil tank.

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

(a) A remedial action is not protective of the public health, safety and the environment when any of the following occur:

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 complete 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 remediation was not conducted in accordance with the remediation standards;

7. The conclusions in the final remediation document are not supported by environmental data as required by this chapter;

8. The scope of the final remediation document is not consistent with the scope of the actual remediation;

9. Mistakes or errors in the final remediation document may result in detrimental reliance on the final remediation document by a third party;

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10. The remediation was not conducted pursuant to N.J.A.C. 7:26C-6.2(c), (f), or (g), as applicable;

11. A presumptive remedy or alternative presumptive remedy was not implemented when required; or

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

(b) The licensed site remediation professional shall rescind his or her response action outcome when he or she determines that:

1. The remedial action is not protective of the public health, safety, and the environment pursuant to (a) above; or

2. The person responsible for conducting the remediation implemented a remedial action that will render the property unusable for future redevelopment or recreational use.

(c) The Department shall:

1. Invalidate a response action outcome when it determines that the licensed site remediation professional has failed to comply with (b) above; or

2. Invalidate a response action outcome or rescind a no further action letter when it determines that:

i. The remedial action is not protective of the public health, safety, and the environment pursuant to (a) above; or

ii. The person responsible for conducting the remediation implemented a remedial action that will render the property unusable for future redevelopment or recreational use.

(d) 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.

(e) A licensed site remediation professional shall withdraw and reissue a response action outcome, pursuant to N.J.A.C. 7:26C-6.2, upon a finding by the Department or by that licensed site remediation professional that the response action outcome was not prepared in accordance with this subchapter. When the finding that the response action outcome was not prepared in accordance with this chapter because it contains administrative errors, the licensed site remediation professional shall, within 30 days:

1. Amend a response action outcome, by correcting all administrative errors, including but not limited to, the improper use of notices, changes made to the Model Response Action

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Outcome that are inconsistent with that model or this subchapter, and missing or incomplete site specific identifiers; and

2. Reissue the amended response action outcome pursuant to N.J.A.C. 7:26C-6.2(b).

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

7:26C-7.1 Purpose and scope

(a) The purpose of this subchapter is to establish the administrative requirements of the person responsible for conducting the remediation for:

1. Using a deed notice as an institutional control;
2. Using a ground water classification area as an institutional control; and

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3. A remedial action permit that establishes the regulatory mechanism for:

- i. Operating and maintaining certain remedial actions;
- ii. Monitoring the effectiveness of certain remedial actions; and
- iii. Submitting a biennial certification of the continued protectiveness of a remedial action that includes an engineering or institutional control.

(b) More specifically, this subchapter establishes:

1. The requirements for the use of a deed notice as part of a remedial action, pursuant to N.J.A.C. 7:26C-7.2;
2. The requirements for the use of a ground water classification area as part of a remedial action, pursuant to N.J.A.C. 7:26C-7.3;
3. The permittees of a remedial action permit, pursuant to N.J.A.C. 7:26C-7.4;
4. The requirements for applying for a remedial action permit at N.J.A.C. 7:26C-7.5;
5. The remedial action permit application schedule, pursuant to N.J.A.C. 7:26C-7.6;
6. The general conditions that apply to all remedial action permits, pursuant to N.J.A.C. 7:26C-7.7;
7. The specific conditions applicable to all soil remedial action permits, pursuant to N.J.A.C. 7:26C-7.8;
8. The specific conditions that apply to all ground water remedial action permits, pursuant to N.J.A.C. 7:26C-7.9;
9. The financial assurance requirements when a remedial action includes an engineering control, pursuant to N.J.A.C. 7:26C-7.10;
10. The procedures for the transfer of a remedial action permit, pursuant to N.J.A.C. 7:26C-7.11;
11. The procedures for the Department to modify specific requirements in a remedial action permit, pursuant to N.J.A.C. 7:26C-7.12; and
12. The procedures for the Department to terminate a remedial action permit, pursuant to N.J.A.C. 7:26C-7.13.

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

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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.

(d) Any person who chooses to redevelop or change the use of real property in a manner inconsistent with a remedial action that includes an engineering or institutional control, or to conduct additional remediation or other activities that would result in the need to file a new deed notice or to replace a declaration of environmental restrictions associated with the real property, shall comply with this subchapter.

7:26C-7.2 Administrative requirements for using a deed notice in a remedial action

(a) The person responsible for conducting the remediation implementing a remedial action that requires a deed notice pursuant to N.J.A.C. 7:26E-5.2(a)4 shall prepare a deed notice that:

1. Is worded exactly as the model document in N.J.A.C. 7:26C Appendix B except that site-specific information shall be inserted where indicated in the model document; and

2. Includes copies of all required maps that:

i. Are GIS compatible and are prepared using the Department's GIS guidance at www.nj.gov/dep/srp/guidance/techgis/;

ii. Are on 8.5 inch by 11 inch paper (using multiple sheets if necessary);

iii. Are scaled at one inch to 200 feet or less;

iv. Are clean, clear, and legible; and

v. Include:

(1) A bar scale;

(2) A north arrow;

(3) A legend;

(4) The applicable Program Interest name and number (Preferred ID);

(5) Tax Block and Lot numbers; and

(6) The date prepared.

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(b) The person responsible for conducting the remediation who will use a deed notice as part of a remedial action for a contaminated site shall comply with the following, as applicable:

1. If there is a deed for the property to which the deed notice applies, the person shall cause the owner of the property to record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the property is located; and shall obtain an official copy of the recorded deed, stamped "Filed" for use in satisfying the requirements of (b)3 below.

2. If there is no deed for the property to which the notice applies, the documents prepared pursuant to (a) above shall serve as a notice in lieu of a deed notice, and the person shall:

i. Where the property is a local, county or State roadway, provide a copy of the documents prepared pursuant to (a) above in both paper and electronic (read only) format, including all maps, to the following, as applicable:

(1) Each road department of each municipality in which the property is located;

(2) Each road department of each county in which the property is located;

(3) The New Jersey Department of Transportation; and

(4) Each utility company with an easement on the roadway; and

ii. For a property that is owned by the U.S. Department of Defense, prepare an amendment to the Base Master Plan or Land Use Control Assurance Plan in the format prescribed in (a) above and submit the amendment to the commanding officer of the affected Base or the commanding officer's designated representative; and

iii. For a property that is owned by a local, county, State or Federal government agency (except as provided in ii above), provide a copy of the documents prepared pursuant to (a) above, in both paper and electronic (read only) format, including all maps, to the head of each affected agency or that agency's designated representative; and

3. Provide a paper copy of the recorded deed notice, stamped "Filed" pursuant to (b)1 above or notice in lieu of deed notice with proof of submission to the officials to which the notice in lieu of deed notice is to be submitted pursuant to (b)2 above, as applicable, and an electronic copy in a read only format, including all maps, to the following individuals and groups:

i. The Department as part of a remedial action permit application pursuant to N.J.A.C. 7:26C-7.4;

ii. The municipal clerk, mayor and governing body of each municipality in which the property is located;

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- iii. The local, county, and regional health department in each municipality and county in which the property is located;
- iv. Each gas, electric, water, sewer, and cable company and all other utilities that service the property or have a license or easement to cross the property;
- v. The Pinelands Commission if the property is located within an area subject to the jurisdiction of the Pinelands Commission; and
- vi. Any other person who requests a copy.

7:26C-7.3 Administrative requirements for establishing and removing a ground water classification exception area in a remedial action

(a) The person responsible for conducting the remediation who is proposing a ground water classification exception area shall complete and submit to the Department for the Department's approval a CEA/Well Restriction Area (WRA) Fact Sheet form available from the Department at www.nj.gov/dep/srp/srra/forms, to which the following shall be attached:

1. The information required pursuant to (b) below;
2. The map and cross sections required pursuant to (c) below;
3. The remedial investigation report submitted pursuant to N.J.A.C. 7:26E-4; and
4. A list of the names and addresses of those persons who were notified pursuant to (d) below.

(b) The person responsible for conducting the remediation shall include the following information with the CEA/Well Restriction Area (WRA) Fact Sheet form as required pursuant to (a)1 above:

1. Data tables that include for each contaminant:
 - i. Name;
 - ii. Maximum concentration in micrograms per liter (ug/L);
 - iii. New Jersey Ground Water Quality Standard pursuant to N.J.A.C. 7:9C;
 - iv. New Jersey Surface Water Quality Standard pursuant to N.J.A.C. 7:9B, when contaminants in the ground water classification exception area may discharge to a surface water body; and
 - v. Vapor Intrusion Ground Water Screening Levels as developed by the Department;

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2. A description of the fate and transport of the ground water contaminant plume, including a summary and description of all data, information, interpretations, and software used to describe the plume's fate and transport. The fate and transport information shall document:

- i. That degradation products were addressed appropriately;
- ii. How horizontal and vertical extent predictions were performed;
- iii. How the ground water classification exception area duration was estimated;
- iv. That the vapor intrusion pathway was included in the fate and transport description, if applicable; and
- v. That a site-specific evaluation was conducted regarding how changes in property use or conditions above the ground water classification exception area could affect the fate and transport of the ground water contamination or of vapors emanating from the plume;

3. An estimate of the horizontal and vertical extent that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to the applicable ground water quality standards; and

4. The estimated length of time that the ground water classification exception area will need to remain in place.

(c) The person responsible for conducting the remediation shall include the following map(s) and cross section(s) as required pursuant to (a)2 above:

1. A map of the ground water classification exception area, in both PDF and GIS-compatible formats. The GIS-compatible format shall be produced in conformance with guidance found at www.nj.gov/dep/srp/guidance/techgis/. The maps shall include the following information:

- i. The known and predicted extent of the most mobile and the most persistent ground water contaminants;
- ii. The prevailing ground water flow direction;
- iii. The proposed ground water classification exception area boundary;
- iv. The locations and identifications of wells and/or sampling points, including but not limited to those that represent:

- (1) The farthest down gradient extent of the ground water contamination;

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(2) The greatest width of the ground water contamination; and

(3) The greatest concentrations of ground water contamination;

v. The location(s) of all area(s) of concern that caused the ground water contamination; and

vi. The location(s) and identification(s) of the downgradient well(s) closest to the area(s) of concern identified in (a)1v above; and

2. A cross section figure along the prevailing ground water flow direction that defines the approximate ground water contaminant plume centerline. The cross section shall include identification of:

i. The location and identification of all wells and borings used to construct the cross section;

ii. The generalized location of the water table;

iii. The generalized hydrostratigraphy;

iv. The known and predicted extent of the contaminant plume;

v. The proposed upper and lower vertical boundaries of the ground water classification exception area; and

vi. The proposed horizontal boundary of the ground water classification exception area along the axis of the cross section.

(d) The person responsible for conducting the remediation shall notify by mailing a copy of the CEA/Well Restriction Area (WRA) Fact Sheet form, via certified mail, return receipt requested, the following persons of the intent to establish the ground water classification exception area:

1. The municipal and county clerks for each municipality and county in which the ground water classification exception area will be located;

2. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;

3. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;

4. The county planning board for each county in which the ground water classification exception area will be located;

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5. The Pinelands Commission if the ground water classification exception area is located within the jurisdiction of that Commission;

6. New Jersey Department of Environmental Protection, Water Supply Administration:

i. Bureau of Safe Drinking Water; and

ii. Bureau of Water Systems and Well Permitting of Water Allocation; and

7. Each owner of any real property that will be within the foot print of the ground water classification exception area.

(e) The Department shall establish a ground water classification exception area based upon the actual and projected area and depth of the contaminant plume in the ground water based on the information submitted pursuant to (b) and (c) above by posting the map of the ground water classification exception area and well restriction area on its website at www.nj.gov/dep/gis/geoweb splash.htm and the CEA/Well Restriction Area (WRA) Fact Sheet at http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=Site+Case+sub-category. The Fact Sheet shall include the effective date establishing the CEA and its anticipated expiration date.

(f) The Department may revise or reestablish a ground water classification exception area at any time to more accurately reflect ground water conditions using any relevant data. The Department shall post an updated CEA/Well Restriction Area (WRA) Fact Sheet if it has revised the ground water classification exception area.

(g) The Department shall remove a ground water classification exception area based upon ground water data, collected pursuant to N.J.A.C. 7:26C-7.9(f), that indicate that the concentrations of contaminants in the ground water are at or below all of the applicable ground water quality standards.

(h) The ground water classification exception area established for historic fill pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.7(b) shall remain effective indefinitely. However, a ground water remedial action permit is not required for the ground water classification exception area.

7:26C-7.4 Permittees of remedial action permits

(a) Each of the following persons shall comply with this section and N.J.A.C. 7:26C-7.5 through 7.13, including any applicable remedial action permit the Department issues pursuant to this section and N.J.A.C. 7:26C-7.5 through 7.13:

1. A person subject to N.J.A.C. 7:26C-2.2; and

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2. A statutory permittee.

(b) If more than one person is 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-7.10.

7:26C-7.5 Application for a remedial action permit

(a) The person responsible for conducting the remediation shall apply for a remedial action permit pursuant to this section, according to the schedules in N.J.A.C. 7:26C-7.6, when the remedial action includes any of the following:

1. A deed notice or a declaration of environmental restrictions;
2. A ground water classification exception area;
3. Any other institutional or engineering control; or
4. Any obligations for monitoring, maintenance and evaluation of a remedial action.

