

Notes for the Draft Rules Documents

1. Please note that in the rule text, additions to existing text are noted in bold typeface. Deletions from existing text are shown within [brackets].
2. Please submit your comments to SRRA@dep.state.nj.us by January 14, 2011. To be considered, the email subject line MUST read: Stakeholder Input.

**ADMINISTRATIVE REQUIREMENTS FOR CONTAMINATED
SITES, N.J.A.C. 7:26C**

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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope of subchapter

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

1. General requirements, in N.J.A.C. 7:26C-1.2;
2. Definitions, in N.J.A.C. 7:26C-1.3;
3. **Applications and [Exemptions] exemptions**, N.J.A.C. 7:26C-1.4;

4. Certifications, N.J.A.C. 7:26C-1.5;

5. Forms and submissions, N.J.A.C. 7:26C-1.6;

6. Public notification, N.J.A.C. 7:26C-1.7

[6.] **7. Liberal construction, N.J.A.C. 7:26C-[1.7] 1.8;** and

[7.] **8. Severability, N.J.A.C. 7:26C-[1.8] 9.**

7:26C-1.2 General requirements

[(a) The person responsible for conducting the remediation shall conduct the remediation in accordance with all applicable statutes, rules, and guidance, including, but not limited to, the Remediation Standards rules, N.J.A.C. 7:26D, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, this chapter and the Department's guidance at www.nj.gov/dep/srp/srra/guidance.]

(a) The person responsible for conducting the remediation shall ensure that the Licensed Site Remediation Professional whose services the person is using is conducting the remediation in accordance with the following:

1. All applicable New Jersey statutes, including:

i. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; and

ii. The indoor air standards adopted by the Department of Health and Senior Services pursuant to N.J.S.A. 52:27D-130.4.

2. All applicable New Jersey rules, including, without limitation:

- i. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E;**
 - ii. The Remediation Standards rules at N.J.A.C. 7:26D; and**
 - iii. Any other applicable standards adopted pursuant to law;**
- 3. Any available and appropriate technical guidance concerning site remediation as issued by the Department. The Department's guidance can be found on the Department's website, www.nj.gov/dep/srp/srra/guidance;**
- i. When there is no specific guidance issued by the Department, the Licensed Site Remediation Professional under the employ of the person responsible for conducting the remediation may use the following additional guidance:**
 - (1) Any relevant guidance from the federal Environmental Protection Agency or other states; and**
 - (2) Any other relevant applicable and appropriate methods and practices to ensure the protection of the public health and safety of the environment; and**
 - ii. When in the judgment of a licensed site remediation professional guidance issued by the Department is not applicable to the remediation of the site, the person responsible for conducting remediation shall set forth justification of why the guidance was not applied by the licensed site remediation professional to the remediation of the site and justification for the guidance or methods utilized.**

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(b) Any person responsible for conducting the remediation shall notify the Department pursuant to N.J.A.C. [7:26E-1.4] **7:26C-1.7**.

7:26C-1.3 Definitions

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

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

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

"Authority" means the New Jersey Economic Development Authority.

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

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

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

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

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

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

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"Day" shall mean a calendar day.

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

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

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

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

"Enforcement action" means an administrative order, a notice of civil administrative penalty, or a court order.

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

"Environmentally sensitive natural resource" means all areas defined as "environmentally sensitive areas" pursuant to the Technical Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26E-1.8.

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

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

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

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

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

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

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

“Hazsite data” means a table summarizing all sampling results, including sample locations, media, sample depth, field and laboratory identification numbers, analytical results, and comparison to applicable remediation standards organized by area of concern.

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

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

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

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

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

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

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

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

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

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

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

"Person responsible for conducting the remediation" means:

1. Any person who executes or is otherwise subject to a memorandum of agreement, memorandum of understanding, administrative consent order, remediation agreement, or administrative order to remediate a contaminated site;
2. The owner or operator of an industrial establishment subject to N.J.S.A. 13:1K-6 et seq. for the remediation of a discharge;
3. The owner or operator of an underground storage tank subject to N.J.S.A. 58:10A-21 et seq. for the remediation of a discharge;

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4. Any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance, pursuant to N.J.S.A. 58:10-23.11g, that was discharged at a contaminated site, or

5. Any other person who is remediating a site, **including a person responsible for conducting the remediation.**

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

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

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

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

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

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

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

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

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

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

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

"Remediation costs" means all costs associated with **conducting the preliminary assessment, site investigation, remedial investigation, and remedial action, including** the development and implementation of a remediation including all direct and indirect capital costs, engineering costs, and annual operation, maintenance and monitoring costs, **and costs incurred by a certified public accountant or an independent auditor pursuant to N.J.A.C. 7:26C-4.8**. Such costs, when applicable, shall include, without limitation, costs for construction of all facilities and process equipment, labor, materials, construction equipment and services, land purchase, land preparation/development, relocation expenses, systems start up and testing, facility operation, maintenance and repair, continuous effectiveness monitoring, periodic site condition reviews, and [legal,] administrative and capital costs. **Certain legal costs may be considered remediation costs to the extent that they are directly supporting the remediation, but remediation costs shall not include those legal costs associated with: recovery of costs expended on remediation, compelling a party to take part in the remediation, and defense against a Department enforcement action.**

"Response action outcome" or "RAO" means a written determination by a licensed site remediation professional that the site was remediated in accordance with all applicable statutes, rules and guidance, and based upon an evaluation of the historical use of the site, or of any area of concern at that site, as applicable, and any other investigation or action the Department deems necessary, there are no contaminants present at the site,

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at the area of concern or areas of concern, or at any other site to which a discharge originating at the site has migrated, or that any contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations have been obtained.

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

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

"Sanitary landfill" [or "landfill" means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that the term sanitary landfill shall not include any waste facility approved for disposal of hazardous waste regulated pursuant to N.J.A.C. 7:26G. A facility is a sanitary landfill regardless of when solid waste was deposited or whether the facility was properly registered, permitted, approved or otherwise authorized to conduct such activity, by the Department or other State agency] **means a sanitary landfill as defined at N.J.A.C. 7:26-1.4.**

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

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

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

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

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

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

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

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

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

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

7:26C-1.4 [Exemptions] **Application and exemptions**

(a) Except as provided in (c) and (d) below, each person responsible for conducting the remediation of a contaminated site shall comply with this chapter, including, without limitation, the following:

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

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

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

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

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

ii. Each subsequent owner of the real property where the discharge occurred

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prior to the filing of a remedial action outcome with the Department;

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

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

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

5. Each person who is notified by the Department that they are required to conduct remediation after the Department has rescinded a no further action letter or has invalidated a response action outcome; and

6. Any other person who is responsible for remediating a site, including a person responsible for conducting the remediation.

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

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

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

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2. Remediating a **sanitary** landfill, unless:

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

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

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

or

iv. Conducting the remediation of off-site ground water contamination pursuant to a New Jersey Pollution Discharge Elimination System Permit, in accordance with N.J.A.C. 7:14A-9.

3. [Responding to a discharge pursuant to a discharge prevention, containment, and countermeasures plan in accordance with N.J.A.C. 7:1E and who is an owner or operator of a major facility;] Remediating a discharge pursuant to a New Jersey Pollutant Discharge Elimination System Underground Injection Control permit issued pursuant to N.J.A.C. 7:14A[; or].

[5.] (d) [Remediating] **The person responsible for conducting the remediation of a discharge from an unregulated heating oil tank [except that the requirements of N.J.A.C. 7:26C-4 and 13 shall apply to a person responsible for remediating a discharge from an unregulated heating oil tank] does not have to use a licensed site remediation professional and is not subject to the mandatory timeframes in subchapter 3 of this**

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chapter.

