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ENVIRONMENTAL PROTECTION

SITE REMEDIATION AND WASTE MANAGEMENT

Discharge of Petroleum and Other Hazardous Substances Rules, Underground Storage Tanks Rules; Industrial Site Recovery Act Rules; Department Oversight of the Remediation of Contaminated Sites

Proposed Amendments: N.J.A.C. 7:1E-6.5, 7:14B-1, 5 and 12, 7:26B, Appendix A, 7:26C-1, 3, 10 and Appendix A

Proposed New Rules: N.J.A.C. 7:26C-10.3, 10.4, 10.5, and 10.6

Authorized By: Bradley M. Campbell, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:1D-1 et seq., 13:1D-9, 13:1D-125 through 133; 13:1E-1 et seq., 13:1K-1 et seq., 13:1K-6 et seq, 58:10-23.11 et seq., 58:10-23.11a et seq., 58:10A-1 et seq; 58:10A-21 et seq; 58:10B-1 et seq;

Calendar Reference: See summary below for explanation of exception to calendar requirement.

DEP Docket No: 25-05-07/456

Proposal Number: PRN 2005-\_\_\_\_\_

A public hearing concerning this proposal will be held on

Date: September 19, 2005

Time: 1:30 – 3:30

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New Jersey Department of Environmental Protection  
Public Hearing Room  
401 East State Street  
Trenton, NJ 08625

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number: \_\_\_\_\_

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, New Jersey 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone presenting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal document can be viewed or downloaded from the Department's web page at [www.state.nj.us/dep/srp/regs](http://www.state.nj.us/dep/srp/regs).

The agency proposal follows.

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### Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to amend the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C (Oversight Rules) to set forth penalties for violations of the Underground Storage Tank Rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act (ISRA) Rules, N.J.A.C. 7:26B, the Oversight Rules, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation Rules (Tech Regs.), N.J.A.C. 7:26E, and identify these violations as either minor or non-minor for the purpose of providing grace periods in accordance with P.L. 1995, c. 296 (N.J.S.A. 13:1D-125 et seq.), commonly known as the Grace Period Law. The proposed amended rules set forth how the Department will respond to any violation identified as minor.

The Department is also proposing amendments to the Oversight Rules regarding the penalty provisions of N.J.A.C. 7:26C-10, Civil Administrative Penalties and Requests for Adjudicatory Hearings, to conform those provisions to the Grace Period Law.

The Department is also proposing amendments to the Oversight Rules at N.J.A.C. 7:26C-3 regarding the memoranda of agreement (MOA) application and termination process. These proposed changes are intended to increase the efficiency of the voluntary cleanup program by eliminating frivolous applications for MOAs.

The Department is also proposing amendments to the Standard ISRA Remediation Agreement (RA) at N.J.S.A. 7:26B, Appendix A, and the Standard Administrative Consent Order (ACO) contained in the Oversight Rules at N.J.A.C. 7:26C, Appendix A, to replace the stipulated penalties provisions of these agreements

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with provisions that conform with the Grace Period Law and to make the provisions of these two agreements consistent with each other.

This proposal also contains amendments to the Underground Storage Tank rules at N.J.A.C. 7:14B-1.8 and 12.1 that clarify the enforcement process for these rules; and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B-1 that make these rules consistent with the Oversight Rules at N.J.A.C. 7:26C-10. These amendments will be discussed in more detail below.

### **Oversight Rules; Civil Administrative Penalties, Grace Periods and other amendments**

On December 22, 1995, the Legislature enacted the Grace Period Law, N.J.S.A. 13:1D-125 et seq., which requires the establishment of procedures to ensure consistent application of grace (compliance) periods for minor violations of certain environmental statutes. Pursuant to that law, the Department is required to designate, through rulemaking, certain types of violations of rules authorized by sixteen environmental statutes, as minor or non-minor violations. Under the Grace Period Law, any person responsible for a minor violation is afforded a period of time by the Department to correct the violation. This period of time is known as a grace period. If the minor violation is corrected as required, then the Department can not assess a penalty. In those cases where a violation is not corrected within the grace period, the Department may assess a penalty in accordance with its statutory authority including, but not limited to, the assessment of penalties as may be appropriate within the exercise of the Department's traditional, judicially recognized enforcement discretion.

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The Grace Period Law does not affect the Department's enforcement authority, including the exercise of enforcement discretion, to treat a violation as non-minor. In those situations where a violation is labeled as minor in these proposed amendments, but in fact the specific violation as it occurred does not fulfill all the statutory requirements for a minor violation (N.J.S.A. 13:1D-129(b)), the Department reserves its discretion to treat the violation as non-minor.

In designating, through rulemaking, types or categories of violations as minor, the Department must apply the criteria set forth in the Grace Period Law at N.J.S.A. 13:1D-129(b). These criteria are as follows:

(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 violation poses minimal risk to the public health, safety and natural resources;

(3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;

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

(5) In the case of a permit violation, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency responsible for a violation of the same requirement of the same permit within the preceding 12 month period;

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(6) In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period;

(7) In the case of any violation, the person responsible for the violation has not been identified by the Department or a local agency as responsible for the same or substantially similar violation at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

(8) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the period of time prescribed by the Department.

The Grace Period Law also requires that the Department establish the length of the grace period, which may be no fewer than 30 days or more than 90 days (unless extended by the Department), based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance. The Department may establish a special class of minor violations that, for public health and safety reasons, must be corrected within a period of fewer than 30 days.

Of the criteria provided by the Grace Period Law, only criteria (2), (3) and (8), as listed above, may pertain to all violations of a particular regulatory requirement. Therefore, the Department determined that violations that pose minimal risk to public health, safety, and natural resources, do not undermine or impair the goals of the program, and can be corrected within a designated grace period would be designated as minor.

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In applying the criteria, the Department has designated most of the violations listed in the table at proposed new N.J.A.C. 7:26C-10.4(e) as minor. However, several broad categories of violations do not qualify as minor and are therefore designated as non-minor. For example, violations that involve failure to conduct required remediation at a site that poses an immediate environmental concern (IEC) as defined at N.J.A.C. 7:26E-1.8 are proposed to be classified as non-minor violations. Additionally, violations that generally qualify as minor may be determined to be non-minor when they occur at a site that is an IEC and the violations are related to the IEC condition, because in those circumstances, the specific violations do not meet the statutory criteria for minor designation.

Another example would be the failure to submit a remedial action work plan. This violation is generally a minor violation. However if the work plan is required to address IEC conditions, the Department may designate the violation as non-minor in that specific case because the violation poses a greater than minimal risk to public health, safety and natural resources.

The Department also proposes designating as non-minor most violations regarding maintenance of engineering and institutional controls. Such controls exist as part of a protective remedy and if any terms, conditions or requirements related to these controls are compromised, the controls become ineffective and the remedy could become non-protective. Additionally, violations related to these controls undermine the program's goal to implement and maintain protective remedies at contaminated sites and therefore make them unsuitable for grace period treatment.

The Department also proposes classifying those categories of violations that materially and substantially undermine or impair the goals of the regulatory program as non-minor. Specifically, the requirement to conduct site investigations in certain situations (for example the requirement at 7:14B-7.2(b) to confirm or disprove that a

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release of a hazardous substance occurred), to conduct remedial investigations, and to conduct remedial actions, are proposed to be classified as non-minor. These violations will be cited as non-minor when a party fails to conduct the required actions at all.

However, where a person responsible for conducting the remediation conducts remediation that is deficient in some way, the person will be penalized for only the specific deficiencies, some of which may qualify for grace period treatment. Specifically, the Department proposes designating most violations of the specific requirements of these remediation phases as minor. Accordingly, parties who submitted at least part of a site investigation work plan pursuant to N.J.A.C. 7:26E-3.3 may be afforded a one-time grace period to correct certain minor violations that occur as part of that effort. Parties who fail to submit the site investigation work plan at all undermine and impair the program's goals and therefore will not be afforded a grace period.

Finally, the Department has designated as non-minor any violation of requirements to notify the Department's Environmental Action Hotline of the discharge of a hazardous substance. Failure to notify the Department upon the discovery of a discharge undermines the program's goal to protect public health, safety and the environment.

The additional statutory criteria, (1), (4), (5), (6) and (7), regarding respectively, the intent of the violator, the duration of the violation, and whether it is a repeat offense, are fact-specific for each violation and must be considered on a case-by-case basis. Thus, each violation listed at N.J.A.C. 7:26C-10.4(e) that is identified as minor will be eligible for a grace period only if it meets the additional criteria in N.J.A.C. 7:26C-10.3 as discussed below.

Subchapter 1 of the Oversight Rules contains generally applicable provisions. The Department proposes to amend N.J.A.C. 7:26C-1.2(a)1 to clarify that the certification

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contained therein applies to all documents required to be certified, except remediation funding sources. This proposed amendment clarifies that the certification at N.J.A.C. 7:26C-1.2(a)1 is the certification that applies to all submittals made pursuant to the applicable provisions of N.J.A.C. 7:14B, N.J.A.C. 7:26B, N.J.A.C. 7:26C, and N.J.A.C. 7:26E, except documents pertaining to remediation funding sources. The certification for remediation funding sources is contained in N.J.A.C. 7:26C-1.2(a)2.

The Department is proposing to add a definition of “grace period” to the definitions section, N.J.A.C. 7:26C-1.3. A grace period is the period of time afforded under the Grace Period Law for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

Proposed amendments to subchapter 3 are described in the section of this summary entitled “Oversight Rules – Memoranda of Agreement Application and Termination.

Subchapter 10 of the Oversight Rules, N.J.A.C. 7:26C-10, governs the Department’s assessment of civil administrative penalties for a person’s failure to comply with any of the following: (1) administrative orders issued pursuant to any of the Department’s statutory authorities; (2) ACO’s issued pursuant to N.J.A.C. 7:26B-6; (3) the ISRA rules, specifically N.J.A.C. 7:26B-6; (3) ISRA remediation agreements (RAs) issued pursuant to the ISRA rules at N.J.A.C. 7:26B-4; (5) The UST rules, specifically N.J.A.C. 7:14B-6 to 8; (6) the Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; and Declarations of environmental restrictions and deed notices established pursuant to the Tech Regs., N.J.A.C. 7:26E. This subchapter also governs the procedures for requesting an adjudicatory hearing on enforcement actions the Department takes pursuant to this subchapter.

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The Department proposes to amend N.J.A.C. 7:26C-10.1(a) to correct the citations referencing other rules contained in the subsection, and to clarify at subparagraph 7 that subchapter 10 applies to all violations of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

The Department proposes to add new N.J.A.C. 7:26C-10.1(b)i. and ii, which reflect the proposed amendments that incorporate grace period requirements and the proposed changes to the penalty procedures necessitated by the incorporation of grace period provisions. Existing N.J.A.C. 7:26C-10.1(b) is being recodified as N.J.A.C. 7:26C-10.1(b)iii with no change in the text.

The Department proposes amending N.J.A.C. 7:26C-10.2(a) by replacing the list of regulations, violations of which constitute a separate and distinct offense, with a cross-reference to the list codified at N.J.A.C. 7:26C-10.1(a).

The Department proposes to amend N.J.A.C. 7:26C-10.2(b) to clarify that each day during which a violation continues constitutes a separate and distinct offense except if the violation was a minor violation that is corrected within the grace period as provided in new N.J.A.C. 7:26C-10.3 or 10.5.

The Department proposes to add the term “or rule” to N.J.A.C. 7:26C-10.2(c) to clarify that the Department may use the enforcement provisions of other statutes or rules in connection with the violation for which a civil administrative penalty was assessed pursuant to this subchapter.

As will be discussed more fully below in the summary of the proposed amendments to RAs and ACOs, proposed N.J.A.C. 7:26C-10.2(d) offers remediators who are parties to either an RA or an ACO the opportunity to reopen these documents and include in them provisions that will enable them to take advantage of the penalty

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provisions, including applicable grace periods, that are included in the proposed amendments to the penalty provisions of the Oversight Rules at N.J.A.C. 7:26C-10.3

The Department proposes to add a new N.J.A.C. 7:26C-10.3, “Grace period applicability; procedure,” and to recodify existing N.J.A.C. 7:26C-10.3 titled “Procedures for assessment and payment of civil administrative penalties” as N.J.A.C. 7:26C-10.8.

Proposed N.J.A.C. 7:26C-10.3(a) and (b) identify whether a violation could be considered a minor or non-minor violation. Proposed N.J.A.C. 7:26C-10.3(c) identifies the general criteria for a violation to be considered a minor violation. The statutory criteria of N.J.S.A. 13:1D-129, the Grace Period Law, were discussed earlier in the Summary. Proposed new N.J.A.C. 7:26C-10.3(d)1 through 3 require the Department to issue a notice of violation to the person responsible for the violation. As provided at proposed N.J.A.C. 7:26C-10.3(d)1, the notice must identify the violation, the statutory or other provision violated and the length of the grace period. The notice is necessary in order that the person responsible may take advantage of the grace period.

If the person responsible certifies that he or she has corrected the violation within the grace period, then proposed new N.J.A.C. 7:26C-10.3(d)2 provides that no penalty will be assessed for the violation. Moreover, the violation will not be an offense pursuant to N.J.A.C. 7:26C-10.2.

The Department proposes new N.J.A.C. 7:26C-10.3(d)3 in order that it can verify that the person responsible for a minor violation has taken appropriate measures to achieve compliance within the grace period. The responsible person must submit, in writing, confirmation, certified and signed by the person responsible for conducting the remediation, information detailing the corrective action taken or compliance achieved. The Department may perform an investigation to determine that the information is accurate and that compliance has been achieved.

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Under proposed N.J.A.C. 7:26-10.3(d)4, if a person responsible for a minor violation seeks additional time beyond the grace period to achieve compliance, the Department may extend the grace period for up to an additional 90 days. In order to obtain an extension, the person responsible for the violation must submit a written request for an extension to the Department one week prior to the expiration of the initial grace period, and explain why additional time is needed. The request must be certified and signed by the person responsible for conducting the remediation. The Department may, at its discretion, issue a written extension to the grace period specified in the notice of violation. No more than 90 additional days may be granted in accordance with the statute. See N.J.S.A. 13:1D-127(b).

As set forth at proposed N.J.A.C. 7:26C-10.3(d)4i through iv, in exercising its discretion to approve a request for an extension, the Department will consider whether the violator has taken reasonable measures to achieve compliance in a timely manner, whether the delay has been caused by circumstances beyond the control of the violator, whether the delay will pose a risk to the public health, safety and natural resources, and whether the delay will materially or substantially undermine or impair the goals of the regulatory program. A person responsible for a violation may submit no more than one extension request for a violation specified in a notice of violation. (See proposed N.J.A.C. 7:26C-10.3(d)6.

If the person responsible for the violation fails to demonstrate to the Department that compliance has been achieved within the period of time specified in the notice of violation or any approved extension of the grace period, then, under proposed N.J.A.C. 7:26C-10.3(d)5, the Department may impose a penalty retroactive to the date the notice of the violation was first issued.

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The Department proposes to delete existing N.J.A.C. 7:26C-10.4, “Amount of a civil administrative penalty,” and replace it with a new N.J.A.C. 7:26C-10.4, “Civil administrative penalty determination,” which describes the process that the Department will follow in determining the amount of a penalty for a violation of a rule provision listed in the violations table at N.J.A.C. 7:26C-10.4(c).

Proposed new N.J.A.C. 7:26C-10.4(a)1 and 2 provide that the Department shall identify the violation from the table in N.J.A.C. 7:26C-10.4(c), and determine whether it is identified by an “M” as minor or “NM” as non-minor in the “Type of Violation” column. Proposed N.J.A.C. 7:26C-10.4(a)3 provides that the penalty for minor violations shall be determined according to N.J.A.C. 7:26C-10.3. However, if the violation is not corrected within the applicable grace period or any extension thereof, the penalty that shall be assessed shall be in the amount set forth in the “Base Penalty” column of the table at N.J.A.C. 7:26C-10.4(c).

Proposed new N.J.A.C. 7:26C-10.4(a)4 provides that the Department shall calculate the penalty for non-minor violations and violations that are identified as minor in the table at N.J.A.C. 7:26C-10.4(c) but that do not meet the criteria of a minor violation (for example, the same violation was committed within the preceding twelve month period) by taking the amount of the base penalty listed in the “Base Penalty” column of the table at N.J.A.C. 7:26C-10.4(c) and adjusting it by applying the factors listed in N.J.A.C. 7:26C-10.5(a) as appropriate.

Proposed new N.J.A.C. 7:26C-10.4(b) states that the Department may multiply the penalty calculated pursuant to 10.4(a)4 by the number of days the violation existed. This subsection is proposed to reflect the Department’s enforcement discretion and corresponds to the provisions of N.J.A.C. 7:26C-10.2(b), as described above.

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Penalties for violations of the rules listed at N.J.A.C. 7:26C-10.1(a) are set forth in proposed N.J.A.C. 7:26C-10.4(c). The “Subchapter and Violation” column contains a summary describing the violation. The “Citation” column lists the rule citation of the violation. The “Type of Violation” column includes one of two different designations, depending on whether the violation is minor (M) or non-minor (NM). A violation of the specific provision identified in the penalty table as minor would be subject to a grace period, provided that the violation meets the criteria of N.J.S.A. 13:1D-129(b)1, (4) or (5), which are set forth in proposed new N.J.A.C. 7:26C-10.3, discussed above. The length of the grace period, if any, is indicated in the “Grace Period” column. The number in this column indicates the number of days, if any, the Department will allow a regulated entity to correct the violation. The “Base Penalty” column contains the base penalty for each violation. The penalty table includes base penalties for minor violations that will apply in the event that the minor violation is not corrected within the grace period.

In determining the penalty amount for the violations listed in “base penalty” column, the Department first grouped similar violations in the Technical Requirements for Site Remediation, the ISRA rules, the Underground Storage Tank Rules, and the Spill Act Notification rules, and assigned the same penalty to each type of violation. For example, any violation of any of these rules regarding failure to submit a required document was assigned an \$8,000 penalty. When establishing the base penalty amounts for the violations, the Department assumed that the violation occurred in the least aggravating of circumstances and that the violator has been fully cooperative and has an otherwise satisfactory compliance history. Base penalties are established at a level determined to be minimally necessary to deter future violations, and assuming that the violation was neither an intentional act nor omission by the violator. Base penalties must also have a deterrent effect sufficient to ensure that regulated entities do not avoid incurring the necessary costs to comply with the rules because it appears more cost-effective to instead pay penalties for violations.

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The Department proposes to recodify existing N.J.A.C. 7:26C-10.5 titled “Civil administrative penalty for economic benefit” as N.J.A.C. 7:26C-10.7, with no change in the text.

The Department proposes to add a new N.J.A.C. 7:26C-10.5 entitled “Penalty Adjustment Factors.” This provision is intended as a deterrent to repeat offenders and to parties who intentionally or deliberately violate a provision of the rules. It contains the factors the Department will consider in adjusting a base penalty for non-minor violations and violations that are identified as minor in penalty table at N.J.A.C. 7:26C-10.4(c), but, as discussed above, do not meet the criteria for treatment as minor. The Department may increase the base penalty based on the compliance history, (see proposed N.J.A.C. 7:26C-10.5(a)1) and the conduct of the violator (see proposed N.J.A.C. 7:26C-10.5(a)2).

The Department proposes to recodify N.J.A.C. 7:26C-10.6, entitled “Procedures for requesting and conducting adjudicatory hearings” as N.J.A.C. 7:26C-10.9, with no change in the text.

Proposed new N.J.A.C. 7:26C-10.6, entitled “Civil administrative penalty for submitting false information,” sets forth the procedures for assessing and calculating penalties and the penalty amounts for submitting inaccurate or false information to the Department. A party who submits inaccurate or false information prevents the Department from determining compliance with applicable regulations and materially and substantially undermines and impairs the goals of the site remediation program. Submitting false or inaccurate information is a violation that is ineligible for grace period treatment (see N.J.A.C. 7:26C-10.6(d)).

### **Administrative Consent Orders and Remediation Agreements**

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Certain site remediation projects may be conducted in accordance with the terms of either an ACO or an RA, both of which are agreements by and between the person responsible for conducting the remediation and the Department. Pursuant to the Oversight Rules at N.J.A.C. 7:26C-2.3, with two exceptions not relevant to this discussion, the Department may allow a person to conduct remediation under an ACO where the site has been scheduled for publicly funded remediation or where a New Jersey court orders a person to remediate a site (unless otherwise specified by the court order). Pursuant to the ISRA rules at N.J.A.C. 7:26B-4, the Department may enter into an RA at the request of an owner or operator of an industrial establishment to allow transfer of ownership or operations of that establishment to occur prior to the Department's approval of a negative declaration or remedial action workplan for that establishment.

As provided in the Oversight Rules at N.J.A.C. 7:26C-5.2(b), the ACO codified at N.J.A.C. 7:26C, Appendix A is applicable in all situation unless modified in accordance with N.J.A.C. 7:26C-5.2(b)1 through 4 or N.J.A.C. 7:26C-5.2 (c) through (f). Similarly, the ISRA rules at N.J.A.C. 7:26B-4.1(c) require that the language for all ISRA RAs must, to the greatest extent practicable, conform to the language in the standard RA codified in the ISRA rules at N.J.A.C. 7:26B, Appendix A.

The Department has determined that the provisions of the Grace Period Law apply to sites remediated pursuant to an ACO or an RA. Additionally, the Department has determined that the provisions of these two agreements should be consistent with each other. Accordingly, the Department proposes to reorganize the paragraphs of these documents so that they are structurally consistent and proposes amendments to each of these agreements described more fully below.

The Department proposes to amend existing paragraph 43 (recodified as paragraph 45) of the Standard ACO and existing paragraph 27 (recodified as paragraph 42) of the Standard RA, to provide that penalties for violations of either of these types of

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agreements shall be assessed pursuant to N.J.A.C. 7:26C-10, Civil Administrative Penalties and Requests for Adjudicatory Hearings. The result of this amendment will be that the Department will assess penalties for minor violations of an ACO or RA pursuant to proposed new N.J.A.C. 7:26C-10.3, including providing the violator with notice of the violation and allowing the violator to correct the violation within the applicable grace period. For non-minor violations, the Department will take enforcement action. These proposed amendments will ensure that the same penalty calculations will be applied, whether a contaminated site is being remediated pursuant to an ACO, an RA, the ISRA rules or the Underground Storage Tank rules.

Additionally, the Department proposes deleting the stipulated penalty language from both the Standard RA (existing paragraphs 28(a) through (d) and (f) and paragraphs 29 through 32) and the Standard ACO (existing paragraphs 46(a) through (d) and (f) and paragraphs 45 through 52) because penalties would no longer be assessed under these paragraphs. However, as mentioned above in the discussion of the proposed grace period amendments, for ACOs and RAs executed prior to the effective date of these amendments and that contain stipulated penalty provisions, the Department proposes amend the Oversight rules to add N.J.A.C. 7:26C-10.2(d). This provision offers the party who entered into the agreement the option to amend the document to remove the stipulated penalty provisions and replace them with language deferring to the penalty provisions in N.J.A.C. 7:26C-10. If the party does not request such an amendment to its ACO or RA, the stipulated penalties will remain in effect.

In addition to the amendments to the penalty provisions of the ACO and RA described above, the Department is proposing amendments to these documents to clarify their intent and/or to ensure consistency between them. Both of these documents have the same purpose: to set forth the terms by which parties agree to remediate contaminated sites. Many of the sections and paragraphs in the existing documents are substantially the

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same; however, there are some inconsistencies between the documents concerning wording of similar provisions and ordering of the sections and paragraphs.

The Department is proposing a number of global changes throughout the RA in order to make the language used in the RA consistent with the language in the ACO and to update cross-references throughout.