(b) The person responsible for conducting the remediation shall apply for a remedial action permit for a soil remedial action that includes an engineering or institutional control by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the soil remedial action permit that is to be supplied by filling out the form includes:
 - i. The site name and location;
 - ii. The permit type and fees;
 - iii. The person responsible for conducting the remediation;

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- iv. The owner of the site;
 - v. The deed notice;
 - vi. The engineering control(s), if applicable, and financial assurance;
 - vii. The use of the engineering controlled area(s) and the contaminants that require the use of the deed notice/engineering control; and
 - viii. The signature and certification of the person(s) responsible for conducting the remediation, the licensed site remediation professional or the certified subsurface evaluator (if the site is an unregulated heating oil tank.);
- 2. A copy of the notice that complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices or a declaration of environmental restrictions that has been recorded with the county clerk and stamped "Filed;"
 - 3. As-built drawings for each engineering control for contaminated soil;
 - 4. A copy of each of the following:
 - i. The soil remedial action report that either the Department or a licensed site remediation professional has approved for the area(s) addressed in the deed notice and/or by the engineering control(s); and
 - ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012;
 - 5. An engineering control monitoring and maintenance plan, if applicable, and schedule to support the biennial certification required pursuant to N.J.A.C. 7:26C-7.6(b);
 - 6. An estimate of the future costs to operate, maintain, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and
 - 7. A permit application fee for a soil remedial action permit, pursuant to N.J.A.C. 7:26C-4.6.
- (c) The person responsible for conducting the remediation shall apply for a ground water remedial action permit for a monitored natural attenuation remedial action by submitting the following to the Department:
- 1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms. Information concerning the ground water remedial action permit to be supplied by filling out the form includes:

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- i. The site name and location;
 - ii. The permit type and fees;
 - iii. The person responsible for conducting the remediation;
 - iv. The owner of the site;
 - v. The classification exception area at the site;
 - vi. Monitoring, maintenance and evaluation information concerning the type of remediation;
 - vii. The engineering control and financial assurance;
 - viii. The use of the property;
 - ix. The use of the property abutting the site;
 - x. A summary of the receptor evaluation concerning the site;
 - xi. A list of other remediation permits, if applicable; and
 - xii. The signature and certification of the person(s) responsible for conducting the remediation, the licensed site remediation professional or the certified subsurface evaluator (if the site is an unregulated heating oil tank);
2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the permit application;
 3. A copy of each of the following:
 - i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates monitored natural attenuation is an effective remedial action;
 - ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012; and
 4. A ground water monitoring plan and schedule to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, and to assess the effectiveness of the monitored natural attenuation remedy, including a downgradient sentinel well, and any other additional monitoring wells necessary to document natural attenuation processes;

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5. An evaluation plan and schedule to evaluate the effectiveness of the natural attenuation ground water remedial action and to determine whether natural attenuation is protective or further remediation is required for ground water;

6. An estimate of the future costs to monitor the characteristics and movement of contaminated ground water, to calibrate the model used to estimate the eventual extent of contaminated ground water, and to assess the effectiveness of the natural attenuation, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

7. A permit application fee for a ground water remedial action permit, pursuant to N.J.A.C. 7:26C-4.6.

(d) The person responsible for conducting the remediation shall apply for a ground water remedial action permit for an active ground water remedial action by submitting the following to the Department:

1. A permit application form available from the Department at www.nj.gov/dep/srp/srra/forms, as described in (c)1 above;

2. A CEA/Well Restriction Area (WRA) Fact Sheet form for each ground water classification exception area included in the permit application;

3. As-built drawings, and operations manual, if applicable, for any engineering control for contaminated ground water;

4. A copy of each of the following:

i. The remedial action report that either the Department or a licensed site remediation professional has approved, which demonstrates that the active ground water treatment system is operating and functioning as designed; and

ii. Every no further action letter the Department issued for the site or area of concern prior to May 7, 2012;

5. A ground water monitoring plan and schedule designed to evaluate the active ground water remedial action in order to:

i. Optimize the system's performance as the remediation progresses; and

ii. Determine whether:

(1) The plume of contaminated ground water is migrating horizontally or vertically into an aquifer zone below or adjacent to the plume of contaminated ground water; or

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(2) The plume of contaminated ground water is contained and therefore not reaching a sentinel well, and the ground water remedial action is performing as designed;

6. An evaluation plan and schedule to evaluate the effectiveness of the active ground water remedial action and to determine whether the active ground water remedial system is protective or further remediation is required for ground water;

7. An estimate of the future costs to operate, maintain, and inspect all engineering controls, and a copy of the financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

8. A permit application fee for a ground water remedial action permit, pursuant to N.J.A.C. 7:26C-4.6.

7:26C-7.6 Remedial action permit application schedule

(a) The person responsible for conducting the remediation shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-7.4 within two years after the last biennial certification was due to the Department, but in no case later than May 7, 2014, when both of the following apply:

1. The Department has not yet issued a remedial action permit for a remedial action; and
2. The Department has issued a restricted or limited restricted use no further action letter.

(b) For all other situations not included in (a), above, the person responsible for conducting the remediation shall apply for a remedial action permit pursuant to N.J.A.C. 7:26C-7.4 according to the following schedule:

1. For a soil remedial action that includes an engineering or institutional control, within 30 days after the owner complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices or June 7, 2012, whichever is later;

2. For a natural attenuation ground water remedial action, when the person responsible for conducting the remediation is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that the natural attenuation remedial action is effective; and

3. For an active ground water remedial action, when the person responsible for conducting the remediation is required to submit a remedial action report to the Department pursuant to N.J.A.C. 7:26E-5.7 that demonstrates that an active ground water remedial action for the site or area of concern is operational and functioning as designed.

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7:26C-7.7 General conditions applicable to all remedial action permits

(a) The permittee shall:

1. Prepare and submit to the Department biennially a remedial action protectiveness certification on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, as required by this subchapter and the remedial action permit. Information concerning the protectiveness of the remedial action to be supplied by filling out the form includes:

- i. The site name and location;
- ii. The current owner and operator of the site;
- iii. The current lessee of the site, if applicable;
- iv. Any areas of immediate environmental concern at the site;
- v. The results of the analysis of statutory and regulatory changes subsequent to the establishment of the deed notice or the last submittal of the biennial certification and report;
- vi. The use of the property;
- vii. Any land disturbances at the site;
- viii. If any additional remediation was conducted at the site; and
- ix. The signature and certification of the person(s) responsible for conducting the remediation and the licensed site remediation professional;

2. If there is more than one remedial action permit for a site:

- i. Submit a separate biennial certification form for each remedial action permit; and
- ii. Submit all of the biennial remedial action protectiveness certification forms at the same time, when the first biennial certification is due to the Department pursuant to (a)1 above, and biennially thereafter on that same date;

3. Maintain financial assurance, if applicable, pursuant to N.J.A.C. 7:26C-7.10; and

4. Pay all applicable remedial action permit fees pursuant to N.J.A.C. 7:26C-4.6.

b) The permittee of a remedial action permit shall comply with all conditions in the remedial action permit.

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7:26C-7.8 Specific conditions applicable to soil remedial action permits

(a) Each permittee of a soil remedial action permit shall comply with all of the following concerning the soil remedial action:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.7;
2. The conditions in each notice that meets the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices, recorded for the property pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E;
3. The biennial certification requirements pursuant to (b) through (e) below; and
4. All other conditions that the Department includes in the soil remedial action permit.

(b) The permittee shall determine the protectiveness of the soil remedial action in preparation for submitting a soil biennial remedial action protectiveness certification report form by:

1. Determining whether any actual or pending zoning or land-use change is consistent with the use restrictions in the deed notice or declaration of environmental restrictions or whether it could undermine the protectiveness of the remedial action in a manner that could prevent the remedial action from:

i. Meeting the applicable health risk standard pursuant to N.J.S.A. 58:10B-12g(3)(b); and

ii. Continuing to be protective of public health, safety, and of the environment pursuant to N.J.S.A. 58:10B-12g;

2. Periodically inspecting the site to identify whether:

i. Any excavation or other disturbance activities have taken place within the restricted areas;

ii. Any disturbances of the soil within the restricted area have resulted in unacceptable human exposure to the soil contamination; and

iii. All engineering or institutional controls that are part of the remedial action continue to function as designed to limit human exposure to contamination above the unrestricted use standard;

3. Comparing New Jersey laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations, or remediation standards to determine whether:

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i. Any subsequently promulgated or modified laws, regulations, or remediation standards apply to the site; and

ii. Each engineering and institutional control is consistent with the requirements of the subsequently promulgated or modified laws, regulations, and remediation standards; and

4. Keeping records, including a detailed log, completed for the time since the implementation of the remedial action, or the last certification and monitoring report was submitted to the Department, whichever is more recent, of how the permittee has maintained and evaluated the engineering control in compliance with this section.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (b) above in a certification to the Department biennially, according to the schedule in the permit, pursuant to the instructions on the form, as well as to the following persons and entities:

1. The municipal and county clerks for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

2. The local, county and regional health department for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

3. Each owner of the property which is included in the deed notice or declaration of environmental restrictions;

4. The Pinelands Commission if the deed notice or declaration of environmental restrictions is recorded within the jurisdiction of that Commission; and

5. Each permittee.

(d) As part of the evaluation of the protectiveness of the soil remedial action, the permittee shall either:

1. Certify to the Department that:

i. The deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained; and

ii. The soil remedial action continues to be protective of the public health and safety and the environment; or

2. If the permittee cannot provide the certification required in (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and

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the environment by, as necessary, modifying the remedial action, proposing a revision to the deed notice, and applying for a modification of the soil remedial action permit.

(e) The permittee shall submit both a paper and electronic copy of the biennial remedial action protectiveness certification for the soil remedial action to the Department according to the schedule on a form available from the Department at www.nj.gov/dep/srp/srra/forms.

7:26C-7.9 Specific conditions applicable to ground water remedial action permits

(a) The permittee shall comply with all of the following concerning the ground water remedial action:

1. The general conditions applicable to all remedial action permits at N.J.A.C. 7:26C-7.7;
2. The ground water monitoring reporting requirements in any remedial action workplan or remedial action report approved for the site by either the Department or a licensed site remediation professional;
3. The ground water monitoring plan and schedule as required in N.J.A.C. 7:26C-7.5(c)4 or 7.5(d)5;
4. The well restrictions associated with each ground water classification exception area for the site;
5. The remedial action protectiveness evaluation in (b) through (d), below; and
6. All other conditions that the Department includes in the ground water remedial action permit.

(b) The permittee shall determine the protectiveness of the ground water remedial action in preparation for submitting a ground water biennial remedial action protectiveness certification report form by:

1. Determining the effectiveness of the remediation by evaluating the data gathered by the monitoring program required pursuant to N.J.A.C. 7:26C-7.5(c)4 and (d)5;
2. Comparing New Jersey laws, Ground Water Quality Standards, and other regulations applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws, regulations, or remediation standards to determine whether:
 - i. Any subsequently promulgated or modified laws, regulations, or remediation standards apply to the site; and

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ii. Each ground water classification exception area is consistent with the requirements of the subsequently promulgated or modified laws, regulations and remediation standards;

3. Determining whether there are any planned changes within a 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located since the Department established the ground water classification exception area or the last completed protectiveness evaluation;

4. Identifying whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed protectiveness evaluation;

5. Inspecting all ground water monitoring wells associated with the ground water classification exception area and maintaining a log for each monitoring well;

6. Identifying any land use disturbance, such as the installation of a detention basin, that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water. If any such disturbance is identified, sample the ground water and surface water downgradient and proximate to the land use disturbance to determine whether the ground water meets the more stringent of either:

i. The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; or

ii. The Federal Surface Water Quality Criteria, 40 CFR Part 131; and

7. Determining whether:

i. The current fate and transport analysis remains accurate with regard to the risk of vapor intrusion; and

ii. There are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants.

(c) The permittee shall submit the results of the remedial action protectiveness determination performed pursuant to (b) above in a certification to the Department biennially, according to the schedule in the permit, on a form, found on the Department's website, www.nj.gov/dep/srp/srra/forms, as described in (a)5 above, as well as to the following:

1. The municipal and county clerks for each municipality and county in which any property included in the ground water classification exception area is located;

2. The local, county and regional health department for each municipality and county in which any property included in the ground water classification exception area is located;

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3. The county planning board for each county in which the ground water classification exception area will be located;
4. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;
5. Each owner of any real property that will be within the footprint of the ground water classification exception area; and
6. Each permittee listed on the permit.

(d) As part of the evaluation of the protectiveness of the ground water remedial action, the permittee shall either:

1. Certify to the Department that:
 - i. The ground water classification exception area is being properly maintained; and
 - ii. The ground water remedial action continues to be protective of public health and safety and the environment; or

2. If the permittee cannot provide the certification required in (d)1 above, the permittee shall ensure that the remedial action remains protective of the public health and safety and the environment by, as necessary:

- i. Modifying the remedial action, re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, and applying for a modification of the ground water remedial action permit; and
- ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, then conduct public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk.

(e) The permittee shall submit both a paper and electronic copy of the biennial remedial action protectiveness certification for the ground water remedial action to the Department according to the schedule in the permit and on a form available from the Department at www.nj.gov/dep/srp/srra/forms.

(f) Within 180 calendar days after the anticipated expiration date of the ground water classification exception area posted by the Department on its website pursuant to N.J.A.C. 7:26C-7.3(e), the permittee shall collect at least two rounds of ground water samples such that the time between sampling events accounts for seasonal fluctuations in the ground water table

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and the number of ground water samples collected is representative of the entire horizontal and vertical extent of the ground water classification exception area, and:

1. If ground water samples indicate that contaminant concentrations have decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then any person may request that the Department remove the ground water classification exception area pursuant to N.J.A.C. 7:26C-7.3(g) and terminate the ground water remedial action permit pursuant to N.J.A.C. 7:26C-7.13; or

2. If ground water samples indicate that contaminant concentrations have not decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then:

i. Modify the remedial action by re-modeling the fate and transport of the ground water contaminant plume, proposing a revision to the ground water classification exception area, and applying for a modification of the ground water remedial action permit; and

ii. If there are any changes in property use that increase the risk of vapor intrusion from volatile ground water contaminants such that the remedial action is no longer protective of public health and safety, then perform public outreach, consistent with the notification requirements at N.J.A.C. 7:26C-1.7, and any additional remediation, and apply for a modification of the ground water remedial action permit necessary to address the vapor intrusion risk.

7:26C-7.10 Financial assurance for remedial action permits for remedial actions that include engineering controls

(a) Except as provided in (c) below, the permittee implementing a remedial action that includes an engineering control shall:

1. Submit to the Department, biennially on the same schedule that the permittee is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.7(a)1, an estimate of the future costs to operate, maintain, and inspect all engineering controls that are part of each remedial action at the site; and

2. Maintain financial assurance in accordance with N.J.A.C. 7:26C-5.2(e):

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; and

ii. Until the Department terminates the permit pursuant to N.J.A.C. 7:26C-7.13.

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(b) In the event that more than one permittee is required to establish financial assurance pursuant to this section and one or more of the permittees is exempt from this requirement pursuant to (c) below, the non-exempt permittee(s) shall establish the full amount of the financial assurance required.