[(b)] (e) Unless notified in writing by the Department that additional remediation is necessary, [a] **the** person responsible for conducting the remediation of any of the following types of discharges is exempt from the requirements at N.J.A.C. 7:26C-[2.4] **2.3(a)1, 2 and 7** to use the services of a licensed site remediation professional or to submit documents to the Department:

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

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

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

2. A discharge that results from a passenger motor vehicle accident; or

3. A discharge that the Department refers to its Bureau of Emergency Response, to the New Jersey Office of Emergency Management, or to a County Environmental Health Agency.

7:26C-1.5 Certifications

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

1. Certify all submissions in accordance with certification instructions on the applicable form; and

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2. Ensure that each form submitted to the Department by [the] **that** person or by a licensed site remediation professional on behalf of [the] **that** person [is certified by a licensed site remediation professional in accordance with the applicable form].

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

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

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

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

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

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

[(d)] (c) The **person responsible for conducting the remediation shall ensure that the** person submitting a certification required by [either] (a), [or (b)] above, [shall ensure that the certification] is signed as follows:

1. For a corporation or a limited liability company, by a principal executive officer of at least the level of vice president;
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
3. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

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[(e)] **(d) The person responsible for conducting the remediation may have that person's** [A] duly authorized representative [of the person described in [(d)] (c)1 through 3 above may] sign the certification required in (a), [or (b)] above. A person is deemed to be a duly authorized representative only if:

1. The authorization is made in writing by a person described in [(d)] (c) above;
2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
3. The written authorization is submitted to the Department along with the certification; and
4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

7:26C-1.6 Forms and submissions

(a) Unless otherwise instructed by the Department, any person may obtain any form or application required by this chapter[, the Underground Storage Tanks rules, N.J.A.C. 7:14B, and the Industrial Site Recovery Act rules, N.J.A.C. 7:26B,] by downloading it from the Department's website at www.nj.gov/dep/srp/srra/forms or by contacting the Department at the address below. Unless otherwise instructed by the Department, the person shall submit all forms, applications and documents required by this chapter to the

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address indicated on the form. If no address is indicated, then submit the form to the following address:

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

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

1. On CD in Adobe Portable Document Format (PDF); and
2. On paper.] **The person responsible for conducting the remediation shall make submissions to the Department pursuant to this chapter and the Technical Requirements for Site Remediation, N.J. A.C. 7:26E, as follows:**

1. **An electronic copy on CD in Adobe portable document format (PDF) of all forms, applications documents and laboratory data deliverables, except as provided in (d)2 through 4 below;**

2. **An electronic copy on CD of the quality assurance project plan, pursuant to N.J.A.C. 7:26E-2.2, with each remedial phase report as applicable;**

3. **One electronic copy of all hazite data using the format outlined in the Site Remediation Program's Electronic Data Interchange guidance;**

4. **An electronic copy of all required maps and GIS compatible electronic maps prepared using the Department's GIS guidance;**

5. An electronic copy of all full laboratory data deliverables on CD in Adobe portable document format (PDF) or in a format determined by the Department and one paper copy of all full laboratory deliverables for drinking water, indoor air, chromium and dioxin samples; and

6. Any forms, applications or documents required by this chapter or the Technical Requirements for Site Remediation, N.J. A.C. 7:26E, that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that:

i. The relevant electronic application is functional; and

ii. The notice administrative change that amends this subsection accordingly.

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

7:26C-1.7 Public notification (this is coming from 7:26E-1.4 – Under construction)

7:26C-1.8 Right of entry and inspection

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

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

i. Have appropriate technical, scientific, and engineering representatives, as necessary, accompany the Department and its authorized representative during the inspection; and

ii. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection.

(c) The owner, operator or tenant of a contaminated site shall, after receiving adequate notice, allow all other responsible parties and their authorized representatives, access to the contaminated site to conduct remediation.

[7:26C-1.7] **7:26C-1.9** Liberal construction

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

[7:26C-1.8] **7:26C-1.10** Severability

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

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

7:26C-2.1 Scope

(a) This subchapter contains provisions that specify the:

[1. Criteria for determining when a person has initiated remediation in N.J.A.C. 7:26C-2.2;

2. Requirements for a person who initiated remediation prior to November 4, 2009, in N.J.A.C. 7:26C-2.3;

3. Requirements for a person who initiated remediation on or after November 4, 2009, in N.J.A.C. 7:26C-2.4; and

4. Requirements for a person to retain records, in N.J.A.C. 7:26C-2.5.]

**1. Criteria for determining when a person is required to remediate a site;
and**

**2. Requirements for the person who is responsible for conducting
remediation.**

7:26C-2.2 Criteria for determining [when a person has initiated remediation] **when a
person is required to remediate a site**

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

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

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- i. The Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E-5;
 - ii. The Underground Storage Tanks rules, N.J.A.C. 7:14B-7.3; or
 - iii. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-3.2; and
2. The person has continuously conducted the remediation since the person notified the Department pursuant to one of the rules cited in (a)1 above.
- (b) A person initiates remediation on or after November 4, 2009 when a person initiates or resumes remediation in response to any of the following which occur on or after November 4, 2009:
1. The person takes over the remediation from any other person or from the Department;
 2. The person submits a document to the Department concerning a site for which the Department has rescinded a no further action letter or has invalidated a response action outcome, prior to the submission of the document;
 3. The person discovers or becomes liable in any way for a discharge;
 4. The owner or operator of a regulated tank system:
 - i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B; or
 - ii. Is required to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.21;

5. The person is liable for compliance with the Industrial Site Recovery Act rules pursuant to N.J.A.C. 7:26B-1.10; or

7. When additional remediation or other activities would result in the need to file a new deed notice or replace a declaration of environmental restrictions, associated with the real property.]

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

1. The person discharges a hazardous substance or otherwise becomes in any way responsible for a hazardous substance that is discharged pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10.23-11g;

2. The owner or operator of a regulated tank system:

i. Determines there has been a known or suspected discharge from the regulated tank system, pursuant to N.J.A.C. 7:14B-7.2; or

ii. Is required to or chooses to close a regulated tank system pursuant to N.J.A.C. 7:14B-8.1(a)6, 9.1(d) and 9.2(a)1;

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

4. The Department notifies the person that the person responsible for conducting the remediation shall conduct additional remediation when the Department:

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i. Rescinds a no further action letter or invalidates a response action outcome; or

ii. Determines that additional remediation is necessary after the Department has issued a response action permit for a remedial action.

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

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

7. The person desires the issuance of a response action outcome.

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

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

1. Establish a remediation funding source, if required, pursuant to N.J.A.C.

7:26C-5;

2. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C.