The Department proposes deleting paragraph 1 of the Findings Section of both the RA and the ACO. These paragraphs describe the site to be remediated pursuant to these documents. The Department proposes replacing them with language that more accurately and succinctly defines the site and clarifies that any areas to which contamination has migrated are also included.

The Department proposes to replace the reference to “NJDEP” in the introductory paragraph of the RA with the term “Department or DEP” in order to be consistent with the wording of the ACO. This change is also proposed for paragraphs 2 through 4 and 7 of the RA Findings section, and existing paragraphs 3 (recodified as paragraph 14), 5 (recodified as paragraph 13), 6 (recodified as paragraph 20), 13 (recodified as paragraph 17), 16 (recodified as paragraph 28), 18 and 19 (recodified as paragraphs 37 and 38, respectively), 25 (recodified as paragraph 35), 37 (recodified as paragraph 54), 40 (recodified as paragraph 62), 41 (recodified as paragraph 66), 44 (recodified as paragraph 50), and 48 (recodified as paragraph 67) of the RA Agreement section.

Also in the RA, the Department proposes to replace the reference to “Responsible Person” with “Person” in paragraphs 2 through 5 of the Findings in order to be consistent with the wording of the ACO. This change also proposed for RA existing paragraphs 3 (recodified as paragraph 14), 5 (recodified as paragraph 13), 13 (recodified as paragraph 17), 16 (recodified as paragraph 28), 22 (recodified as paragraph 32), 18 through 21 (recodified as 37 through 40), 27 through 28 (recodified as 42 through 43), 37 (recodified

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as paragraph 54), 40 (recodified as paragraph 62), 41 (recodified as paragraph 66), and 48 (recodified as paragraph 67).

The Department proposes to replace the word “Paragraph” to “paragraph” in paragraphs 3 and 4 of the Findings in order to be consistent with the ACO.

The Department proposes to make the following specific amendments to the RA and the ACO.

In the RA, the Department proposes to recodify existing paragraph 6 of the Findings as new paragraph 41 of the Agreement section with amendments. The Department is proposing to add a new paragraph 6 to the RA that clarifies that the scope of the RA includes contaminants at the site that is the subject of the agreement as well as contaminants that have or will emanate from the subject site. This change was made to make the RA consistent with paragraph 5 of the Findings Section of the ACO.

The Department proposes to delete the phrase “with the agreement of [Responsible Person(s)]” from paragraph 7 of the Findings of the RA since the person’s acquiescence is implied by their execution of the RA.

The Department proposes to change the heading of Section I of the RA Agreement section from “Remediation” to “Remedial Investigation Requirements” in order to be consistent with the heading of Section I of the ACO.

The Department proposes to amend existing paragraph 6 of the ACO (recodified as paragraph 7) which references the effective date of the ACO by adding a cross-reference to the paragraph of the ACO that clarifies the effective date of the ACO. The Department also proposes to amend this paragraph by adding the phrase “including a

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schedule pursuant to N.J.A.C. 7:26E-4.2(b)” to clarify that the Tech Regs. at N.J.A.C. 7:26E-4.2(b) require that the Remedial Investigation Work Plan include schedules.

The Department proposes to amend existing paragraph 7 of the ACO (recodified as paragraph 8) by adding language to clarify that the Department will provide written final approval of the Remedial Investigation (RI) Work Plan to the person responsible for conducting the remediation.

The Department proposes to recodify existing paragraph 10 of the ACO as paragraph 11 and add language to clarify the process by which the Department will inform the person responsible for conducting the remediation that the additional remedial investigation work is required at the site. Pursuant to these proposed amendments, the Department will notify the person of the additional work that is required, and the person remediating the site will submit another RI Work Plan and schedule for the additional work, conduct the additional work and submit another RI Report pursuant to the Department-approved schedule.

The Department proposes to amend existing paragraph 11 of the ACO (recodified as paragraph 12) by adding language to clarify that the Department will provide the person responsible for conducting the remediation written final approval of the final RI Work Plan.

In order to clarify the process the RA requires for the remediation of the site that is the subject of the RA (including the submission of documents and the Department review of these documents), and to ensure consistency with corresponding ACO provisions, the Department proposes to replace existing paragraphs 1 through 6 of the agreement section of the RA with new paragraphs 1 through 6, the language of which mirrors ACO existing paragraphs 6 through 11 as proposed to be amended. Existing paragraphs 1 through 3 of the RA contain a general description of the required

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remediation process. The Department proposes to break out the requirements contained in these paragraphs into separate paragraphs that are more descriptive of the required tasks. Additionally, as will be more fully described below, the Department proposes to recodify existing paragraphs 3, 4, 5 and 6 of the Agreement section of the RA as new paragraphs 14, 36, 13 and 20 respectively.

The Department proposes to add the word “Requirements” to the title of Section II of the ACO for clarity.

The Department proposes to amend existing paragraph 13 of the ACO (recodified as paragraph 14) by adding language to clarify that the Department will provide written final approval of the RI Work Plan to the person responsible for conducting the remediation.

The Department proposes to amend existing paragraphs 16 and 17 of the ACO (recodified as paragraphs 17 and 18, respectively) by adding language to clarify the process by which the Department will inform the person responsible for conducting the remediation that the additional remediation is required at the site. Pursuant to these proposed amendments, the Department will notify the person of the additional work that is required, and the person conducting the remediation will submit additional work plans, reports, and schedules for the additional work, conduct the additional work, and submit another Remedial Action Report pursuant to the Department-approved schedule. The Department also proposes to replace the word “directed” with the word “required” to clarify that the person’s agreement to conduct the additional work is a requirement of the ACO.

In order to make the RA and the ACO consistent, the Department proposes to add a new Section II to the RA entitled “Remedial Action Requirements.” In this new section, the Department proposes to include new paragraphs 7 through 12, whose

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language would mirror the language of ACO existing paragraphs 12 through 17 as proposed to be amended.

The Department proposes to add a new Section III to the RA Agreement section in order to be consistent with the organization of the ACO. This section is titled “Additional Remedial Investigation and Remedial Action.” Within this section, the Department proposes to recodify existing paragraph 5 of the Agreement Section of the RA as paragraph 13 so that the ordering of the paragraphs in the RA corresponds to the paragraph order of the ACO. In addition, the Department proposes to make minor wording changes to the paragraph to be consistent with the corresponding paragraph in the ACO. The corresponding paragraph is existing paragraph 18 (recodified as paragraph 19).

Also within proposed RA Section III, the Department proposes to recodify existing paragraph 3 as paragraph 14. This paragraph requires that the person responsible for conducting the remediation submit a negative declaration when the Department determines that no further action is required at the site. As the negative declaration and no further action occurs at the end of the active remediation process, it follows that this paragraph should appear in the section of the RA concerning the end of the remediation phase. The requirement for a negative declaration pertains only to cases being remediated pursuant to the ISRA rules; thus there are no corresponding paragraphs in the ACO.

The Department proposes to add a new Section IV, entitled “Progress Reports,” to the Agreement section of the RA in order to be consistent with the organization of the ACO.

In order to make the RA and the ACO consistent, the Department proposes to add a new paragraph 15 to the RA which corresponds to existing paragraph 19 of the ACO

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(recodified as paragraph 20). This paragraph concerns the submission of quarterly progress reports by the person responsible for conducting the remediation.

The Department proposes to clarify existing paragraph 20 of the ACO (recodified as paragraph 21) which concerns project coordination including force majeure issues by adding a cross-reference to Section X. of the ACO which contains the force majeure requirements.

The Department proposes to amend existing paragraph 21 of the ACO (recodified as paragraph 22) by deleting the provision of the paragraph concerning the agent of the person responsible for conducting the remediation and adding it as a new paragraph 49.

The Department proposes to recodify Section IV “Project Coordination” of the Agreement section of the RA as Section V in order to be consistent with the organization of the ACO.

In order to make the RA and the ACO consistent, the Department proposes to add a new paragraph 16 to the RA which corresponds to existing paragraph 20 of the ACO (recodified as paragraph 21), including the amendments to existing paragraph 20 as described above. This paragraph states that the person responsible for conducting the remediation agrees to submit documents required by the RA to the Department by delivery with acknowledgment of receipt and that the date the Department uses to determine compliance with schedules will be the date the Department executes the acknowledgment.

In order to make the language of the RA and the ACO consistent, the Department proposes to make the same amendments to existing paragraph 13 of the RA (recodified as paragraph 17) as those made to existing paragraph 21 of the ACO (recodified as

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paragraph 22) described above. Further, the Department proposes to recodify existing paragraph 13 of the RA as paragraph 17.

The Department proposed to recodify Section II of the RA, Remediation Funding Sources and Remediation Funding Source Surcharge, as Section VI. Paragraphs 7 and 8 would be recodified as 21 and 22 respectively, with no change in the text. Similarly, Section III, Project Cost Review, would be recodified as Section VII and paragraphs 9 through 12 would be recodified as paragraphs 23 through 26, with no change in the text.

The Department proposes to delete Section IV of the RA, Project Coordination, including existing paragraphs 13 and 14. Instead, the Department proposes to add new paragraphs 18 and 19 to the RA which correspond to existing paragraph 22 and 23 of the ACO (recodified as paragraph 23 and 24, respectively). These state that the Department will identify a Department contact for the case and directs the person to send all payments and documents related to the RA to this person and thus, are more specific than the language to be deleted.

The Department proposes to amend existing paragraph 23 of the ACO (recodified as paragraph 24) by correcting the cross-reference to paragraph 22 as paragraph 23.

The Department proposes to recodify existing paragraph 6 of the RA as paragraph 20 in order to correspond to the ordering of the paragraphs in the ACO and to amend this paragraph to correspond with the language of existing paragraph 24 of the ACO (recodified as paragraph 25).

The Department proposes to recodify Section V of the Agreement section of the RA, , “Oversight Cost Reimbursement,” as section VIII to be consistent with the organization of the ACO.

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The Department proposes to recodify existing paragraph 15 of the RA as paragraph 27 with no change in the text. This paragraph concerns the payment of fees which are required for sites being remediated pursuant to the Industrial Site Recovery Act rules, and thus, it is more appropriate to include it in the section of the RA concerning Oversight Cost Reimbursement. Note that the ACO does not contain a similar provision because this provision is specific to the ISRA rules.

The Department proposes to amend paragraph 31 of the ACO (recodified as paragraph 32) by replacing the phrase “for the period being charged” with the phrase “for the period invoiced in the Department’s summary” in order to clarify the period that the Department is billing for oversight costs. In addition, the Department proposes to correct the cross-reference to paragraph 33, which is proposed to be recodified as paragraph 34.

In order to make the language of the RA and the ACO consistent, the Department proposes to make the same amendments to existing paragraph 16 of the RA (to be recodified as paragraph 28) as those made to existing paragraph 31 of the ACO (to be recodified as paragraph 32), as described above. In addition, the Department proposes to delete the last sentence from existing paragraph 16 of the RA (recodified as paragraph 28) concerning the person’s ability to contest the Department’s oversight cost calculation pursuant to N.J.A.C. 7:26B-8.3. The RA does not limit the person’s right to contest oversight costs pursuant to N.J.A.C. 7:26B-8.3, thus this sentence is superfluous.

In order to make the language of the RA and the ACO consistent, the Department proposes to add a new paragraph 29 to the RA. This paragraph states that person agrees to pay the Department’s oversight costs that accrued prior to the termination of the RA, after the RA is terminated and corresponds to existing paragraph 32 (recodified as paragraph 33) of the ACO.

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The Department proposes to recodify existing paragraph 17 of the RA as paragraph 30 in order to be consistent with the ordering of the paragraphs in the ACO. This paragraph corresponds to existing paragraph 33 of the ACO (recodified as paragraph 34) and concerns the obligation of the person responsible for conducting the remediation to pay interest on any unpaid balance of oversight costs. The Department proposes to amend the language of this paragraph in order to make the language of the paragraph consistent with the language in existing paragraph 33 of the ACO.

The Department proposes to recodify section VII. "Reservation of Rights" of the Agreement section of the RA as section IX. in order to be consistent with the organization of the ACO.

In order to make the language of the RA and the ACO consistent, the Department proposes to add a new paragraph 31 to the RA. This paragraph states that the Department reserves the right to unilaterally terminate the RA if the Department determines that the person has violated the terms of the Agreement and describes the process the Department will follow for termination. This paragraph corresponds to existing paragraph 34 (recodified as paragraph 35) of the ACO.

The Department proposes to amend existing paragraph 35 of the ACO (recodified as paragraph 36) to clarify that the person maintains his/her right to pursue the Department's dispute resolution process by adding a cross-reference to the paragraph of the ACO which concerns the dispute resolution process.

The Department proposes to delete existing paragraphs 32 of the RA which concerns the Department's ability to pursue penalties or take any other enforcement action against the person for any violation of the RA, and existing paragraph 42 of the RA which states that if person fails or refuses to perform any obligation under the RA, the person agrees that the Department has the right to exercise any options available

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under the RA or any other statutes. These paragraphs are redundant with existing paragraph 22 of the RA.

The Department proposes to recodify existing paragraph 22 of the RA as paragraph 32 in order to be consistent with the ordering of the paragraphs in the ACO. This paragraph corresponds to existing paragraph 35 of the ACO (recodified as paragraph 36) and concerns the Department reserving its right to seek civil or civil administrative penalties or any other equitable relief against the person for violations of the RA. It also concerns the person's defenses to such actions brought by the Department. The Department proposes to amend the language of this paragraph to make it consistent with the language in existing paragraph 35 of the ACO as proposed to be amended.

The Department proposes to delete existing paragraph 24 of the RA as it is duplicative of paragraphs 3 and 5 of the Findings section and new paragraph 53 of the RA which corresponds to existing paragraph 60 of the ACO (recodified as paragraph 56).

The Department proposes to recodify existing paragraph 26 of the RA as paragraph 33 in order to correspond to the ordering of the paragraphs in the ACO.

The Department proposes to delete existing paragraph 39 of the RA which states that person agrees not to contest the authority of the Department to issue the RA, nor contest the terms and conditions of the RA, except to defend against an enforcement action concerning the RA brought by the Department. Instead, in order to make the language and the ordering of the paragraphs of the RA and the ACO consistent, the Department proposes to add the following new paragraphs to the RA: paragraph 53 which states that the person agrees to comply with the RA which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority. This paragraph corresponds to existing paragraph 60 (recodified as paragraph 56) of the ACO; paragraph 55 which states that person waives its rights to an

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administrative hearing concerning the entry of the RA. This paragraph corresponds to existing paragraph 62 (recodified as paragraph 58) of the ACO; and paragraph 34 which reserves the person's legal, equitable or administrative remedies which person has under applicable law or regulation, and describes the defenses that the person reserves under the Spill Compensation and Control Act in any enforcement action initiated by the Department. This paragraph corresponds to existing paragraph 37 (recodified as paragraph 38) of the ACO.

The Department proposes to recodify existing paragraph 25 of the RA as paragraph 35 in order to be consistent with the ordering of the paragraphs in the ACO. This paragraph corresponds to existing paragraph 38 of the ACO (recodified as paragraph 39) and states that, except as otherwise provided in the RA, the execution of the RA does not release the person from any liabilities or obligations the person may have pursuant to any other authority. The Department proposes to amend the language of existing paragraph 25 of the RA in order to make the language of the paragraph consistent with the language in existing paragraph 38 of the ACO.

The Department proposes to recodify existing paragraph 4 of agreement section of the RA as paragraph 36, with no change in the text. This paragraph concerns reserving the right of the person responsible for conducting the remediation to implement any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B, the Industrial Site Recovery Act rules, and more logically belongs in the Reservation of Rights section of the RA. This provision only concerns compliance options for persons remediating sites pursuant to the ISRA rules; thus a similar provision is not included in the ACO.

The Department proposes to recodify section VI. "Force Majeure" of the Agreement section of the RA as section X. in order to be consistent with the organization of the ACO.

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The Department proposes to recodify existing paragraphs 18 through 21 of the RA as paragraphs 37 through 40 in order to correspond to the ordering of the paragraphs in the ACO. Existing paragraphs 18 through 21 of the RA correspond to existing paragraphs 39 through 42 of the ACO (recodified as paragraphs 40 through 43). In addition, the Department proposes to amend existing paragraphs 40 of the ACO by replacing the word “performance” with the word “compliance” which is consistent with the language in the corresponding paragraph of the RA and is more descriptive of what the paragraph requires.

The Department proposes to recodify Section VIII of the Agreement section of the RA, “Penalties,” as Section XI in order to be consistent with the organization of the ACO.

The Department proposes to amend existing paragraph 27 of the RA (recodified as paragraph 42) by replacing the phrase “violations of” with the phrase “failure to implement and maintain institutional controls including by way of example” in referring to penalties for failure to comply with deed notice or declaration of environmental restriction requirements in order to clarify the violation that is intended by this paragraph. The Department also proposes to replace the reference to “this section” with a reference to N.J.A.C. 7:26C-10 in order to clarify that the payment of penalties will be made in accordance with the subchapter of the Oversight Rules concerning grace period, civil administrative penalties and requests for adjudicatory hearings. The Department proposes the same amendments to existing paragraph 43 of the ACO (recodified as paragraph 45).

The Department proposes to amend existing paragraph 33 of the RA (recodified as paragraph 44) by adding the phrase “List each non-DEP party to this RA” in order to

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be consistent with the language in existing paragraph 49 of the ACO (recodified as paragraph 47).

The Department proposes to delete existing paragraphs 34 through 36 of the RA and existing paragraphs 50 through 52 of the ACO since these paragraphs concern calculating penalties for the economic benefit gained by persons responsible for conducting the remediation that are in violation of the RA. These paragraphs are not needed in the RA and ACO since the Department is proposing to amend existing paragraph 27 (recodified as paragraph 42) of the RA and paragraph 43 (recodified as paragraph 45) of the ACO to refer to N.J.A.C. 7:26C-10 for penalty calculations as previously discussed.

The Department proposes to add a new section entitled “Dispute Resolution” to the Agreement section of the RA as section XII in order to be consistent with the organization of the ACO.

In order to make the RA and the ACO consistent, the Department proposes to add a new paragraph 45 to the RA which corresponds to existing paragraph 53 of the ACO (recodified as paragraph 48) concerning dispute resolution.

The Department proposes to recodify section IX. “General Provisions” of the Agreement section of the RA as section XIII. in order to be consistent with the organization of the ACO.

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The Department proposes to add a new paragraph 46 to the RA and a new paragraph 49 to the ACO in which the person responsible for conducting the remediation designates the person's agent for the purpose of service for all matters concerning the RA or ACO. This paragraph is based on language in existing 13 of the RA and existing paragraph 21 of the ACO.

In order to make the RA and the ACO consistent, the Department proposes to add new paragraphs 47 through 49 to the RA which corresponds to existing paragraphs 54 through 56 of the ACO (recodified as paragraphs 50 through 52). The Department proposes to amend existing paragraph 54 of the ACO in order to correct the cross-reference contained therein. Paragraph 47 concerns the person's agreement to allow the Department access to the site for purposes of monitoring person's compliance with the RA. Paragraph 48 concerns person's agreement not to construe informal advice from the Department or by persons acting on behalf of the Department as relieving person of its obligation to obtain written approvals required by the RA. Paragraph 49 concerns Person's agreement to provide a copy of the RA to each contractor and subcontractor retained to perform work required by the RA.

The Department proposes to recodify existing paragraph 44 of the RA as paragraph 50 in order to correspond to the ordering of the paragraphs in the ACO and to amend it by adding the sentence, "Nothing in the Remediation Agreement relieves [Person] from complying with all other applicable laws and regulations," to make the language of this paragraph consistent with existing paragraph 57 of the ACO (recodified as paragraph 53). Existing paragraph 44 of the RA corresponds to existing paragraph 57 of the ACO (recodified as paragraph 53).

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In order to make the RA and the ACO consistent, the Department proposes to add new paragraphs 51 through 53 to the RA, which correspond to existing paragraphs 58 through 60 of the ACO (recodified as paragraphs 54 through 56). Paragraph 51 states that all work plans, schedules and other documents required by this RA and approved by the Department are incorporated into the RA. Paragraph 52 states that the person agrees to submit all data and information concerning contamination at the site to the Department upon written request by the Department to do so. Paragraph 53 states that person agrees to comply with the RA which shall be fully enforceable as an Order in New Jersey Superior court.

The Department proposes to recodify existing paragraph 37 of the RA as paragraph 54 in order to correspond to the ordering of the paragraphs in the ACO. Existing paragraph 37 of the RA corresponds to existing paragraph 61 of the ACO (recodified as paragraph 57).

In order to make the RA and the ACO consistent, the Department proposes to add new paragraphs 55 through 59 to the RA, which correspond to existing paragraphs 62 through 66 of the ACO (recodified as paragraphs 58 through 62). Paragraph 55 states that the person waives its rights to an administrative hearing concerning the entry of the RA. Paragraph 56 states that the RA shall be governed and interpreted under the laws of New Jersey. Paragraph 57 states that if any provision of the RA shall be invalid or unenforceable, the remainder of the RA shall not be affected.

The Department proposes to recodify existing paragraph 38 of the RA as paragraph 60 in order to correspond to the ordering of the paragraphs in the ACO. Existing paragraph 38 of the RA corresponds to existing paragraph 67 of the ACO (recodified as paragraph 63).

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The Department proposes to amend existing paragraph 68 (recodified as paragraph 64) of the ACO by adding the phrase “person’s document retention policy notwithstanding,” to clarify that the requirements of existing paragraph 68 controls, regardless of the terms of the responsible person’s document retention policy. In order to make the RA and the ACO consistent, the Department proposes to add a new paragraph 61 to the RA which corresponds to existing paragraph 68 of the ACO, including the proposed amendment.

The Department proposes to recodify existing paragraph 40 of the RA as paragraph 62 in order to correspond to the ordering of the paragraphs in the ACO and to amend this paragraph to make its language consistent with the language of ACO existing paragraph 69 (recodified as paragraph 65). Existing paragraph 40 of the RA corresponds to existing paragraph 69 of the ACO (recodified as paragraph 65).

The Department proposes to clarify existing paragraph 70 of the ACO (recodified as paragraph 66) by deleting the reference to existing paragraph 71 of the ACO. Existing paragraph 71 states that the Department will terminate the ACO when the person responsible for conducting the remediation has remediated the site to the applicable unrestricted use standard and satisfied all of its financial obligations. Instead of the reference to existing paragraph 71, the Department proposes to include language in existing paragraph 70 that clarifies that the ACO remains in effect until the site is remediated to the applicable unrestricted use standard.

The Department proposes to amend existing paragraph 72 of the ACO (recodified as paragraph 68) by adding the phrase “except as provided in paragraph 55 above.” The proposed addition of this phrase clarifies that the person responsible for conducting the remediation may not assert a claim of confidentiality pursuant to N.J.A.C. 7:26B-7, except for documents concerning data related to site conditions, sampling or monitoring as allowed by recodified paragraph 55.

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The Department proposes to amend existing paragraph 73 of the ACO (recodified as paragraph 69) by deleting the phrase “along with” and the word “original” and adding the phrase “each with the original signature of [Person] or its authorized representative,” for clarity.

In order to make the RA and the ACO consistent, the Department proposes to add new paragraphs 63 through 65 to the RA which corresponds to existing paragraphs 70 through 72 of the ACO (recodified as paragraphs 66 through 68), including the proposed amendments to existing paragraphs 70 and 72 of the ACO. Paragraph 63 states that if the person remediates the site to a restricted use standard and the person implements institutional and engineering controls, the RA shall remain in effect, including the requirement to pay the remediation funding source surcharge, until the site is remediated to the applicable unrestricted use standard. Paragraph 64 states that if the person remediates contaminated soil at the site to the unrestricted use soil standard and other media to the applicable remediation standard, the requirements of the RA shall be deemed satisfied upon the person’s receipt of written notice by the Department that the person completed the required remediation. Paragraph 65 concerns the persons right to assert a claim of confidentiality.