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

1. A government entity;

2. A person who is not otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, who purchased a contaminated site prior to May 7, 2009, and is remediating, or has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g.d;

3. A person who undertakes remediation at that person's primary or secondary residence;

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

5. The person responsible for performing remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.; and

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

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

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

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

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

7:26C-7.11 Transfer of a remedial action permit

(a) Any permittee who believes that its status as a person responsible for conducting the remediation is limited by law to that period of time that that person is a subsequent owner or operator of the property that is the subject of the remedial action permit (see N.J.A.C. 7:26C-7.4(a)2) may, prior to changing such status, request that the Department transfer the permit to a

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new owner, operator, or tenant. The permittee shall pay the permit transfer fee pursuant to N.J.A.C. 7:26C-4.6 and has the burden of showing that its permittee status is so limited by law.

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

1. Contact information of the current permittee intending to transfer the permit;
2. Contact information of the prospective permittee, if any;
3. Site identification;
4. Confirmation that the current permittees do not have any outstanding remedial action permit fees; and
5. Confirmation that the prospective permittee requesting a transfer of the remedial action permit:
 - i. Is the new owner, operator, or tenant of or at the contaminated site;
 - ii. Has acknowledged in writing that it accepts its responsibility as a permittee; and
 - iii. Is in compliance with the financial assurance requirements of N.J.A.C. 7:26C-7.10, if applicable.

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

1. The permittee requesting transfer of the permit complies with the notice requirements in (b) above;
2. The permittee requesting transfer of the permit actually terminates its status as subsequent owner, operator, or tenant; and
3. A permittee, other than the one requesting that the Department rescind its status as a permittee, establishes financial assurance pursuant to N.J.A.C. 7:26C-7.10.

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7:26C-7.12 Modification of specific requirements in a remedial action permit

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

(b) A permittee shall apply to have the Department modify a remedial action permit within 30 days after the occurrence of any of the following, by submitting a completed form appropriate for the specific remedial action permit, as described in (c) below, as applicable, available from the Department on its website at www.nj.gov/dep/srp/srra/forms:

1. A determination that the remedial action is not adequately protective of the public health and safety and of the environment;
2. A determination that the size, duration, or contaminants of a ground water classification exception area, or the frequency and parameters of the ground water monitoring need to be modified;
3. A person proposes to change the engineering or institutional controls applicable to the site, as described in the notice that complies with the requirements of N.J.A.C. 7:26C-7.2(b) concerning deed notices;
4. The person responsible for conducting the remediation modifies the remedial action;
5. A determination that the municipality has revised the lot and block designations of the property; or
6. The permittee changes its address.

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

1. The form appropriate for the specific remedial action permit, found on the Department's website at www.nj.gov/dep/srp/srra/forms, which includes:
 - i. Identification of the contaminated site; and
 - ii. Identification and contact information of the applicant;
2. A copy of the following as applicable:
 - i. The filed copy of a new deed notice;
 - ii. A revised ground water classification exception area application; or
 - iii. A revised remedial action workplan; and

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3. The applicable permit application fee, pursuant to N.J.A.C. 7:26C-4.4.

7:26C-7.13 Termination of a remedial action permit

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

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

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

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

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

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SUBCHAPTER 8. SITE ACCESS

7:26C-8.1 Scope

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

7:26C-8.2 Site access

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

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

1. A description of the obligation that the person responsible for conducting the remediation has to remediate the site;
2. A site map indicating each area for which access is needed;
3. A description of the reason access is needed and the extent of access needed;
4. A description of the remediation to be conducted, indicating the approximate time of initiation of the remediation and the approximate time necessary to implement the remediation; and
5. A request that the property owner respond in writing to the person requesting access within 30 days after receipt of the written request.

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

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

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

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

SUBCHAPTER 9. ENFORCEMENT

7:26C-9.1 Scope

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

1. An administrative order issued pursuant to any of the Department's statutory authorities;
2. An administrative consent order;
3. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., including any of the following:
 - i. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B; and
 - ii. A remediation agreement issued pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, at N.J.A.C. 7:26B-4;
4. The Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and this chapter;
5. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1, 3, and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; or
7. A remedial action permit issued pursuant to N.J.A.C. 7:26C-7.

(b) This subchapter:

1. Identifies those violations where a grace period will be afforded;

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2. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period;
3. Governs the procedures the Department will follow when it issues an administrative order;
4. Governs the procedures for requesting an adjudicatory hearing on an administrative order and a notice of civil administrative penalty assessment that the Department may issue pursuant to this subchapter; and
5. Identifies responses required to a directive the Department issues pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.

7:26C-9.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, a rule, or a remedial action permit constitutes an additional, separate, and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

(b) Each day during which a violation continues constitutes an additional, separate, and distinct offense.

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

(d) Any party to an Administrative Consent Order or a Remediation Agreement that includes stipulated penalty provisions may request in writing that the Department amend its document to replace the stipulated penalty provisions with language deferring to the penalty provisions in N.J.A.C. 7:26C-9. The Department may, in its discretion, agree to modify the Administrative Consent Order or Remediation Agreement.

7:26C-9.3 Administrative orders

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

1. Specifies the provision or provisions of any statute, administrative order, administrative consent order, remediation agreement, remediation certification, rule, remedial permit or guidance of which that person is in violation;

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2. Cites the action or omission that caused the violation;
3. Requires compliance with such provision or provisions; and
4. Gives notice to that person of a right to an administrative hearing to contest a notice of an administrative order issued pursuant to this subchapter.

7:26C-9.4 Grace period applicability; procedures

(a) Each violation identified in the penalty table at (c) below by an “M” in the Type of Violation column, for which conditions at (c) below are satisfied, is a minor violation and is subject to a grace period, the length of which is indicated in the column with the heading “Grace Period.”

(b) Each violation identified in the penalty table at (c) below by an “NM” in the Type of Violation column is a non-minor violation and is not subject to a grace period.

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

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department;
3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for a violation of the same requirement within the preceding 12-month period; and
4. The person responsible for the violation has not been identified by the Department as responsible for the same or substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible.

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

1. The Department will issue a notice of violation to the person responsible for a minor violation that:
 - i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

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

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation and in addition, shall not consider the minor violation as an offense pursuant to N.J.A.C. 7:26C-9.2(b).

3. The person responsible for a violation shall submit to the Department, at the address indicated in the notice of violation, before the end of the specified grace period, written information, certified in accordance with N.J.A.C. 7:26C-1.5(b)1, and signed by the person responsible for conducting the remediation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, certified in accordance with N.J.A.C. 7:26C-1.5, no later than one week before the end of the specified grace period and shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. If the person is unable to meet this deadline due to extenuating circumstances, the person may still request the extension, which request shall explain the reason for the delay in requesting the extension. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose an additional risk to the public health, safety and the environment; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

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

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

7:26C-9.5 Civil administrative penalty determination

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

1. The Department shall identify the violation listed in the table in (b) below;
2. The Department shall determine whether the violation is identified by an "M" or "NM" in the Type of violation column;
3. For a violation identified by an "M" as minor in the "Type of Violation" column, the Department shall apply the provisions of N.J.A.C. 7:26C-9.4; and
4. For a violation identified by an "NM" as non-minor in the "Type of Violation" column, or for a violation that is identified by an "M" as minor in the "Type of Violation" column, but for which the conditions at N.J.A.C. 7:26C-9.3 are not satisfied, the Department:
 - i. Shall identify the corresponding base penalty dollar amount for the rule violated as listed in (b) below;
 - ii. Shall adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-9.6(a), as applicable; and
 - iii. May multiply the penalty calculated pursuant to subparagraph (a)4 above by the number of days the violation existed.

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

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	<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Discharges of Petroleum and Other Hazardous Substances N.J.A.C. 7:1E					
5	Discharge notification, response and reporting				
	Failure to conduct remediation in accordance with N.J.A.C. 7:26C.	7:1E-5.7(a)2ii	NM		\$20,000
Underground Storage Tanks N.J.A.C. 7:14B					
1	General information				
	Failure to submit proper certifications.	7:14B-1.7	M	30	\$10,000
3	Fees				
	Failure to pay fees or oversight costs.	7:14B-3	NM		100 percent of the amount of the fee that is in arrears
7	Release reporting and investigation				
	Failure to perform an investigation of a suspected release, in accordance with 7:14B-7.2(a) within 7 days of discovery of the suspected release.	7:14B-7.1(a)	NM		\$15,000
	Introduction of product into an underground storage tank undergoing a suspected release investigation.	7:14B-7.1(b)	NM		\$25,000
	Failure to properly conduct a suspected release investigation.	7:14B-7.2(a)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to perform a Site Investigation within the required timeframe, in accordance with N.J.A.C. 7:26E-3.3, when the 7-day investigation was inconclusive in confirming or disproving a suspected release or when available information indicates the tank system may be the source of a discharge.	7:14B-7.2(b)	NM		\$15,000
Failure to immediately report a confirmed discharge as required.	7:14B-7.3(a) and (b)	NM		\$25,000
Failure to remediate discharges from the underground storage tank system in accordance with this chapter and N.J.A.C. 7:26C.	7:14B-7.3(c)	NM		\$20,000
Failure to implement the release response plan when a discharge is identified.	7:14B-7.3(d)	NM		\$20,000
Failure to report a discharge of a reportable quantity of hazardous substances other than petroleum or waste oil to the National response Center per 40 CFR Part 302.	7:14B-7.3(e)	NM		\$15,000
Introduction of a hazardous substance into an underground storage tank system which is known to be leaking or discharging hazardous substances.	7:14B-7.3(f)	NM		\$25,000
Failure to perform an unknown source investigation and submit the required report and form when required within the required timeframe.	7:14B-7.4	NM		\$15,000

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	<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
8	Remediation				
	Failure to take the required actions upon confirming the leak of a hazardous substance into the interstitial space created by the secondary containment system.	7:14B-8.1(a)	NM		\$15,000
	Upon confirming a release, failure to take all required actions, including remediation of the discharge pursuant to N.J.A.C. 7:26C.	7:14B-8.1(b)	NM		\$20,000
	For tanks subject to regulation at 40 C.F.R. Part 280, failure to report to the Department the source and cause of the confirmed release.	7:14B-8.3(a)	NM		\$15,000
9	Out-of-service underground storage tank systems and closure of underground storage tank systems				
	Failure to comply with requirements related to out of service tanks.	7:14B-9.1	NM		\$15,000
	Failure to comply with required procedures when closing an underground storage tank system.	7:14B-9.2	NM		\$15,000
	Failure to comply with required procedures when the substance being stored is being changed to a substance not regulated by this chapter.	7:14B-9.4	NM		\$15,000
	Failure to comply with reporting and record keeping requirements related to tank system closure.	7:14B-9.5	NM		\$15,000
10	Permitting requirements for underground storage tank systems				
	Failure to obtain a permit when required.	7:14B-10.1(a)	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to maintain the required site diagrams and specification at the underground storage tank facility.	7:14B-10.1(f)	M	30	\$10,000
Failure to notify the Department at least 14 days prior to the commencement of any work activities related to installation, substantial modification, or closure of an underground storage tank system.	7:14B-10.1A	M	30	\$1,750
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		\$15,000
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	\$15,000
Failure to comply with permit application requirements.	7:14B-10.3	M	30	\$10,000
Failure to make the Department-issued permit available for inspection, prominently display the permit during the course of the permitted activity, maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection.	7:14B-10.5	M	30	\$10,000
Failure to comply with requirements related to emergency permits.	7:14B-10.6	NM		\$15,000

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Failure to discontinue ongoing permitted activities upon receipt of a notice from Department denying or revoking a permit.	7:14B-10.8(e)	NM		\$25,000
11 Municipal ordinances				
Failure to obtain permission from the Department to enact a law or ordinance regulating underground storage tank systems subject to N.J.A.C. 7:14B.	7:14B-11.1(b)	NM		\$10,000
Failure to submit to the Department a complete application when seeking authority to enact an ordinance or law that provides rules and regulations that are more environmentally protective than N.J.A.C. 7:14B.	7:14B-11.2(a)	M	30	\$10,000
13 Certification of individuals and business firms				
Performance of entire system installation or release detection monitoring system installation, closure, tank testing, subsurface evaluation, or corrosion protection system analysis without proper certification and/or supervision..	7:14B-13.1(a)1	NM		\$20,000
Conducting remediation on an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter without holding a LSRP license.	7:14B-13.1(a)2	NM		\$20,000

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Failure to make the Department-issued certification card available to the Department or its authorized agent upon request or to conspicuously display the Department-issued certificate at the office of the business firm as required.	7:14B-13.1(b) and (c)	M	30	\$10,000
Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.A.C. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual, and that remediation is being conducted by a LSRP.	7:14B-13.1(d)	NM		\$20,000
Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm, or to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)	NM		\$20,000
Failure to retain a licensed site remediation professional to conduct remediation pursuant to N.J.A.C. 7:26C.	7:14B-13.1(g)	NM		\$20,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-13.1(i)	NM		\$10,000

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Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-13.1(k)	NM		\$10,000
Failure of an individual certified pursuant to N.J.A.C. 7:14B-13 to sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to N.J.A.C. 7:14B and submitted to the Department.	7:14B-13.1(l)	M	30	\$10,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card, or the license number of the Licensed Site Remediation Professional as applicable, when requested by the local construction official.	7:14B-13.1(m)	M	30	\$10,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to comply with the professional business practices described in N.J.A.C 7:14B-13.9	7:14B-13.1(n)	NM		\$15,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		\$20,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation when requested.	7:14B-13.7(f)	M	30	\$10,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to maintain evidence of financial responsibility assurance for the mitigation or remediation of a hazardous substance discharge resulting from the performance of services.	7:14B-13.8(a)	NM		\$15,000
Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-13.8(b)	NM	30	\$10,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 shall perform all services in accordance with all Federal, State and local rules and regulations and comply with the listed professional business practices.	7:14B-13.9(a) through (c)	NM		\$15,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to submit to the Department documentation of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance, and to facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-13.9(d)1 and 2	M	30	\$10,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-13.9(e)	NM		\$20,000
16 Certification of individuals and business firms for unregulated underground storage tank systems				
Performing services on unregulated heating oil tanks without proper certification and/or supervision.	7:14B-16.2(a)	NM		\$20,000
Failure to make the Department-issued certification card available to the Department or its authorized agent upon request or to conspicuously display the Department-issued certificate at the office of the business firm as required.	7:14B-16.2(b) and (c)	M	30	\$10,000
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tanks are performed by an individual with proper certification and/or supervision.	7:14B-16.2(d)	NM		\$20,000
Performing services on unregulated heating oil tanks without proper certification and/or supervision.	7:14B-16.2(e)	NM		\$20,000