7:26C-4;

3. Provide the Department access to the contaminated site;

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

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

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

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

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

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

3. By maintaining any remediation funding source previously required to have been maintained under the applicable administrative consent order, remediation

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agreement administrative order, court order or directive, and by paying the remediation funding source surcharge, if required.] **(Reserved.)**

7:26C-[2.4] **2.3** Requirements for [a] **the person responsible for conducting the remediation** [who initiated remediation on or after November 4, 2009]

(a) [Any person who initiates remediation on or after November 4, 2009] **Upon the occurrence of any of the events listed in 2.2(a), above, any person who is responsible for conducting the remediation at a site pursuant to N.J.A.C. 7:26C-1.4(a) shall:**

1. Hire a licensed site remediation professional, **unless;**

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

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

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

i. [Of t] **The occurrence of the earliest of the events listed at N.J.A.C. 7:26C-[2.2(b)] 2.2(a);**

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

ii. The effective date of this chapter; or

iii. The **date the person** [receives written notification from the Department that the Department is taking] **is required to remediate the site, area of concern, or site condition under the direct oversight of the Department pursuant to N.J.A.C. 7:26C-14;** [of the remediation of the site, area of concern, or site condition pursuant to N.J.S.A. 58:10C-27;]

3. Conduct the remediation of the discharge:

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

(1) The Department directs otherwise;

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

(3) The remediation is being conducted partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; or

(4) The remediation is for a site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.;

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- ii. In accordance with all applicable statutes[,] and rules [and guidance] pursuant to N.J.A.C. 7:26C-1.2(a); and
- iii. Address all deficiencies identified by the Department in any submittals made by the person or by a licensed site remediation professional on behalf of the person;
4. Pay all applicable fees and oversight costs as required pursuant to N.J.A.C. 7:26C-4;
5. Establish a remediation funding source, if required, pursuant to N.J.A.C. 7:26C-5;
6. Provide the Department access to the contaminated site pursuant to N.J.A.C. 7:26C-8;
7. Provide the Department copies of all applicable documents concerning the remediation as required by this chapter, **and** the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, [and guidance,] or upon request of the Department;
8. Meet the timeframes in this chapter and in the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E; and
9. Obtain and comply with all permits necessary for the remediation.

(b) Persons responsible for conducting the remediation who have been conducting the remediation without a Licensed Site Remediation Professional prior to May 7, 2012 and are required to conduct the remediation using a Licensed Site Remediation Professional as of the effective date of this chapter shall comply with (a) above.

7:26C-2.5 [Record retention

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

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

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

**SUBCHAPTER 3. REMEDIATION TIMEFRAMES AND EXTENSION
REQUESTS**

7:26C-3.1 Scope

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

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

7:26C-3.2 Regulatory timeframes

(a) The person responsible for conducting the remediation shall comply with the regulatory timeframes established by all applicable statutes, rules and guidance, including, but not limited to, the Underground Storage Tank rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E and this chapter.

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

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

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

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

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

2. Submit any additional information the Department requests.

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

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

7:26C-3.3 Mandatory remediation timeframes

(a) The person responsible for conducting the remediation **who meets the criteria in N.J.A.C. 7:26C-1.4(a)1-5** shall:

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

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

ii. When the earliest of any of the events listed at N.J.A.C. 7:26C-2.2(b) occurs;

2. Complete the delineation of the immediate environmental concern contaminant source, initiate immediate environmental concern contaminant source control and submit to the Department an Immediate Environmental Concern Contaminant Source Control Report, pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.14, no later than one year from the later of the following dates:

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

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

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

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

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

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

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

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

7:26C-3.4 Expedited site specific remediation timeframes

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

1. The risk to the public health and safety, or to the environment; and
2. The compliance history of the person responsible for conducting the remediation.

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

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

(d) When the Department determines that a person responsible for conducting the remediation has failed to meet an expedited site specific remediation timeframe, that person shall be subject to the direct oversight pursuant to the Site Remediation Reform

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Act, N.J.S.A. 58:10C-27, for the site, area of concern or condition to which the expedited site specific remediation timeframe applies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 4. FEES AND OVERSIGHT COSTS

7:26C-4.1 Scope

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

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

[1. – 4.] **2. – 5.** (No change in text.)

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[5.] **6.** The procedures by which a person may request a review of an oversight cost invoice from the Department, pursuant to N.J.A.C. 7:26C-4.7; [and]

[6.] **7.** How a person is to make payments to the Department of the fees and costs in this subchapter, pursuant to N.J.A.C. 7:26C-4.8[.]; and

8. The procedures for a person to apply for the application of the 7.5 percent cap on fees and costs applicable in this subchapter, pursuant to N.J.A.C. 7:26C-4.9.

7:26C-4.2 Annual remediation fee formula

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

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

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

2. The Department shall assign 65 percent of the SRRA Budget to the contaminated area of concern fees listed at N.J.A.C. 7:26C-4.3(a)2 and 35 percent of the budget to the contaminated media fees listed at N.J.A.C. 7:26C-4.3(a)3.

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3. The Department will calculate a base contaminated area of concern fee by dividing 65 percent of the SRRA Budget by the number of contaminated areas of concern reported to the Department pursuant to N.J.A.C. 7:26C 4.3(a)2 in the previous fiscal year. Using the base fee calculation established above the Department will assess the contaminated area of concern fee for each of four categories described below as follows:

i. Category 1: Zero to one contaminated areas of concern, where the number of contaminated areas of concern is undetermined, determined to be one, or where the site is limited to historic fill. The base fee for category 1 is the amount rounded down to the nearest \$10.

ii. Category 2: Two through 10 contaminated areas of concern or any number of contaminated regulated underground storage tank system areas, excluding regulated heating oil tank systems, provided there are no other contaminated areas of concern at the site The fee for category 2 is two times the base fee;

iii. Category 3: 11 through 20 contaminated areas of concern, or one or more landfills The fee for category 3 is eleven times the base fee; and

iv. Category 4: More than 20 contaminated areas of concern. The fee for category 4 is twenty two times the base fee.

4. The Department will calculate a contaminated media fee by dividing 35% of the SRRA budget by the number of impacted media reported to the Department pursuant to N.J.A.C. 7:26C-4.3(b)3 in the previous fiscal year. The contaminated media fee shall be assessed for each separate contaminated medium that is present at the site as determined from the following list and shall be the sum of the individual contaminated medium fees:

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i. Ground water;

ii. Surface Water Sediment; and

iii. Ground water contaminated above an applicable Surface Water Quality Standard that is an unpermitted discharge to surface water

(c) Each year, the Department shall prepare an Annual SRRA Budget Fee Calculation Report detailing the factors used to calculate each fee. Beginning February 2013 and each February thereafter, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the budget, the contaminated areas of concern and contaminated media counts used to calculate each fee, the base contaminated area of concern fee, and the impacted media fee that will be in effect for the following state fiscal year which runs from July 1 through June 30. The report shall also be made available on the Department's website at www.state.nj.us/dep/srp.

7:26C-4.[2] 3 Annual remediation fee [for a person initiating remediation on or after November 4, 2009]

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

1. A person subject to this section shall pay a nonrefundable annual remediation fee, which shall be the sum of the applicable [category] **area of concern** fee as determined pursuant to [(a)2 below] **N.J.A.C. 7:26C-4.2(b)3** and the total contaminated media fee as calculated pursuant to [(a)3 below] **N.J.A.C. 7:26C-4.2(b)4**.

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2. **Until such time as the Department publishes an Annual SRRA Budget Fee Calculation Report in accordance with N.J.A.C. 7:26-4.2(c), the [The] applicable [category] contaminated area of concern fee and an impacted media fee shall be assessed as follows:**

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

ii. The fee for:

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

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

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

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

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

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

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- i. Category 1: \$450**
- ii. Category 2: \$900**
- iii Category 3: \$5000;**
- iv Category 4: \$9,500 and**
- v. For each type of media impacted: \$1400**

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

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

4. Persons responsible for conducting the remediation who have been conducting the remediation without a Licensed Site Remediation Professional prior to May 7, 2012 and are required to conduct the remediation using a Licensed Site Remediation Professional as of the effective date of this chapter

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shall submit the first annual remediation fee no later than 45 days after the effective date of this rule, or as established by the Department.