The Department proposes to recodify existing paragraph 41 of the RA as paragraph 66 in order to be consistent with the ordering of the paragraphs in the ACO. This paragraph corresponds to existing paragraph 73 of the ACO (recodified as paragraph 69) and concerns the way in which the person must submit the executed RA to the Department. The Department proposes to amend the language of existing paragraph 41 of the RA in order to make the language of the paragraph consistent with the language in existing paragraph 73 of the ACO, including the proposed amendments described above.

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The Department proposes to recodify existing paragraph 45 of the RA as paragraph 67 in order to correspond to the ordering of the paragraphs in the ACO. Existing paragraph 45 of the RA corresponds to existing paragraph 74 of the ACO (recodified as paragraph 70).

### **Discharges of Petroleum and Other Hazardous Substances Rules**

The Department proposes to correct the citation to the Oversight Rules in N.J.A.C. 7:1E-6.5(c).

### **Underground Storage Tank Rules**

The Department proposes to recodify N.J.A.C. 7:14B-1.8(a) and (b) as N.J.A.C. 7:14B-5.9(a) and (b). This provision concerns introducing product into a leaking or unregistered tank, and thus is more properly located in Subchapter 5, which concerns the operational requirements for underground storage tanks.

The Department proposes to reformat existing N.J.A.C. 7:14B-12.1(a) into 12.1(a) through (c) for clarity. Proposed new N.J.A.C. 7:14B-12.1(a) refers to the denial or revocation of an owner's or operator's registration or permit for the underground tank system, and/or the denial, suspension or refusal to renew a certified individual's or business firm's certification issued pursuant to N.J.A.C. 7:14B-13.

Proposed N.J.A.C. 7:14B-12.1(b) refers to the failure by any person to comply with a requirement of N.J.A.C. 7:14B-1, 3, and 7 through 14. These subchapters set forth the fee and remediation requirements for underground storage tanks. One consequence for violating these subchapters of the Underground Storage Tanks Rule is the assessment of civil administrative penalties pursuant to the Oversight Rules at N.J.A.C. 7:26C-10. The Department proposes to delete the reference to N.J.A.C. 7:26C-10.4 and 5 due to the

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proposed amendments to N.J.A.C. 7:26C-10 that incorporate the provisions of the Grace Period Law as explained above.

Proposed N.J.A.C. 7:14B-12.1(c) refers to the failure by any person to comply with a requirement of N.J.A.C. 7:14B-2, 4 through 6 or 15. These subchapters contain the operational requirements for underground storage tanks. One consequence for violating these subchapters of the Underground Storage Tank Rule is the assessment of civil administrative penalties pursuant to the Water Pollution Control Act Rules, N.J.A.C. 7:14-8.

The Department proposes to recodify existing N.J.A.C. 7:14B-12.1(b) as 12.1(d) and proposes to correct the citation to the procedures to request an administrative hearing in the Oversight Rules from N.J.A.C. 7:26C-10.6 to 10.9.

### **The Industrial Site Recovery Act Rules**

The Department proposes to change the reference in N.J.A.C. 7:26B-1.11(b) from the specific reference to N.J.A.C. 7:26C-10.4 and 10.5 to the general reference to N.J.A.C. 7:26C-10 since all of subchapter 10 applies to the ISRA rules.

### **Oversight Rules - Memoranda of Agreement Application and Termination**

Subchapter three of the Oversight Rules, N.J.A.C. 7:26C-3 prescribes the administrative process for voluntary cleanups. Through this process, qualifying parties who wish to voluntarily clean up a site apply for Departmental oversight following the procedure outlined in N.J.A.C. 7:26C-3.2. The application, together with the Department's written acceptance of the applicant's offer to conduct the remediation and the provisions set forth at N.J.A.C. 7:26C-3.3(a)3, constitute a memorandum of agreement (MOA).

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The Department proposes to add new N.J.A.C. 7:26C-3.2(a)6 to provide that, where the Department has terminated a prior MOA with this applicant pursuant to N.J.A.C. 7:26C-3.3(c)1i through iii, that applicant must include a payment of \$1,000 with the application for a second or subsequent MOA. This payment will cover the Department's costs associated with evaluating the application for the second or subsequent MOA, in consideration of the party's activities in connection with a prior MOA.

The Department proposes to amend N.J.A.C. 7: 26C-3.2(b)1iii to allow a party whose complete application was rejected by the Department due to prior MOA terminations to execute an ACO with the Department if that party desires Departmental remediation oversight. The proposed amendment improves the efficiency of site remediation by ensuring that the Department's limited resources are focused on parties that truly intend to remediate a site pursuant to the terms of the MOA. Since the ACO has more structure and requirements than an MOA (for example, the requirement to establish a remediation funding source), in those instances where the Department rejects an MOA application, an ACO is the appropriate oversight document..

The Department proposes to add a new N.J.A.C. 7:26C-3.2(b)3 to define the term "applicant" for the purposes of the section. This proposed new section clarifies that an applicant for an MOA includes any individual or entity, including without limitation, a public or private corporation, company, firm, partnership, joint stock company, the United States and any of its political subdivisions, the State of New Jersey or any of its political subdivisions within the State, or any of the other meanings which apply to the common understanding of the term. "Applicant" also includes any sibling, spouse, child, parent, grandparent, spouse of the child, child of a sibling, or sibling of a parent of the applicant. The clarification is necessary to ensure that a party who has entered into prior MOAs, two or more of which were terminated by the Department, does not try to apply

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for a third MOA (instead of an ACO as required by proposed N.J.A.C. 7:26C-3.2(b)1) by making the application in the name of a business associate or family member.

The Department proposes to amend N.J.A.C. 7:26C-3.3(a)3 by adding a new subparagraph ii. that expands the terms of an MOA to include the requirement for the applicant to submit all data generated or collected concerning the site and to require that this obligation continue after the Department's termination of the MOA. This proposed amendment will enhance the efficiency of site remediation by eliminating the need to re-collect data at a site for which the data was already collected under a previous MOA.

The Department proposes to delete the phrase "for any 6-month period or more" from N.J.A.C. 7:26C-3.3(c)1i. The 6-month time period was originally included in the Oversight Rules to allow a person responsible for conducting the remediation pursuant to the schedule submitted by the person as part of his/her MOA application to get back on schedule prior to the Department terminating the MOA. At that time, the Department did not anticipate how the implementation of grace period provisions would affect the implementation of the voluntary cleanup program through MOAs. The Grace Period Law does not apply to MOAs, which are voluntary agreements. However, in order to ensure consistency between contaminated sites being remediated pursuant to an MOA and those being remediated pursuant to another type of oversight document such as an ACO, or pursuant to a regulatory obligation such as the Underground Storage Tank rules, the Department has decided as a matter of policy to allow a person responsible for conducting the remediation a period of time to correct a deficiency in complying with the MOA for a schedule violation. Therefore, the six month period to allow the person to come into compliance with the schedule which is part of the MOA is no longer necessary.

Similarly, as a matter of policy, the Department intends to allow a period of time to correct two other deficiencies prior to initiating termination of the MOA. These deficiencies are: failure to pay oversight costs and failure to submit documents that

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comply with the Technical Requirements for Site Remediation. Again, such allowance is intended to create parity for persons remediating sites pursuant to an MOA and persons remediating sites in non-MOA circumstances.

The Department proposes to delete the phrase “and the person does not meet the conditions at N.J.A.C. 7:26C-3.4” from N.J.A.C. 7:26C-3.3(c)1iv to clarify that the application of the conditions at N.J.A.C. 7:26C-3.4 are at the Department’s discretion.

The Department proposes to recodify existing N.J.A.C. 7:26C-3.3(c)2 as N.J.A.C. 7:26C-3.3(c)3 with amendments to be described below.

At new N.J.A.C. 7:26C-3.3(c)2, the Department proposes to add language that permits a person responsible for conducting remediation pursuant to an MOA a period of time to correct the deficiency that would otherwise result in termination of the MOA pursuant to N.J.A.C. 7:26C-3.3(c)1. This proposed amendment is intended to provide a party with every possible opportunity to remediate a contaminated site using private dollars rather than the Department remediating the site with public funds. In addition, allowing for a period of time to correct deficiencies prior to termination will encourage parity between site remediation programs.

As discussed above, the Department proposes to recodify N.J.A.C. 7:26C-3.3(c)2 as N.J.A.C. 7:26C-3.3(c)3. Additionally, the Department proposes to amend this subsection by replacing the word “notify” with the phrase “issue a notice of termination.” This amendment clarifies the process by which the Department will terminate an MOA and remind that person of his/her continuing obligations. The Department is also proposing to recodify N.J.A.C. 7:26C-3.3(c)2ii and iii as N.J.A.C. 7:26C-3.3(c)3iv and v with amendments that clarify the existing provisions, and to add a new N.J.A.C. 7:26C-3.3(c)3iii that the notice of termination will include the reason(s) for termination.

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Finally, the Department proposes to recodify N.J.A.C. 7:26C-3.3(c)2iv as N.J.A.C. 7:26C-3.3(c)3ii with no change in the text.

The Department proposes to add a new N.J.A.C. 7:26C-3.3(c)4 that provides that, where the Department terminates an MOA, the Department reserves it right to pursue any available enforcement action.

To dovetail with the amendment to N.J.A.C. 7:26C-3.3(c)1iv described above, the Department proposes to add a new paragraph N.J.A.C. 7:26C-3.4(c) that provides that, for a site scheduled for publicly funded remediation, where the Department has terminated the MOA, the Department may allow that person to conduct remediation under an ACO.

### **Social Impact**

Contaminated sites affect virtually everyone in the State, either directly due to proximity to the contaminated site, which may increase public health risks, or indirectly due to the potential cost to the taxpayers, businesses, and other individuals to remediate these sites. The proposed amendments to the Oversight Rules will encourage compliance with the State's contaminated site remediation laws such as the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and ISRA, N.J.S.A. 13:1K-6 et seq., associated rules, administrative orders, administrative consent orders, and remediation agreements issued by the Department. The proposed amendments to the Oversight Rules will also continue to provide a positive social impact by outlining specific procedures for the enforcement of contaminated site remediation rules.

The citizens of the State will benefit from the continued improvement to human health and the environment that will result from compliance with contaminated site remediation rules, including the Discharges of Petroleum and Other Hazardous

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Substances rules, specifically N.J.A.C. 7:1E-5.7; the Underground Storage Tank Rules N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

The proposed amendments to N.J.A.C. 7:26C-3 concerning MOAs will result in a positive social impact by eliminating frivolous applications for MOAs and ensuring that parties who enter into an MOA are committed to performing the remediation of the contaminated site as described therein.

The proposed amendments to N.J.A.C. 7:26C-10 to implement the Grace Period Law will provide a positive social impact by helping encourage a greater sense of cooperation between the Department and the regulated community. By removing the threat of penalties for certain types of violations where compliance is achieved within the time specified, the proposed amendments will encourage the regulated community to take positive action toward achieving compliance resulting in the remediation of contaminated sites. Rapid remediation of a contaminated site results in less exposure to the contaminants, thus less adverse risks to human health and the environment.

The proposed amendments to N.J.A.C. 7:26C-10.4 through 10.7 concerning the assessment of civil administrative penalties will have a positive social impact. Under the current rules, categories of violations are identified and variable dollar amounts may apply for each day the violation continues. The proposed new penalty calculation process includes a detailed list of violations that identifies specific violations and dollar amounts for each. While the Department reserves the right to consider each day a separate and distinct violation, the Department anticipates that most penalties assessed will be lower under the proposed amended penalty calculation process than penalties assessed under existing N.J.A.C. 7:26C-10. The lowering of the penalty amounts will discourage contesting the penalties that the Department has assessed. The Department anticipates that a violator will be more inclined to pay the penalty for the first violation, and avoid

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future non-compliance, which would result in a second violation, hence a higher penalty. The proposed amendments will give the Department a mechanism to ensure compliance with remediation requirements. Since contaminated sites in New Jersey present an unacceptable risks to human health and the environment, as well as an unacceptable burdens on the vitality of the State's economy, incentives to ensure compliance with remediation requirements will benefit all citizens of New Jersey.

### **Economic Impact**

The proposed amendments to N.J.A.C. 7:26C-3 concerning MOAs will result in a positive economic impact by providing a disincentive for parties to apply for an MOA without being committed to actually remediating the site. Encouraging only parties who are committed to complying with the terms of the MOA will ensure that contaminated sites are remediated more rapidly and efficiently. Resultant economic benefits to the citizens of New Jersey will be the return of sites that were previously unused or under utilized to the tax rolls, and the elimination of the need to remediate contaminated sites using tax dollars. The proposed amendments to N.J.A.C. 7:26C-3 may have a negative economic impact on parties who make applications to the Department for an MOA after an MOA has been terminated for noncompliance. Parties who have previously had an MOA terminated by the Department for non-compliance pursuant to N.J.A.C. 7:26C-3.3(c)1, and who wish to reapply for a second or subsequent MOA, will be required to include a payment in the amount of \$1,000 with their application to offset the Department's costs to evaluate whether to grant the application in light of the party's past activities concerning the terminated MOA.

The proposed grace period rules will have little economic impact on the regulated community. To the extent that the proposed amended rules formally classify violations as minor for which the Department has not previously provided a grace period, the regulated community will realize an economic benefit. No longer will the person responsible for conducting the remediation at a site be subject to immediate penalty, but

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instead the person will have between 30 and 180 days (if the initial grace period is extended) to achieve compliance, without being assessed a penalty. The extent of the economic impact will depend primarily upon the nature of the violation, the violator's conduct and compliance history, and the extent of any remedial or preventive measures that the violator has taken.

The proposed amendments to subchapter 10 of the Oversight Rules will have no economic impact on persons who comply with the rules concerning the remediation of contaminated sites. A penalty for either a minor or non-minor violation is intended to have a negative economic impact on the violator to discourage future violations. For violators, the economic impact of the proposed amendments will vary according to the severity of the violation and the behavior of the violator. It has been the Department's experience that an alleged violator is less inclined to contest the imposition of a low penalty amount, and is less inclined to violate again if the penalty for the second violation is higher. The greater the number of cases that are settled without the need for a hearing, the less the economic impact on state resources such as attorneys from the Division of Law, or case managers dedicated to preparation for litigation.

### **Environmental Impact**

The proposed amendments to N.J.A.C. 7:26C-3 concerning MOAs will result in a positive environmental impact by increasing the efficacy of the voluntary cleanup program through encouraging only committed parties to enter into MOAs with the Department. The more quickly and efficiently contaminated sites are remediated, the less humans may be exposed to harmful contaminants.

The proposed grace period provisions will allow a violator an opportunity to correct certain violations within the time provided and thereby avoid a penalty. The

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Department therefore anticipates that these proposed rules will encourage the regulated community to correct certain types of violations in a timely manner. Prompt correction will reduce the potential risk these minor violations may have created and will, therefore, result in an additional positive environmental impact.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

The proposed amendments to the Oversight Rule which implement the Grace Period Statute do not implement, comply with or enable the State to participate in any program established under Federal law, standards or requirements. Of all the statutes that provide the basis for the promulgation of the Oversight Rules, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., is the only one that contains references to the National Contingency Plan, 40 C.F.R. Part 300 (NCP). The NCP contains the Federal technical requirements for addressing environmental contingencies. The NCP does not contain any provisions for administrative requirements for a person wanting to participate in the remediation of a contaminated site with Department oversight. Therefore, there are no Federal provisions with which to compare the provisions of the Oversight Rule. Based on this analysis, the Department has determined that this proposed readoption with amendments does not contain any standards or requirements that exceed those imposed by Federal law, and no further analysis under Executive Order 27 or N.J.S.A. 52:14B-1 et seq. is required.

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The Department has conducted an analysis of the new grace period provisions in the proposed rules and has determined that the grace period provisions do not exceed any standard or requirement imposed by Federal law. The grace period provisions in the proposed rules are consistent with Federal law and Federal penalty assessment guidance. Accordingly, no Federal Standard Analysis is required with regard to the amendment of the rules to include a grace period.

### **Jobs Impact**

The proposed amendments to the Oversight Rules are not anticipated to have either a positive or negative impact upon jobs within the State. No party will incur any costs unless it commits a violation that results in a penalty assessment.

To the extent that the other amendments help speed the process by which contaminated sites are remediated, jobs may be created by the process of redeveloping these sites.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed this proposal and determined that it will have little or no impact upon the Agriculture Industry. If there is any effect at all upon members of the agricultural industry, it is anticipated that such effect will be to afford those members the same opportunity as others to correct certain types of violations in a manner as provided by the proposed amendments to N.J.A.C. 7:26C-10 and thereby avoid a possible penalty assessment.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees.

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The establishment of grace periods will allow a person responsible for a violation to avoid penalties if the violation is corrected within the time provided, and therefore increase the regulatory flexibility of N.J.A.C. 7:26C. It is, therefore, anticipated that the rules will encourage violators to achieve compliance in a timely fashion. The proposed new rules will not, however, impose any additional compliance requirements upon the regulated community over those that currently exist. In the event that a person responsible for a violation elects not to comply with the grace period conditions, the Department will pursue the enforcement action in accordance with its current enforcement procedures.

The proposed amendments to N.J.A.C. 7:26C-3 concerning MOAs, and to Appendix A concerning the ISRA Remediation Agreement, and N.J.A.C. 7:26C, Appendix A concerning the Model Administrative Consent Order do not impose any additional reporting, recordkeeping, or compliance requirements upon the regulated community over those that currently exist. Thus, a regulatory flexibility analysis is not required for these provisions.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed rules' impact on smart growth and the implementation of the State Plan. The proposed amendments to the Discharge of Petroleum and Other Hazardous Substances Rules, UST Rules, the ISRA Rules and the Oversight Rules do not involve land use policies or infrastructure development and therefore do not impact the

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achievement of smart growth. In addition, the proposed amendments are consistent with the goals and objectives of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**CHAPTER 1E**  
**DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES**  
**RULES**

**7:1E-6.5 Civil administrative penalty determination – general**

(a)-(b) (No change.)

(c) The Department may assess a civil administrative penalty, pursuant to the Department Oversight of Contaminated Sites rule, N.J.A.C. 7:26C-10[.4 and 10.5], for a person's violation of an obligation to cleanup and remove a discharge pursuant to N.J.A.C. 7:1E-5.

**CHAPTER 14B**  
**UNDERGROUND STORAGE TANKS**  
**SUBCHAPTER 1. GENERAL INFORMATION**

7:14B-1.8 Use of regulated underground storage tank systems Recodify as N.J.A.C. 7:14B-5.9(a) and (b). (No change in text.)

**SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE PROCEDURES**

**7:14B-12.1 Penalties**

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(a) Failure by any person to comply with any requirement of the State Act or this chapter may result in denial or revocation of an owner's or operator's registration or permit for the tank system; and/or denial, suspension, revocation or refusal to renew a certified individual's or business firm's certification issued pursuant to N.J.A.C. 7:14B-13[; and/or the].

(b) Failure by any person to comply with any requirement of N.J.A.C. 7:14B-1, 3, and 7 through 14, may result in the assessment of civil administrative penalties pursuant to the Oversight Rules, at N.J.A.C. 7:26C-10.[4 and 10.5, for violations of an owner's or operator's obligation to remediate contamination and pursuant to N.J.A.C. 7:14-8 for all other violations of the Underground Substances Act or this chapter, issuance of administrative orders, or other enforcement action in accordance with N.J.S.A. 58:10A-10].

(c) Failure by any person to comply with any requirements of N.J.A.C. 7:14B-2, 4, 5, 6 or 15 may result in the assessment of civil administrative penalties pursuant to the Water Pollution Control Act Rules, at N.J.A.C. 7:14-8.

[(b)] (d) An owner, operator, certified individual or certified business firm, may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the requirements of N.J.A.C. 7:14-8.4, or the Oversight rules, at N.J.A.C. 7:26C-10.[6]9, as applicable.

## **CHAPTER 26B**

### **INDUSTRIAL SITE RECOVERY RULES**

7:26B-1.11 Civil penalties

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(a) (No change.)

(b) The Department may assess a civil administrative penalty, pursuant to the Oversight rules, at N.J.A.C. 7:26C-10[.4 and 10.5], against any person who violates the requirements of this chapter to remediate contamination.

(c) through (d) (No change.)

#### APPENDIX A

#### STANDARD ISRA REMEDIATION AGREEMENT

The standard ISRA remediation agreement contains references to [Person], [amount], and other blank brackets [ ]. Upon the Department's issuance or entry of a remediation agreement, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document. The {Matter}matter bracketed [ ] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN THE MATTER OF :  
THE [Name of the site] SITE : REMEDIATION  
AND [Name of operator] : AGREEMENT  
  
AND [Name of owner] :  
ISRA Case #[ ] :

This Remediation Agreement is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the {"NJDEP"} "Department" or "DEP") by N.J.S.A. 13:1D-1 et{.} seq., the

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Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 {through 23.14}et seq., and duly delegated to the Assistant Director for the Industrial Site Evaluation Element within the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

## FINDINGS

1. {The property that is the subject of this Remediation Agreement is operated by [full name of the direct owner] and owned by [full name of current property owner], and is located at [address] and is designated as Block [ ], Lot [ ], on the tax maps of the [Township, Borough, City, etc.] of [ ], [ ] County, New Jersey (hereinafter the “[ ]” or “Site”). The North American Industry Classification System (“NAICS”) numbers which best describe the operations at the [ ] industrial establishment are [ ]. [Paragraph 1 will be repeated as 1A, 1B, etc. for each industrial establishment subject to this Remediation Agreement.]} The property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [ ], Lot [ ] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter “Property”), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").

2. On [date], [Corporation/entity/individual] submitted to {NJDEP}the Department an application for a Remediation Agreement pursuant to N.J.A.C. 7:26B-4.1. This Remediation Agreement application is incorporated herein by reference and includes the following information:

A. (No change.)

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B. Person(s) executing this Remediation Agreement and responsible for conducting the remediation of the [ ] industrial establishment{.} (hereinafter referred to as {"Responsible Person(s)"}Person(s)).

Lead {Responsible} Person:

Name: [ ]

Business Association: [ ]

Address: [ ]

Telephone No. [( ) - ] Fax No. [( ) - ]

{Responsible} Person: [Any other Person(s)]

Name: [ ]

Business Association: [ ]

Address: [ ]

Telephone No. [( ) - ] Fax No. [( ) - ]

3. {NJDEP}The Department and the [{Responsible} Person(s)] expressly agree that the terms and conditions of this Remediation Agreement shall apply separately to each of the industrial establishments listed in {P}paragraph 1 above. Furthermore, {NJDEP}the Department and the [{Responsible} Person(s)] agree to administer and complete all applicable ISRA program requirements, including the remediation funding

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source requirements and any other remedial measures undertaken pursuant to this Remediation Agreement and ISRA, for the industrial establishment.

4. The transaction described in {P}paragraph 2.A above is the transfer of ownership or operations of an industrial establishment as defined by ISRA. {NJDEP}The Department and [{Responsible} Person(s)] expressly agree that the transaction described in {P}paragraph 2.A above is subject to ISRA. [{Responsible}Person(s)] has requested that {NJDEP}the Department prepare a Remediation Agreement which, when effective, will allow the transaction described in {P}paragraph 2.A above to be consummated prior to the completion of all administrative and remediation requirements pursuant to ISRA.

5. By entering into this Remediation Agreement, [{Responsible} Person(s)] neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable] nor waives any rights or defenses with regard to the site except as specifically provided in this Remediation Agreement.

6. The scope of the remediation required by this Remediation Agreement includes all contaminants within the meaning of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (hereinafter “contaminants”) at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

7. [Additional provisions may be added at the {NJDEP's}Department's discretion {with the agreement of [Responsible Person(s)]}].