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Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.	7:14B-16.2(f)	NM		\$15,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to facilitate any audit of its pricing and business practices, including the individual's or business firm's cost for providing services being performed with financial assistance from the Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund.	7:14B-16.2(g)	NM		\$20,000
Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.	7:14B-16.2(i)	NM		\$10,000
Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.	7:14B-16.2(j)	NM		\$10,000

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Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.	7:14B-16.2(k)	NM		\$10,000
Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.	7:14B-16.2(l)	M	30	\$10,000
Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.	7:14B-16.8(d)	NM		\$15,000
Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation.	7:14B-16.8(f)	M	30	\$10,000
Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of services.	7:14B-16.9(a)	NM		\$15,000

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Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.	7:14B-16.9(b)	NM		\$15,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations and comply with the listed professional business practices.	7:14B-16.10(a) through (c)	NM		\$15,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to submit to the Department documentation of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance, and to facilitate an audit by the Department of the individual and business firm's pricing and business practices.	7:14B-16.10(d)	NM		\$20,000
Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.	7:14B-16.10(e)	NM		\$20,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>	
Industrial Site Recovery Act Rules N.J.A.C. 7:26B					
1	General information				
	Failure to submit proper certifications.	7:26B-1.6	M	30	\$10,000
	Failure of an owner or operator to comply with ISRA and this chapter.	7:26B-1.10(a)	NM		\$15,000
	Transfer of an industrial establishment prior to: a licensed site remediation professional's issuance of a response action outcome or certification of a remedial action workplan; submittal of a remediation certification with all required information; or Department approval of an application for a waiver or exemption.	7:26B-1.10(b)	NM		\$15,000
3	Notification and remediation requirements				
	Failure to submit a General Information Notice with the required information within five calendar days after the occurrence of a transaction event, on the proper form, and to amend it as required.	7:26B-3.2	NM		\$15,000
	Failure to remediate the industrial establishment as required.	7:26B-3.3(a)	NM		\$20,000
	Failure to establish and maintain a remediation funding source as required.	7:26B-3.4	NM		\$15,000

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8	Program fees and oversight costs			
	Failure to pay fees and oversight costs.	7:26B-8	NM	100 percent of the amount of the fee that is in arrears
Administrative Requirements for the Remediation of Contaminated Sites N.J.A.C. 7:26C				
1	General information			
	Failure to conduct remediation in accordance with all applicable statutes, rules, standards, or to provide a written rationale and justification for deviation from technical guidance.	7:26C-1.2(a)	NM	\$20,000
	Failure to comply with this chapter	7:26C-1.4(a)	NM	\$15,000
	Failure to conduct additional remediation using the services of a LSRP when notified of termination of exempt status.	7:26C-1.4(e)	NM	\$15,000
	Failure to properly certify all submissions.	7:26C-1.5	M	30 \$10,000
	Failure to submit forms, applications and documents as required.	7:26C-1.6	M	30 \$10,000
	Failure to immediately notify the Department of a discharge or IEC.	7:26C-1.7(a) and (b)	NM	\$25,000
	Failure to comply with the notification requirements listed	7:26C-1.7(c) through (d)	NM	\$25,000

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Failure to assure required notifications are in English, and other predominant language if warranted, include the proper contact information and are submitted as required.	7:26C-1.7(e) through (g)	M	30	\$10,000
Failure to provide requested information to the Department, and to local property owners and tenants who reside within 200 feet of the contaminated site, and to the government entities, as required.	7:26C-1.7(h)	NM		\$10,000
Failure to submit a copy of the remedial action workplan and any updates or status reports, and a copy of the site health and safety plan to the clerk of the municipality, county health department, and local health agency in which the site is located, when requested.	7:26C-1.7(i)	M	30	\$10,000
Failure to obtain the Department's prior written approval, comply with the N.J.A.C. 7:26E-5.2, and provide required notification, prior to bringing contaminated material on to the site in an amount that is in excess of the amount that is needed to complete the remediation requirements or to raise the topographic level in a floodplain.	7:26C-1.7(k)	NM		\$15,000
Failure to prepare, distribute and publish a fact sheet when contamination migrates off site in any environmental medium, as required.	7:26C-1.7(l)	NM		\$10,000

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Failure to include in the applicable remedial phase report the rationale for implementation of an alternative public notification plan.	7:26C-1.7(n)	M	30	\$10,000
Failure to conduct additional public outreach when required.	7:26C-1.7(o)	M	30	\$10,000
Failure to comply with requirements for a site located within the jurisdiction of the Pinelands Commission.	7:26C-1.7(q)	M	30	\$10,000
Failure to allow access as required	7:26C-1.8	NM		\$20,000
2 Obligations of the persons responsible for conducting the remediation of a contaminated site				
Failure to conduct remediation when required.	7:26C-2.2(a)	NM		\$15,000
Failure to hire a licensed site remediation professional to conduct remediation and submit the required form.	7:26C-2.3(a)1 and 2	NM		\$15,000
Failure to conduct remediation in accordance with this chapter.	7:26C-2.3(a)3	NM		\$15,000
Failure to pay all applicable fees and oversight costs.	7:26C-2.3(a)4	NM		100 percent of the amount of the fee that is in arrears
Failure to establish and maintain a remediation funding source when required.	7:26C-2.3(a)5	NM		\$15,000
Failure to provide the Department access to the contaminated site.	7:26C-2.3(a)6	NM		\$20,000

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Failure to provide the Department copies of all applicable documents concerning the remediation.	7:26C-2.3(a)7	M	30	\$10,000
Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E.	7:26C-2.3(a)8	NM		\$20,000
Failure to obtain and comply with all permits necessary for the remediation.	7:26C-2.3(a)9	NM		\$15,000
3 Remediation timeframes and extension requests				
Failure to comply with each applicable regulatory timeframe.	7:26C-3.2(a)	NM		\$20,000
Failure to comply with each applicable mandatory timeframe.	7:26C-3.3(a)	NM		\$20,000
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 and submit the required form.	7:26C-4.3(a)	NM		100 percent of the amount of the fee that is in arrears
Failure to accurately identify contaminated areas of concern/media for the purpose of determining the amount of the annual remediation fee.	7:26C-4.3(b) and (c)	NM		\$15,000

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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-4.3(e)	NM		\$15,000
Failure to pay the annual remediation fee and the Department oversight costs, as required, when the Department has determined that it will undertake direct oversight of a site portion or condition, or the whole site.	7:26C-4.3(g) and (h)	NM		100 percent of the amount of the fee and oversight costs that are in arrears
Failure to pay document review fees as required.	7:26C-4.4(a) through (d)	NM		100 percent of the amount of the fee that is in arrears
Failure to submit the required remedial action permit fee.	7:26C-4.6	NM		100 percent of the amount of the fee that is in arrears

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	Failure to pay oversight costs as required.	7:26C-4.7(a)	NM		100 percent of the amount of the oversight costs that are in arrears
5	<u>Remediation funding source and financial assurance</u>				
	Failure to establish and maintain a remediation funding source and/or financial assurance in the required amount for the required time period.	7:26C-5.2(e)	NM		\$15,000
	Failure to establish a remediation trust fund for a site being remediated under the Department's direct oversight as required.	7:26C-5.2(k)	NM		\$15,000
	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	\$10,000
	Failure to pay the annual RFS surcharge.	7:26C-5.9(b)	NM		\$10,000
	Failure to submit the required remediation cost review when a remediation funding source or financial assurance is required.	7:26C-5.10	M	30	\$10,000
	Failure to increase the remediation funding source and/or financial assurance within 30 days of a determination that remediation costs are greater than the amount established.	7:26C-5.11(c)	NM		\$15,000

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Failure to submit info regarding disbursements.	7:26C-5.12(c)	M	30	\$10,000
7	<u>Deed notices, ground water classification exception areas and remedial action permits</u>			
Failure to comply with requirements related to the redevelopment or change in use of real property.	7:26C-7.1(d)	NM		\$15,000
Failure to properly prepare and follow procedures for filing a deed notice.	7:26C-7.2	NM		\$15,000
Failure to properly prepare, submit and file information related to a classification exception area.	7:26C-7.3	NM		\$15,000
Failure to comply with the requirements of a remedial action permit including the submittal of a biennial certification, maintenance of financial assurance, if applicable, and payment of applicable fees.	7:26C-7.4(a)	NM		\$15,000
Failure to apply for a remedial action permit when required.	7:26C-7.5(a)	NM		\$15,000
Failure to submit the required information when applying for a soil remedial action permit for a remedial action that includes an engineering or institutional control.	7:26C-7.5(b)	M	30	\$10,000
Failure to submit the required information when applying for a ground water remedial action permit for a monitored natural attenuation remedial action.	7:26C-7.5(c)	M	30	\$10,000

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Failure to submit the required information when applying for a ground water remedial action permit for an active ground water remedial action.	7:26C-7.5(d)	M	30	\$10,000
Failure to apply for a remedial action permit in accordance with the required schedule.	7:26C-7.6	NM		\$15,000
Failure to comply with the requirements of a remedial action permit, including the requirement to submit a remedial action protectiveness certification.	7:26C-7.7	NM		\$15,000
Failure to comply with specific conditions applicable to a soil remedial action permit.	7:26C-7.8	NM		\$15,000
Failure to comply with specific conditions applicable to a ground water remedial action permit.	7:26C-7.9	NM		\$15,000
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 and to maintain financial assurance in an amount equal to the estimate.	7:26C-7.10	NM		\$15,000
Failure provide the required information at least 60 calendar days prior to the sale or transfer of the property, transfer of the operation of the property, or termination of a lease when requesting that the Department rescind permittee status.	7:26C-7.11	NM		\$10,000

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	Failure to apply for modification of a remedial action permit when required, including submittal of required information.	7:26C-7.12	NM		\$15,000
	Failure to provide the information required for remedial action permit termination.	7:26C-7.13	M	30	\$10,000
8	Site access				
	Failure to send written requests for access as required to each property owner.	7:26C-8.2(b) and (c)	M	30	\$10,000
	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	\$10,000
13	Remediation of unregulated heating oil tanks				
	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		\$15,000
	Failure to submit the required information.	7:26C-13.3	M	30	\$15,000
	Failure to obtain the required approvals when conducting remediation of an unregulated heating oil system	7:26C-13.5(b)	NM		\$15,000
14	Direct oversight				
	Failure to comply with the requirements for direct oversight.	7:26C-14.2(b)	NM		\$25,000

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16	Linear construction Projects				
	Failure to comply with linear construction requirements	7:26C-16.2(a)	NM		\$15,000
	Failure to pay fees related to linear construction project	7:26C-16.3(a)	NM		\$15,000
Technical Requirements for Site Remediation N.J.A.C. 7:26E					
1	General Information				
	Failure to conduct any additional remediation the Department determines is necessary to protect public health and safety and the environment.	7:26E-1.1(c)	NM		\$20,000
	Failure to comply with this chapter when conducting remediation pursuant to any of the applicable statutes.	7:26E-1.3(a)	NM		\$15,000
	Failure to conduct remediation pursuant to this chapter and N.J.A.C. 7:26C-1.2.	7:26E-1.5(a)	NM		\$20,000
	Failure to remediate to the applicable standards.	7:26E-1.5(c)	NM		\$20,000
	Failure to document all work conducted at a site and include required information in reports.	7:26E-1.5(d)	NM		\$15,000
	Failure to provide all complete, accurate and relevant information regarding the remediation.	7:26E-1.5(e)	NM		\$15,000
	Failure to provide site specific information and documents related to the remediation when requested by the Department	7:26E-1.5(f)	NM		\$15,000
	Failure to properly install or decommission borings and wells.	7:26E-1.5(g)	NM		\$15,000

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Failure to follow procedures and criteria for the return excavated soil from drill cuttings or test pit excavations to the original location.	7:26E-1.5(h)	NM		\$15,000
Failure to comply with listed requirements and 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-1.5(i) and 5.1(d)5	NM		\$15,000
Failure to submit a completed case inventory document worksheet at the front of each remedial phase workplan and report.	7:26E-1.6(a)3	M	30	\$15,000
Failure to submit a quality assurance project plan, prepared pursuant to N.J.A.C. 7:26E-2.2, with each remedial phase workplan and report.	7:26E-1.6(a)4	NM		\$15,000
Failure to submit all sampling data electronically in a summary table using the format outlined in the Site Remediation Program's "Electronic Data Interchange Manual."	7:26E-1.6(a)5	M	30	\$15,000
Failure to submit a GIS compatible site plan that includes the location of all areas of concern as polygons.	7:26E-1.6(a)6	M	30	\$15,000
Failure to include required general reporting information in each remedial phase workplan and report.	7:26E-1.6(b)	NM		\$15,000

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Failure to submit technical information required to justify varying from a technical requirement prior to varying.	7:26E-1.7(a)	NM		\$15,000
Failure to implement an interim response measure to remove, contain or stabilize a source of contamination to prevent contaminant migration and include a description of each interim remedial measure implemented and each interim remedial measure that is planned in each remedial phase report.	7:26E-1.10(a)	NM		\$25,000
Failure to notify the Department of the discovery of light non-aqueous phase liquid (LNAPL) and initiate free product recovery as required.	7:26E-1.10(b)	NM		\$25,000
Failure to complete the delineation of LNAPL, initiate implementation of LNAPL interim remedial measure, initiate operational monitoring and submit report within the required timeframe.	7:26E-1.10(c)	NM		\$25,000
Failure to immediately notify the Department upon the discovery of an IEC.	7:26E-1.11(a)1	NM		\$25,000
Failure to mitigate the IEC impacts within the required timeframe by providing an interim response action and a copy and explanation of the analytical results to the property owner, occupant (if applicable), and designated local health department.	7:26E-1.11(a)2	NM		\$25,000

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Failure to submit the required information within the required timeframe and provide routine updates to the Department on a schedule set by the Department's IEC case manager.	7:26E-1.11(a)3 through 5	NM		\$25,000
Failure to implement an IEC engineered system response action within the required timeframe.	7:26E-1.11(a)6	NM		\$25,000
Failure to identify and sample all potable wells, pursuant to N.J.A.C. 7:26E-1.14, within the appropriate distance of the impacted well.	7:26E-1.11(a)6i(2)	NM		\$25,000
Failure to identify all buildings at risk and conduct additional vapor intrusion investigations pursuant to N.J.A.C. 7:26E-1.15 at all buildings within 100 feet of the impacted building,	7:26E-1.11(a)6ii(2)	NM		\$25,000
Failure to identify and sample all areas of concern and evaluate for direct contact threats.	7:26E-1.11(a)6iii(2)	NM		\$25,000
Failure to submit an IEC engineered system response action report with the required information, form, and spreadsheet within the required timeframe.	7:26E-1.11(a)7	NM		\$25,000
Failure to identify and initiate control of all IEC contaminant sources and submit an IEC contaminant source control report including the required information and form within the required timeframe.	7:26E-1.11(a)8	NM		\$25,000