5. For each subsequent year, the Department shall invoice the person responsible for conducting the remediation for the annual remediation fee on the anniversary date of the first year that the annual fee was submitted pursuant to [(a)4] **(a)3** above.

(b) Except as provided in (c) below, [The]the person responsible for conducting the remediation shall identify all contaminated areas of concern individually and shall not combine contaminated areas of concern or contaminated media for the purpose of determining the amount of the annual remediation fee.

(c) A public entity or a non-profit as defined pursuant to 26 U.S.C. §501(c)3, may consider that part of a brownfield development area that it is remediating using funds pursuant to N.J.A.C. 7:26C-11, as a single site for the purpose of calculating a fee pursuant to this section.

[(c)](d) The person responsible for conducting the remediation that receives an RAO for a contaminated area of concern may submit a new [Annual Remediation Fee Reporting] form **found on the Department's website at www.nj.gov/dep/srp/srra/forms** 90 days prior to the annual remediation fee anniversary date. **Fees for regulated underground storage tank systems and landfills described at N.J.A.C. 7:26C-4.2(a)2ii(2) and (a)2iii, respectively, may not be reduced.**

[(d)](e) The person responsible for conducting the remediation that discovers an additional contaminated area of concern shall submit a new [Annual Remediation Fee Reporting] form **found on the Department's website at www.nj.gov/dep/srp/srra/forms** 90 days prior to the annual remediation fee anniversary date.

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

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

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

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

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

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7:26C-[4.3] **4.4** Individual review fees

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

[1. Preliminary assessment report	\$375.00;
2. Site investigation report	\$750.00;
3. Remedial action report for unregulated heating oil tank system	\$400.00;
4] 1. Biennial certification, unless the person responsible for conducting the remediation has a remedial action permit that covers the biennial certification	\$375.00; [and]
[5.] 2. Child care center [response action outcome or child care center] renewal certification	\$225.00[.] ;
3. Confidentiality claim	and \$500.00

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

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

1.] \$350.00 fee for a discharge to ground water proposal[pursuant to N.J.A.C. 26C-13.5(b)1;
2. \$ 400.00 for an on-scene coordinator discharge authorization pursuant to N.J.A.C. 7:26C-13.5(b)3; and

3. All applicable fees pursuant to the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A].

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

7:26C-[4.4] **4.5 Remedial Action Permit Fee Calculation**

(a) The Department shall calculate remedial action permit fees in accordance with (b)1 and 2 below and shall assess these fees in accordance with (d) below.

(b) The Department shall calculate remedial action permit fees for the upcoming State fiscal year, as of the December 1 that precedes the upcoming State Fiscal Year as follows:

1. Calculate the average number of hours required by permit program staff to issue each type of remedial action permit (determined from time coding or workload analysis).

2. Multiply the average number of hours required to issue each type of remedial action permit by the permit program staff hourly rate derived pursuant to (c) and (d) below to derive the remedial action permit fee for each type of remedial action permit.

(c) The Department shall compute a remedial action permit fee hourly rate in accordance with (b) below and shall use this hourly rate in calculating remedial action permit fees in accordance with (d) below.

(d) The Department shall calculate the remedial action permit fee hourly rate for the upcoming State Fiscal Year (SFY) as of the December 1 that precedes the upcoming SFY as follows:

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$$\text{Hourly Rate} = (\text{AS} + \text{FB} + \text{IC} + \text{OE})$$

BH

Where:

AS = The average annual salary of the Direct Program staff assigned to the activity, plus a component that reflects the salaries for Bureau overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Bureau overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

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

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OE = The average operational expenses attributable to an employee. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

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

(e) Each year, the Department shall prepare an Annual Remedial Action Permit Fee Calculation Report detailing the factors used to calculate each fee. During the month of February, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and the task hours used to calculate each fee that will be in effect for the following state fiscal year which runs from July 1 through June 30. The notice shall state the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at www.state.nj.us/dep.

7:26C-4.6 Permit fees

(a) **Until such time as the Department publishes its Annual Remedial Action Permit Fee Calculation Report pursuant to N.J.A.C. 7:26C-4.5(e), [T]the person** responsible for conducting remediation shall submit to the Department the applicable remedial action permit fees as required by this chapter and the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, pursuant to the following table:

Remedial Action <u>Permit Fees</u>	Soil Remedial <u>Action Permit</u>	Ground Water <u>Remedial Action Permit</u>
Remedial Action Permit Application Fee	\$550.00	\$750.00
Remedial Action Permit Modification Fee	\$550.00	\$750.00
Remedial Action Permit Transfer Fee	\$100.00	\$100.00
Remedial Action Permit Termination Fee	\$550.00	\$750.00

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

1. The annual soil remedial action permit fee for a remedial action:
 - i. With a deed notice without engineering controls: \$100.00; and
 - ii. With a deed notice and engineering controls: \$250.00.

2. The annual ground water remedial action permit fee is as follows:
 - i. For a natural attenuation remedial action: \$250.00; and

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ii. For any other ground water remedial action: \$750.00.

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

7:26C-[4.5] **4.7** Oversight costs

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

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

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

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

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

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3. The number of hours spent by each staff member working on the site; and

4. The dollar amount of the oversight costs calculated pursuant to (e) below.

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

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

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

or for persons **that the Department determines eligible based upon the submittal of** [signing] the Developer's Certification found in chapter Appendix A, incorporated herein by reference, **limited as described in (e)2iii below**, and for persons responsible for conducting the remediation of discharged substances at their primary residence:

Oversight Costs = direct program costs + expenses

where:

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

i. Number of coded hours represents the sum of hours each Departmental employee has coded to the site specific job number. Actual hours for all Departmental employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

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ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to Departmental employees' reimbursable "down time" salary expenses. Reimbursable "down time" expenses includes costs for vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive rate is the sum of the reimbursable "down time" expenses divided by the net Department regular salary for a given fiscal year. The net Department regular salary cost is calculated by subtracting the Department employees' reimbursable "down time" expenses from the Department's regular salary; and

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

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

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

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

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

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

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

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

iii. A person responsible for conducting the remediation may be exempt prospectively from paying the indirect program costs if the person meets the criteria in the Developer Certification form in Appendix A of this chapter and submits the form to the Department. Upon a determination by the Department that the person meets the criteria, the Department will calculate the person's oversight costs using the oversight cost formula without the indirect program cost from that point forward. The person is not eligible for the reimbursement of indirect costs incurred prior to the submittal of the Developer's Certification.

(f) The person responsible for conducting the remediation may request a statutory exemption from the obligation to reimburse the Department for its indirect costs, by following the procedures in this subsection.

1. To request the prospective application of this statutory exemption, the person responsible for conducting the remediation shall submit to the Department, within 60 calendar days after its initiation of remediation at the site or area of concern, along with a form found on the Department's website at www.nj.gov/dep/srp/srra/forms:

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

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

(2) A discharger, or a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-

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23.11g, and who does not have a defense to liability pursuant to N.J.S.A. 58:10-23.11gd; or

ii. Is remediating that person's primary residence.

2. When the Department determines that a person meets the statutory exemption and has complied with (f)1, above, the Department will calculate that person's prospective costs beginning on the date of the requested exemption using the alternative oversight cost formula in (e), above; however, the Department may only off-set any future costs by the exempted amount, and shall not off-set or pay any rebates of such costs prior to the effective date of this provision.