## AGREEMENT

### I. {Remediation} Remedial Investigation Requirements

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{1. [Responsible Person(s)] agrees to remediate the [ ] industrial establishment and to submit the following documents as established below:

A. Within [ ( ) ] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or such additional time as authorized by NJDEP, [Responsible Person(s)] shall submit a preliminary assessment report, Site investigation report, and remedial investigation work plan, as applicable, prepared in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [ ] industrial establishment.

B. Within [ ( ) ] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or within [ ( ) ] calendar days from receipt of NJDEP's written approval of the Remedial Investigation Work plan or longer as authorized by NJDEP, [Responsible Person(s)] shall submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E or [Responsible Person(s)] shall submit a Negative Declaration for the [ ] industrial establishment.

C. Within [ ( ) ] calendar days after the NJDEP's receipt of the General Information Notice (GIN) or within [ ( ) ] calendar days from receipt of NJDEP's written approval of the Remedial Investigation Report or longer as authorized by NJDEP, [Responsible Person(s)] shall submit a Negative Declaration for the [ ] industrial establishment, or [Responsible Person(s)] shall submit a Remedial Action Work plan as applicable, prepared in accordance with N.J.A.C. 7:26E.

D. The NJDEP will review all documents in accordance with N.J.A.C. 7:26B and N.J.A.C. 7:26E.

2. If NJDEP determines any submittal made under this section is inadequate or incomplete, the NJDEP shall provide [Responsible Person(s)] with written notification of

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each deficiency, and [Responsible Person(s)] shall revise and resubmit the required information within thirty (30) calendar days or longer as authorized by NJDEP from receipt of such notification. The determination as to whether or not the submittal, as modified, conforms to the Department's comments and is otherwise approveable by the Department shall be made solely by the Department in writing.

3. If the NJDEP determines that no further action is required at the [ ] industrial establishment, [Responsible Person(s)] shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6.6, within thirty (30) calendar days or longer as authorized by NJDEP from receipt of the NJDEP's request for the submission of the negative declaration.

4. Nothing in this Remediation Agreement shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the [ ] industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.

5. If at any time that this Remediation Agreement is in effect the NJDEP determines that the requirements of N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment from contamination at the Site, [Responsible Person(s)] shall conduct such additional remediation as the NJDEP directs.

6. The NJDEP will consider a request for an extension of time to perform any requirement under this Remediation Agreement, provided that any extension request is submitted to the NJDEP fourteen (14) calendar days prior to any applicable deadline to which the extension request refers. }

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1. Within [ ] calendar days after the effective date of this Remediation Agreement, as set forth in paragraph 67 below (hereinafter “the effective date of this Remediation Agreement”), or as otherwise approved in writing by the Department, [Person] agrees to submit to the Department a detailed Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with N.J.A.C. 7:26E, including a schedule pursuant to N.J.A.C. 7:26E-4.2(b). [Person] agrees to include in the RI Work Plan a baseline ecological evaluation pursuant to N.J.A.C. 7:26E-3.11 and all other work required by N.J.A.C. 7:26E-3.1 et seq., that the Department has not already approved for the site.

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

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

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

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

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

## II. Remedial Action Requirements

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

8. Within [ ] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the Department's comments and agrees to submit the modified Remedial Action Work Plan to the Department. The determination as to whether or not the modified Remedial Action Work Plan, as resubmitted, conforms to the Technical Requirements for Site

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Remediation, N.J.A.C. 7:26E, and the Department's written comments and is otherwise acceptable to the Department shall be made solely by the Department in writing. When the Department determines that the RA Work Plan conforms to the Technical Requirements for Site Remediation and the Department's comments, it shall send [Person] written final approval of the RA Work Plan.

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

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

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

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

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### III. Additional Remedial Investigation and Remedial Action

{5.} 13. If at any time that this Remediation Agreement is in effect the {NJDEP} Department determines that the {requirements of} prevailing standards in N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, [{Responsible} Person(s)] {shall} agrees to conduct such additional remediation as the {NJDEP} Department directs.

{3.} 14. If the {NJDEP} Department determines that no further action is required at the [ ] industrial establishment, [{Responsible} Person(s)] shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6. {6} 7, within thirty (30) calendar days or longer as authorized by the {NJDEP} Department from receipt of the {NJDEP} Department's request for the submission of the negative declaration.

### IV. Progress Reports

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

### {IV.} V. Project Coordination

16. [Person] agrees to submit to the Department all documents required by this Remediation Agreement, including correspondence relating to force majeure issues pursuant to Section X. of this Agreement by delivery with an acknowledgment of receipt from the Department. The date that the Department executes the acknowledgment will be the date the Department uses to determine [Person's] compliance with the requirements of

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this Remediation Agreement for purposes of assessing penalties and availing itself of any other applicable remedies.

{13.}17. Within seven (7) calendar days after the effective date of this Remediation Agreement, [{Responsible} Person(s)] {shall} agrees to submit to the {NJDEP}Department the name, title, address and telephone number of the individual who shall be [{Responsible Person}]'s technical contact for the {NJDEP}Department for all matters concerning this Remediation Agreement, {and [Responsible Person(s)] shall designate an agent for the purpose of service for all matters concerning this Remediation Agreement and shall provide the NJDEP with the agent's name and address.} In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to [Person's] agent, identified in paragraph 46. below of the date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

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

19. [Person] agrees to notify, both verbally and in writing, the Department's contact person identified pursuant to paragraph 18, above, at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.

{6.}20. The {NJDEP} the Department will consider a written request for an extension of time to perform any requirement under this Remediation Agreement, provided that [Person] submits any extension request {is submitted} to the {NJDEP}

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fourteen (14) calendar days} Department two weeks prior to any applicable deadline to which the extension request refers.

{II} VI. Remediation Funding Source and Remediation Funding Source Surcharge  
7. through 8. Recodify as 21-22. (No change in text).

{III} VII. Project Cost Review  
9. through 12. Recodify as 23-26. (No change in text).

{IV. Project Coordination

13. Within seven (7) calendar days after the effective date of this Remediation Agreement, [Responsible Person(s)] shall submit to the NJDEP the name, title, address and telephone number of the individual who shall be [Responsible Person]'s technical contact for the NJDEP for all matters concerning this Remediation Agreement and [Responsible Person(s)] shall designate an agent for the purpose of service for all matters concerning this Remediation Agreement and shall provide the NJDEP with the agent's name and address.

14. Unless otherwise directed by NJDEP, any submission to be made to NJDEP in accordance with this Remediation Agreement and ISRA shall be directed to:

[Assistant Director]

Division of Responsible Party Site Remediation  
401 East State Street  
PO Box 028  
Trenton, NJ 08625-0028}

{V.} VIII. Oversight Cost Reimbursement  
15. Recodify as 27. (No change in text.).

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{16.}28. Within thirty (30) calendar days after receipt from the {NJDEP} Department of a written summary{, conforming to N.J.A.C. 7:26B-8.2,} of the {NJDEP's} Department's oversight costs, including all accrued interest incurred pursuant to the paragraph 30 below, determined pursuant to N.J.A.C. 7:26B-8, [{Responsible} Person(s)] {shall} agrees to submit to the {NJDEP} Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A {in accordance with N.J.A.C. 7:26B-8.4}, for the full amount of the {NJDEP's} Department's oversight costs, for the period invoiced in the Department's summary. {Nothing contained in the paragraph shall be construed to limit or restrict any person's ability to contest any oversight costs calculated pursuant to N.J.A.C. 7:26B-8.2 in accordance with the oversight cost review procedures at N.J.A.C. 7:26B-8.3.}

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

{17.}30. [Person] also agrees to pay {I} interest {shall accrue} on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in {the preceding} paragraph 28, above, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

{VII.}IX. Reservation of Rights

31. The Department reserves the right to unilaterally terminate this Remediation Agreement in the event that the Department determines that [Person] has violated the terms of this Remediation Agreement. Before the Department unilaterally terminates this Remediation Agreement, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and [Person] shall have thirty (30) calendar days after receipt of such notice to perform such obligation(s).

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{22.} 32. Nothing in this Remediation Agreement precludes the Department from seeking {By entering into this Remediation Agreement, the NJDEP does not waive its right to seek, assess or collect} civil or civil administrative penalties or any other legal or equitable relief against [{Responsible} Person(s)] for {past, present and future violations by [Responsible Person(s)] of any New Jersey environmental statutes or regulations}violations of this Remediation Agreement. In any such action brought by the Department under this Remediation Agreement for injunctive relief, civil, or civil administrative penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this Remediation Agreement, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the Remediation Agreement. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Remediation Agreement, except as provide in paragraph 45. of this Agreement. Under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Remediation Agreement.

26. Recodify as 33. (No change in text.)

34. Except as otherwise stated in this Remediation Agreement, nothing herein shall be construed as limiting any legal, equitable or administrative remedies which [Person] may have under any applicable law or regulation. In any enforcement action the Department initiates pursuant to this Remediation Agreement, [Person] reserves any defenses which the Spill Compensation and Control Act, *Matter of Kimber Petroleum Corp.*, 110 N.J. 69 (1988) or their amendments, supplements and progeny allow.

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{25} 35. Except as otherwise set forth herein, by the execution of this Remediation Agreement the {NJDEP} does not release {any p}[Person], {including without limitation, [ ]} from any liabilities or obligations {such p}[Person] may have pursuant to {ISRA and the ISRA regulations, or any other applicable} any other authority, nor does the {NJDEP} Department waive any of its rights or remedies pursuant thereto.

4. Recodify as 36. (No change in text.)

{VI} X. Force Majeure

{18} 37. If any event specified in the following paragraph occurs which [{Responsible} Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Remediation Agreement, [{Responsible} Person] shall notify the {NJDEP} Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [{Responsible} Person] shall take all necessary action to prevent or minimize any such delay.

{19.} 38. The {NJDEP} Department will extend in writing the time for compliance for a period no longer than the delay resulting from such circumstances as determined by the {NJDEP} Department only if:

(a) [{Responsible} Person] has complied with the notice requirements of the preceding paragraph;

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(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [{Responsible} Person]; and

(c) [{Responsible} Person] has taken all necessary action to prevent or minimize any such delay.

{20.} 39. The burden of proving that any delay is caused by circumstances beyond the control of [{Responsible} Person] and the length of any such delay attributable to those circumstances shall rest with [{Responsible} Person].

21. Recodify as 40. (No change in text).

(a) (No change).

(b) Increases in the cost or expenses incurred by [{Responsible} Person] in fulfilling the requirements of this Remediation Agreement;

(c) Contractor's breach, unless [{Responsible} Person] demonstrates that such breach falls within paragraph {19. above} 38. below; and

(d) (No change).

#### {VII. Reservation of Rights

22. By entering into this Remediation Agreement, the NJDEP does not waive its right to seek, assess or collect civil or civil administrative penalties or any other legal or equitable relief against [Responsible Person(s)] for past, present and future violations by [Responsible Person(s)] of any New Jersey environmental statutes or regulations.

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23. The NJDEP reserves the right to require [Responsible Person(s)] to take or arrange for the taking of any and all additional measures if the NJDEP determines that such actions are necessary to protect human health or the environment.

24. [Responsible Person(s)] admits that it has agreed to comply with the terms of this Remediation Agreement. Neither the entry into this Remediation Agreement nor the conduct of [Responsible Person(s)] hereunder, shall be construed as any admission of fact, fault or liability by the [Responsible Person(s)] under any applicable laws or regulations.

25. Except as otherwise set forth herein, by the execution of this Remediation Agreement the NJDEP does not release any person, including without limitation, [ ] from any liabilities or obligations such person may have pursuant to ISRA and the ISRA regulations, or any other applicable authority, nor does the NJDEP waive any of its rights or remedies pursuant thereto.

26. This Remediation Agreement shall not be constructed to affect or waive the claims of federal or State natural resources trustees against any person for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein. }

{ VIII } XI. Penalties

{ 6. of the Findings } 41. [OPTIONAL--{Responsible} [Person(s)] agrees to pay a penalty in the amount of \$ \_\_\_\_\_ for its violation of \_\_\_\_\_, and shall submit to {NJDEP} the Department a certified check made payable to the "Treasurer, State of New Jersey" for \$[ ].00, no later than [{Responsible} Person(s)] execution and submittal to {NJDEP} the Department of the Remediation Agreement. {NJDEP's} The Department's acceptance of the penalty shall not be construed as a waiver of {NJDEP's} the

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Department's right to compel [{Responsible} Person(s)] to specifically perform their obligations under this Remediation Agreement.]

{27.} 42. [{Responsible} Person] agrees to pay penalties for its violations of this Remediation Agreement, or for its {violations of} failure to implement and maintain institutional controls including, by way of example, a deed notice or declaration of environmental restriction that {is} are part of a remedial action implemented pursuant to this Remediation Agreement order, according to the amounts and conditions in {this section}N.J.A.C. 7:26C-10.

{28.} 43. [{Responsible} Person] agrees{;

(a) That each violation of any requirement, condition or deadline in this Remediation Agreement constitutes an additional, separate, and distinct violation to which penalties apply;

(b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;

(c) To pay interest, at the rate set forth in the New Jersey Court Rules, R. 4:42-11(a)i, on any unpaid penalty pursuant to this Remediation Agreement commencing on the first day after it has agreed to pay a penalty pursuant to this Remediation Agreement ; and

(d) That nothing in this Remediation Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Remediation Agreement ;

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(e) T}that its payment of a penalty pursuant to this Remediation Agreement does not alter [Person's] responsibility to complete any requirement of this { Administrative Order} Remediation Agreement {; and}.

{(f) To regard payments of penalties pursuant to this Remediation Agreement as payments 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.

29. [Responsible Person] agrees to pay a penalty for all violations of this Remediation Agreement beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

Calendar Days After Due Date	Penalty
1 – 7 days	\$ 500 per calendar day
8 – 14 days	\$ 1,000 per calendar day
15 days and over	\$ 2,500 per calendar day

30. The Department will provide [Responsible Person] with written notice of each violation, including a description of the conditions of this Remediation Agreement that [Responsible Person] has violated, the date that [Responsible Person] was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 29, above.

31. [Responsible Person] agrees to pay each penalty required by this Remediation Agreement by cashier's check or certified check payable to the "Treasurer, State of New Jersey," accompanied by DEP Form 062A and a letter referencing this Remediation Agreement and the violations for which [Responsible Person] is submitting the payment

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within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 30, above.

32. [Responsible Person] agrees that nothing herein shall limit the Department's ability, upon [Responsible Person's] failure to pay a penalty pursuant to this Remediation Agreement, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Remediation Agreement .

33. } 44. [Do not include this paragraph if only one party other than the Department is signing the Remediation Agreement.] {[Responsible Persons]} [List each non-DEP party to this Remediation Agreement] are jointly and severally liable for penalties for violations of this Remediation Agreement.

{34. [Responsible Person] agrees to pay a penalty in the amount of the economic benefit (in dollars) which [Responsible Person] has realized as a result of not complying, or by delaying compliance, with the requirements of the Remediation Agreement , including the following:

(a) The amount of savings realized from avoided capital or non-capital costs resulting from the violation;

(b) The return earned or that may be earned on the amount of the avoided costs;

(c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

(d) All other benefits resulting from the violation.

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35. [Responsible Person] agrees that the Department will consider the following factors in determining a penalty for economic benefit:

(a) The amount of capital investments required, and whether they are one-time or recurring;

(b) The amount of one-time non-depreciable expenditures;

(c) The amount of annual expenses;

(d) The useful life of capital;

(e) Applicable tax, inflation and discount rates;

(f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and

(g) Any other factors relevant to economic benefit.

36. If the total economic benefit was derived from more than one violation, [Responsible Person] agrees that 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. }

## XII. Dispute Resolution

45. In the event a conflict arises between [Person] and the Department, [Person] may initiate the Department's dispute resolution process at N.J.A.C. 7:26C-1.4.

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{IX.} XIII. General Provisions

46. [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Remediation Agreement unless and until [Person] provides the Department with the name, title address and telephone number of [Person's] new agent.

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

{37. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by [Responsible Person(s)] and the NJDEP. Any amendment to this Remediation Agreement shall be executed by the NJDEP and [Responsible Person(s)]. The NJDEP reserves the right to require the resolution of any outstanding violations ISRA or this Remediation Agreement prior to executing any such amendment.

38. This Remediation Agreement shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the industrial establishment or site shall alter signatory's responsibilities under this Remediation Agreement.

39. [Responsible Person(s)] agrees not to contest the authority or jurisdiction of the NJDEP to issue this Remediation Agreement; [Responsible Person(s)] further agrees not to contest the terms or conditions of this Remediation Agreement except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the NJDEP to enforce the provisions of this Remediation Agreement.

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40. [Responsible Person(s)] shall provide to the NJDEP written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least five (5) calendar days prior to such action. [Responsible Person(s)] shall also provide written notice to the NJDEP of a filing of a petition for bankruptcy no later than five business days after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations.

41. For persons executing this Remediation Agreement on behalf of a corporate entity, [Responsible Person(s)] shall submit to the NJDEP, along with the executed original Remediation Agreement, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Responsible Person(s)] to the terms of this Remediation Agreement.

42. [Responsible Person(s)] expressly agrees that in the event that [Responsible Person(s)] fails or refuses to perform any obligation(s) under this Remediation Agreement as determined by the NJDEP, the NJDEP shall have the right to exercise any option or combination of options available to the NJDEP under this Remediation Agreement, or any other statute.

43. Except as otherwise provided, the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by [Responsible Person(s)] of written notice from the NJDEP that [Responsible Person(s)] has demonstrated, to the satisfaction of the NJDEP, that [Responsible Person(s)] has completed the substantive and financial obligations imposed by this Remediation Agreement. Such written notice shall not relieve [Responsible Person(s)] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Remediation Agreement.

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44. Compliance with the terms of this Remediation Agreement shall not excuse any Person(s) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ISRA through this Remediation Agreement. The execution of this Remediation Agreement shall not excuse any Person(s) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that the Person(s) obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Remediation Agreement if the terms and conditions of any such permit are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by the Person(s) during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations, N.J.A.C. 7:14A- 1 et seq., then the Person(s) shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.

45. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the NJDEP and the [Responsible Person(s)]. [Responsible Person(s)] may consummate the transaction described at Findings, Paragraph 2 A above, upon the execution of this Remediation Agreement. [Responsible Person(s)] shall return a fully executed Remediation Agreement to the NJDEP together with the signature authorization required above within five business days from the effective date. }

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47. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site to which [Person] has access, at all times, for the purpose of monitoring [Person's] compliance with this Remediation Agreement and/or to perform any remedial activities [Person] fails to perform as required by this Remediation Agreement. [Person] agrees that the Department's right of access pursuant to this paragraph shall continue after the Department's termination of this Remediation Agreement pursuant to paragraph 64., below.

48. [Person] agrees to not construe any informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

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

{44.} 50. Nothing in this Remediation Agreement relieves [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this Remediation Agreement shall not excuse {any} [Person(s)] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by {ISRA through} this Remediation Agreement. {The execution of t} This Remediation Agreement {shall not excuse any Person(s) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and} shall not preclude {NJDEP} the Department from

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requiring that {the}[Person(s)] obtain and comply with any permits, and/or orders issued by {NJDEP}the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Remediation Agreement if the terms and conditions of any such permit are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by {the} [Person(s)] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) regulations, N.J.A.C. 7:14A-1 et seq., then {the} [Person(s)] {shall} agrees to obtain a NJPDES permit or permit modification from {NJDEP}the Department prior to commencement of {said}the activity.

51. All work plans, schedules, and other documents required by this Remediation Agreement and approved in writing by the Department are incorporated herein and made a part hereof.

52. Upon the receipt of a written request from the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitoring data, whether or not such data and information, including technical records and contractual documents, were developed pursuant to this Remediation Agreement. [Person] reserves its right to assert a privilege regarding such documents, but agrees not to assert any confidentiality or privilege claim with respect to any data related to site conditions, sampling or monitoring.

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

{37.} 54. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by [{Responsible} Person(s)] and the {NJDEP} Department. Any amendment to this Remediation Agreement shall be executed by the {NJDEP} Department and [{Responsible} Person(s)]. The {NJDEP} Department reserves the right to require the resolution of any outstanding violations {ISRA} of the applicable regulations or this Remediation Agreement prior to executing any such amendment.

55. [Person] waives its rights to an administrative hearing concerning the entry of this Remediation Agreement.

56. This Remediation Agreement shall be governed and interpreted under the laws of the State of New Jersey.

57. If any provision of this Remediation Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Remediation Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Remediation Agreement shall be valid and enforced to the fullest extent permitted by law.

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

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

{38.} 60. This Remediation Agreement shall be binding, jointly and severally, on each {signatory} party, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any party or of the industrial establishment or {S} site shall alter {signatory's} party's responsibilities under this Remediation Agreement.

61. [Person's] document retention policy notwithstanding, [Person] agrees to preserve, during the pendency of this Remediation Agreement and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of [Person's] divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege regarding such data or

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information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to data related to site conditions, sampling, or monitoring.

{40.} 62. [{Responsible} Person(s)] {shall} agrees to provide to the {NJDEP} Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations {at least five (5) calendar days} in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] agrees to submit a cost review pursuant to this Remediation Agreement to the Department. [{Responsible} Person(s)] {shall} agrees to also provide written notice to the {NJDEP} Department of a filing of a petition for bankruptcy no later than {five} the first business day{s} after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] agrees to obtain and submit to the Department additional financial assurance pursuant to this Remediation Agreement.

63. If [Person] remediates the site to a restricted use standard as defined in N.J.A.C. 7:26E-1.8 and [Person] implements institutional and engineering controls, this Remediation Agreement shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1% surcharge of the total amount of the remediation funding source until the Department determines that the site is remediated to the applicable unrestricted use standard.

64. If [Person] remediates contaminated soil at the site to the Department's unrestricted use soil standard as defined at N.J.A.C. 7:26E-1.8, and any other contaminated media to the applicable remediation standard, the requirements of this

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Remediation Agreement shall be deemed satisfied upon the receipt by [Person] of written notice from the Department stating that [Person] has completed the remediation required by this Remediation Agreement in accordance with N.J.A.C. 7:26E and has satisfied all financial obligations imposed by this Remediation Agreement and therefore [Person] does not need to continue to maintain a remediation funding source or pay the annual 1% surcharge, and that no further action is necessary at the Site. The written notice shall also state that the Remediation Agreement is thereby terminated. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to Federal, State or local laws for matters not addressed by this Remediation Agreement.

65. Except as provided in paragraph 52. above, [Person] may assert a claim of confidentiality for any information submitted by [Person] pursuant to this Remediation Agreement, by following the Department's procedures in N.J.A.C. 7:26B-7.

{41.} 66. {For persons executing this Remediation Agreement on behalf of a corporate entity,} [{Responsible} Person(s)] {shall} agrees to submit to the {NJDEP} Department, {along with} two copies of the executed original Remediation Agreement, each with the original signature of [Person] or its authorized representative, and documentary evidence {in the form of} such as a corporate resolution, or a certification by a corporate officer, that the signatory has the authority to bind [{Responsible} Person(s)] to the terms of this Remediation Agreement, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

{48.} 67. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the {NJDEP} Department and [{Responsible} Person(s)]. [{Responsible Person(s)}] may consummate the transaction described at Paragraph 2.A above, upon the execution of this Remediation Agreement. [Responsible Person(s)] shall

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return a fully executed Remediation Agreement to the NJDEP together with the signature authorization required above within five business days from the effective date. }

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_ By: \_\_\_\_\_,

Assistant Director  
Site Remediation Program

[NAME OF PERSON EXECUTING

AGREEMENT]

Date: \_\_\_\_\_ By: \_\_\_\_\_

[of]

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

**CHAPTER 26C**  
**DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED**  
**SITES**

**SUBCHAPTER 1: GENERAL INFORMATION**

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### **7:26C-1.2 Certifications**

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

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

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

2. (No change.)

(b) through (d) (No change.)