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Failure to provide annual monitoring and maintenance reports to the Department that detail the monitoring of contaminated properties and receptors and monitoring conducted for wells and buildings that are located near the wells and buildings that are impacted by the IEC	7:26E-1.11(a)9	NM		\$25,000
Failure to conduct and submit an initial receptor evaluation, pursuant to N.J.A.C. 7:26E-1.12(a) within the applicable required timeframe.	7:26E-1.12(a) and (c)	NM		\$25,000
Failure to update a receptor evaluation and submit it as required.	7:26E-1.12(d) and (e)	NM		\$25,000
Failure to send a copy of each receptor evaluation to local officials as required.	7:26E-1.12(f)	M		\$10,000
Failure to conduct a receptor evaluation of land use.	7:26E-1.13	NM		\$25,000
Failure to conduct a well search within the required timeframe.	7:26E-1.14(a)1	NM		\$25,000
Failure to notify the Department and conduct potable well sampling as required within the required timeframe.	7:26E-1.14(a)2	NM		\$25,000
Failure to update the well search every two years after the first trigger for a well search to identify if new wells have been installed.	7:26E-1.14(a)3	NM		\$25,000

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Failure to comply with requirements when contaminants are discovered in any potable or irrigation well that may be utilized for potable purposes.	7:26E-1.14(b)	NM		\$25,000
Failure to make the proper notifications or submissions when no contaminant concentration is detected in any potable well sample in excess of any Class II ground water remediation standard within the required timeframes.	7:26E-1.14(c)	NM		\$25,000
Failure to conduct a vapor intrusion receptor evaluation when required.	7:26E-1.15(a)	NM		\$25,000
Failure to conduct a proper vapor intrusion investigation.	7:26E-1.15(b) and (c)	NM		\$25,000
Failure to make the proper notifications or submissions when a vapor intrusion investigation has been conducted pursuant to N.J.A.C. 7:26E-1.15(c), within the required timeframes.	7:26E-1.15(d)	NM		\$25,000
Failure to submit required notifications and information concerning exceedance of the vapor intrusion indoor air screening levels within the required timeframe.	7:26E-1.15(e)1	NM		\$25,000
Failure to submit a mitigation plan within the required timeframe.	7:26E-1.15(e)2	NM		\$25,000
Failure to implement a mitigation plan within the required timeframe.	7:26E-1.15(e)3	NM		\$25,000

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Failure to submit a vapor intrusion mitigation action report within the required timeframe.	7:26E-1.15(e)4	NM		\$25,000
Failure to provide routine updates to the Department's IEC case manager.	7:26E-1.15(e)5	NM		\$25,000
Failure to identify all buildings at risk and conduct additional vapor intrusion investigations at all buildings within 100 feet of the impacted building,	7:26E-1.15(e)6	NM		\$25,000
Failure to make submissions or provide notifications to the New Jersey Department of Health and Senior Services, Consumer and Environmental Health Services, Indoor Environments Program.	7:26E-1.15(g)2, (h) and (i)3	NM		\$25,000
Failure to report potentially explosive conditions.	7:26E-1.15(i)	NM		\$25,000
Failure to conduct an ecological receptor evaluation.	7:26E-1.16	NM		\$25,000
2 <u>Quality assurance for sampling and laboratory analysis</u>				
Failure to use a laboratory that has the appropriate certification and capabilities.	7:26E-2.1(a)1 and 2	NM		\$15,000
Failure to use appropriate methods for sampling, sample management, sample matrix cleanup, analysis and reporting as required.	7:26E-2.1(a)3 through 15	NM		\$15,000
Inappropriate use of field screening methods.	7:26E-2.1(b)	NM		\$15,000

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Failure to analyze samples for contaminants which may be present or to analyze for the Target Compound List (TCL) plus tentatively identified compounds (TICs)/Target Analyte List (TAL) (TCL + TICs/TAL), hexavalent chromium, extractable petroleum hydrocarbons (EPH), and pH when contaminants are unknown or not well documented.	7:26E-2.1(c)1	NM		\$15,000
Failure to analyze all initial potable water and vapor intrusion samples for the method specific compounds plus TICs and report all results.	7:26E-2.1(c)2 and (c)3	NM		\$15,000
Failure to analyze samples for petroleum hydrocarbons contamination as required.	7:26E-2.1(d)	NM		\$15,000
Failure to further address tentatively identified compounds, as required.	7:26E-2.1(e)	NM		\$15,000
Failure to prepare and follow a quality assurance project plan, as required.	7:26E-2.2(a)	NM		\$15,000
3 Preliminary assessment and site investigation				
Failure to conduct a preliminary assessment when required.	7:26E-3.1(b)	NM		\$20,000
Failure to properly conduct a preliminary assessment.	7:26E-3.1(c)	NM		\$15,000
Failure to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.15 when potentially contaminated areas of concern are identified.	7:26E-3.1(d)	NM		\$20,000

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Failure to submit a preliminary assessment report when no areas of concern are identified, as required.	7:26E-3.1(e)	NM		\$15,000
Failure to submit a preliminary assessment report that conforms to the requirements of N.J.A.C. 7:26E-3.2.	7:26E-3.2	NM		\$15,000
Failure to conduct a site investigation when required.	7:26E-3.3(b)	NM		\$20,000
Failure to conduct a site investigation that satisfies all the listed requirements in N.J.A.C. 7:26E-3.	7:26E-3.3(c)	NM		\$15,000
Failure to conduct a comparison of all site data with the Department's applicable remediation standards or any criterion to determine if contaminated areas of concern are present, identify as contaminated areas of concern those areas where site data demonstrate that contaminant concentrations exceed any remediation standard or any criterion; and determine if any immediate environmental concerns exist.	7:26E-3.3(d)	NM		\$15,000
Failure to properly conduct soil sampling in each potentially contaminated area of concern, including failure to properly select sample locations, and to properly collect and analyze samples.	7:26E-3.4	NM		\$15,000

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Failure to properly conduct ground water sampling in all potentially contaminated area of concern, including failure to properly select sample locations, and to properly collect and analyze samples.	7:26E-3.5	NM		\$15,000
Failure to determine if there is any evidence that contamination from the site has reached a surface water body.	7:26E-3.6(a)	NM		\$15,000
Failure to conduct a site investigation of surface water and sediment including failure to properly select sample locations, and to properly collect and analyze samples, when required.	7:26E-3.6(b)	NM		\$15,000
Failure to conduct a site investigation of building interiors in order to determine whether contaminants inside the building have the potential to migrate to the environment outside the building or contaminants outside the building have the potential to migrate into the building, and to conduct additional remedial investigation necessary for the impacted media.	7:26E-3.7	NM		\$15,000
Failure to support the conclusion that any hazardous substance, hazardous waste, or pollutant identified in soil or ground water is naturally occurring pursuant to N.J.A.C. 7:26E-3.8.	7:26E-3.8	NM		\$15,000

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Failure to support the conclusion that contamination found in soil, ground water, surface water or sediment is due to migration to the site from an offsite source.	7:26E-3.9 through 3.10	NM		\$15,000
Failure to conduct a site investigation of any landfill suspected to be present at the site to determine whether a landfill is present.	7:26E-3.11	NM		\$15,000
Failure to conduct a site investigation when a historic fill is suspected to be present.	7:26E-3.12	NM		\$15,000
Failure to submit a site investigation report that conforms to the requirements of N.J.A.C. 7:26E-3.14.	7:26E-3.13	NM		\$15,000
Failure to submit a preliminary assessment report and site investigation report for a site being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. within the required timeframe.	7:26E-3.14(a)1 and (b)1	NM		\$15,000
Failure to submit a site investigation report for a site being remediated pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. within the required timeframe.	7:26E-3.14(a)2 and (b)2	NM		\$15,000
4 Remedial investigations	7:26E-4.1(b)	NM		\$20,000
Failure to conduct a remedial investigation when required	7:26E-4.1(c)	NM		\$15,000
Failure to conduct a remedial investigation that satisfies all the listed requirements in N.J.A.C. 7:26E-4.				

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to submit a remedial investigation workplan when required.	7:26E-4.1(d)	NM		\$15,000
Failure to conduct a remedial investigation of contaminated soil that satisfies all the listed requirements, including failure to properly select sample locations, and to properly collect and analyze samples.	7:26E-4.2(a) and (b)	NM		\$15,000
Failure to conduct a remedial investigation of contaminated ground water that satisfies all the listed requirements, including failure to properly select sample locations, and to properly collect and analyze samples.	7:26E-4.3(a) and (b)	NM		\$15,000
Failure to conduct a remedial investigation of surface water that satisfies all the listed requirements, including failure to properly select sample locations, and to properly collect and analyze samples.	7:26E-4.4	NM		\$15,000
Failure to conduct a remedial investigation of building interiors that satisfies all the listed requirements.	7:26E-4.5	NM		\$15,000
Failure to conduct a remedial investigation of a landfill that satisfies all the listed requirements.	7:26E-4.6	NM		\$15,000
Failure to conduct a remedial investigation of historic fill material that satisfies all the listed requirements.	7:26E-4.7	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to conduct an investigation of ecological receptors that satisfies all the listed requirements.	7:26E-4.8	NM		\$15,000
Implementing a remedial action for an ecological receptor without the Department's prior written approval of the final remediation goal when the final remediation goal is something other than the ecological screening criterion.	7:26E-4.8(c)3	NM		\$15,000
Failure to submit a remedial investigation report that conforms to the requirements of N.J.A.C. 7:26E-4.9.	7:26E-4.9	NM		\$15,000
Failure to complete the remedial investigation and submit a remedial investigation report within the required timeframe.	7:26E-4.10	NM		\$15,000
5 Remedial action				
Failure to conduct a remedial action when required.	7:26E-5.1(b)	NM		\$20,000
Failure to conduct a remedial action that satisfies all the listed requirements in N.J.A.C. 7:26E-5	7:26E-5.1(c)	NM		\$15,000
Failure to implement a remedial action that is protective of public health, safety and the environment.	7:26E-5.1(d)1	NM		\$15,000
Failure to utilize engineering and institutional controls in conjunction with a remedial action permit whenever a restricted use or limited restricted use remedy is implemented.	7:26E-5.1(d)2	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Implementing a remedy that causes an uncontrolled or unpermitted discharge or transfer of contaminants.	7:26E-5.1(d)3	NM		\$25,000
Failure to implement a remediation that complies with all applicable remediation standards in effect at the time the remedial action workplan was approved, and failure to conduct additional remedial action when a remediation standard decreased by an order of magnitude.	7:26E-5.1(d)4	NM		\$15,000
Implementing a remedial action that causes a natural resource injury.	7:26E-5.1(d)6	NM		\$25,000
Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.	7:26E-5.1(e)	NM		\$25,000
Failure to submit a remedial action workplan prepared pursuant to N.J.A.C. 7:26E-5.5 or a corrective measures study workplan for approval when required.	7:26E-5.1(f)	NM		\$15,000
Failure to select a remedial action that prevents further exposure of residual contamination to any receptor.	7:26E-5.2(a)1	NM		\$15,000
Failure to develop and implement a monitoring program to effectively monitor the performance of a remedial action.	7:26E-5.2(a)2	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to demonstrate compliance with the appropriate remediation standard or ecological risk based remediation goal.	7:26E-5.2(a)3	NM		\$15,000
Failure to file a deed notice when implementing a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards.	7:26E-5.2(a)4	NM		\$15,000
Failure to obtain a remedial action permit for a restricted use or limited restricted use remedial action.	7:26E-5.2(a)5	NM		\$15,000
Failure to comply with all the listed requirements concerning the use of clean or alternative fill as part of a remedial action.	7:26E-5.2(b) through (g)	NM		\$15,000
Failure to utilize an unrestricted use remedy, a presumptive remedy, or alternative remedy for any remediation initiated after May 7, 2010 when new construction of, or a change in use to, a residence, a school or child care center will occur at an area of concern that is undergoing remediation.	7:26E-5.3(a)	NM		\$25,000
Failure to implement a presumptive remedy that is unrestricted use for a discrete area discharge or widespread PCB contamination as required.	7:26E-5.3(b)	NM		\$25,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to submit a remedial action workplan that includes the required information pursuant to 7:26E-5.3(c) and obtain the Department's approval prior to implementation when an unrestricted use remedy or presumptive remedy is not utilized.	7:26E-5.3(c)	NM		\$25,000
Failure to submit a remedial action workplan and obtain the Department's approval prior to implementation where required.	7:26E-5.3(d)	NM		\$25,000
Constructing single family residences, schools or child care centers on a landfill where engineering controls are required for landfill gas or leachate.	7:26E-5.3(e)	NM		\$25,000
Failure to address vapor intrusion concerns for all new construction of, or conversion to, Residential Type I or II buildings, schools, or child care centers.	7:26E-5.3(f) and (g)	NM		\$25,000
Failure to implement a remedial action for soil contamination associated with historic fill material and ground water contaminated by historic fill material.	7:26E-5.4	NM		\$15,000
Failure to prepare and submit a remedial action workplan that complies with all listed requirements.	7:26E-5.5	NM		\$15,000
Failure to apply for and obtain all required permits and comply with public notice requirements, prior to initiating the activity requiring the permit.	7:26E-5.6	NM		\$15,000

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period Days</u>	<u>Base Penalty</u>
Failure to submit a remedial action report that conforms to the requirements of N.J.A.C. 7:26E-5.8.	7:26E-5.7	NM		\$15,000
Failure to conduct a remedial action within the required regulatory timeframe.	7:26E-5.8	NM		\$15,000

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

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

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(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;

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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-9.5(b), the Department shall, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessment. In each notice of civil administrative penalty assessment the Department shall:

1. Identify the 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-9.10.

(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;

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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;

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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
401 East State Street, 4th Floor
Mail Code 401-042
P.O. Box 402
Trenton, NJ 08625-0402
Attention: Hearing Request; and

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2. New Jersey Department of Environmental Protection
Site Remediation Program
Bureau of Enforcement and Investigation
Mail Code 401-051
P.O. Box 420
Trenton, NJ 08625-0420
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 discharge of a hazardous substance, including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs, or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(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.