7:26C-[4.6] **4.8** Oversight cost review

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

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

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

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

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

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

1. A copy of the invoice;
2. Payment of all uncontested charges, including salary, additives, and fringe and indirect rate calculations, as applicable, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address, email address, and telephone number of the person making the request; and
6. Information supporting the request or other written documents relied upon to support the request.

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

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

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

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

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

7:26C-[4.7] **4.9** Payment of fees and oversight costs

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

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

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1. By either:

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

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

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

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

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

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

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

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

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

7:26C-[4.8] 4.10 Seven and one-half percent of the cost of the remediation

(a) The person responsible for conducting the remediation may request that the Department determine whether the applicable costs in this subchapter have exceeded 7.5 percent of the total remediation costs for a site, by following the procedures outlined in this section.

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

- 1. The effective date of this section; or**
- 2. The issuance of the final remediation document for the all of the discharges at the site issued after the effective date of this section.**

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

- 1. A form found on the Department's website at www.nj.gov/dep.srp/srra/forms;**
- 2. A narrative summary of the remediation of the site;**

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

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

i. This subchapter; and

ii. The previously applicable rules at N.J.A.C. 7:14B, N.J.A.C. 7:26B, and N.J.A.C. 7:26C;

5. A detailed description of all of the remediation costs, prepared by a certified public accountant or an independent auditor, including, as applicable:

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

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

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

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

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

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

i. The effective date of this section; or

ii. The receipt by the person responsible for conducting the remediation of each oversight cost invoice, unless that person has complied with the requirement to request an oversight cost review pursuant to N.J.A.C. 7:26C-4.6;

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

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

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

1. Review the request to determine compliance with (b) through (d), above;

2. Inform the requestor in writing of any noncompliance with (b) through (d), above;

3. If full compliance with (b) through (d) above is determined, recalculate fees and any costs related to remediation permits, and, if applicable, one or a combination of the following:

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i. **The amount of credit that could be applied to future costs to off-set any prior payment above the statutory maximum; or**

ii. **Rebate any prior payment above the statutory maximum, subject to the legislative authorization specified in (d)5 above.**

SUBCHAPTER 5. REMEDIATION FUNDING SOURCE AND FINANCIAL ASSURANCE

7:26C-5.1 Scope of subchapter

(a) This subchapter establishes the requirements for:

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

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

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

[3.] **4. The financial mechanisms available as remediation funding sources or financial assurance, in N.J.A.C. 7:26C-[5.4 through 5.9] 5.2;**

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

[5.] **6. The procedures for adjusting the amount of the remediation funding source or financial assurance and the return of the remediation fund source or financial assurance, in N.J.A.C. 7:26C-5.11;**

[6.] **7. The disbursement of funds from a remediation funding source or financial assurance, in N.J.A.C. 7:26C-5.12; and**

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

8. The procedures the Department will use to draw on the funding in the remediation funding source or **financial assurance** when a person has failed to perform the remediation, in N.J.A.C. 7:26C-[5.14] **5.13.**

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

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

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

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

i. The Department has issued a Spill Act directive to that person;

ii. A State agency has issued an order to that person; or

iii. That person has entered into an administrative consent order with a State Agency; and

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

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

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

2. A person who uses an innovative remedial action technology, [provided]

except that the exemption from the requirement to establish and maintain a remediation funding source shall only apply to the cost of the remediation involving the innovative technology;

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

4. A government entity;

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

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

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

(c) Except as provided in (d) below, the person responsible for conducting the remediation shall establish and maintain financial assurance pursuant to this subchapter.

(d) The owner or operator of a small business and the persons listed at (b)4, (b)5, (b)6, and (b)7 above are not required to establish financial assurance pursuant to this subchapter.

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

1. For a remediation funding source, [The Department or] the licensed site remediation professional issues an unrestricted use or limited restricted use [final remediation document] **response action outcome** for the site; [or]

2. For financial assurance, [The] **the** [person responsible for conducting the remediation obtains a remedial action permit for an engineering control and submits to the Department evidence of compliance with the requirement to establish financial assurance pursuant to N.J.A.C. 7:26C-7 prior to the termination of the existing remediation funding source] **Department either transfers the remedial action permit pursuant to N.J.A.C. 7:26C-7.8, or terminates the remedial action permit pursuant to N.J.A.C. 7:26C-7.10.**

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

[(e)] **(g) In the event the New Jersey Economic Development Authority denies the application for a loan and/or grant from the Hazardous Discharge Site Remediation Fund,**

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the person required to establish a remediation funding **source or financial assurance** shall establish the full amount of the remediation funding source **or the financial assurance** in accordance with this subchapter within 14 days after the person's receipt of notice from the New Jersey Economic Development Authority that the application has been denied.

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

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4;
2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-5.5;
3. A line of credit agreement in accordance with N.J.A.C. 7:26C-5.6;
4. A letter of credit in accordance with N.J.A.C. 7:26C-5.7
5. [A self-guarantee in accordance with N.J.A.C. 7:26C-5.8] **A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12; or**
6. [A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12] **A self-guarantee in accordance with N.J.A.C. 7:26C-5.8.**

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

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

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

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

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

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

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

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

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

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

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

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

iv. As required by a court; [and]

3. A person [who has received notice from the Department that the Department will undertake direct oversight of the remediation of the contaminated site pursuant to N.J.S.A. 58:10C-27 shall submit evidence of a remediation trust fund agreement established] **responsible for conducting the remediation shall submit evidence of a remediation trust fund established** in accordance with N.J.A.C. 7:26C-5.4, no later than 30 days after [receipt of such notification.]:

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

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

4. The person responsible for conducting the remediation shall submit evidence of financial assurance as part of a remedial action permit application required pursuant to N.J.A.C. 7:26C-7.2.

[(i) Any person may establish, on behalf of any person required to establish a remediation funding source, any type of remediation funding source listed at (f)4 above except for a self-guarantee.]

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

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

1. The amount calculated in a cost estimate [of] **for the [implementation of the] remediation, including the estimated cost to operate, maintain and inspect engineering controls, and the Department's fees and oversight costs, [but excluding the estimated cost to operate, maintain and inspect engineering controls as part of a remedial action permit as provided in N.J.A.C. 7:26C-7, as approved by the Department or] as certified by the licensed site remediation professional and the person responsible for conducting the remediation[, as applicable];**
2. The amount to which the person responsible for conducting the remediation has agreed in an administrative consent order, remediation agreement, or remediation certification;
3. The amount that the Department has required in an order or directive;
4. The amount that the Department requires when it undertakes direct oversight of remediation pursuant to N.J.S.A. 58:10C-27; or
5. The amount that a court has required.

(b) The person responsible for conducting the remediation may reduce the amount of the remediation funding source to exclude the costs to operate, maintain and inspect engineering controls when a complete remedial action permit

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application, including evidence of the establishment of financial assurance has been submitted to the Department.