### **7:26C-1.3 Definitions**

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

...

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“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.

...

### **SUBCHAPTER 3. ADMINISTRATIVE PROCESS FOR VOLUNTARY CLEANUPS**

#### 7:26C-3.2 Memorandum of Agreement Application

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

1. through 5. (No change.)

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

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

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

i. (No change.)

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ii. Not to accept the applicant's offer to conduct remediation

because:

(1) The applicant has not fulfilled its prior agreement to pay the Department's oversight costs for oversight of remediation for another site; [or for a previous remediation phase at this site;] or

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

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

3. (No change.)

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

7:26C-3.3 Memorandum of agreement by rule

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

1-2. (No change.)

3. The following provisions:

i. (No change.)

ii. The applicant shall submit all data generated or collected concerning the site and the contaminants at the site, and this obligation continues, for data generated or collected prior to termination, after the Department's termination of the memorandum of agreement.

[ii.-iv.] iii.-v. (No change in text.)

(b) (No change.)

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

1. The Department determines that it is necessary to terminate a memorandum of agreement when the person responsible for conducting the remediation pursuant to the memorandum of agreement:

i. Has not made scheduled submissions to the Department [for any 6-month period or more]; pursuant to the schedule set forth in the MOA application which is a part of the MOA;

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ii. through iii. (No change.)

iv. When the Department has scheduled the site for publicly funded remediation [and the person does not meet the conditions at N.J.A.C. 7:26C-3.4].

2. The Department may provide the person responsible for conducting the remediation a period of time to correct the deficiency identified in (c)1.i through iii, above, in order to achieve compliance with the memorandum of agreement and avoid termination of the memorandum of agreement pursuant to (c)3 below.

[2.] 3. To terminate a memorandum of agreement pursuant to this section, the Department will [notify] issue a Notice of Termination to the person responsible for conducting the remediation[,in writing] that contains the following:

i. That the Department is ceasing review of any submittals under the memorandum of agreement;

[ii. That the person is required to submit all data generated or collected, concerning the site and the contaminants at the site, that has not already been submitted;

iii. Of the amount of the person's outstanding oversight costs and that the obligation to pay oversight costs continues after the Department's termination of the memorandum of agreement pursuant to N.J.A.C. 7:26C-3.3(a)3i ; and]

[iv.]ii. That the memorandum of agreement is terminated[.];

iii. The reason(s) that the Department is terminating the memorandum of agreement;

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iv. That the person responsible for conducting remediation shall pay the amount of the person's oversight cost when billed by the Department and that the obligation to pay oversight costs continues after the Department's termination of the memorandum of agreement pursuant to N.J.A.C 7:26C-3.3(a)3i; and

v. That the person responsible for conducting remediation must submit all data generated or collected, concerning the site and the contaminants at the site, that has not already been submitted within 30 calendar days from the date on the Notice of Termination and that the obligation to submit the data continues after the Department's termination of the memorandum of agreement pursuant to N.J.A.C 7:26C-3.3(a)3ii.

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

7:26C-3.4 Remediation of a site, scheduled for a publicly funded remediation [pursuant to a memorandum of agreement]

(a) through (b) (No change.)

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

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## **SUBCHAPTER 10. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS**

### 7:26C-10.1 Scope

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

1. through 2. (No change.)
3. The Industrial Site Recovery Act Rules, [specifically] N.J.A.C. 7:26B[-6]
4. (No change.)
5. The Underground Storage Tank Rules, specifically N.J.A.C. 7:14B-[6-8]1, 3 and 7-14;
6. (No change.)
7. [Declarations of environmental restrictions and deed notices established pursuant to N.J.A.C. 7:26E] The Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(b) This subchapter ;

i. Identifies those violations where a grace period will be afforded for correction of the violation;

ii. Establishes base penalty amounts and penalty calculation procedures for non-minor violations and minor violations not corrected within the grace period; and

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iii. [governs] Governs the procedures for requesting an adjudicatory hearing on enforcement actions the Department takes pursuant to this subchapter.

#### 7:26C-10.2 Applicability

(a) Each violation of an administrative order, an administrative consent order, a remediation agreement, or a requirement of any of the rules listed in N.J.A.C. 7:26C-10.1(a), above [Industrial Site Recovery Act Rules, a requirement of the Underground Storage Tank Rules, a requirement of the Discharges of Petroleum and Other Hazardous Substances Rules, a deed notice, or a declaration of environmental restrictions,] constitutes an additional, separate and distinct offense, and each penalty payment constitutes a payment of civil or civil administrative penalties pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.14.

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

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

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

7:26C-10.3 Recodify at 7:26C-10.8 (No change in text.)

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7:26C-10.3 Grace period applicability; procedures

(a) Each violation identified in the penalty table at N.J.A.C. 7:26C-10.4(e) 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 N.J.A.C. 7:26C-10.4(e) 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.

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.

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

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

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

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

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

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

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, certified in accordance with N.J.A.C. 7:26C-1.2, no later than one week before the end of the specified grace period and shall include the anticipated time needed to achieve

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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. The Department may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

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

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

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

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

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

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

[7:26C-10.4 Amount of a civil administrative penalty

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(a) The Department may assess a civil administrative penalty pursuant to this section against each person who violates:

1. An administrative order
2. An administrative consent order;
3. A remediation agreement;
4. A requirement of the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B;
5. A requirement of the Underground Storage Tank Rules, N.J.A.C. 7:14B;
6. A requirement of the Discharges of Petroleum and Other Hazardous Substances Rules, N.J.A.C. 7:1E;
7. A declaration of environmental restrictions or a deed notice; and
8. A requirement to pay a civil administrative penalty assessed pursuant to this subchapter.

(b) The Department shall assess a civil administrative penalty pursuant to (f), below, for each of the following non-minor violations of an administrative order or an administrative consent order.

1. Failure to perform interim remedial measures;
2. Failure to submit workplans in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments;

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3. Failure to provide the Department with prior notice of all field work for remediation;
4. Failure to perform any work in a Department-approved workplan in accordance with a Department-approved schedule;
5. Failure to submit reports in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments;
6. Failure to submit an annual cost review;
7. Failure to establish and maintain sufficient funds in a remediation funding source;
8. Failure to pay the annual remediation funding source surcharge;
9. Failure to pay the Department's oversight costs;
10. Failure to pay penalties;
11. Failure to pay any other monies required by an administrative order or an administrative consent order; and
12. Failure to provide the Department access to the Site.

(c) The Department shall assess a civil administrative penalty pursuant to (f), below, for each of the following non-minor violations of a declaration of environmental restrictions or a deed notice.

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1. Failure to comply with restricted uses pursuant to a declaration of environmental restrictions or a deed notice;
2. Failure to comply with conditions applicable to alterations, improvements and disturbances pursuant to a declaration of environmental restrictions or a deed notice;
3. Failure to notify the Department of any emergency as required by a declaration of environmental restrictions or a deed notice;
4. Failure to restore the property to pre-emergency conditions pursuant to a declaration of environmental restrictions or a deed notice;
5. Failure to comply with the monitoring and maintenance or protectiveness certification requirements pursuant to the Technical Requirements for Site Remediation, N.J.A.C.7:26E-8;
6. Failure to provide the Department access to the property as required pursuant to a declaration of environmental restrictions or a deed notice; and
7. Failure to provide the notices required pursuant to a declaration of environmental restrictions or a deed notice.

(d) The Department shall assess a civil administrative penalty pursuant to (f), below, for each of the following non-minor violations of the obligations concerning ground water classification exception areas pursuant to N.J.A.C. 7:26E-8.6.

1. Failure to evaluate changes in the applicable laws to determine if there are additional or different legal requirements pursuant to N.J.A.C. 7:26E-8.6(a)1;

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2. Failure to identify planned changes in water use pursuant to N.J.A.C. 7:26E-8.6(a)2;

3. Failure to identify actual changes in ground water use pursuant to N.J.A.C. 7:26E-8.6(a)3;

4. Failure to inspect ground water monitoring wells pursuant to N.J.A.C. 7:26E-8.6(a)4;

5. Failure to identify land use disturbances pursuant to N.J.A.C. 7:26E-8.6(a)5;

6. Failure to determine whether changes in ground water use have influenced the protectiveness of the remedial action that includes the ground water classification exception area pursuant to N.J.A.C. 7:26E-8.6(a)6; and

7. Failure to assess the ground water quality pursuant to N.J.A.C. 7:26E-8.6(a)7.

(e) The Department shall assess a civil administrative penalty pursuant to (g), below, for all other violations as minor violations.

(f) The Department shall assess a civil administrative penalty for all non-minor violations in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
1 – 7 days	\$1,000 per calendar day
8 - 14 days	\$ 2,500 per calendar day
15 days and over	\$ 5,000 per calendar day

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(g) The Department shall assess a civil administrative penalty for all minor violations as follows:

1. The Department will provide the violator with written notice of each minor violation, including a description of the requirements that the violator has violated, the date that the violator was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to this section.

2. The Department will also establish a period not to exceed 30 calendar days for the violator to correct the minor violation.

3. If the violator corrects a minor violation within the time frame the Department specifies in its notice described in (g)2, above, the Department will not assess a penalty for that violation.

4. If the violator fails to correct a minor violation within the time frame the Department specifies in its notice described in (g)2, above, the Department shall assess a civil administrative penalty in the following amounts:

<u>Calendar Days After Due Date</u>	<u>Penalty</u>
1 – 7 days	\$ 500 per calendar day
8 – 14 days	\$1,000 per calendar day
15 days and over	\$ 2,500 per calendar day]

7:26C-10.4 Civil administrative penalty determination

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

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

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

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

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

i. Identify the corresponding base penalty dollar amount for the rule violated as listed in (c) below; and

ii. Adjust the amount of the base penalty by applying the factors in N.J.A.C. 7:26C-10.5(a), as applicable.

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

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

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

<b><u>2. The Technical Requirements for Site Remediation N.J.A.C 7:26E</u></b>					
	<b><u>Subchapter &amp; Violation</u></b>	<b><u>Citation</u></b> <b><u>7:26E-</u></b>	<b><u>Type of</u></b> <b><u>Violation</u></b>	<b><u>Grace</u></b> <b><u>Period</u></b> <b><u>(Days)</u></b>	<b><u>Base Penalty</u></b>
<b><u>1</u></b>	<b><u>General Information</u></b>				
	<u>Failure to notify Department of any sampling activities prior to initiation.</u>	<u>7:26E-1.4(a)1</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to notify municipal clerk prior to specific activities.</u>	<u>7:26E-1.4(a)2</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to notify Department and municipal clerk prior to specific field activities.</u>	<u>7:26E-1.4(a)3</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to immediately notify Department of</u>	<u>7:26E-1.4(b)</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>IEC conditions.</u>				
	<u>Failure to immediately initiate stabilization of IEC conditions.</u>	<u>7:26E-1.4(b)</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to notify Department and municipal clerk prior to interim response actions to be conducted in response to IEC conditions.</u>	<u>7:26E-1.4(b)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to include all the required information in the written notification.</u>	<u>7:26E-1.4(d)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to make submissions to, and/or get approvals from, Pinelands Commission.</u>	<u>7:26E-1.4(f)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to notify the Department of contaminant migration from an off site source.</u>	<u>7:26E-1.4(h)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit work plans or reports in a timely manner per schedule applicable pursuant to 7:26C, oversight document or ISRA or UST rules.</u>	<u>7:26E-1.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to comply with format and content requirements of 7:26E-2 through 8 for work plans and reports submitted.</u>	<u>7:26E-1.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to prepare or implement health and safety plan.</u>	<u>7:26E-1.9</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to contain and/or stabilize contaminants in all media to prevent receptor exposure and/or contaminant migration as a first priority.</u>	<u>7:26E-1.11</u>	<u>NM</u>		<u>\$20,000</u>

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	<u>Failure to conduct remediation with Department oversight in situations where such oversight is required.</u>	<u>7:26E-1.12</u>	<u>NM</u>		<u>\$5,000</u>
<b><u>2</u></b>	<b><u>Quality Assurance for Sampling and Laboratory Analysis</u></b>				
	<u>Failure to use laboratory that has appropriate certification.</u>	<u>7:26E-2.1(a)1</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to use appropriate analytical method.</u>	<u>7:26E-2.1(a)3</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to use required sampling procedures and analytical methods for volatile organics.</u>	<u>7:26E-2.1(a)4</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to select and document appropriate alternate analytical method, where method does not exist for specific parameter/matrix.</u>	<u>7:26E-2.1(a)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to follow QA/QC procedures specified in analytical method.</u>	<u>7:26E-2.1(a)7</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to report solid analyses in a dry weight basis.</u>	<u>7:26E-2.1(a)8</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to perform sample matrix cleanup when required.</u>	<u>7:26E-2.1(a)9</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to perform required sample matrix cleanup using acceptable matrix cleanup methods.</u>	<u>7:26E-2.1(a)10</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to ensure use of acceptable method to detect free and/or residual product.</u>	<u>7:26E-2.1(a)11</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to use GC/MS for volatile/semi-volatile contaminants as required.</u>	<u>7:26E-2.1(a)12</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to provide Appendix A laboratory deliverables, as specified.</u>	<u>7:26E-2.1(a)13</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to use applicable industry methods for sample collection &amp; handling.</u>	<u>7:26E-2.1(a)14</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to comply with time constraints for sample preservation and delivery to laboratory.</u>	<u>7:26E-2.1(a)15</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Inappropriate use of field screening methods.</u>	<u>7:26E-2.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to collect samples from each AOC for contaminants which may be present, or to analyze for Target Compound List plus TICs/Target Analyte List, hexavalent chromium, petroleum hydrocarbons, and pH in areas where contaminants are unknown or not well documented.</u>	<u>7:26E-2.1(c)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to analyze samples from petroleum storage and discharge areas for required parameters.</u>	<u>7:26E-2.1(d)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to further address tentatively identified compounds as required.</u>	<u>7:26E-2.1(e)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to submit quality assurance project plan, as required.</u>	<u>7:26E-2.2(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<b>3</b>	<b><u>Preliminary Assessment and Site Investigation</u></b>				
	<u>Failure to conduct a preliminary assessment</u>	<u>7:26E-3.1(c)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to investigate historical information</u>	<u>7:26E-3.1(c)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to conduct a site visit.</u>	<u>7:26E-3.1(c)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit preliminary assessment report in required format.</u>	<u>7:26E-3.2(a)1 &amp; 2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to include maps and plans in preliminary assessment report.</u>	<u>7:26E-3.2(a)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include a recommendation for each area of concern.</u>	<u>7:26E-3.2(a)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include a recommendation for each area of concern for which a no further action letter was previously issued.</u>	<u>7:26E-3.2(a)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include required documentation to support recommendations for each area of concern for which a no further action letter was previously issued.</u>	<u>7:26E-3.2(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct a site investigation that satisfies listed requirements.</u>	<u>7:26E-3.3(b)</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to submit site investigation report as required.</u>	<u>7:26E-3.3(c)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to properly locate samples, including biasing as required, and obtaining Department approval to modify sampling locations.</u>	<u>7:26E-3.4(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to collect and analyze site investigation samples pursuant to N.J.A.C. 7:26E-2.1 et seq.</u>	<u>7:26E-3.4(b)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Submitting site investigation data generated from composite samples.</u>	<u>7:26E-3.4(c)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to conduct necessary site investigation of building interiors.</u>	<u>7:26E-3.5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct site investigation of soil according to general technical requirements.</u>	<u>7:26E-3.6(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to conduct a soil investigation survey.</u>	<u>7:26E-3.6(a)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to collect soil samples for analysis &amp; subsurface profiling.</u>	<u>7:26E-3.6(a)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to collect soil samples for initial characterization at 0-6 inches.</u>	<u>7:26E-3.6(a)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly collect soil samples for volatile organic analysis.</u>	<u>7:26E-3.6(a)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly collect soil samples in 6 inch increments or to document sample recovery problems.</u>	<u>7:26E-3.6(a)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to collect and document additional samples below specified depths upon encountering filling or regrading.</u>	<u>7:26E-3.6(a)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to collect soil sample in saturated zone.</u>	<u>7:26E-3.6(a)7</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct site investigation of soil according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.</u>	<u>7:26E-3.6(c)2</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to conduct site investigation of ground water when required by measured soil contamination at an area of concern.</u>	<u>7:26E-3.7(a)</u>	<u>M</u>	<u>60</u>	<u>\$5,000</u>
<u>Failure to implement QA/QC requirements as part of site investigation of ground water.</u>	<u>7:26E-3.7(c)1</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to utilize proper sampling methods in the collection of ground water samples.</u>	<u>7:26E-3.7(c)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to properly locate ground water sampling points.</u>	<u>7:26E-3.7(c)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to collect the required number of ground water samples.</u>	<u>7:26E-3.7(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to properly evaluate ground water site investigation sampling results.</u>	<u>7:26E-3.7(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to resample ground water to confirm the presence of contamination.</u>	<u>7:26E-3.7(e)2</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to take required actions upon confirmation of ground water contamination including conduct well search, notify the Department, determine ground water flow, or sample potable wells.</u>	<u>7:26E-3.7(e)3</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to commence a potable water investigation within 30 calendar days after property acquisition.</u>	<u>7:26E-3.7(f)</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to conduct a background investigation that supports a position that the presence of a ground water contaminant in excess of the applicable remediation standard is due to background ground water contamination.</u>	<u>7:26E-3.7(g)</u>	<u>M</u>	<u>90</u>	<u>\$4,000</u>
	<u>Failure to evaluate evidence of discharges to surface water or sediment.</u>	<u>7:26E-3.8(a)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure to properly conduct site investigation of surface water and sediment.</u>	<u>7:26E-3.8(b)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>

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<u>Failure to properly conduct site investigation of above ground tanks over unpaved soil.</u>	<u>7:26E-3.9(a)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of above ground tanks over paved surfaces.</u>	<u>7:26E-3.9(a)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of underground storage tanks.</u>	<u>7:26E-3.9(a)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all above grade piping.</u>	<u>7:26E-3.9(a)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all below grade piping.</u>	<u>7:26E-3.9(a)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of loading and unloading areas.</u>	<u>7:26E-3.9(a)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all pads.</u>	<u>7:26E-3.9(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all storage and staging areas over permeable cover.</u>	<u>7:26E-3.9(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all surface impoundments.</u>	<u>7:26E-3.9(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all drainage systems.</u>	<u>7:26E-3.9(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly conduct site investigation of all discharge and waste disposal systems and areas.</u>	<u>7:26E-3.9(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to properly conduct site investigation of any area of concern not addressed pursuant to previous requirements.</u>	<u>7:26E-3.9(f)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct a baseline ecological evaluation according to general technical requirements.</u>	<u>7:26E-3.11(a)</u>	<u>M</u>	<u>60</u>	<u>\$5,000</u>
<u>Failure to evaluate all data collected in the preliminary assessment and site investigation to identify site-specific contaminants of ecological concern.</u>	<u>7:26E-3.11(a)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to identify environmentally sensitive natural resources.</u>	<u>7:26E-3.11(a)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to identify potential contamination migration pathways.</u>	<u>7:26E-3.11(a)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct further ecological investigations as part of the remedial investigation when the baseline evaluation indicates such investigation is warranted.</u>	<u>7:26E-3.11(a)4</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to conduct a site investigation of historic fill as required.</u>	<u>7:26E-3.12(a)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
<u>Failure to demonstrate that historic fill is not contaminated above the applicable residential soil remediation standards.</u>	<u>7:26E-3.12(b)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to conduct required ground water sampling when a site with historical fill is in an area where ground water is used for potable water.</u>	<u>7:26E-3.12(c)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>

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<u>Failure to present and discuss all of the information identified and collected in the site investigation report.</u>	<u>7:26E-3.13(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include historical information in the site investigation report.</u>	<u>7:26E-3.13(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include a description of the site's physical setting in the site investigation report.</u>	<u>7:26E-3.13(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include an overview of site investigation execution and results in the site investigation report.</u>	<u>7:26E-3.13(b)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include findings and recommendations in the site investigation report.</u>	<u>7:26E-3.13(b)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include all analytical data as required in the site investigation report.</u>	<u>7:26E-3.13(c)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include a summary table of analytical methods and quality assurance indicators in the site investigation report.</u>	<u>7:26E-3.13(c)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include a summary results table in the site investigation report.</u>	<u>7:26E-3.13(c)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include stratigraphic logs in the site investigation report.</u>	<u>7:26E-3.13(c)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include stratigraphic cross sections in the site investigation report.</u>	<u>7:26E-3.13(c)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to include soil borings, piezometer or monitoring well records in the site investigation report.</u>	<u>7:26E-3.13(c)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include information for each monitoring well sampled for each ground water sampling event in the site investigation report.</u>	<u>7:26E-3.13(c)7</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the site investigation report any other data obtained pursuant to N.J.A.C. 7:26E-3.3 through 3.12.</u>	<u>7:26E-3.13(c)8</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include any required map or diagram in the site investigation report.</u>	<u>7:26E-3.13(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>4</b>	<b><u>Remedial Investigations</u></b>				
	<u>Failure to delineate the horizontal and vertical extent of contamination to the applicable remediation standard, including the extent to which contamination has migrated off the property.</u>	<u>7:26E-4.1(b)</u>	<u>M</u>	<u>90</u>	<u>\$5,000</u>
	<u>Failure to submit a remedial investigation workplan that conforms to the general requirements of this section.</u>	<u>7:26E-4.2(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to include in the remedial investigation workplan a detailed schedule.</u>	<u>7:26E-4.2(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation workplan a description of the role of the principal personnel.</u>	<u>7:26E-4.2(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to include in the remedial investigation workplan the required historical information.</u>	<u>7:26E-4.2(b)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan the required site description.</u>	<u>7:26E-4.2(b)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan a description of each area of concern.</u>	<u>7:26E-4.2(b)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan a sampling summary table for each area of concern.</u>	<u>7:26E-4.2(b)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan a map of the proposed sampling locations.</u>	<u>7:26E-4.2(b)7</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan other sampling proposals for treatability, bench scale or pilot studies, data for permit effluent limits or ecological investigations.</u>	<u>7:26E-4.2(b)8</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan a quality assurance project plan.</u>	<u>7:26E-4.2(b)9</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation workplan a health and safety plan.</u>	<u>7:26E-4.2(b)10</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct a remedial investigation of soil at a contaminated site.</u>	<u>7:26E-4.3(a)</u>	<u>NM</u>		<u>\$5,000</u>

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<u>Failure to conduct the remedial investigation of soil according to general technical requirements.</u>	<u>7:26E-4.3(b)</u>	<u>M</u>	<u>90</u>	<u>\$4,000</u>
<u>Failure to conduct a remedial investigation of ground water when required.</u>	<u>7:26E-4.4(a)</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to provide information necessary to support a position that ground water sampling is not necessary.</u>	<u>7:26E-4.4(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct a remedial investigation of ground water according to general technical requirements.</u>	<u>7:26E-4.4(c)</u>	<u>M</u>	<u>90</u>	<u>\$4,000</u>
<u>Failure to collect ground water samples using acceptable professional methods such as those described in the then effective NJDEP Field Sampling Procedures Manual, or to gain Department approval of an alternate method.</u>	<u>7:26E-4.4(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly locate all ground water sampling points.</u>	<u>7:26E-4.4(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to collect the appropriate number of ground water samples.</u>	<u>7:26E-4.4(f)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to comply with requirements for monitoring wells and piezometers.</u>	<u>7:26E-4.4(g)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to evaluate the results of the initial ground water analyses.</u>	<u>7:26E-4.4(h)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly perform confirmation ground water sampling.</u>	<u>7:26E-4.4(h)2</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>