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(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

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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;

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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 shall request that the Department make a finding of substantial public interest for each community group interested in applying for a technical assistance grant in connection with 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 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, including a statement that the community group meets the eligibility requirements pursuant to N.J.A.C. 7:26C-10.3;

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.

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(d) Upon submittal of the Letter of Intent to the Department, the community group shall 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 have 60 days after the publication of the notice in the newspaper to submit a petition containing the signatures of 25 or more people who live or work near the site, requesting that the Department make a finding of substantial public interest for the community group, and that each community group must submit its own Letter of Intent to the Department.

(e) If the Department does not receive an additional petition and 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. 7:26C-10.5.

(f) If the Department receives additional petitions and Letters of Intent, all community groups filing letters will have an additional 60 days from the publication of the public notice to attempt to form a coalition. The Department's website at www.nj.gov/dep/srp/srra/community/ provides guidance about the coalition process.

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

7:26C-10.5 Application for technical assistance grant

(a) An applicant for a technical assistance grant shall submit an application, on a form, found on the Department's website 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;

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ii. An explanation of how the community group is organized, including officers and purpose;

iii. An explanation of how the community group's board of directors, technical advisors, and project manager will interact with each other; and

iv. The name and address of contact person for the community group and his/her daytime phone number;

2. Documentation that the community group meets the eligibility requirements outlined in N.J.A.C. 7:26C-10.3(a); and

3. A financial plan, including:

i. The total amount of money being requested in the technical assistance grant;

ii. A budget that describes how the community group will spend the money;

iii. A description of the work that will be undertaken with the assistance of a licensed site remediation professional;

iv. An outline of how the community group will share information with the community in which the site is located; and

v. A list of project milestones and a schedule for meeting those milestones;

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

1. The community group is eligible, the application is administratively complete, technically acceptable and the Department approves the application for all or part of the amount requested, provided there are sufficient funds in the Remediation Guarantee Fund;

2. The application is administratively incomplete or technically unacceptable and the Department cannot take further action until the deficiencies listed in the Department's notification are corrected; or

3. The community group is not eligible for a technical assistance grant, with a statement of the reason(s) therefor.

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

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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:

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1. The Department shall revoke the technical assistance grant and require reimbursement; and

2. The community group shall repay the portion of the grant that was used for activities not identified in the approved budget and scope of work or for activities listed in (c) within 60 days of the revocation.

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

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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 form, found on the Department's website 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.

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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;

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2. Requirements for a person responsible for conducting the remediation using a certified subsurface evaluator to conduct the remediation, in N.J.A.C. 7:26C-13.3; and

3. Requirements for a person responsible for conducting the remediation using a licensed site remediation professional to conduct the remediation, in N.J.A.C. 7:26C-13.4.

7:26C-13.2 General requirements

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

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

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

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

(a) A person responsible for conducting the remediation of a discharge from an unregulated heating oil tank system who uses a certified subsurface evaluator to remediate the discharge shall employ an individual working for a business firm certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank rules at N.J.A.C. 7:14B-16

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

1. A certification by the subsurface evaluator certified pursuant to N.J.A.C. 7:14B-13 or 16 to perform the remediation, that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated was remediated pursuant to, and in compliance with the Technical Requirements for Site

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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 Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.7. 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-4.4; and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.7.

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

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

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-4.4.

(b) The Department will issue a no further action letter to the person responsible for conducting the remediation, pursuant to N.J.A.C. 7:26C-6 upon receipt and review of a certification by the licensed site remediation professional pursuant to N.J.A.C. 7:14B-1.7(e), and the submissions listed in N.J.A.C. 7:26C-13.3(b)2 through 4.

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

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New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

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-1.11 when the discharge from the unregulated heating oil tank system results in an immediate environmental concern.

(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-5.6;
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.

SUBCHAPTER 14. DIRECT OVERSIGHT

7:26C-14.1 Scope

(a) This subchapter contains provisions that specify:

1. The compulsory direct oversight triggers and requirements applicable when the person responsible for conducting the remediation becomes subject to the compulsory statutory provisions for direct oversight in N.J.A.C. 7:26C-14.2;
2. The discretionary direct oversight triggers and the criteria the Department will evaluate when considering a remediation of a contaminated site for direct oversight in N.J.A.C. 7:26C-14.3; and
3. The criteria the Department will evaluate in determining whether to adjust the applicable requirements for the remediation of a contaminated site in direct oversight in N.J.A.C. 7:26C-14.4.

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7:26C-14.2 Compulsory direct oversight

(a) The person responsible for conducting the remediation shall comply with the statutory requirements for direct oversight, pursuant to N.J.S.A. 58:10C-27, whenever:

1. The person responsible for conducting the remediation has been the object of two enforcement actions, concerning the remediation, during any five-year period after May 7, 2009;
2. The person responsible for conducting the remediation has failed to meet:
 - i. A mandatory remediation timeframe established by the Department pursuant to N.J.A.C. 7:26C-3.3, including any extension thereof granted by the Department;
 - ii. An expedited site-specific timeframe established by the Department pursuant to N.J.A.C. 7:26C-3.4, including any extension thereof granted by the Department; or
 - iii. A schedule established pursuant to an administrative order or court order; or
3. A discharge was discovered prior to May 7, 1999 and the person responsible for conducting the remediation has failed to complete the remedial investigation of the entire contaminated site by May 7, 2014.

(b) The person responsible for conducting the remediation that is in direct oversight as described in (a) above, shall:

1. Proceed with the remediation as the Department directs, including retaining a licensed site remediation professional if one has not yet been retained;
2. Conduct and submit a feasibility study to the Department for approval;
3. Implement each remedial action the Department selects for the site;
4. Submit an initial remediation cost review, pursuant to N.J.A.C. 7:26C-5.10(a), within 60 days after the applicable event in (a) above, and submit an annual remediation cost review on the same calendar day each year thereafter;
5. Establish a remediation trust fund pursuant to N.J.A.C. 7:26C-5.4 in the amount of the estimated cost of the remediation, within 90 days after the applicable event in (a), above, and maintain a remediation trust fund in the amount of the estimated cost of the remediation;
6. Pay an annual remediation funding source surcharge pursuant to N.J.A.C. 7:26C-5.9;
7. Obtain the Department's prior approval before making any disbursements from the remediation trust fund;

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8. Ensure that all submissions prepared by the licensed site remediation professional concerning the remediation required by the Department are provided simultaneously to the Department and the person responsible for conducting the remediation;

9. Submit a proposed public participation plan, with a schedule, to the Department for approval pursuant to N.J.S.A. 58:10C-27.c.7, that contains the strategy for soliciting public comment concerning the remediation from the members of the surrounding community concerning the remediation of the site, within 30 days after the applicable event in (a), above; and

10. Implement the Department-approved public participation plan to solicit public comment concerning the remediation from the members of the surrounding community.

7:26C-14.3 Discretionary direct oversight

(a) The Department may evaluate undertaking direct oversight of a portion, a condition, or the entire remediation of a contaminated site when the contamination at the site:

1. Includes chromate chemical production waste and either of the following apply:

i. Hexavalent chromium (Cr+6) is detected in the soil in excess of 20 milligrams per kilogram of dry weight soil (mg/kg or ppm); or

ii. The Cr+6 contamination in ground water exceeds 70 micrograms per liter of solution (ug/l or ppb);

2. Has injured more than one environmentally sensitive natural resource;

3. Has contributed to sediments contaminated by polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface water above the Department's Ecological Screening Criteria as found on the Department website at www.nj.gov/dep/srp/guidance/ecoscreening, and the concentration of any of these substances exceeds either of the following:

i. The severe effects level for freshwater conditions; or

ii. The effects range medium for saline conditions; or

4. The Department has ranked the site in the category requiring the highest priority pursuant to the ranking system developed pursuant to N.J.S.A. 58:10-23.16.

(b) The Department will consider the following criteria when evaluating, pursuant to (a) above, whether to undertake direct oversight of a portion, a condition, or the entire remediation of a contaminated site:

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1. The extent that the person responsible for conducting the remediation:
 - i. Is in compliance with all applicable remediation statutes and regulations;
 - ii. Has implemented an interim response action necessary to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors;
 - iii. Has entered into a voluntary agreement with the Department to resolve the natural resource injury caused by discharges at a site if such damage has occurred; and
 - iv. Has implemented green remediation as part of remediation; and

2. Whether:

- i. Ground water contamination is greater than 5 acres;
- ii. Wetland soil or sediment contamination is greater than 5 acres;
- iii. Surface water sediment contamination exceeds, for any given contaminant, the severe effects level concentration for freshwater conditions or the effects range medium concentration for saline conditions pursuant to the Department's Ecological Screening Criteria as found on the Department's website at www.nj.gov/dep/srp/guidance/ecoscreening;
- iv. Surface water contamination exceeds, for any given contaminant, an acute aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);
- v. Ground water contamination, which is discharging to surface water, exceeds, for any given contaminant, the acute aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);
- vi. Soil contamination, except for pesticides, exceeds, for any given contaminant, 100 times the greatest value in the Department's Ecological Screening Criteria, which are available at www.nj.gov/dep/srp/guidance/ecoscreening/; or
- vii. Pesticide soil contamination exceeds 1 mg/kg for any given pesticide.

(c) When the Department determines to undertake discretionary direct oversight of the remediation of a contaminated site:

1. The Department shall inform the person responsible for conducting the remediation in writing of its decision; and
2. The person responsible for conducting the remediation shall, upon receipt of the Department's written notice pursuant to (c)1, above, comply with the requirements for direct oversight listed at N.J.A.C. 7:26C-14.2(b).

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7:26C-14.4 Adjustments in direct oversight

(a) The Department may determine that certain direct oversight requirements established in this subchapter are not applicable to a specific case based upon a finding that such an action would be:

1. In the public interest; and
2. Protective of public health and safety and the environment.

(b) When the Department makes a determination pursuant to (a) above, the Department shall notify the person responsible for conducting the remediation of its determination, and the person responsible for conducting the remediation may discontinue implementing those requirements upon receipt of the Department's determination.

SUBCHAPTER 15. CONFIDENTIALITY

7:26C-15.1 Scope

(a) This subchapter sets forth the procedures for making information received by the Department available to the public and maintaining confidentiality of certain parts of that information, including:

1. General information pertaining to confidentiality at N.J.A.C. 7:26C-15.2;
2. The process for asserting a confidentiality claim at N.J.A.C. 7:26C-15.3;
3. The process for determining the validity of a confidentiality claim at N.J.A.C. 7:26C-15.4;
4. The process concerning the exchange of confidential information between the Department and other public agencies at N.J.A.C. 7:26C-15.5;
5. The procedure for disclosing confidential information to contractors at N.J.A.C. 7:26C-15.6;
6. The process for disclosing information by consent at N.J.A.C. 7:26C-15.7;
7. When the Department may disclose confidential information upon a finding of imminent and substantial danger at N.J.A.C. 7:26C-15.8;
8. The procedures the Department will use to ensure the security of confidential information at N.J.A.C. 7:26C-15.9; and

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9. The penalties for wrongful access to or disclosure of confidential information at N.J.A.C. 7:26C-15.10.

7:26C-15.2 General information

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made shall be limited to Department employees, representatives, and contractors, whose activities necessitate such access and as provided in this subchapter.

(b) If a request for public disclosure of information is made for interagency or intra-agency memoranda or letters, the Department may deny this request if such request is exempted from disclosure pursuant to the Freedom of Information Act 5 U.S.C. § 552(b)(5) or the Open Public Records Act, N.J.S.A. 47:1A-3.

(c) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(7) or the Open Public Records Act, N.J.S.A. 47:1A-3.

(d) The Department shall not disclose to any person information for which a confidentiality claim has been asserted except as provided in this subchapter or as otherwise required by law.

(e) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow a person, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:26C-15.3 Process for submitting confidentiality claims

(a) Any person required to submit any information to the Department pursuant to this chapter, N.J.A.C. 7:14B, N.J.A.C. 7:26B, N.J.A.C. 7:26D, or N.J.A.C. 7:26E, which in the person's opinion constitutes a trade secret, proprietary information, specific information regarding a real estate transaction at an industrial establishment that subjects the transaction to the Industrial Site Recovery Act, other than the fact that the transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the appropriate fee pursuant to N.J.A.C. 7:26C-4.3(a).

(b) Any person asserting a confidentiality claim pursuant to (a) above shall submit two copies of the document to the Department that contains the purportedly confidential material, a non-redacted copy, and a copy in which the purportedly confidential material has been redacted. The non-redacted copy shall conform to the following:

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1. The top of each page of the first submission containing the information which the person alleges to be entitled to confidential treatment shall be stamped or otherwise marked "CONFIDENTIAL" in bold type:

2. All parts of the text that the person alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machine; and

3. The non-redacted copy, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the redacted submission (which may or may not be enclosed in a separate envelope, at the option of the person), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(c) The package containing both the redacted and the non-redacted copies of the material containing the purportedly confidential information should be sent to the address listed in N.J.A.C. 7:26C-1.6 by certified mail, return receipt requested or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department assumes no responsibility for packages until they are received.

7:26C-15.4 Confidentiality determination

(a) When the Department receives a request for a confidentiality determination that complies with N.J.A.C. 7:26C-15.3, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential as follows:

1. The person has asserted a confidentiality claim pursuant to this subchapter which has not expired by its terms, been waived or withdrawn;

2. The person has shown that reasonable measures were taken to protect the confidentiality of the information and that the person intends to continue to take such measures;

3. The person has demonstrated that the information is not, and has not been, available or otherwise disclosed to any other person without the consent of the person asserting a confidentiality claim (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. The person has demonstrated that no statute or regulation specifically requires disclosure of the information; and

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5. Except for information related to national security, the person has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

(b) The Department shall determine whether information is entitled to confidential treatment whenever the Department:

1. Receives a request under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. or the Freedom of Information Act 5 U.S.C. § 552(b)(5), to inspect or copy such information;

2. Finds it necessary to determine whether information in its possession is entitled to confidential treatment; or

3. Determines for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) Within 30 calendar days after deciding that the information is not entitled to confidential treatment, the Department shall send written notification, by certified mail, return receipt requested, to the person who submitted the information, outlining the reasons for its decision and that the information will become part of the Department's public files unless successfully contested pursuant to (d) below.