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

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

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

7:26C-5.4 Remediation trust fund requirements

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

The remediation trust fund agreement must:

1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;
2. Include the applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;

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3. Specify that the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;

4. Indicate that the trustee may only disburse those funds from the remediation trust fund:

i. If the [entire] **remediation of the** site [or portion of the site] is under direct oversight by the Department pursuant to N.J.S.A. 58:26C-27, **only** the Department **may** approve[s] in writing **the amount to** be disbursed; or

ii. For all other sites, [the Department or] the licensed site remediation professional approves in writing **the amount to** be disbursed;

5. Specify that the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation approved by either the Department or the licensed site remediation professional; and

6. Identify the Department as the sole beneficiary of the remediation trust fund.

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

7:26C-5.5 Environmental insurance policy requirements

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

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

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

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3. Indicate that the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department except for failure to pay the premium;

4. Specify that the issuer of the environmental insurance policy may revoke or terminate the policy for failure to pay the premium, but only after notifying the person who established the remediation funding source and the Department by certified mail of the decision to revoke or terminate the policy at least 120 days before termination, beginning from the date of receipt by the Department as shown on the signed return receipt;

5. Indicate that the insurer may only disburse those funds from the environmental insurance policy that the [Department or the] licensed site remediation professional approves in writing may be disbursed pursuant to N.J.A.C. 7:26C-5.12;

6. Indicate the funds in the environmental insurance policy will be utilized solely for the purposes of conducting the remediation; and

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

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

7:26C-5.6 Line of credit requirements

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

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

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

3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended for a period of at least one year;

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

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

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

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

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

7:26C-5.7 Letter of credit

(a) Any person who chooses to provide a letter of credit as a remediation funding source **or financial assurance** to guarantee the availability of funds pursuant to this

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subchapter shall submit to the Department an original letter of credit. The letter of credit must:

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

7:26C-5.8 Self-guarantee requirements

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

1. The applicable case number, the program interest name, and program interest number (preferred ID), site name and site address;
2. Information that demonstrates that the estimated cost of the remediation that the Department has approved or that a licensed site remediation professional has certified does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;
3. Information that demonstrates that the individual or entity possesses the required cash flow and has sufficient net cash provided by operating activities [, as

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defined by the American Institute for Certified Public Accountants,] to pay for the remediation during the next 12-month period. **This information must be prepared in accordance with the Generally Accepted Accounting Principles prescribed by either the United States Financial Accounting Standards Board's Accounting Standards Codification or the International Accounting Standards Board's International Financial Reporting Standards.** Cash flow and net cash will be deemed sufficient if:

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

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

4. Audited financial statements, in which the auditor expresses an unqualified opinion for the preceding fiscal year that ended closest in time to the date of the self guarantee statement, prepared in accordance with the American Institute for Certified Public Accountants [guidelines] **or the Public Company Accounting Oversight Board's auditing standards in accordance with either the United States Financial Accounting Standards Board's Accounting Standards Codification or the International Accounting Standards Board's International Financial Reporting Standards**, including, but not limited to, income statement, balance sheet and consolidated statement of cash flow; and

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

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

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

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

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

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

7:26C-5.9 Remediation funding source surcharge

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

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

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

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

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

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

7:26C-5.10 Remediation cost review

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

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

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

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

(b) The person responsible for conducting the remediation that is subject to a remedial action permit shall submit to the Department, on the same schedule that the person is required to submit the biennial certification pursuant to N.J.A.C. 7:26C-7.4(b)1, an estimated of the future costs to operate, maintain, and inspect all

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engineering controls, on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms, that includes the following:

1. A summary of all monies spent to date to comply with the remedial action permit;
2. An estimate of the remaining costs to comply with the remedial action permit; and
3. An explanation of any changes from the most recently submitted cost review for implementing the remedial action subject to a remedial action permit.

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

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

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

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

2. Submission to the Department of a [Remediation Cost Review Form] **form** pursuant to [(a)] **5.10** above [, but only if that submission includes a certification by the licensed site remediation professional justifying the revised cost estimate].

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

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

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

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

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

1. An innovative remedial action technology;
2. A limited restricted use remedial action; or
3. An unrestricted use remedial action.]

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

[(f)] **(e)** The Department shall return the remediation funding source [to the person responsible for conducting the remediation] **or financial assurance** when either the Department or a licensed site remediation professional has issued a final remediation

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document for the entire site pursuant to N.J.A.C. 7:26C-6 **or the Department has either transferred the remedial action permit pursuant to N.J.A.C. 7:26C-7.8, or terminated the remedial action permit pursuant to N.J.A.C. 7:26C-7.10.**

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

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

1. Identification of the site, including name, address, case number (if applicable), program interest name, program interest number (preferred ID)[, and status of the remediation];

2. [Information related to remediation costs, prepared and certified by a licensed site remediation professional, if applicable, including:

i. A detailed description, including documentation, of remediation costs incurred and the specific remediation that has been completed under this request;

ii. A detailed description, including documentation, of remediation costs to be incurred and the specific remediation that will be completed under this request;

iii. The total amount of disbursement being requested; and

iv. An updated, detailed estimate of the cost of implementing the remaining remediation] **The amount of the disbursement request; and**

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

(b)[If the disbursement request is submitted to the Department rather than directly to the provider of the remediation funding source] **For cases where the person responsible for conducting the remediation is subject to direct oversight**, within 30 days after the Department's receipt of the written request submitted [pursuant to (a) above,] **on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms**, the Department will respond to a disbursement request as follows:

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

2. The information submitted is **incomplete**[; however, the requested disbursement amount includes remediation costs that has neither been approved by the Department nor has been certified by a licensed site remediation professional, and therefore, the Department will only allow disbursement of funds for the approved remediation costs; or], **including a list of the missing information and a statement that the Department shall give no further consideration to the disbursement request until the requestor submits all the required information.**

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

(c) If the disbursement request is submitted directly to the provider of the remediation funding source **or financial assurance** in accordance with (a) above, the person responsible for conducting the remediation **and the licensed site remediation professional** shall provide the Department with notice of the disbursement [or denial] and the amount of the remaining remediation funding source **or financial assurance** within 30 days [of] **after** disbursement [or denial] **on a form available on the Department's website at www.nj.gov/dep/srp/srra/forms**.

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7:26C-5.13 Failure to perform the remediation

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

(b) The Department shall provide a copy of the notification required in (a) above, to the current owners and operators of the site when the person required to establish the remediation funding source **or financial assurance** has failed to remediate the site.

(c) [Thirty calendar days after the person's receipt of the notification in (a) above, the] **The Department may, in its sole discretion [,] avail itself of the funds in the remediation funding source or financial assurance and** perform the remediation of a site using the funds in the remediation funding source **or financial assurance**.

(d) A person may petition the Department for authority to perform the remediation and to avail itself of all or some of the moneys in the remediation funding source **or financial assurance** established by another person pursuant to this subchapter. The Department may, in its discretion, disburse all or some of the monies to the petitioner.

SUBCHAPTER 6. FINAL REMEDIATION DOCUMENTS

7:26C-6.1 Scope

(a) This subchapter establishes the requirements for:

1. Response action outcomes, in N.J.A.C. 7:26C-6.2;

2. No further action letters, in N.J.A.C. 7:26C-6.3;

3. Modification, rescission, **withdrawal**, and invalidation of final remediation documents, in N.J.A.C. 7:26C-6.4; and

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4. Scope of a final remediation document and covenant not to sue, in N.J.A.C. 7:26C-6.5.

7:26C-6.2 Response action outcomes

(a) The licensed site remediation professional shall issue a response action outcome [1. To] **to** the person who has conducted the remediation when, in the opinion of the licensed site remediation professional, the site or area of concern has been remediated pursuant to [all applicable statutes, rules, and guidance, including, but not limited to, this chapter, the Underground Storage Tanks rules, N.J.A.C. 7:14B, the Industrial Site Recovery Act rules, N.J.A.C. 26B, the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, and the Remediation Standards rules, N.J.A.C. 7:26D] **(c), (f) and (g) below;**

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

3. After **the person responsible for conducting the remediation has paid to the Department** all fees and oversight costs [have been paid to the Department];

4. For an entire site or one or more areas of concern, including all areas to which a [discharge] **contamination** originating at the site or area of concern may have migrated; and

5. According to specific tax block and lot or, if no block and lot are available, then other specific identification of the property that was remediated.