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<u>Failure to fully investigate confirmed groundwater contamination and potential impacts, or to conduct a background investigation that supports a position that groundwater contamination is from an offsite source.</u>	<u>7:26E-4.4(h)3</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
<u>Failure to delineate the vertical and horizontal extent of ground water contamination and the sources of ground water contamination, including free and residual product.</u>	<u>7:26E-4.4(h)3i</u>	<u>M</u>	<u>90</u>	<u>\$4,000</u>
<u>Failure to confirm ground water flow direction.</u>	<u>7:26E-4.4(h)3ii</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to adequately characterize the impacted aquifer.</u>	<u>7:26E-4.4(h)3iii</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to provide documentation for ground water flow system model.</u>	<u>7:26E-4.4(h)3iv</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to properly perform a well search.</u>	<u>7:26E-4.4(h)3v</u>	<u>NM</u>		<u>\$20,000</u>
<u>Failure to properly sample potable and supply wells which are suspected to be contaminated.</u>	<u>7:26E-4.4(h)3vi</u>	<u>NM</u>		<u>\$20,000</u>
<u>Failure to properly evaluate any surface water body potentially impacted by contaminated ground water.</u>	<u>7:26E-4.4(h)3vii</u>	<u>NM</u>		<u>\$20,000</u>
<u>Failure to properly evaluate any subsurface utilities, basements or other structures potentially impacted by vapor hazards</u>	<u>7:26E-4.4(h)3viii</u>	<u>NM</u>		<u>\$20,000</u>

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	<u>related to contaminated ground water.</u>				
	<u>Failure to properly evaluate current and potential ground water uses for the 25 year planning horizon.</u>	<u>7:26E-4.4(h)3ix</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to properly conduct soil gas studies when required.</u>	<u>7:26E-4.4(i)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to properly conduct a remedial investigation of surface water, wetlands and sediment.</u>	<u>7:26E-4.5(a)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to properly conduct the remedial investigation of surface water, wetlands and sediment in accordance with the general technical requirements.</u>	<u>7:26E-4.5(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to properly document a position that a remedial investigation of surface water is not necessary.</u>	<u>7:26E-4.5(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to conduct a surface water investigation as required.</u>	<u>7:26E-4.5(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation an investigation of all landfills.</u>	<u>7:26E-4.6(a)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to conduct an investigation of all landfills as required.</u>	<u>7:26E-4.6(a)1-4</u>	<u>M</u>	<u>90</u>	<u>\$4,000</u>
	<u>Failure to conduct the remedial investigation of historic fill according to the</u>	<u>7:26E-4.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>general technical requirements.</u>				
	<u>Failure to conduct ground water sampling when required to document that ground water is not contaminated in an area of historic fill.</u>	<u>7:26E-4.6(b)6</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
	<u>Failure to conduct an ecological risk assessment according to general technical requirements.</u>	<u>7:26E-4.7(a)</u>	<u>M</u>	<u>60</u>	<u>\$5,000</u>
	<u>Failure to present the results of an ecological risk assessment in a ecological risk assessment report that conforms to the specific requirements.</u>	<u>7:26E-4.7(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report the requirements of N.J.A.C. 7:26E-3.13, and the results of additional information collected pursuant to N.J.A.C 7:26E-4.1-4.7 and the approved remedial investigation workplan.</u>	<u>7:26E-4.8(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report the historical information described in N.J.A.C. 7:26E-4.2(b)3.</u>	<u>7:26E-4.8(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report a description of the physical setting pursuant N.J.A.C. 7:26E-4.2(b)4.</u>	<u>7:26E-4.8(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to include in the remedial investigation report a technical overview as described in N.J.A.C. 7:26E-3-13(b)3 and this section.</u>	<u>7:26E-4.8(b)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report findings and recommendations pursuant to N.J.A.C. 7:26E-3.13(b)4 as updated by the remedial investigation requirements of N.J.A.C. 7:26E-4.</u>	<u>7:26E-4.8(b)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report the analytical results and laboratory deliverables.</u>	<u>7:26E-4.8(c)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report a summary table of analytical methods and quality assurance indicators.</u>	<u>7:26E-4.8(c)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report a sampling results summary table that conforms to the requirements of this section.</u>	<u>7:26E-4.8(c)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report the stratigraphic logs.</u>	<u>7:26E-4.8(c)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report the stratigraphic cross sections.</u>	<u>7:26E-4.8(c)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to include in the remedial investigation report all of the soil boring, piezometer, and monitoring well records.</u>	<u>7:26E-4.8(c)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report the required information for each monitoring well sampled.</u>	<u>7:26E-4.8(c)7</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report the ground water elevation of each monitoring well.</u>	<u>7:26E-4.8(c)8</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report the summary of inventory control records review.</u>	<u>7:26E-4.8(c)9</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report the results of treatability, bench scale or pilot studies or other data collected to support the remedy selection.</u>	<u>7:26E-4.8(c)10</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report data necessary to develop permit limitations.</u>	<u>7:26E-4.8(c)11</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report the results of ecological assessments and evaluations.</u>	<u>7:26E-4.8(c)12</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the remedial investigation report a summary of records pertaining to the nature of landfill waste and to submit copies of such records.</u>	<u>7:26E-4.8(c)13</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to include in the remedial investigation report the description of the historic fill material.</u>	<u>7:26E-4.8(c)14</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report all other data and information obtained pursuant to N.J.A.C. 7:26E-4.</u>	<u>7:26E-4.8(c)15</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the remedial investigation report any of the required maps or diagrams in the prescribed formats.</u>	<u>7:26E-4.8(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>5</b>	<b><u>Remedial Action Selection</u></b>				
	<u>Failure to establish remedial action objectives/goals as required.</u>	<u>7:26E-5.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to select a remedial action which is protective of public health and safety and the environment.</u>	<u>7:26E-5.1(c)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to select a remedial action which is implementable.</u>	<u>7:26E-5.1(c)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to select a remedial action which is consistent with other applicable Federal, State and local laws and regulations.</u>	<u>7:26E-5.1(c)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to select a remedial action which takes into account the community responses and the local land use Master Plan.</u>	<u>7:26E-5.1(c)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to select a remedial action free of potential to cause injury to natural resources.</u>	<u>7:26E-5.1(c)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to include in an application for use of an innovative remedial action technology any of the required information.</u>	<u>7:26E-5.1(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to comply with the Department's requirements for use of engineering and institutional controls at N.J.A.C. 7:26E-8.</u>	<u>7:26E-5.1(e)</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to submit for approval a Remedial Action Selection Report for a restricted use remedial action.</u>	<u>7:26E-5.2(a)1</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit for approval a Remedial Action Selection Report for a remedial action that utilizes an innovative remedial action technology.</u>	<u>7:26E-5.2(a)2</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit for approval a Remedial Action Selection Report for a remedial action that will take longer than five years to complete.</u>	<u>7:26E-5.2(a)3</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit for approval a Remedial Action Selection Report for a remedial action that is being implemented to address ground water, surface water, sediment contamination or ecological impact.</u>	<u>7:26E-5.2(a)4</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to present the Remedial Action Selection Report in a format that complies to N.J.A.C.7:26E-5.2(c).</u>	<u>7:26E-5.2(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to submit the Remedial Action Selection Report with the Remedial Investigation Report or the Remedial Action Workplan as required.</u>	<u>7:26E-5.2(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit the Remedial Action Selection Report with the Remedial Action Report.</u>	<u>7:26E-5.2(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>6</b>	<b><u>Remedial Action</u></b>				
	<u>Failure to notify the Department and the local governing body pursuant to N.J.A.C. 7:26E-1.4.</u>	<u>7:26E-6.1(a)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Implementation of a remedial action that has not been approved by the Department when such approval is required.</u>	<u>7:26E-6.1(b)1</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Implementation of a remedial action that fails to comply with all applicable remediation standards in effect at the time the remedial action workplan is approved by the Department.</u>	<u>7:26E-6.1(b)2</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Implementation of a remedial action that fails to comply with all applicable Federal, State and local laws, regulations and requirements.</u>	<u>7:26E-6.1(b)3</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Implementation of a remedial action that caused an uncontrolled or unpermitted discharge or transfer of contaminants from one media to another.</u>	<u>7:26E-6.1(b)4</u>	<u>NM</u>		<u>\$20,000</u>

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	<u>Failure to treat or remove free and/or residual product when practical, or to contain same when treatment or removal are not practical.</u>	<u>7:26E-6.1(d)</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to establish institutional controls for a restricted use or a limited use remedy.</u>	<u>7:26E-6.1(e)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to conduct the remediation of historic fill pursuant to N.J.A.C. 7:26E-6.2(c), or for other fill material pursuant to N.J.A.C.7:26E-5.1.</u>	<u>7:26E-6.1(f)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure to submit a Remedial Action Workplan when required, according to the applicable schedule and which complies to the specified format.</u>	<u>7:26E-6.2(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit the Remedial Investigation Report, or a summary if previously submitted, as the first section of the Remedial Action Workplan.</u>	<u>7:26E-6.2(a)1</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to include in the Remedial Action Workplan a sampling summary table.</u>	<u>7:26E-6.2(a)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Workplan a proposal to complete all the requirements at N.J.A.C 7:26E-6.</u>	<u>7:26E-6.2(a)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Workplan the identification of all applicable remediation standards.</u>	<u>7:26E-6.2(a)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to include in the Remedial Action Workplan a detailed description of the remedial action and the remedial technology to be conducted for each area of concern.</u>	<u>7:26E-6.2(a)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a map that identifies all areas where remedial action will be conducted, and provides information about the remedial action to be taken at each area, as specified.</u>	<u>7:26E-6.2(a)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a quality assurance project plan.</u>	<u>7:26E-6.2(a)7</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a list of all required permits.</u>	<u>7:26E-6.2(a)8</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan required information regarding construction activity.</u>	<u>7:26E-6.2(a)9</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a description of soil and sediment erosion control and monitoring, and dust and odor control and monitoring procedures to be implemented during remedial activities.</u>	<u>7:26E-6.2(a)10</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a health and safety plan.</u>	<u>7:26E-6.2(a)11</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a detailed description of site restoration plans.</u>	<u>7:26E-6.2(a)12</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to include in the Remedial Action Workplan a description of procedures for dismantling and removal of remedial structures and equipment from the site.</u>	<u>7:26E-6.2(a)13</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a cost estimate for the remedial action.</u>	<u>7:26E-6.2(a)14</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a proposed completion date and a schedule of the remedial action.</u>	<u>7:26E-6.2(a)15</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan the documentation required for the establishment of a deed notice.</u>	<u>7:26E-6.2(a)16</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan the documentation required for the establishment of a classification exception area.</u>	<u>7:26E-6.2(a)17</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to include in the Remedial Action Workplan a plan for maintenance and evaluation of all engineering and institutional controls.</u>	<u>7:26E-6.2(a)18</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to conduct an evaluation pursuant to N.J.A.C 7:26E-6.4(d) and submit a soil reuse proposal.</u>	<u>7:26E-6.2(b)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to propose engineering and institutional controls when historic fill material will not be treated or removed.</u>	<u>7:26E-6.2(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to contain or stabilize contaminants in all media, as a first priority, to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.</u>	<u>7:26E-6.3(a)</u>	<u>NM</u>		<u>\$20,000</u>
<u>Failure to properly drain piping and pump out and clean tanks during tank closure.</u>	<u>7:26E-6.3(b)1</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to plug openings of tank as required during tank closure.</u>	<u>7:26E-6.3(b)2</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to excavate the soil around the tank and remove and secure the tank as required.</u>	<u>7:26E-6.3(b)3</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
<u>Failure to inspect the tank for holes and report the findings to DEP as required.</u>	<u>7:26E-6.3(b)4</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to properly label a tank for disposal.</u>	<u>7:26E-6.3(b)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to remove and dispose of a tank in accordance with all applicable laws and regulations.</u>	<u>7:26E-6.3(b)6</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to remediate piping systems associated with an underground storage tank in accordance with N.J.A.C. 7:26E-3.9(a)5.</u>	<u>7:26E-6.3(b)6v</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
<u>Failure to conduct the required investigation or take the required actions, and to provide all the information necessary, to support the proposal of a natural ground water remediation.</u>	<u>7:26E-6.3(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to meet the monitoring and performance requirements for natural</u>	<u>7:26E-6.3(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>remediation.</u>				
	<u>Failure to document the effectiveness of the remedial action.</u>	<u>7:26E-6.4(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to restore all areas subject to remediation to pre-remediation conditions.</u>	<u>7:26E-6.4(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to decommission all monitoring and extraction wells after completion of remediation.</u>	<u>7:26E-6.4(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to conduct a soil reuse evaluation and submit a proposal for soil reuse to the Department prior to the reuse of any soils, and to satisfy the required sampling requirements related to soil reuse.</u>	<u>7:26E-6.4(d)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to remediate property not owned by the person conducting the remediation to the applicable unrestricted use standard if the property owner does not consent in writing to implement the institutional or engineering controls and to record a deed notice.</u>	<u>7:26E-6.4(e)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to prepare a schedule of the remedial action when required.</u>	<u>7:26E-6.5(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to prepare a schedule of the remedial action that includes the information specified in this section.</u>	<u>7:26E-6.5 (b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to revise the remedial action schedule and submit it to the Department.</u>	<u>7:26E-6.5(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to submit remedial action progress reports as required.</u>	<u>7:26E-6.6(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to include the required information in the remedial action progress report.</u>	<u>7:26E-6.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit a Remedial Action Report that complies with the content and format requirements specified by this section.</u>	<u>7:26E-6.7(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to include as the first section of the Remedial Action Report the Remedial Investigation Report, or a summary if previously submitted.</u>	<u>7:26E-6.7(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report a summary of all remedial actions completed, by area of concern.</u>	<u>7:26E-6.7(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report a list of the remediation standards achieved for each remedial action.</u>	<u>7:26E-6.7(b)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report “as-built” diagrams for any permanent structures.</u>	<u>7:26E-6.7(b)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report a detailed description of site restoration activities.</u>	<u>7:26E-6.7(b)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report a report of remedial action costs, including an estimate to monitor and maintain and certify the protectiveness of each engineering and/or institutional</u>	<u>7:26E-6.7(b)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>control.</u>				
	<u>Failure to include in the Remedial Action Report the required information concerning soils and sediments.</u>	<u>7:26E-6.7(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report graphs depicting changes in contaminant concentrations over time in all monitoring wells.</u>	<u>7:26E-6.7(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include in the Remedial Action Report the information required for natural remediation ground water remedial action.</u>	<u>7:26E-6.7(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>7</b>	<b><u>Permit Identification and Application Schedule</u></b>				
	<u>Failure to identify all relevant Federal, State and local permits of permit modifications or certifications needed to implement the selected remedial action.</u>	<u>7:26E-7.1(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to apply for and obtain all required permits prior to initiating the remedial action.</u>	<u>7:26E-7.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure to develop a permit application schedule when required.</u>	<u>7:26E-7.1(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>8</b>	<b><u>Engineering and Institutional Controls</u></b>				
	<u>Failure to propose a deed notice, pursuant to N.J.A.C. 7:26E-8.2.</u>	<u>7:26E-8.1(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to demonstrate in the Remedial Action Workplan that the selected remedial action will remain protective, that contamination exposure can be controlled, and all current and future uses of the site will be consistent with the remedial action.</u>	<u>7:26E-8.1(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to monitor each engineering and institutional control.</u>	<u>7:26E-8.1(b)3</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to record a deed notice for the site pursuant to NJAC 7:26E-8.2(c) and (d).</u>	<u>7:26E-8.2(a)1</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to provide the Department documentation of the owner's consent to record the necessary deed notice pursuant to NJAC 7:26E-8.2(b).</u>	<u>7:26E-8.2(a)2</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to provide the Department with a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16.</u>	<u>7:26E-8.2(b)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>For a property that is owned by a local, county, state or federal government agency, failure to submit a draft notice worded pursuant to NJAC 7:26E-8.2(d).</u>	<u>7:26E-8.2(c)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>For a property that is owned by the U.S. Department of Defense, failure to draft an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to NJAC 7:26E-8.2(d).</u>	<u>7:26E-8.2(c)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<p><u>Failure to provide the Department with a draft deed notice pursuant to NJAC 7:26E-8.2(d).</u></p>	<p><u>7:26E-8.2(c)3</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to submit a draft deed notice to the Department, as part of the remedial action work plan, that is worded exactly as the model document in N.J.A.C. 7:26E, Appendix E, and includes copies of all required maps.</u></p>	<p><u>7:26E-8.2(d)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to submit a final draft of the deed notice to the Department as part of the remedial action report.</u></p>	<p><u>7:26E-8.2(e)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$8,000</u></p>
<p><u>Failure to have the owner of the property record the deed notice at the proper county office within 45 days of the Department's approval of the final deed notice.</u></p>	<p><u>7:26E-8.2(f)1</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the road department of each municipality and county in which the site is located, the NJ Department of Transportation, and utility companies with easements on the roadway.</u></p>	<p><u>7:26E-8.2(f)2</u></p>	<p><u>NM</u></p>		<p><u>\$5,000</u></p>

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	<p><u>Failure to provide a copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1 to the necessary recipients within 45 days of the Department's approval of the final deed notice.</u></p>	<p><u>7:26E-8.2(g)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
	<p><u>Failure to submit a MOA, remedial action workplan, and request to modify the DER or deed notice prior to redeveloping or changing the use of a site in a manner inconsistent with a remedial action, or conducting additional remediation or other activities.</u></p>	<p><u>7:26E-8.2(h)</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
	<p><u>Failure to submit a list of all contaminants and their concentrations that do not meet the GWQS from the most recent 24 months of ground water sampling for each ground water sampling point with the remedial action workplan.</u></p>	<p><u>7:26E-8.3(b)1</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
	<p><u>Failure to submit with the remedial action workplan, a description of the fate and transport of the contaminant plume.</u></p>	<p><u>7:26E-8.3(b)2</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
	<p><u>Failure to submit the required ground water classification exception area maps with the remedial action workplan.</u></p>	<p><u>7:26E-8.3(b)3</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>

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<u>Failure to submit, with the remedial action workplan, information regarding current and projected use of the ground water in the aquifer(s) in which the ground water classification exception area is located.</u>	<u>7:26E-8.3(b)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit copies of notification letters sent to the required recipients, with the remedial action workplan.</u>	<u>7:26E-8.3(b)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit to the Department a monitoring/maintenance certification, for a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded.</u>	<u>7:26E-8.4(c)1</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to submit to the Department a monitoring/maintenance certification, for a ground water classification exception area, every two years on the anniversary of the date that the Department established the ground water classification exception area.</u>	<u>7:26E-8.4(c)2</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to submit to the Department a monitoring/maintenance certification, for all other engineering and institutional controls (besides a deed notice or ground water classification exception area), every two years on the anniversary of when the engineering or institutional control was in</u>	<u>7:26E-8.4(c)3</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>place.</u>				
	<u>Failure to submit a biennial certification for all remedial actions and all engineering and institutional controls for the site to the Department in accordance with N.J.A.C. 7:26E-8.4 (c) and biennially thereafter on that same date.</u>	<u>7:26E-8.4(d)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to determine whether any actual or pending zoning or land use change is consistent with the deed notice or declaration of environmental restriction, or could undermine the protectiveness of the remedial action.</u>	<u>7:26E-8.5(a)1</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to conduct periodic site inspections to determine whether any disturbances of the soil have resulted in unacceptable exposure.</u>	<u>7:26E-8.5(a)2</u>	<u>NM</u>		<u>\$8,000</u>

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<p><u>Failure to compare laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations or standards to determine whether changes have occurred and whether each control complies with changes.</u></p>	<p><u>7:26E-8.5(a)3</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to develop a detailed log of how the RP has maintained and evaluated the engineering control in compliance with this section.</u></p>	<p><u>7:26E-8.5(a)4</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to prepare a monitoring report that includes the information listed at NJAC 7:26E-8.5(b)1-10.</u></p>	<p><u>7:26E-8.5(b)</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to certify to the Department that the deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained, and the remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of public health and the environment.</u></p>	<p><u>7:26E-8.5(c)1</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$5,000</u></p>
<p><u>Failure to submit a written and electronic version of the monitoring report along with the certification.</u></p>	<p><u>7:26E-8.5(c)2</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>

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	<u>Failure to submit the monitoring report and the certification in accordance with the schedule in N.J.A.C. 7:26E-8.4(c), to the municipal and county clerks; the local, county and regional health department; each owner of the property; or the Department.</u>	<u>7:26E-8.5(c)3</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to notify the Department of a change in obligations within 30 days of the effective date of the change.</u>	<u>7:26E-8.5(d)1</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to notify the Department of a change in obligations within 30 days of the effective date of the change.</u>	<u>7:26E-8.5(d)2</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to compare the laws, Ground Water Quality Standards, and other regulations, applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws or regulation.</u>	<u>7:26E-8.6(a)1</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to determine whether there are any planned changes within the 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located.</u>	<u>7:26E-8.6(a)2</u>	<u>NM</u>		<u>\$8,000</u>

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	<p><u>Failure to identify whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed biennial review.</u></p>	<p><u>7:26E-8.6(a)3</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
	<p><u>Failure to inspect all ground water monitoring wells associated with the ground water classification exception area, maintain a log for each monitoring well, repair or replace damaged wells as needed, and decommission wells as required by this section.</u></p>	<p><u>7:26E-8.6(a)4</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
	<p><u>Failure to identify any land use disturbance that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water.</u></p>	<p><u>7:26E-8.6(a)5</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
	<p><u>Failure to determine whether any of the actual or proposed changes in the ground water use identified pursuant to NJAC 7:26E-8.6(a)2 and 3, have influenced or may influence the protectiveness of the remedial action that includes the ground water classification area.</u></p>	<p><u>7:26E-8.6(a)6i</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>

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<p><u>Failure to determine whether there is a need to reevaluate the fate and transport of the ground water contamination plume and to revise the ground water classification exception area to ensure that the remedial action remains protective of the public health, safety and the environment.</u></p>	<p><u>7:26E-8.6(a)6ii</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to assess ground water quality within 120 calendar days after the projected expiration of the ground water classification exception area.</u></p>	<p><u>7:26E-8.6(a)7</u></p>	<p><u>M</u></p>	<p><u>90</u></p>	<p><u>\$5,000</u></p>
<p><u>Failure to submit a monitoring report that includes all of the criteria outlined in N.J.A.C. 7:26C-8.6(b)1-13.</u></p>	<p><u>7:26E-8.6(b)</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to certify that the ground water classification exception area continues to provide notice of the ground water contamination and the remedial action continues to be protective of the public health and safety and the environment.</u></p>	<p><u>7:26E-8.6(c)1</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$3,000</u></p>
<p><u>Failure to submit a report pursuant to NJAC 7:26E-8.6(b), in both paper copy and in electronic format acceptable to the Department.</u></p>	<p><u>7:26E-8.6(c)2</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to submit a ground water classification exception area certification in accordance with the schedule in N.J.A.C. 7:26E-8.4 to the Department, property</u></p>	<p><u>7:26E-8.6(c)3</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>

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	<u>owner, and each external agency.</u>				
	<u>Failure to conduct a periodic inspection of a site with an institutional control.</u>	<u>7:26E-8.7(a)1i</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to evaluate any actual or pending zoning or land use changes that could undermine the remedial action.</u>	<u>7:26E-8.7(a)1ii</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to monitor each engineering control by periodically reviewing O&amp;M records.</u>	<u>7:26E-8.7(a)2i</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to monitor each engineering control by conducting periodical inspections of each engineering control.</u>	<u>7:26E-8.7(a)2ii</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to compare the compare the laws, remediation standards and other regulations applicable at the time the engineering or institutional control was established, with any relevant subsequently promulgated or modified laws or regulations to determine whether any subsequently promulgated or modified laws or regulations apply to the site, and whether each engineering and/or institutional control meet those new laws and regulations.</u>	<u>7:26E-8.7(a)3</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>Failure to develop a detailed log of how the RP has maintained and evaluated the engineering control in compliance with this section.</u>	<u>7:26E-8.7(a)4</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to prepare a monitoring report that includes all the information listed at NJAC 7:26E-8.7(b)1-9.</u>	<u>7:26E-8.7(b)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to certify to the Department that each engineering or institutional control is being properly maintained.</u>	<u>7:26E-8.7(c)1</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to include a monitoring report required by NJAC 7:26E-8.7(b) with the certification.</u>	<u>7:26E-8.7(c)2</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit the certification to the Department pursuant to the schedule and address in 7:26E-8.4(e)1.</u>	<u>7:26E-8.7(c)3</u>	<u>NM</u>		<u>\$8,000</u>