(d) A person who wishes to contest a determination by the Department that the information submitted is not entitled to confidential treatment shall, within 30 calendar days after receipt of the Department's written notification, submit evidence to support the person's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

1. The period of time for which confidential treatment is desired by the person (for example, until a certain date, until the occurrence of a specified event, or permanently);

2. The measures taken by the person to guard against undesired disclosure of the information to others;

3. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

4. The extent to which disclosure of the information would result in substantial damage to the person, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the nexus between disclosure and the damage.

(e) Failure of the person to furnish timely comments or exceptions pursuant to (d) above waives the person's confidentiality claim.

(f) The person may assert a confidentiality claim to any information submitted to the Department as part of its comments pursuant to (d) above.

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(g) A person may submit a written request for an extension to contest the Department's determination pursuant to (d) above. The Department may extend the time limit for submitting comments pursuant to (d) above for good cause.

(h) The Department shall review the evidence and:

1. To the extent that the Department determines that the information submitted is not entitled to confidential treatment, the Department shall send written notification of this determination to the person by certified mail, return receipt requested. The notice shall state the basis for the determination and that the Department shall make the information available to the public on the 14th calendar day after receipt by the person of the written notice; or

2. To the extent that the Department determines that the information submitted is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The Department shall send written notification of this determination to the person by certified mail, return receipt requested.

7:26C-15.5 Exchange of confidential information between the Department and other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section.

(b) The Department may disclose confidential information to another state agency or to a Federal agency if:

1. The Department is required by law to disclose the information;

2. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

3. The request sets forth the official purpose for which the information is needed;

4. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

5. The other state or Federal agency has first furnished to the Department a written legal opinion from the agency's chief legal officer or counsel stating that under applicable law, the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

6. The other agency has obtained the written consent of the affected person to the proposed disclosure; and

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7. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in this subchapter, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure to another agency;
2. The date on which disclosure was made;
3. The name of the agency to which the confidential information was disclosed; and
4. A description of the confidential information disclosed.

(d) When the U.S. Environmental Protection Agency supplies information to the Department that was submitted to the U.S. Environmental Protection Agency under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from the U.S. Environmental Protection Agency that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

(e) Notwithstanding any other provision of this subchapter, any information obtained by the Department shall be available to the U.S. Environmental Protection Agency and U.S. Department of Justice upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to the U.S. Environmental Protection Agency when providing information as required in this section.

(f) Access to any information for which a confidentiality claim has been made will be limited to Department employees, representatives and contractors, whose activities necessitate such access, subject to N.J.A.C. 7:26C-15.6 below. Additionally, U.S. Environmental Protection Agency employees may have access to confidential information subject to (e) above.

7:26C-15.6 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department if the contract in question provides that the contractor and the contractor's employees, agents and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to anyone the Department has not authorized in writing, shall store the information in locked cabinets in secure rooms, and shall return to the Department all copies of the information, and any abstracts or extracts there from, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

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(b) Within 30 calendar days after the disclosure of the information to its contractors, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure to its contractors;
2. The date on which disclosure was made;
3. The name of the contractor to which disclosure was made; and
4. A description of the information disclosed.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1D-2, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

7:26C-15.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the person who made the confidentiality claim to such disclosure.

(b) The giving of consent by the person who made the confidentiality claim to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

7:26C-15.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that the information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure;

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2. The date on which disclosure was made;
3. The name of the person to which disclosure was made; and
4. A description of the information disclosed.

7:26C-15.9 Security procedures

(a) Submissions to the Department, pursuant to N.J.A.C 7:26C-15.3, will be opened only by persons authorized by the Department engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope that is marked "CONFIDENTIAL".

(c) The Department shall store all submissions entitled to confidential treatment as determined by this subchapter in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors that contains confidential information shall contain appropriate indicators identifying that the information is confidential.

7:26C-15.10 Wrongful access or disclosure remedies

(a) No person may disclose, seek access to, obtain or have possession of any confidential information obtained by the Department, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information that came into his or her possession, or to that he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and
2. Pursue any other remedy available by law.

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(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

SUBCHAPTER 16. LINEAR CONSTRUCTION PROJECTS

7:26C-16.1 Scope

(a) The purpose of this subchapter is to specify the:

1. Requirements for a person engaged in a linear construction project, in N.J.A.C. 7:26C-16.2; and
2. Required fees for a person engaged in a linear construction project, in N.J.A.C. 7:26C-16.3.

7:26C-16.2 Requirements for a person engaged in a linear construction project

(a) Any person who initiates a linear construction project shall:

1. Hire a licensed site remediation professional to oversee the management of contamination encountered during the linear construction project;
2. Notify the Department of the linear construction project and the name of the licensed site remediation professional on a form available from the Department on its website at www.nj.gov/dep/srp/srra/forms either:
 - i. At least 45 days prior to initiating construction on a project with known or suspected contamination; or
 - ii. Within 45 days after detecting contamination on a project where it was assumed contamination was not present;
3. Conduct the linear construction project without prior Department approval;
4. Pay all applicable fees as required pursuant to N.J.A.C. 7:26C-16.2 below;
5. Provide the Department access to the linear construction project pursuant to N.J.A.C. 7:26C-8;

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6. Obtain and comply with all permits necessary for the linear construction project pursuant to N.J.A.C. 7:26C-7 and N.J.A.C. 7:26E-5.6; and

7. Provide the Department a final report that describes the management of contamination encountered during the linear construction project, within 180 days after completion of the project or upon request of the Department, whichever occurs sooner.

7:26C-16.3 Required fees for a person engaged in a linear construction project

(a) The person conducting a linear construction project shall pay the following fees:

1. \$450 with the notification of the linear construction project required pursuant to N.J.A.C. 7:26C-16.2(a)2; and

2. A fee based on the number of contaminated properties, or parts of properties, with the linear construction project final report required pursuant to N.J.A.C. 7:26C-16.2(a)7 as follows:

i. \$1,000 for one through five contaminated properties or parts of contaminated properties;

ii. \$3,000 for six through ten contaminated properties or parts of contaminated properties; or

iii. \$5,000 for 11 or more contaminated properties or parts of contaminated properties.

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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).

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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;

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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.

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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]

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APPENDIX B - MODEL DEED NOTICE

DEED NOTICE

This shell document contains blanks and matter in brackets []. These blanks shall be replaced with the required site information prior to recording.

Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

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

Prepared by: _____
[Signature]

[Print name below signature]

Recorded by: _____
[Signature, Officer of County Recording Office]

[Print name below signature]

DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by *[Insert the full legal name and address of each current property owner]* (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. *[Insert the full legal name and address of each current property owner]* *[Insert as appropriate: "is", or "are"]* the owner in fee simple of certain real property designated as Block(s) ____ Lot(s) ____, on the tax map of the *[Insert, as appropriate: City/Borough/Township/Town]* of *[Insert the name of municipality]*, *[Insert the name of county]* County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site which includes this property is *[Insert the Program Interest Number (Preferred ID)]*; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. REMEDIATION.

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i. *[Insert name of the Licensed Site Remediation Professional and LSRP License No. of the LSRP that approved this Deed Notice]* has approved this Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.

ii. N.J.A.C. 7:26C-7 requires the Owner, among other persons, to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.

3. SOIL CONTAMINATION. *[Insert the full legal name of the person that was responsible for conducting the remediation]* has remediated contaminated soil at the Property, such that soil contamination remains in certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property; this soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice *[include if appropriate: and engineering controls]* in accordance with N.J.S.A. 58:10B-13.

4. CONSIDERATION. In accordance with the remedial action for the site which included the Property, and in consideration of the terms and conditions of that remedial action, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental officials.

5B. RESTRICTED LAND USES. The following statutory land use restrictions apply to the Restricted Areas:

i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented; and

ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to a single family residence or a child care facility without the Department's prior written approval.

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[Insert the following paragraph when engineering controls are also implemented at the site:

5C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls is provided in Exhibit C.]

6A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at www.nj.gov/srp/forms within thirty (30) calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Restricted Area.

iii. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at www.nj.gov/srp/forms, within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.

6B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees and operators while each is an owner, lessee, or operator of the Property.

7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. Except as provided in Paragraph 7B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first obtaining a soil remedial action permit modification pursuant to N.J.A.C. 7:26C-7. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.

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iii. Notwithstanding subparagraph 7Aii., above, a soil remedial action permit modification is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

(B) Restores any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(C) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(D) Ensures that human exposure to contamination in excess of the remediation standards does not occur; and

(E) Describes, in the next biennial certification the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance.

7B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:

i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;

ii. Hires a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;

iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;

iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;

v. Notifies the Department of Environmental Protection when the emergency or immediate environmental concern has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337; and

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vi. Restores the engineering control to the pre-emergency conditions as soon as possible, and provides notification to the Department of Environmental Protection within sixty (60) calendar days after completion of the restoration of the engineering control, including: (a) the nature and likely cause of the emergency; (b) the potential discharges of or exposures to contaminants, if any, that may have occurred; (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (d) the measures completed or implemented to restore the engineering control; and (e) the changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.

8. TERMINATION OF DEED NOTICE.

i. This Deed Notice may be terminated only upon filing of a Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the *[Insert as appropriate the County Clerk/Register of Deeds and Mortgages]* of *[Insert the name of the County]* County, New Jersey, expressly terminating this Deed Notice.

ii. Within thirty (30) calendar days after the filing of a Termination of Deed Notice, the owner of the property shall apply to the Department for termination of the soil remedial action permit pursuant to N.J.A.C. 7:26C-7.

9. ACCESS. The Owner, and the subsequent owners, lessees and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessees and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C.

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11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description - A tax map of lots and blocks as wells as metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

12B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map - A separate map for each restricted area that includes:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, (and, if any) ground water monitoring wells, extent of the ground water classification exception area, pumping and treatment systems that may be required as part of a ground water engineering control in addition to the deed notice

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes either (A) or (B) through (F):

(A) Only for historic fill extending over the entire site or a portion of the site and for which analytical data are limited or do not exist, a narrative that states that historic fill is present at the site, a description of the fill material (e.g., ash, cinders, brick, dredge

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material), and a statement that such material may include, but is not limited to, contaminants such as PAHs and metals;

(B) Sample location designation from Restricted Area map (Exhibit B-1);

(C) Sample elevation based upon mean sea level;

(D) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;

(E) The restricted and unrestricted use standards for each contaminant in the table; and

(F) The remaining concentration of each contaminant at each sample location at each elevation.

12C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls [*Insert as appropriate: and engineering controls*] as follows:

i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) Description and estimated size of the Restricted Areas as described above;

(B) Description of the restrictions on the Property by operation of this Deed Notice; and

(C) The objective of the restrictions.

[*Insert the following if engineering controls are part of the remedial action for the site:*

ii. Exhibit C-2: [*Insert the name of the first engineering control*]: Exhibit C-2 includes a narrative description of [*Insert the name of the first engineering control*] as follows:

(A) Description of the engineering control;

(B) The objective of the engineering control; and

(C) How the engineering control is intended to function.

[*Repeat the contents of Exhibit C-2, renumbering accordingly, for each separate engineering control that is part of the remedial action for the site.*]

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

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[If Owner is an individual]

WITNESS: _____
[Signature]

[Print name below signature]

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

I certify that on _____, 20__, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, 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
[Print Name and Title]

14. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is a corporation]

ATTEST: [Name of corporation]

_____ By _____

[Print name and title] [Signature]

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

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

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(a) this person is the [secretary/assistant secretary] of [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]

Signed and sworn before me on _____, 20__

_____, Notary Public

[Print name and title]

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APPENDIX C - 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

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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

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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]

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[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]

_____, General Partner
[Signature] By: _____ [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]

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D. [If Owner is a Limited Liability Company]

WITNESS: [Name of Limited Liability Company]

[Signature] By: _____
[Signature]

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

_____, Notary Public
[Signature]

[Print name]

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[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.

_____, Notary Public
[Signature]

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[*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

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APPENDIX D - MODEL RESPONSE ACTION OUTCOME DOCUMENT

[Only Insert Name and address of Person(s) Responsible for Conducting the Remediation]

[Date]

Re: Response Action Outcome

Remedial Action Type: [Select One *Restricted Use with Permit Requirements* OR *Limited Restricted Use with Permit Requirements* OR *Unrestricted Use*]

Scope of Remediation: [Select One *Area(s) of Concern*: (followed by a list of the remediated area(s) of concern) *and no other areas* OR *Entire Site* OR *ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Entire Site* OR *ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Leasehold* OR *Child Care Facility* Note: Entire Site, Child Care Facility or ISRA Industrial Establishment Response Action Outcomes can only be issued if a complete preliminary assessment and site investigation, as applicable was completed for the Entire Site, Child Care Facility or an ISRA Industrial Establishment]

Case Name:

Address:

Municipality :

County:

Block: ____ Lot: ____

Preferred ID: 000000

Child Care License #

KCSL # NJL000000000

Communication Center # 00-00-00-0000-00 [List all that apply], UST Registration # 0000000, UST Closure #C00-0000

ISRA Transaction: [Select as applicable to this ISRA Case: Sale of Property, Cessation, Sale of Business, Bankruptcy - List Type, Foreclosure, Partnership Change, Sale of Assets, Stock Transfer/Corporate Merger, List Other Applicable ISRA Transactions]

ISRA Case # E00000

Well Permit #

Dear :

As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey, I hereby issue this Response Action Outcome for the remediation of the [Select one: *site* OR, *industrial establishment as defined according to N.J.A.C. 7:26B* OR *area(s) of concern*] specifically referenced above. I [Select one or both of the following: directly oversaw and supervised all of the referenced remediation, AND/OR personally reviewed and accepted all of the referenced remediation] and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of

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public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4.

This remediation includes the completion of a [Select all that apply: *Preliminary Assessment, Site Investigation, Remedial Investigation and Remedial Action*] as defined pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E),

My decision in this matter is made upon the exercise of reasonable care and diligence and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time these professional services are performed.

As required pursuant to N.J.A.C. 7:26C-6.2(b)2ii, a copy of all records related to the remediation that occurred at this location is being simultaneously filed with the New Jersey Department of Environmental Protection (Department). These records contain all information upon which I based my decision to issue this Response Action Outcome.