(b) The licensed site remediation professional shall:

1. Prepare **and issue a** [the] response action outcome pursuant to:

i. The requirements of this section; and

- ii. The Model Response Action Outcome, included in Appendix C of this chapter, including all applicable inserts that are part of that model, as appropriate[:**
- i. This section; and
 - ii. The Guidance for the Issuance of Response Action Outcomes (RAO) found on the Department's website at www.nj.gov/dep/srp/srra/guidance]; and
2. File each response action outcome with the Department:
- i. With a [Response Action Outcome] form [available from] **found on the [Department] Department's website** at www.nj.gov/dep/srp/srra/forms, when the licensed site remediation professional issues the response action outcome to the person who has conducted the remediation; and
 - ii. [Three] **An** electronic [copies] **copy**, pursuant to N.J.A.C. 7:26C-1.6, of all data, documents and information concerning remediation, including but not limited to, technical records and contractual documents (**as the Department may request**), raw sampling and monitoring data, whether or not the data and information relate in any way to the site or area of concern, including technical records and contractual documents, developed by the licensed site remediation professional, the licensee's divisions, employees, agents, accountants, contractors, or attorneys, or a prior licensed site remediation professional for the remediation to the extent that the subsequent licensed site remediation professional relied on the work of the earlier licensed site remediation professional.
- (c) The licensed site remediation professional shall base his or her opinion as to whether to issue the response action outcome on the following **hierarchy**, in effect at the time of the response action outcome:

1. – 4 (No change.)

(d) (No change.)

(e) [The] **If the licensed site remediation professional [shall] does not comply with the following requirements concerning response action outcomes, the Department shall invalidate the response action outcome:**

1. The licensed site remediation professional shall make all necessary corrections in any response action outcome the licensed remediation professional submits to the Department by:

i. Immediately correcting any administrative errors, including, but not limited to, the improper use of notices, changes made to response action outcome shell document language where edits are not allowed or are inconsistent with this chapter, and missing or incomplete site identifiers; and

ii. Within the timeframe the Department establishes, correcting deficiencies the Department identifies [identified by the Department] in [the Department's] its inspection and review findings; and

2. The licensed site remediation professional shall amend the response action outcome, as required in Appendix C, and provide a copy of the amended response action outcome to each person copied on the initial response action outcome.

(f) If the licensed site remediation professional issues a response action outcome that is based solely upon a preliminary assessment and/or site investigation, as applicable, the licensed site remediation professional shall certify that there are no contaminated areas of concern or that any contaminants at the site or area of concern meet all of the following, as applicable:

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1. The most stringent soil remediation standards in the Remediation Standards rules, [at] N.J.A.C. 7:26D;

2. The applicable ground water remediation standards in the Remediation Standards rules, [at] N.J.A.C. 7:26D; and

3. All other applicable remediation [guidance, criteria, and] standards.

(g) The licensed site remediation professional shall **only** issue a response action outcome after the licensed site remediation professional has determined that the remediation has been completed pursuant to [the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E] **N.J.A.C. 7:26C-1.2**, including, without limitation, the following, as applicable:

1. All contaminated soil has been remediated:

i. To the most stringent soil remediation standard; or

ii. [Using engineering and institutional controls in lieu of remediation of contaminated soil to the most stringent soil remediation standard and] the Department has issued a soil remedial action permit pursuant to N.J.A.C. 7:26C-7; and

2. All contaminated groundwater has been remediated:

i. To the applicable ground water [quality] **remediation** standard; or

ii. The [licensed site remediation professional has:

(1) Determined, based upon the most recent eight consecutive quarters of ground water monitoring data, that allowing the contaminated ground water to remain in the

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environment without active remediation will not result in any unacceptable impacts to any human or ecological receptors until such time when the ground water meets the applicable remediation standard pursuant to the Ground Water Quality Standards, N.J.A.C. 7:7C, and that a natural attenuation ground water remedial action is therefore appropriate;

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

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

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

iii. The licensed site remediation professional has:

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

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

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

(4) Determined that the Department has issued a ground water remedial action permit for the remediation] **Department has issued a groundwater remedial action permit pursuant to N.J.A.C. 7:26C-7.**

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7:26C-6.3 No further action letters

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

1. R]remediating an unregulated heating oil tank; or

[2. Subject to N.J.A.C. 7:26C-2.3 and completes the remedial action prior to May 7, 2012.]

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

1. Remediating an unregulated heating oil tank; or

2. Subject to N.J.A.C. 7:26C-2.3 and completes the remedial action prior to May 7, 2012.]

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

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

1. A discharge that occurred prior to the issuance of a final remediation document is discovered after the issuance of the final remediation document and the remediation of that discharge [should have been] **was not** addressed in the remediation to which the final remediation document pertains;

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2. The Department amends a remediation standard after the issuance of a final remediation document and the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude and the person responsible for conducting the remediation fails to [conduct] **complete** further remediation;

3. – 5. (No change.)

6. The Department concludes that the remediation was not performed in [compliance with applicable statutes, rules and guidance] **pursuant to (c), (f) and (g) above; or**

7. (No change.)

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

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

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

3. Failed to conduct the remediation consistent with the requirements of this chapter; or

4. Failed to conduct the remediation so that it is protective of the public health and safety and the environment.

(c) The Department may require a licensed site remediation professional to withdraw and reissue as may be appropriate a response action outcome, and a

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licensed site remediation professional may withdraw and reissue as may be appropriate a response action outcome, upon a finding that the response action outcome either contains administrative errors or was otherwise not prepared according to this subchapter.

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

SUBCHAPTER 7 REMEDIAL ACTION PERMITS (UNDER CONSTRUCTION)

SUBCHAPTER 9 ENFORCEMENT (UNDER CONSTRUCTION)

SUBCHAPTER 14. DIRECT OVERSIGHT

7:26C-14.1 Scope

(a) This subchapter contains provisions that specify:

1. The compulsory direct oversight triggers and requirements applicable when the person responsible for conducting the remediation becomes subject to the compulsory statutory provisions for direct oversight in N.J.A.C. 7:26C-14.2;

2. The discretionary direct oversight triggers and evaluation criteria the Department will evaluate when considering a remediation of a contaminated site for direct oversight in N.J.A.C. 7:26C-14.3; and

3. The criteria the Department will evaluate in determining whether to adjust the applicable requirements for the remediation of a contaminated site in direct oversight in N.J.A.C. 7:26C-14.4.

7:26C-14.2 Compulsory direct oversight

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

1. The person responsible for conducting the remediation has been the object of two enforcement actions, concerning the remediation, during any five-year period after May 7, 2009;

2. The person responsible for conducting the remediation has failed to meet:

i. A mandatory remediation timeframe;

ii. An expedited site-specific timeframe; or

iii. A schedule established pursuant to an administrative order or court order; or

3. A discharge was discovered prior to May 7, 1999 and the person responsible for conducting the remediation has failed to complete the remedial investigation of the entire contaminated site by May 7, 2014, unless a longer period has been ordered by a court.