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

	<b><u>Subchapter &amp; Violation</u></b>	<b><u>Citation 7:26B-</u></b>	<b><u>Type of Violation</u></b>	<b><u>Grace Period (Days)</u></b>	<b><u>Base Penalty</u></b>
<b><u>1</u></b>	<b><u>General Information</u></b>				
	<u>Failure to submit certifications and signatories.</u>	<u>7:26B-1.6(a)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit certifications and signatories for a Remediation Agreement of Remediation Agreement Amendment.</u>	<u>7:26B-1.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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	<u>Failure to have all certifications notarized.</u>	<u>7:26B-1.6(f)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to complete additional remediation and address deficiencies in submittals.</u>	<u>7:26B-1.7(b)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure of owner or operator to give consent to right of entry and inspection by the Department.</u>	<u>7:26B-1.9(a)</u>	<u>NM</u>		<u>\$12,000</u>
	<u>Failure of buyer or transferee to give consent to right of entry and inspection by the Department.</u>	<u>7:26B-1.9(b)1</u>	<u>NM</u>		<u>\$12,000</u>
	<u>Failure of buyer or transferee to give consent to right of entry for implementation of a remedial action workplan or compliance with the conditions of a remediation agreement.</u>	<u>7:26B-1.9(b)2</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure to provide assistance to the Department during any site inspection.</u>	<u>7:26B-1.9(c)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure to obtain a no further action letter, remedial action workplan approval, remediation agreement or Departmentally issued authorization letter prior to the transfer of an industrial establishment.</u>	<u>7:26B-1.10(c)</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to amend a General Information Notice for any subsequent transfers of ownership or operations.</u>	<u>7:26B-1.10(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b><u>3</u></b>	<b><u>General Information Notice</u></b>				

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	<u>Failure to submit a General Information Notice within five calendar days after the occurrence of a transaction event.</u>	<u>7:26B-3.2(a)</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to remediate a site in accordance with ISRA when a written notice is required to be submitted.</u>	<u>7:26B-3.2(b)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit a complete and accurate GIN.</u>	<u>7:26B-3.3(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit revisions to the General Information Notice within 30 calendar days of discovery that the original General Information Notice is incorrect, inaccurate, or incomplete.</u>	<u>7:26B-3.4(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b><u>4</u></b>	<b><u>Remediation Agreement</u></b>				
	<u>Failure to submit a Remediation Agreement application prior to the transfer of the industrial establishment without the Department's approval of a negative declaration or remedial action workplan.</u>	<u>7:26B-4.1(a)</u>	<u>NM</u>		<u>\$5,000</u>
<b><u>6</u></b>	<b><u>Remediation Procedures</u></b>				
	<u>Failure to submit a Preliminary Assessment Report within the required timeframe.</u>	<u>7:26B-6.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit a Site Investigation Report within 120 calendar days after the date the submission of written notice is required.</u>	<u>7:26B-6.1(c)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>

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	<u>Failure to submit a Remedial Investigation Workplan within 180 calendar days after the date the submission of written notice.</u>	<u>7:26B-6.1(d)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit a Remedial Investigation Report within 300 calendar days after the date the submission of written notice, or within 120 calendar days after the receipt of the Department's written approval of the remedial investigation workplan.</u>	<u>7:26B-6.1(e)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Commenced a remedial action, which does not meet the criteria in N.J.A.C. 7:26B-6.2(b), without the Department's approval of a remedial action workplan.</u>	<u>7:26B-6.2(a)</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to submit, within 420 days after the date of submission of written notice, a certification that there are no areas of concern at the industrial establishment where hazardous substances have migrated or are migrating from, involving remediation of groundwater or surface water, and a summary and schedule of completed and proposed soil remedial actions.</u>	<u>7:26B-6.2(c)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to certify the notification referenced in 7:26B-6.2(c).</u>	<u>7:26B-6.2(d)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit a notification in accordance with N.J.A.C. 7:26E-1.4.</u>	<u>7:26B-6.2(e)</u>	<u>NM</u>		<u>\$8,000</u>

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<u>Failure to submit progress reports when required.</u>	<u>7:26B-6.2(f)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a Remedial Action Workplan within 420 days after the date of the submission of the written notice, or within 120 days after approval of the Remedial Investigation Report.</u>	<u>7:26B-6.2(g)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a Ground water or Surface Water Remedial Action Workplan within 420 days after the date of the submission of the written notice, or within 120 days after approval of the Remedial Investigation Report.</u>	<u>7:26B-6.3</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a Remediation Funding Source upon the Department's approval of a remedial action workplan.</u>	<u>7:26B-6.4</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to remediate a site in accordance with a schedule.</u>	<u>7:26B-6.5(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit all workplans and reports documenting the completion of remediation.</u>	<u>7:26B-6.6</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a negative declaration subsequent to closing operations, or the public release of its decision to close operations, or prior to transferring ownership or operations of the industrial establishment.</u>	<u>7:26B-6.7(a)</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to submit a negative declaration.</u>	<u>7:26B-6.7(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to include all required information in the submission for a negative declaration.</u>	<u>7:26B-6.7(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to certify a Negative Declaration in accordance with N.J.A.C. 7:26B-1.6.</u>	<u>7:26B-6.7(d)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<b>8</b>	<b><u>Fee Schedule and Direct Billing Fees</u></b>				
	<u>Failure to pay fees in accordance with Fee Schedule.</u>	<u>7:26B-8.1(a)</u>	<u>M</u>	<u>30</u>	<u>20% of outstanding fee</u>
	<u>Failure to pay oversight costs.</u>	<u>7:26B-8.2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>A</b>	<b><u>Appendix A: Standard ISRA Remediation Agreement</u></b>				
	<u>Failure to submit a Remedial Investigation Work Plan including a baseline ecological evaluation and all other required work that the Department has not already approved.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to modify the Remedial Investigation Work Plan to conform to the Department's comments and re-submit.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to conduct the remedial investigation in accordance with the approved Remedial Investigation Work Plan and schedule.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E and the Remedial Investigation Work Plan and schedule.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>

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<u>Failure to conduct additional remedial investigation as required, including submission of another Remedial Investigation Work Plan and schedule, and another Remedial Investigation Report.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to modify the Remedial Investigation Report to conform to the Department's comments re-submit.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a Remedial Action Work Plan.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to modify the Remedial Action Work Plan to conform to the Department's comments and re-submit.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to implement the approved Remedial Action Work Plan in accordance with the schedule.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to submit to the Department a Remedial Action Report in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan and schedule.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to conduct additional remediation as directed and submit subsequent Remedial Investigation Report and Remedial Action Report as applicable.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>

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<u>Failure to modify the Remedial Action Report to conform the Department's comments and agrees to submit the modified Remedial Action Report to the Department.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to conduct additional remediation as required.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to submit a negative declaration as required.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit quarterly progress reports.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit all documents required by the Remediation Agreement, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit the name, title, address and telephone number of the technical contact.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit all required payments and required number of copies of all documents.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to notify the Department's contact person at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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<u>Failure to submit an extension request two weeks prior to any applicable deadline to which the extension request refers.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to establish and maintain a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs, including all operation, maintenance and monitoring costs of all engineering and institutional controls.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to pay an annual remediation funding source surcharge when required.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to annually submit a detailed review of all remediation costs as required.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to increase the amount of the remediation funding source within thirty (30) calendar days after receipt of written notice from the Department.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to maintain the remediation funding source in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to submit appropriate fees.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>20% of outstanding fee</u>
<u>Failure to submit a check for the full amount of the Department's oversight costs.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>for the period invoiced.</u>				
	<u>Failure to pay oversight costs accrued prior to termination</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to pay interest on the unpaid balance of oversight costs.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to notify the Department as required in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay and to take all necessary action to prevent or minimize any such delay.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit a certified check made payable to the "Treasurer, State of New Jersey" for \$[penalty amount].00, upon submittal of signed Remediation Agreement.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to pay penalties for violations of the Remediation Agreement, or for failure to implement and maintain institutional controls that are part of a remedial action implemented pursuant to the Remediation Agreement.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to allow the Department and its authorized representatives access to all areas of the Site as required.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$12,000</u>

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<p><u>Failure to provide a copy of the Remediation Agreement to each contractor and subcontractor retained to perform the work required by the Remediation Agreement, to condition all contracts and subcontracts entered for the performance of such work upon compliance with its terms and conditions, and to be responsible to the Department for ensuring that contractors and subcontractors perform the work in accordance with the Remediation Agreement.</u></p>	<p><u>7:26B-Appendix A</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to submit all data and information developed pursuant to the Remediation Agreement as required.</u></p>	<p><u>7:26B-Appendix A</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to comply with the Remediation Agreement.</u></p>	<p><u>7:26B-Appendix A</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to record a copy of the Remediation Agreement with the County Clerk and to provide the Department with written verification of filing as required.</u></p>	<p><u>7:26B-Appendix A</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to preserve and submit all data and information, as required.</u></p>	<p><u>7:26B-Appendix A</u></p>	<p><u>NM</u></p>		<p><u>\$5,000</u></p>

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	<u>Failure to provide written notice of dissolution of identity, liquidation of assets or the closure, termination or transfer of operations prior to such action; submit a cost review; provide written notice of a filing of a petition for bankruptcy, and when requested, within fourteen (14) days increase the remediation funding source.</u>	<u>7:26B-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to submit two original copies of the signed Remediation Agreement, documentary evidence that the signatory has the authority to commit to the terms of the Remediation Agreement, and proof that the remediation funding source has been established.</u>	<u>7:26B-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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

	<u>Subchapter &amp; Violation</u>	<u>Citation</u> <u>7:26C-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
<u>1</u>	<u>General Information</u>				
	<u>Failure to submit the signatures and certifications specified in N.J.A.C. 7:26C-1.2 (a)-( c )(1).</u>	<u>7:26C-1.2</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit payment of the applicable oversight costs to the Department.</u>	<u>7:26C-1.5(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Failure to notify the Department immediately upon knowledge of a condition that posed an immediate environmental concern to the public health and safety and to the environment.</u>	<u>7:26C-1.5(c)</u>	<u>NM</u>		<u>\$8,000</u>
<b>7</b>	<b><u>Remediation Funding Sources</u></b>				
	<u>Failure to establish and maintain a remediation funding source.</u>	<u>7:26C-7.2(a)</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to establish and maintain a remediation-funding source in an amount equal to the estimated cost of the remediation.</u>	<u>7:26C-7.2(c)1</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to establish and maintain a remediation-funding source for a period of not less than the actual time necessary to complete the remediation.</u>	<u>7:26C-7.2(c)2</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to submit information regarding areas of concern and cost estimate.</u>	<u>7:26C-7.3(a)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to submit information required by the Department pursuant to N.J.A.C. 7:26C-7.3(b).</u>	<u>7:26C-7.3(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit the required remediation trust fund agreement along with signed copies of the ACO, directive, court order or other judicial settlement.</u>	<u>7:26C-7.4(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit the required remediation trust fund information pursuant to N.J.A.C. 7:26C-7.4(b).</u>	<u>7:26C-7.4(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<p><u>Failure to submit to the Department, 30 days prior to the anniversary date of remediation trust fund, a written statement from the trustee confirming the value of the trust in an amount the Department approved</u></p>	<p><u>7:26C-7.4(c)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to submit an environmental insurance policy.</u></p>	<p><u>7:26C-7.5(a)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to obtain an environmental insurance policy issued by an entity licensed by the State of New Jersey Dept.of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.5(b)1-5.</u></p>	<p><u>7:26C-7.5(b)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to submit to the Department, 30 days prior to the anniversary date of the environmental insurance policy, a written statement from the insurance company confirming the value of the environmental insurance policy in an amount the Department approved and renewal of the policy for the next 12-month period.</u></p>	<p><u>7:26C-7.5(c)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to submit the line of credit agreement pursuant to N.J.A.C.7:26C-7.6(b).</u></p>	<p><u>7:26C-7.6(a)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>

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	<u>Failure to obtain a line of credit issued by an entity licensed by the State of New Jersey Dept.of Insurance to transact business in the State of New Jersey, that contains the information specified in N.J.A.C. 7:26C-7.6(b)1-5.</u>	<u>7:26C-7.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit to the Department, 30 days prior to the anniversary date of the establishment of the line of credit, a written statement from the lender confirming the value of the line of credit in an amount the Department approved and renewal of the line of credit for the next 12-month period.</u>	<u>7:26C-7.6(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit the required remediation funding source surcharge.</u>	<u>7:26C-7.8(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation pursuant to N.J.A.C. 7:26C-7.</u>	<u>7:26C-7.9(d)</u>	<u>NM</u>		<u>\$5,000</u>
<b>8</b>	<b><u>Site Access</u></b>				
	<u>Failure to send a written request for access as required to each property owner.</u>	<u>7:26C-8.2(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to send a second written request for access as required to each property owner.</u>	<u>7:26C-8.2(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to initiate and vigorously pursue site access via legal action and provide written confirmation to the Department, as required.</u>	<u>7:26C-8.2(e)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<b>9</b>	<b><u>Oversight Costs</u></b>				
	<u>Failure to submit the payment of applicable fixed cost fees.</u>	<u>7:26C-9.2(a)</u>	<u>M</u>	<u>30</u>	<u>20% of outstanding fee</u>
	<u>Failure to submit the payment of the Department's oversight costs.</u>	<u>7:26C-9.3(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b>A</b>	<b><u>Appendix A: Standard Administrative Consent Order</u></b>				
	<u>Failure to submit a Remedial Investigation Work Plan including a baseline ecological evaluation and all other required work that the Department has not already approved.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to modify the Remedial Investigation Work Plan to conform to the Department's comments and re-submit.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to conduct the remedial investigation in accordance with the approved RI Work Plan and schedule.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit a Remedial Investigation Report in accordance with N.J.A.C. 7:26E and the RI Work Plan and schedule.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to conduct additional remedial investigation as required, including submission of another RI Workplan and schedule, and another RI Report.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to modify the RI Report to conform to the Department's comments re-submit.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit a Remedial Action Work</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>

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	<u>Plan.</u>				
	<u>Failure to modify the Remedial Action Work Plan to conform to the Department's comments and re-submit.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to implement the approved Remedial Action Work Plan in accordance with the schedule.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit to the Department a Remedial Action Report in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Remedial Action Work Plan and schedule.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to conduct additional remediation as directed and submit subsequent Remedial Investigation Report and Remedial Action Report as applicable.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to modify the Remedial Action Report to conform the Department's comments and agrees to submit the modified Remedial Action Report to the Department.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to conduct additional remediation as required.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit quarterly progress reports.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>

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<u>Failure to submit all documents required by the Administrative Consent Order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit the name, title, address and telephone number of the technical contact.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit all required payments and required number of copies of all documents.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to notify the Department's contact person at least fourteen (14) calendar days prior to the initiation of any field activities at the Site which are related to remediation, development or redevelopment.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to submit an extension request two weeks prior to any applicable deadline to which the extension request refers.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to establish and maintain a remediation funding source in an amount equal to the Department-approved estimate of the remediation costs, including all operation, maintenance and monitoring costs of all engineering and institutional controls.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to pay an annual remediation funding source surcharge when required.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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<u>Failure to annually submit a detailed review of all remediation costs as required.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to increase the amount of the remediation funding source within thirty (30) calendar days after receipt of written notice from the Department.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to maintain the remediation funding source in an amount necessary to pay for the operation maintenance and monitoring of the engineering and institutional controls.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to submit a check for the full amount of the Department's oversight costs, for the period invoiced.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to pay oversight costs accrued prior to termination.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to pay interest on the unpaid balance of oversight costs.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to notify the Department as required in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay and to take all necessary action to prevent or minimize any such delay.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to submit a certified check made payable to the "Treasurer, State of New Jersey" for \$[penalty amount].00, upon submittal of executed Administrative</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>Consent Order.</u>				
	<u>Failure to pay penalties for violations of the Administrative Consent Order, or for failure to implement and maintain institutional controls that are part of a remedial action implemented pursuant to the Administrative Consent Order.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to allow the Department and its authorized representatives access to all areas of the Site as required.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$12,000</u>
	<u>Failure to provide a copy of the Administrative Consent Order to contractors and subcontractors as required, to condition all contracts and subcontracts as required, and to ensure that contractors and subcontractors perform the work in accordance with the Administrative Consent Order.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit all data and information developed pursuant to the Administrative Consent Order as required.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to comply with the Administrative Consent Order.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to record a copy of the</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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<u>Administrative Consent Order with the County Clerk and to provide the Department with written verification of filing as required.</u>				
<u>Failure to preserve and submit all data and information, as required.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$3,000</u>
<u>Failure to provide written notice of dissolution of identity, liquidation of assets or the closure, termination or transfer of operations prior to such action; submit a cost review; provide written notice of a filing of a petition for bankruptcy, and when requested, within fourteen (14) days increase the remediation funding source.</u>	<u>7:26C-Appendix A</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure to submit two original copies of the signed Administrative Consent Order, documentary evidence that the signatory has the authority to commit to the terms of the Administrative Consent Order, and proof that the remediation funding source has been established.</u>	<u>7:26C-Appendix A</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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

<u>Subchapter &amp; Violation</u>	<u>Citation</u> <u>7:14B-</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u> <u>(Days)</u>	<u>Base Penalty</u>
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<b><u>1</u></b>	<b><u>General Information</u></b>				
	<u>Failure to include signatures and certifications when making a submission to the Department pursuant to N.J.A.C. 7:14B.</u>	<u>7:14B-1.7(a)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to sign requisite certification by the appropriate party.</u>	<u>7:14B-1.7(b)2</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure of a New Jersey professional engineer to sign and submit the requisite certification when submitting plans in accordance with N.J.A.C. 7:14B-10.3(b)1.</u>	<u>7:14B-1.7(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure of an individual certified in the classification of subsurface evaluator to sign and submit the requisite certification when submitting documents in accordance with N.J.A.C. 7:14B-10.3(b)9.</u>	<u>7:14B-1.7(d)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure of an individual to sign and submit the requisite certification when submitting documents in accordance with N.J.A.C. 7:14B-13.3(C).</u>	<u>7:14B-1.7(e)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure of an individual certified as a subsurface evaluator to sign, date and submit the requisite certification when submitting a cathodic protection permit application in accordance with N.J.A.C.</u>	<u>7:14B-1.7(f)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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	<u>7:14B-10.3(b)5.</u>				
	<u>Failure of an individual certified as a subsurface evaluator who conducts or directs activities and prepares documents in accordance N.J.A.C. 7:14B-8.5 or 9.5 to sign, date and submit the requisite certification.</u>	<u>7:14B-1.7(g)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure of an individual certified as a subsurface evaluator who prepares documents in accordance with N.J.A.C. 7:14B-8.5 or 9.5 for another certified subsurface evaluator who conducted or directed on-site activities, to sign, date and submit the requisite certification.</u>	<u>7:14B-1.7(h)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<b><u>3</u></b>	<b><u>Fees</u></b>				
	<u>Failure to pay fees for tank registration, renewal &amp; permit activity as required.</u>	<u>7:14B-3</u>	<u>M</u>	<u>30</u>	<u>20% of outstanding fee</u>
	<u>Failure to submit oversight costs as required by N.J.A.C. 7:26C-9.3 and 9.5.</u>	<u>7:14B-3.5(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b><u>7</u></b>	<b><u>Release Reporting and Investigation</u></b>				
	<u>Failure of an owner/operator to perform an investigation of a suspected release within seven days of the discovery of the</u>	<u>7:14B-7.1(a)</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>suspected release.</u>				
	<u>Failure to perform an investigation of a suspected release in accordance with all required procedures.</u>	<u>7:14B-7.2(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to perform a Site Investigation within 60 calendar days of discovery of a suspected release, in accordance with N.J.A.C. 7:26E-3.3, when the 7-day investigation was inconclusive in confirming or disproving a suspected release.</u>	<u>7:14B-7.2(b)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to immediately report a confirmed discharge to the appropriate local health agency and the Department's Environmental Action Hotline.</u>	<u>7:14B-7.3(a)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to perform the remedial actions set forth in N.J.A.C. 7:14B-8.</u>	<u>7:14B-7.3(c)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to implement the release response plan when a discharge was identified.</u>	<u>7:14B-7.3(d)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>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.</u>	<u>7:14B-7.3(e)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to perform a site investigation in</u>	<u>7:14B-7.4</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>accordance with N.J.A.C. 7:26E-3.3 and/or submit a site investigation report in accordance with N.J.A.C. 7:26E-3.13 when required by the Department due to a suspected discharge.</u>				
<b>8</b>	<b><u>Remediation Activities</u></b>				
	<u>Failure to take immediate action upon confirming a release.</u>	<u>7:14B-8.1(a)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to take immediate action to determine the source of the discharge upon confirming a release.</u>	<u>7:14B-8.1(a)1</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to take immediate action to cease use of the underground storage tank system upon confirming a release.</u>	<u>7:14B-8.1(a)2</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to take immediate action to mitigate any fire, safety or health hazard upon confirming a release.</u>	<u>7:14B-8.1(a)3</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to take immediate action to conduct a visual inspection to detect and mitigate the effects of evident discharges upon confirming a release.</u>	<u>7:14B-8.1(a)4</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to take immediate action to properly remove all hazardous substances from the underground storage tank system upon confirming a release.</u>	<u>7:14B-8.1(a)5</u>	<u>NM</u>		<u>\$20,000</u>
	<u>Failure to take immediate action to repair, replace or close the underground storage</u>	<u>7:14B-8.1(a)6</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>tank system upon confirming a release.</u>				
	<u>Failure to take immediate action to comply with the reporting requirements at N.J.A.C. 7:14B-7.3 upon confirming a release.</u>	<u>7:14B-8.1(a)7</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to perform a remedial investigation in accordance with N.J.A.C. 7:26E-4.</u>	<u>7:14B-8.2(a)1</u>	<u>Defer to specific 7:26E-4 violations</u>		<u>Defer to specific 7:26E-4 penalties</u>
	<u>Failure to perform a remedial action in accordance with the requirements of N.J.A.C. 7:26E-6.</u>	<u>7:14B-8.2(a)2</u>	<u>Defer to specific 7:26E-6 violations</u>		<u>Defer to specific 7:26E-6 penalties</u>
	<u>Failure to determine the classification of any wastes that are generated during the remedial investigation or remedial action.</u>	<u>7:14B-8.2(a)3</u>	<u>M</u>	<u>60</u>	<u>\$5,000</u>
	<u>Failure to remove all non-hazardous wastes from the site or treat soils on site in accordance with N.J.A.C. 7:26E-5 and 6, or reuse soils in accordance with N.J.A.C. 7:26E-6.2(b) upon Department approval, within six months after generation.</u>	<u>7:14B-8.2(a)4</u>	<u>M</u>	<u>90</u>	<u>\$5,000</u>
	<u>Failure to remove all hazardous wastes from the site within 90 days of generation.</u>	<u>7:14B-8.2(a)5</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>