By operation of law a Covenant Not to Sue pursuant to N.J.S.A. 58:10B -13.2 applies to this remediation. The Covenant Not to Sue is subject to any conditions and limitations contained herein. The Covenant Not to Sue remains effective only as long as the real property referenced above continues to meet the conditions of this Response Action Outcome [Select if Limited Restricted Use or Restricted Use RAO: and applicable permits].

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12o, [Insert Name of Person(s) Responsible for Conducting the Remediation] and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. shall inform the Department in writing, on a form available from the Department, within 14 calendar days after its name or address changes. Any notices you submit pursuant to this paragraph shall reference the above case numbers and shall be sent to:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

[Add the Following if a Remedial Action Permit has been Issued Related to this Response Action Outcome: Any such name or address change may also trigger a transfer or modification of the remedial action permit pursuant to N.J.A.C. 7:26C-7.11 and 7.12.]

[Select if Limited Restricted Use or Restricted Use Response Action Outcome: Based on my professional opinion you have obtained all applicable permit(s) and authorization(s) to ensure this remedial action remains protective of public health, safety and the environment into the future provided that you, and any other persons responsible for conducting remediation, remain in full

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compliance with the terms and conditions of those permit(s) and authorization(s). The designated remedial action permit number(s) is\are Add Permit Number(s) effective Insert Date(s)]

NOTICES

[Insert All of the Following Notices that are Applicable to this Remediation].

Well Decommissioning

[Select One: Pursuant to N.J.A.C. 7:9D-3, all wells installed as part of this remediation have been properly decommissioned by a New Jersey licensed well driller of the proper class in accordance with the procedures set forth in N.J.A.C. 7:9D and the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. OR Pursuant to N.J.A.C. 7:9D-3 any wells installed as part of this remediation that will no longer be used for remediation have been properly decommissioned. If any wells have been properly decommissioned, the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. Pursuant to N.J.S.A. 58:4A, any monitoring wells remaining onsite shall be properly decommissioned prior to the termination of the applicable remedial action permit. A New Jersey licensed well driller shall decommission the well(s) in accordance with the requirements of N.J.A.C. 7:9D-3 and submit the decommissioning report on your behalf to the Bureau of Water Allocation and Well Permitting. More information about regulations regarding the maintenance and decommissioning of wells in New Jersey can be found at www.nj.gov/dep/watersupply. For a list of New Jersey licensed well drillers, click on the "reports" button in the left column and select "access the well permit reports." Questions can be emailed to wellpermitting@dep.state.nj.us.] [Select if applicable: Please note that [add count of wells to which this applies] well(s) could not be located or properly decommissioned. Contact has been made with the Bureau of Water Allocation and Well Permitting regarding appropriate steps to document and conclude efforts in this regard.]

Building Interiors Not Addressed (Non-Child Care)

Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains. [Select if applicable: The only exception to this building interior exclusion is the release of specify contaminant from specify the AOC that discharged outside the building.] A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

Building Interiors Addressed

Site specific: to be developed by licensed site professional in coordination with the Department.

Regional Natural Background Levels of Materials in Soil

Please be advised that concentrations of [Insert specific materials] were detected in the soil at this site above the Department's (Select: Residential OR Non-residential) Direct Contact Remediation Standards. However, these concentrations are associated with natural background levels of these material(s) in the soil. Pursuant to N.J.S.A. 58:10B, remediation beyond natural background levels is not required. [Select for Response Action Outcomes involving Child Care Facilities Only: However, to minimize potential direct contact at this Child Care Center an

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impermeable barrier should be installed over the surface of the outdoor play area in its entirety in accordance with Department guidance for presumptive remedies found at www.nj.gov/dep/srp/guidance/srra/presumptive_remedy_guidance_DRAFT.pdf. The Department recommends that any such barrier consists of impermeable materials, such as hard surfacing, poured rubber, or rubber matting, etc. Finally, the Department recommends that the Child Care Center maintain documentation that provides proof of installation and proper maintenance of the integrity of the barrier.]

Existing Classification Exception Area or Deed Notice from Prior Remediations

Please be advised that this Response Action Outcome does not address the contamination at this site covered under the [Select if applicable: *Classification Exception Area(s)* OR *Deed Notice(s)* OR *Classification Exception Area(s) and Deed Notice(s)*] for the case(s) covered under Department Program Interest # 00000.

Child Care Building Interiors Not Addressed

Please be advised that this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. [Select one: As a result, any risks to human health presented by any building interior or equipment remains. The requirements in the Department of Children and Families licensing regulation requires you to contact the Department of Health, Indoor Environments Program to determine what steps, if any, are necessary to address the risks posed by the prior historical use. The Department of Health, Indoor Environments Program can be reached at 609-826-4950. Department of Health guidance can be found at www.nj.gov/health/eoh/tsrp. OR However, these issues were evaluated as part of an Indoor Environmental Health Assessment conducted pursuant to N.J.A.C. 8:50. Documentation related to the Indoor Environmental Health Assessment [Select one: has been OR will be] submitted to the Department of Health - Indoor Environments Program under separate cover.]

[Select if applicable: The only exception to this building interior exclusion is the release of specify contaminant from specify the AOC that discharged outside the building.]

Child Care Center Notices

[Select one: The potable well at this location has been sampled within the past 3 years and it has been demonstrated that the potable water utilized at the Child Care Center does not contain contaminants above the Maximum Contaminant Levels established for any of the contaminants required to be tested pursuant to N.J.A.C. 7:10-5 in nontransient noncommunity water systems or private wells, including radiological contaminants, nitrates and coliform. OR I certify that the Child Care Center is connected to a public community water system.]

This RAO is based on my determination that [Select One: there is no impact to this Child Care Center from offsite contamination. OR the impact to the Child Care Center from an offsite contamination source has been mitigated.]

[Select one: The outdoor play area is located on-site, and is adjacent to/near (Briefly describe location, size, fence and construction of play area). {*Add the following sentence if there is capped play area contamination*: The integrity of the play area shall be maintained at all times.}

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OR The outdoor play area is located off-site. (Briefly describe size and construction of play area, and provide location identification (park name, etc.), address, block and lot, and ownership with description). {Add the following sentence if the play area is on public land: This site is not listed on the Department's Known Contaminated Site List (KCSL) as either an active or pending case.}
OR There is no outdoor play area for this child care center.]

Be advised that any relocation and/or expansion of the existing licensed Child Care Center into other portions of the building or play areas, on or off-site, requires a new RAO Letter

Child Care Center Specific - Multi-Tenant Situations

Please be advised that this Response Action Outcome is for the leasehold portion of the above referenced site only, including all play areas where the potential for direct contact with soil exists. It does not include the [Specify any known: Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility. The leasehold portion is the area defined by [Define the Area of the leasehold portion] and identified on the enclosed map. Relocation and/or expansion of the existing licensed Child Care Center into other portions of the multi-tenant facility requires a new Response Action Outcome determination.

Soils Only Response Action Outcome when Ground Water Contamination remains from that Area(s) of Concern or Site

This Response Action Outcome only applies to the soils at the referenced location. By issuing this Response Action Outcome, I have relied on both the implementation of the remedial action for soil and on the ground water data to support the determination that soil contamination is no longer affecting ground water. Please be advised that if changes in future ground water data no longer support this conclusion, additional soil remediation may be necessary. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination. Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

Known Onsite Contamination Source Not Yet Remediated

This Response Action Outcome specifically does not address the [Specify any known areas of concern at the site] contaminated with [Add contaminant type, i.e. lead, benzene, etc.]. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable: This contamination is being addressed under Department Program Interest #.] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

Ground water Contamination due to Regional Historic Fill

Please be advised that ground water contamination (specifically, [identify contaminants]) at this site exists above the Ground Water Quality Standards (N.J.A.C. 7:9C) which may limit ground water use at this site. It has been determined that this contamination is solely related to regional historic fill and there is no other onsite source of contamination contributing to this ground water

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contamination. Based on ground water data collected as part of this remediation and provided to the Department, a Classification Exception Area (CEA) pursuant to N.J.A.C. 7:26E-4.7(b) is required for the footprint of this property. Since this contamination is from regional historic fill only, the Department will maintain the Classification Exception Area and a Remedial Action Permit for this contamination is not required. The duration of this Classification Exception Area is for an "indeterminate" period.

Ground Water Contamination not yet Investigated

This Response Action Outcome does not address the ground water contamination (specifically, [identify contaminants]) at this site. This contamination was reported to the Department and assigned the Department's Hotline incident number 00-00-00-0000-00. Pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-4.3, a remedial investigation of ground water (including a background investigation pursuant to N.J.A.C. 7:26E-3.9 if an offsite source is being claimed) is required. In order to identify any onsite areas of concern that may be contributing to the noted contamination a preliminary assessment and site investigation (as applicable), pursuant to N.J.A.C. 7:26E-3 should be conducted. [Select if Applicable This contamination is being addressed under Department Program Interest # _____.] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the contamination (not otherwise determined to be from an offsite source) within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. Be advised that ground water contamination exists above the Ground Water Quality Standards (N.J.A.C. 7:9C-1.7) which may limit ground water use at this site. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination.

Contamination Remains On-Site due to Off-site Contamination

Please be advised that contamination in the ground water at this site exists above the Ground Water Quality Standards (N.J.A.C. 7:9C-1.7) which may limit ground water use at this site. Based on completion of a preliminary assessment and site investigation (as applicable), pursuant to N.J.A.C. 7:26E-3, and completion of a background investigation pursuant to N.J.A.C. 7:26E-3.9, there is no onsite contribution to this contamination and I have confirmed the source of this contamination is from offsite. This aspect of the site was reported to the Department and assigned the Department's Hotline incident number 00-00-00-0000-00. [Select if applicable: This ground water contamination is being addressed under Department Program Interest # _____.] Any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination.

Order of Magnitude Change to a Remediation Standard after approval of a Remedial Action Workplan

Please be advised that this Response Action Outcome is based on the implementation and completion of the Remedial Action Workplan and any addenda in accordance with the terms of the [Select: [date] Department approval OR [date Remedial Action Workplan approved by --- Name LSRP---, Licensed Site Remediation Professional. Subsequent to the approval of the Remedial Action Workplan, the Department changed remediation standards as such, [list contaminants] exist on site above the current [Select as applicable: soil, ground water or surface water] remediation standards. However, as the standards for these contaminants did not change

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by an order of magnitude, additional remediation is not required at this time pursuant to N.J.S.A. 58:10B-12.j.

Order of Magnitude Change to a Remediation Standard after Approval of a Final Remediation Document

Please be advised that this Response Action Outcome is being issued for a site that is subject to a No Further Action Letter issued by the [Select: [date] Department OR [date Response Action Outcome prepared by ---Name LSRP---, Licensed Site Remediation Professional. Subsequent to the issuance of that final remediation document, the Department changed remediation standards. [list contaminants] exist on site above the current [Select as applicable: soil, ground water or surface water] remediation standards. However, these contaminant concentrations are within an order of magnitude of the current remediation standards and as a result additional remediation is not required at this time pursuant to N.J.S.A. 58:10B-13.e.

ISRA Specific - RCRA Situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome does not cover the [Specify the Known Area(s) of Concern] area regulated under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., and currently being addressed under a RCRA Closure Plan. The environmental impact of this area was not evaluated. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable This contamination is being addressed under Department Program Interest #.] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

ISRA Specific - Multi-Tenant Situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome is for the leasehold portion of the above referenced property only. The leasehold portion is the area defined by [Define the Area of the leasehold portion] and identified on the enclosed map. [Select One: It does not include any other areas of concern on the property. OR It does not include the [specify any known Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility including non-subject tenants. OR It does not include the [specify any known Contaminated Area(s) of Concern] located at the above referenced property which service(s) the multi-tenant facility including non-subject tenants. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. Please note that there is an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, on any "person responsible for conducting remediation" to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. [Select if applicable: This contamination is being addressed under Department Program Interest #.]

ISRA Specific - Landfill situations - Bureau of Case Assignment and Initial Notice Referral

Please be advised that this Response Action Outcome does not cover or address the [Specify Landfill Name] sanitary landfill and the environmental impacts of the landfill were not evaluated

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under this ISRA case. This aspect of this site was reported to the Department and assigned the Department's Hotline incident number(s) 00-00-00-0000-00. [Select if Applicable: This contamination is being addressed under Department Program Interest #.] Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate any contamination associated with the landfill within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27. Please consult www.nj.gov/dep/srp/srra/ for additional guidance.

[End APPLICABLE Notices]

In concluding that this remediation has been completed, I am offering no opinions concerning whether either primary restoration (restoring natural resources to their pre-discharge condition) or compensatory restoration (compensating the citizens of New Jersey for the lost interim value of the natural resources) has been completed.

Pursuant to N.J.S.A. 58:10C-25, the Department may audit this Response Action Outcome and associated documentation up to three years following issuance. Based on a finding by the Department that a Response Action Outcome is not protective of public health, safety and the environment, the Department can invalidate the Response Action Outcome. Other justifications for the Department's invalidation of this Response Action Outcome are listed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6, including, but not limited to, a Department audit following issuance of this document may be initiated at any time if: a) undiscovered contamination is found that was not addressed by the Response Action Outcome, b) if the Site Remediation Professional Licensing Board conducts an investigation of the Licensed Site Remediation Professional issuing the Response Action Outcome or, c) if the license of that person is suspended or revoked.

Thank you for your attention to these matters. If you have any questions, please contact me at (xxx)xxx-xxxx.

Sincerely,

Name,
Licensed Site Remediation Professional #

Enclosure(s): Child Care Center map (including all play areas) (as applicable for Child Care Centers)

- c: Local, County Environmental Health Act Agency and Regional Health Department(s)
Mayor/Clerk/Town Council, City of [City]
Municipal Clerk
Local Construction Code Official (Child Care Center applicable for Madden Bill Subject Sites in need of local construction permits)

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Case Manager (If assigned)

ISRA Authorized Agent (as applicable)

Highlands Commission (as applicable)

Pinelands Commission (as applicable)

NJDEP Bureau of Case Assignment and Initial Notice

NJDEP Bureau of Enforcement and Investigations - (ACO, Remediation Agreement or Child Care Center Applicable)

NJDEP-Bureau of Safe Drinking Water (Child Care Center Applicable when water source is a private well or a non-community water system)

NJ Department of Children and Families (NJDCF) - Office of Licensing (Child Care Center applicable)

NJ Department of Health and Senior Services (NJDHSS) (Child Care Center applicable)

Others