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<u>Failure to submit the Remedial Investigation Report to the Department and local health agencies within 120 days after notification to the Department of the discharge.</u>	<u>7:14B-8.3(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a Remedial Action Selection report prepared in accordance with N.J.A.C. 7:26E within 120 days after notification to the Department of the discharge.</u>	<u>7:14B-8.3(a)1</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to have a remedial investigation report prepared by a Department Certified Subsurface Evaluator.</u>	<u>7:14B-8.3(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to submit a request for No Further Action, a remedial investigation workplan, or a remedial action workplan with the remedial investigation report.</u>	<u>7:14B-8.3(c)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to submit a remedial investigation report prepared in accordance with N.J.A.C. 7:26E-4.8, within 90 days of the approval of the remedial investigation workplan.</u>	<u>7:14B-8.3(d)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to conduct additional sampling and analysis as required by the Department and/or submit a remedial investigation workplan in the timeframe required by the Department.</u>	<u>7:14B-8.3(e)</u>	<u>M</u>	<u>60</u>	<u>\$8,000</u>

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<u>Failure to revise inadequate or incomplete submittals and resubmit the required information to the Department within 30 days or in the timeframe specified.</u>	<u>7:14B-8.3(f)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to accept or reject in writing the Department's conditions for approved remedial investigation or remedial action workplans. Failure to submit a revision to said remedial investigation or remedial action workplan within 30 calendar days or in the timeframe specified.</u>	<u>7:14B-8.3(g)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to provide the Department with 14 calendar days notice prior to initiation of remedial activities.</u>	<u>7:14B-8.3(i)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to allow the Department site access to observe remedial activities.</u>	<u>7:14B-8.3(i)</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure to submit a remedial action workplan, for a portion of the facility that is determined to present an immediate threat to health and the environment, to the Department within 45 days of the Department's request.</u>	<u>7:14B-8.3(k)</u>	<u>NM</u>		<u>\$20,000</u>
<u>Failure to implement the remedial action workplan within the timeframes approved by the Department and/or obtain all necessary permits to perform the remedial</u>	<u>7:14B-8.4(a)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>

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	<u>action workplan.</u>				
	<u>Failure to submit a revised remedial action workplan upon discovery of new information available which was not adequately addressed in the original workplan.</u>	<u>7:14B-8.4(c)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit progress reports, prepared in accordance with N.J.A.C. 7:26E-6.5, within the time schedule approved in the remedial action workplan.</u>	<u>7:14B-8.4(d)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit a complete remedial action report, prepared in accordance with N.J.A.C. 7:26E-6.6, upon full implementation of the remedial action workplan.</u>	<u>7:14B-8.5(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to submit an amended Remedial Action Report, in the time frame specified by the Department, that addresses the deficiencies of the initial Remedial Action Report.</u>	<u>7:14B-8.5(b)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to remediate a discharge of hazardous substances in accordance with the Technical Requirements for Site Remediation at N.J.A.C.7:26E.</u>	<u>7:14B-8.6</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>

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	<u>Failure to conduct all remedial investigation and remedial action activities in accordance with N.J.A.C. 7:26E-1.9.</u>	<u>7:14B-8.7</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to empty and repair or close a tank system which has leaked a hazardous substance into the annular space created by the secondary containment system.</u>	<u>7:14B-8.8(a)</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
	<u>Failure to submit to the Department a report which documents the investigation of the tank leak and it's repair.</u>	<u>7:14B-8.8(b)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<b>9</b>	<b><u>Out-of-Service UST Systems and Closure of UST Systems</u></b>				
	<u>Failure to notify the Department within 30 days that a tank system is out of service.</u>	<u>7:14B-9.1(a)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to follow the requirements of API Bulletin No. 1604 when a tank system is out of service for greater than 3 months.</u>	<u>7:14B-9.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to properly submit documentation to the Department for the extension of the 12-month out of service period.</u>	<u>7:14B-9.1(c)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to close a tank system after it has been out of service for more than 12 months without the approval of the Department.</u>	<u>7:14B-9.1(d)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make</u>	<u>7:14B-9.1(e)</u>	<u>NM</u>		<u>\$12,000</u>

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	<u>all observations and decisions regarding site investigation and remedial investigation activities.</u>				
	<u>Failure to notify the Department and all applicable local and county health departments in writing at least 30 days prior to closing an underground storage tank system.</u>	<u>7:14B-9.2(a)1</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to comply with all applicable requirements of the New Jersey Uniform Constriction Code regarding closing an underground storage tank system.</u>	<u>7:14B-9.2(a)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to include a copy of the Department notification with the application for a local demolition permit prior to closing an underground storage tank system.</u>	<u>7:14B-9.2(a)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit a completed New Jersey Underground Storage Tank Registration Questionnaire and fees, if the tank is not already registered, at least 60 days prior to closing an underground storage tank system.</u>	<u>7:14B-9.2(a)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to develop and implement a closure plan pursuant to the procedures set forth in N.J.A.C. 7:26E-6.3(b).</u>	<u>7:14B-9.2(b)</u>	<u>Defer to specific 7:26E-6 violations</u>		<u>Defer to specific 7:26E-6 penalties</u>

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<u>Failure to submit a closure plan to the Department when a variance from N.J.A.C. 7:26E is necessary.</u>	<u>7:14B-9.2(c)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
<u>Failure to follow the closure requirements set forth in N.J.A.C. 7:26-9 for underground storage tank systems regulated by the New Jersey Hazardous Waste Regulations.</u>	<u>7:14B-9.3(a)</u>	<u>Defer to specific 7:26-9 violations</u>		<u>Defer to specific 7:26-9 penalties</u>
<u>Failure to follow the closure requirements set forth in N.J.A.C. 7:14B-9.2 for underground storage tank systems containing hazardous wastes which are not subject to the New Jersey Hazardous Waste Regulations.</u>	<u>7:14B-9.3(b)</u>	<u>Defer to specific 7:14B-9.2 violations</u>		<u>Defer to specific 7:14B-9.2 penalties</u>
<u>Failure to insure the underground storage tank system is closed by an individual certified for closure per N.J.A.C. 7:14B-13.</u>	<u>7:14B-9.3(c)</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure to have an individual certified in subsurface evaluation on site during the removal or abandonment-in-place of an underground storage tank system and make all observations and decisions regarding site investigation and remedial investigation activities.</u>	<u>7:14B-9.3(d)</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure to empty and clean a tank prior to storing a non-hazardous substance.</u>	<u>7:14B-9.4(a)1</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to perform a site investigation in accordance with N.J.A.C. 7:26E-3, before</u>	<u>7:14B-9.4(a)2</u>	<u>NM</u>		<u>\$8,000</u>

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	<u>the substance being stored was changed to a non-hazardous substance.</u>				
	<u>Failure to submit a site investigation report, prepared and presented in accordance with N.J.A.C. 7:26E-3.13, within 120 calendar days after the tank cleaning.</u>	<u>7:14B-9.4(a)3</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to immediately notify the Department upon identification of a discharge during activities associated with N.J.A.C. 7:14B-9.4(a), and to conduct a remedial investigation.</u>	<u>7:14B-9.4(b)</u>	<u>NM</u>		<u>\$8,000</u>
	<u>Failure to submit to the Department a site investigation report within 120 days of the initiation of breaking ground for closure activities.</u>	<u>7:14B-9.5(a)</u>	<u>M</u>	<u>30</u>	<u>\$8,000</u>
	<u>Failure to have an individual certified in subsurface evaluation prepare the site investigation report required at N.J.A.C. 7:14B-9.5(a).</u>	<u>7:14B-9.5(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to maintain and make available to the Department upon request all records generated per N.J.A.C. 7:14B-9.</u>	<u>7:14B-9.5(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<b><u>10</u></b>	<b><u>Permitting Requirements for UST Systems</u></b>				
	<u>Failure to obtain a permit from the Department prior to the repair, installation, substantial modification or upgrade of an underground storage tank system.</u>	<u>7:14B-10.1(a)1</u>	<u>NM</u>		<u>\$8,000</u>

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<u>Failure to obtain a construction permit pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to repair, installation or upgrade of an underground storage tank system.</u>	<u>7:14B-10.1a)2</u>	<u>M</u>	<u>30</u>	<u>\$5,000</u>
<u>Failure to maintain the required site diagrams and specification at the underground storage tank facility.</u>	<u>7:14B-10.1(f)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to obtain a permit from the Department prior to upgrading an underground storage tank system in a wellhead protection area.</u>	<u>7:14B-10.2(a)</u>	<u>NM</u>		<u>\$8,000</u>
<u>Failure to perform a site investigation prior to submitting a permit application for the upgrade or substantial modification of an underground storage tank system in a wellhead protection area.</u>	<u>7:14B-10.2(b)</u>	<u>M</u>	<u>60</u>	<u>\$4,000</u>
<u>Failure to submit a permit application on forms provided by the Department.</u>	<u>7:14B-10.3(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system installation, modification or upgrade which are signed and sealed by a New Jersey profession engineer.</u>	<u>7:14B-10.3(b)1</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to submit a scaled copy of the plans and specification for the proposed underground storage tank system indicating</u>	<u>7:14B-10.3(b)2</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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	<u>the size and location of the tank systems, existing structures on the site, and distances from lot lines.</u>				
	<u>Failure to submit information documenting soil permeability.</u>	<u>7:14B-10.3(b)3</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit required documentation of the depth to ground water.</u>	<u>7:14B-10.3(b)4</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit corrosion system designs which are properly certified.</u>	<u>7:14B-10.3(b)5</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit a detailed description of the upgrade, installation, or repair that is to be performed.</u>	<u>7:14B-10.3(b)6</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit documentation of the precision of the performance of the release detection monitoring method chosen pursuant to N.J.A.C. 7:14B-6.1, 6.2 and 6.3.</u>	<u>7:14B-10.3(b)7</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit a scaled site diagram accurately indicating the locations of all sampling and monitoring points in relation to all underground storage tank systems at the facility.</u>	<u>7:14B-10.3(b)8</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit the required certification, signed by a Department certified subsurface evaluator, that the number and locations of all vapor or product monitoring points is sufficient to monitor the tank system.</u>	<u>7:14B-10.3(b)9</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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<p><u>Failure to make the Department issued permit available for inspection by an authorized local, State or Federal representative and prominently display the permit at the facility site during the course of the permitted activity.</u></p>	<p><u>7:14B-10.5(a)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$3,000</u></p>
<p><u>Failure to maintain a set of approved plans at the facility site during the course of the permitted activity and make the approved plans available for inspection by an authorized local, State or Federal representative.</u></p>	<p><u>7:14B-10.5(b)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$3,000</u></p>
<p><u>Failure to contact the Department as required to obtain an emergency permit, and to submit a permit application within 14 calendar days of receipt of the emergency permit.</u></p>	<p><u>7:14B-10.6(b)</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>
<p><u>Failure to provide required information when requesting an emergency permit.</u></p>	<p><u>7:14B-10.6(c)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$4,000</u></p>
<p><u>Failure to make the Department issued emergency permit number available for inspection by an authorized local, State or Federal representative and prominently display the emergency permit number at the facility site during the course of the permitted activity.</u></p>	<p><u>7:14B-10.6(d)</u></p>	<p><u>M</u></p>	<p><u>30</u></p>	<p><u>\$3,000</u></p>
<p><u>Failure to discontinue ongoing permitted activities upon receipt of a notice from</u></p>	<p><u>7:14B-10.8(e)</u></p>	<p><u>NM</u></p>		<p><u>\$8,000</u></p>

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	<u>Department denying or revoking a permit.</u>				
<b><u>11</u></b>	<b><u>Municipal Ordinances</u></b>				
	<u>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.</u>	<u>7:14B-11.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>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.</u>	<u>7:14B-11.2(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
	<u>Failure to submit to the Department a copy of the final ordinance.</u>	<u>7:14B-11.3(d)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<b><u>13</u></b>	<b><u>Certification of Individuals and Business Firms</u></b>				
	<u>Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.</u>	<u>7:14B-13.1(a)</u>	<u>NM</u>		<u>\$12,000</u>
	<u>Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.</u>	<u>7:14B-13.1(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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	<u>Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.</u>	<u>7:14B-13.1(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>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.</u>	<u>7:14B-13.1(d)</u>	<u>NM</u>		<u>\$12,000</u>
	<u>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.</u>	<u>7:14B-13.1(e)1</u>	<u>NM</u>		<u>\$12,000</u>
	<u>Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.</u>	<u>7:14B-13.1(e)2</u>	<u>NM</u>		<u>\$12,000</u>
	<u>Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification.</u>	<u>7:14B-13.1(h)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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<u>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.</u>	<u>7:14B-13.1(j)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>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.</u>	<u>7:14B-13.1(k)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>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.</u>	<u>7:14B-13.1(l)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).</u>	<u>7:14B-13.6(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to certification renewal.</u>	<u>7:14B-13.6(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.</u>	<u>7:14B-13.7(d)</u>	<u>NM</u>		<u>\$12,000</u>

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	<u>Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-13.6.</u>	<u>7:14B-13.7(f)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
	<u>Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.</u>	<u>7:14B-13.8(a)</u>	<u>NM</u>		<u>\$12,000</u>
	<u>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.</u>	<u>7:14B-13.8(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

7:26C-10. 5 Recodify as 7:26C-10.7 (No change in text.)

7:26C-10.5 Penalty Adjustment Factors

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

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

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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% if the violation is the result of any intentional, deliberate, purposeful, knowing or willful act or omission by the violator.

[7:26C-10. 6] Recodify as 7:26C-10.9 (No change in text.)

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

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

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

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

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty per act or omission shall be up

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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, APPENDIX A**

**STANDARD ADMINISTRATIVE CONSENT ORDER**

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

{Prepared by}

IN THE MATTER OF THE:

[Site name] :

ADMINISTRATIVE  
CONSENT ORDER

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AND :

[Name of Person] :

PROGRAM INTEREST

NUMBER :

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

#### FINDINGS

1. {[The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the Administrative Consent Order.]} The property that is the subject of this Settlement Agreement is located at [Address], and designated as Block [ ], Lot [ ] on the tax maps of the [Township, Borough, City] of [Name of the Township, Borough, City], [Name of County] County, New Jersey (hereinafter "Property"), and includes all other areas to which any hazardous substance discharged on the Property has migrated (collectively, "the Site").

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2. through 5. (No change.)

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

## ORDER

### I. Remedial Investigation Requirements

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

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

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8.-9. Recodify as 9.-10. (No change in text.)

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

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

## II. Remedial Action Requirements

12. Recodify as 13. (No Change in text.)

{ 13. } 14. Within [ ] calendar days after receipt of the Department's written comments on the Remedial Action Work Plan, or as otherwise approved in writing by the Department, [Person] agrees to modify the Remedial Action Work Plan to conform to the

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

14.-15. Recodify as 15.-16. (No change in text.)

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

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

III. Additional Remedial Investigation and Remedial Action Requirements

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18. Recodify as 19. (No Change in text.)

#### IV. Progress Reports

19. Recodify as 20. (No Change in text.)

#### V. Project Coordination

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

{21.}22. Within seven (7) calendar days after the effective date of this Administrative Consent Order, [Person] agrees to submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this Administrative Consent Order. {and [Person] agrees that the person listed below is [Person's] agent for the purpose of service for all matters concerning this Administrative Consent Order.} In the event the Department determines that a meeting concerning the remediation of the site is necessary, the Department will provide notification to {this agent} [Person's] agent, identified in paragraph 49. below, of the date, time and place of such meeting. [Person] agrees to ensure that the agent is available for and participates in such meeting.

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

22. Recodify as 23. (No change in text.)

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{23.}24. [Person] agrees to notify both verbally and in writing, the Department's contact person identified pursuant to paragraph {22.}23. above at least fourteen (14) calendar days prior to the initiation of any field activities at the site which are related to remediation, development or redevelopment.

24. Recodify as 25. (No change in text.)

#### VI. Remediation Funding Source and Remediation Funding Source Surcharge

25. through 26. Recodify as 26. through 27. (No change in text.)

#### VII. Project Cost Review

27. through 30. Recodify as 28. through 31. (No Change in text.)

#### VIII. Oversight Cost Reimbursement

{31.}32. Within thirty (30) calendar days after receipt from the Department of a written summary of the Department's oversight costs, including all accrued interest incurred pursuant to paragraph {33.}34., determined pursuant to N.J.A.C. 7:26C-9.3, [Person] agrees to submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A, for the full amount of the Department's oversight costs, {for the period being charged} for the period invoiced in the Department's summary.

32.-33. Recodify as 33.-34. (No change in text.)

#### IX. Reservation of Rights

34. Recodify as 35. (No Change in text.)

{35.} 36. Nothing in this Administrative Consent Order precludes the Department from seeking civil or civil administrative penalties or any other legal or

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equitable relief against [Person] for violations of this Administrative Consent Order. In any such action brought by the Department under this Administrative Consent Order for injunctive relief, civil, or civil administrative penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this Administrative Consent Order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the Administrative Consent Order. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this Administrative Consent Order, except as provided in paragraph {53} 48. of this Administrative Consent Order. {and under} Under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this Administrative Consent Order.

36. through 38. Recodify as 37.-39. (No change in text.)

#### X. Force Majeure

39. Recodify as 40. (No Change in text.)

{40}41. The Department will extend in writing the time for {performance}compliance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

(a)-(c) (No change.)

41. through 42. Recodify as 42.-43. (No Change in text.)

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#### XI. Penalties

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

{43}45. [Person] agrees to pay penalties for its violations of this Administrative Consent Order, or for its {violations of } failure to implement and maintain institutional controls including by way of example, a deed notice or declaration of environmental restriction that {is}are part of a remedial action implemented pursuant to the order, according to the amounts and conditions in {this section}N.J.A.C. 7:26C-10.

{44}46. [Person] agrees{:

(a) That each violation of any requirement, condition or deadline in this Administrative Consent Order constitutes an additional, separate, and distinct violation to which penalties apply;

(b) That each day that a violation continues constitutes an additional, separate, and distinct violation to which penalties apply;

(c) To pay interest, at the rate set forth in the New Jersey Court Rules, R. 4:42-11(a)i, on any unpaid penalty pursuant to this Administrative Consent Order commencing on the first day after it has agreed to pay a penalty pursuant to this Administrative Consent Order; and

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(d) That nothing in this Administrative Consent Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Administrative Consent Order;

(e) That its payment of a penalty pursuant to {this Administrative Consent Order} N.J.A.C. 7:26C-10 does not alter [person's] responsibility to complete any requirement of this Administrative Consent Order; and

(f) To regard payments of penalties pursuant to this Administrative Consent Order as payments of civil administrative penalties pursuant to the Spill Compensation And Control Act, N.J.S.A. 58:10-23.11 through 23.14.

45. [Person] agrees to pay a penalty for all violations of this Administrative Consent Order beginning on the first calendar day following the day the noncompliance begins and continually thereafter until the final day of correction of the noncompliance, in the following amounts:

Calendar Days After Due Date	Penalty
1 – 7 days	\$ 500 per calendar day
8 – 14 days	\$ 1,000 per calendar day
15 days and over	\$ 2,500 per calendar day

46. The Department will provide [person] with written notice of each violation, including a description of the conditions of this Administrative Consent Order that [person] has violated, the date that [person] was to have completed each task, the duration of the violation, and the amount of the penalty that is due and owing pursuant to Paragraph 45, above.

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47. [Person] agrees to pay each penalty required by this Administrative Consent Order by cashier's check or certified check payable to the "Treasurer, State of New Jersey," accompanied by DEP Form 062A and a letter referencing this Administrative Consent Order and the violations for which [person] is submitting the payment within 30 calendar days after its receipt of a penalty payment demand from the Department pursuant to Paragraph 46, above.

48. [Person] agrees that nothing herein shall limit the Department's ability, upon [person's] failure to pay a penalty pursuant to this Administrative Consent Order, to pursue civil or civil administrative penalties or take any other enforcement action for any violations of this Administrative Consent Order.

49. }47. No Change in text.)

{50. [Person] agrees to pay a penalty in the amount of the economic benefit (in dollars) which [person] has realized as a result of not complying, or by delaying compliance, with the requirements of this Administrative Consent Order, including the following:

(a) The amount of savings realized from avoided capital or noncapital costs resulting from the violation;

(b) The return earned or that may be earned on the amount of the avoided costs;

(c) All benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and

(d) All other benefits resulting from the violation.

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51. [Person] agrees that the Department will consider the following factors in determining a penalty for economic benefit:

(a) The amount of capital investments required, and whether they are one-time or recurring;

(b) The amount of one-time nondepreciable expenditures;

(c) The amount of annual expenses;

(d) The useful life of capital;

(e) Applicable tax, inflation and discount rates;

(f) The amount of low interest financing, the low interest rate, and the corporate debt rate; and

(g) Any other factors relevant to economic benefit.

52. If the total economic benefit was derived from more than one violation, [person] agrees that 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. }

## XII. Dispute Resolution

53. Recodify as 48. (No Change in text.)

## XIII. General Provisions

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

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

{54}50. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] agrees to allow the Department and its authorized representatives access to all areas of the Site [Person] has access to, at all times, for the purpose of monitoring [Person's] compliance with this Administrative Consent Order and/or to perform any remedial activities [Person] fails to perform as required by this Administrative Consent Order. [Person] agrees that its agreement here to provide the Department with access will continue after the Department's termination of this Administrative Consent Order pursuant to Paragraph {34}35, above.

55. through 60. Recodify as 51.-56. (No Change in text.)

{61}57. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by [Person] and the Department. Any amendment to this {[ORDER]} Administrative Consent Order shall be executed by the Department and [Person]. The Department reserves the right to require the resolution of any outstanding violations of the applicable regulations {rules of}or this {[ORDER]} Administrative Consent Order prior to executing any such amendment.

62. through 67. Recodify as 58.-63. (No change in text.)

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{68.}64. [Person's] document retention policy notwithstanding, [Person] agrees to preserve, during the pendency of this Administrative Consent Order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of [Person's] divisions, employees, agents, accountants, contractors, or attorneys that relate in any way to the contamination at the site{, despite any document retention policy to the contrary}. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, [Person] agrees to submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege regarding such data or information, however, [Person] agrees not to assert any privilege or confidentiality claims with respect to data related to site conditions, sampling, or monitoring.

{69.}65. [Person] agrees to provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets, or the closure, termination or transfer of operations in accordance with the schedule set forth at N.J.A.C. 7:26B-3.2 prior to such action. Upon such notice, [Person] agrees to submit a cost review pursuant to this Administrative Consent Order to the Department. [Person] agrees to also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution

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of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] agrees to obtain and submit to the Department additional financial assurance pursuant to this Administrative Consent Order.

{70.}66. If [Person] remediates the Site to a restricted use standard and [Person] implements institutional and engineering controls, this Administrative Consent Order shall remain in full force and effect including the requirements to maintain a remediation funding source, and to pay an annual 1 % surcharge of the total amount of the remediation funding source until the Department determines that the site is remediated to the applicable unrestricted use standard. { This Administrative Consent Order shall otherwise be terminated pursuant to paragraph 71below. }

71. Recodify as 67. (No change in text.)

{72.}68. Except as provided in paragraph 55 above, [Person] may assert a claim of confidentiality for any information submitted by [Person] pursuant to this Administrative Consent Order, by following the Department's procedures in N.J.A.C. 7:26B-7.

{73.}69. [Person] agrees to submit to the Department, {along with} two {original} copies of the {[}executed original{]} Administrative Consent Order, {signed by} each with the original signature of [Person] or its authorized representative, and documentary evidence, such as a corporate resolution or a certification by a corporate officer, that the signatory has the authority to bind [Person] to the terms of this Administrative Consent Order, and proof that the remediation funding source has been established pursuant to N.J.A.C. 7:26C-7.

74. Recodify as 70. (No Change in text.)

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_

BY: \_\_\_\_\_

Signature

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

[Print Name of Company executing Order]

Date \_\_\_\_\_

BY: \_\_\_\_\_

Signature

\_\_\_\_\_  
Print Full Name Signed Above

\_\_\_\_\_  
Title

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement addressing the requirements of Executive Order No. 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.,

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permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize the proposal.

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Date

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Bradley M. Campbell, Commissioner  
Department of Environmental Protection