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

1. Proceed with the remediation as the Department directs;

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- 2. Conduct and submit a feasibility study to the Department for approval;**
- 3. Implement each remedial action the Department selects for the site;**
- 4. Submit an initial remediation cost review, pursuant to N.J.A.C. 7:26C-5.10(a), within 30 days after the applicable event in (a), above, and submit an annual remediation cost review on the same calendar day;**
- 5. Establish a remediation trust fund pursuant to N.J.A.C. 7:26C-5.4(g) in the amount of the estimated cost of the remediation, within 60 days after the applicable event in (a), above, and maintain a remediation trust fund in the amount of the estimated cost of the remediation;**
- 6. Pay an annual remediation funding source surcharge pursuant to N.J.A.C. 7:26C-5.9;**
- 7. Obtain the Department's prior approval before making any disbursements from the remediation trust fund;**
- 8. Ensure that all submissions prepared by the licensed site remediation professional concerning the remediation required by the Department are provided simultaneously to the Department and the person responsible for conducting the remediation;**
- 9. Submit a proposed public participation plan, with a schedule, to the Department to solicit public comment concerning the remediation from the members of the surrounding community concerning the remediation of the site within 30 days after the applicable event in (a), above; and**
- 11. Implement the Department-approved public participation plan to solicit public comment concerning the remediation from the members of the surrounding**

community.

7:26C-14.3. Discretionary direct oversight

(a) The Department may evaluate undertaking direct oversight of a remediation of a contaminated site when the contamination at the site:

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

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

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

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

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

i. the severe effects level for freshwater conditions; or

ii. The effects range medium for saline conditions; or

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

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

1. Whether the person responsible for conducting the remediation:

i. Is in compliance with all applicable remediation statutes and regulations;

ii. Has implemented an interim response action necessary to contain or stabilize contaminants in all media to prevent contaminant migration and exposure of receptors; and

iii. Has entered into a voluntary agreement with the Department to resolve the natural resource injury caused by discharges at a site.

iv. Has implemented green remediation as part of remediation; and

2. Whether:

i. Ground water contamination is greater than 5 acres;

ii. Wetland soil or sediment contamination is greater than 5 acres.

iii. Surface water sediment contamination exceeds, for any given contaminant, the Severe Effects Level concentration for freshwater conditions or the Effects Range Medium concentration for saline conditions pursuant to the Department Ecological Screening Criteria as found on the Department website at <http://www.nj.gov/dep/srp/guidance/ecoscreening>;

iv. Surface water contamination exceeds, for any given contaminant, an acute

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aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);

v. Groundwater contamination, which is discharging to surface water, exceeds, for any given contaminant, the acute aquatic surface water quality standard, pursuant to N.J.A.C. 7:9B-1.14(f);

vi. Soil contamination, except for pesticides, exceeds, for any given contaminant, 100 times the highest value in the Department's Ecological Screening Table, which are available at <http://www.nj.gov/dep/srp/guidance/ecoscreening/>; or

vii. Pesticide soil contamination exceeds 1 mg/kg for any given pesticide.

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

1. The Department shall inform the person responsible for conducting the remediation of its decision; and

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

SUBCHAPTER 15 CONFIDENTIALITY

N.J.A.C. 7:26C-15.1 Scope

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

1. General information pertaining to confidentiality at N.J.A.C. 7:26C-15.2;

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2. The process for asserting a confidentiality claim at N.J.A.C. 7:26C-15.3;
3. The process for determining the validity of a confidentiality claim at N.J.A.C. 7:26C-15.4;
4. The process concerning the exchange of confidential information between the Department and other public agencies at N.J.A.C. 7:26C-15.5;
5. The procedure for disclosing confidential information to contractors at N.J.A.C. 7:26C-15.6;
6. The process for disclosing information by consent at N.J.A.C. 7:26C-15.7;
7. When the Department may disclose confidential information upon a finding of imminent and substantial danger at N.J.A.C. 7:26C-15.8;
8. The procedures the Department will use to ensure the security of confidential information at N.J.A.C. 7:26C-15.9; and
9. The penalties for wrongful access to or disclosure of confidential information at N.J.A.C. 7:26C-15.10.

N.J.A.C. 7:26C-15.2 General information

(a) All information collected by or originated by the Department shall be generally available to the public except as provided otherwise in this subchapter.

(b) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(c) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made shall be limited to

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Department employees, representatives, and contractors, whose activities necessitate such access and as provided in this subchapter.

(d) If a request for information is made for interagency or intra-agency memoranda or letters, the Department may deny this request if such request is exempted from disclosure pursuant to **the Freedom of Information Act** 5 U.S.C. § 552(b)(5).

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

(f) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter or as otherwise required by law.

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

N.J.A.C. 7:26C-15.3 Confidentiality claims

(a) Any person required to submit any information to the Department pursuant to N.J.A.C. 7:14B, N.J.A.C. 7:26B, N.J.A.C. 7:26D, N.J.A.C. 7:26E or this chapter, which in the person's opinion constitutes trade secrets, proprietary information, specific information regarding a real estate transaction at an industrial establishment that subjects the transaction to the Industrial Site Recovery Act other than the fact that the transaction has occurred and the general nature of such transaction, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the appropriate fee pursuant to N.J.A.C. 7:26C-4.4.

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(b) Any person asserting a confidentiality claim pursuant to (a) above shall submit two documents to the Department. One document shall be intact including any information which the person alleges to be entitled to confidential treatment. The second document shall be identical to the first and may be a copy of the first except that the alleged confidential material shall be redacted.

(c) The top of each page of the first submission containing the information which the person alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the person alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

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

(f) To ensure proper delivery, the complete package should be sent to the address listed in N.J.A.C. 7:26C-1.6 by certified mail, return receipt requested or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are received.

N.J.A.C. 7:26C-15.4 Confidentiality determination

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(a) When the person submitting the confidentiality claim satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The person has asserted a confidentiality claim pursuant to this subchapter which has not expired by its terms, been waived or withdrawn;
2. The person has shown that reasonable measures were taken to protect the confidentiality of the information and that the person intends to continue to take such measures;
3. The person has demonstrated that information is not, and has not been, available or otherwise disclosed to any other person without the consent of the person asserting a confidentiality claim (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);
4. The person has demonstrated that no statute or regulation specifically requires disclosure of the information; and
5. Except for information related to national security, the person has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under **the Open Public Records Act** N.J.S.A. 47:1A-1 et seq., to inspect or copy such information;

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2. Deems it necessary to determine whether information in its possession is entitled to confidential treatment; or

3. Determines for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the determination whether information is or is not entitled to confidential treatment. Within 30 calendar days after its determination that the information is not entitled to confidential treatment, the Department shall send written notification outlining the reasons for its determination, by certified mail, return receipt requested, to the person who submitted the information and the information shall become part of the Department's public files unless contested pursuant to (d) below.

(d) A person who wishes to contest a determination by the Department that the information submitted is not entitled to confidential treatment shall, within 30 calendar days after receipt of the Department's written notification, submit evidence to support the person's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

1. The period of time for which confidential treatment is desired by the person (for example, until a certain date, until the occurrence of a specified event, or permanently);

2. The measures taken by the person to guard against undesired disclosure of the information to others;

3. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

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4. The extent to which disclosure of the information would result in substantial damage to the person, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the nexus between disclosure and the damage;

(e) Failure of the person to furnish timely comments or exceptions pursuant to (d) above waives the person's confidentiality claim.

(f) The person may assert a confidentiality claim to any information submitted to the Department as part of its comments pursuant to (d) above.

(g) A person may submit a written request for an extension to contest the Department's determination pursuant to (d) above. The Department may extend the time limit for submitting comments pursuant to (d) above for good cause.

(h) The Department shall review the evidence and:

1. To the extent that the Department determines that the information submitted is not entitled to confidential treatment, the Department shall send written notification of this determination to the person by certified mail, return receipt requested. The notice shall state the basis for the determination and that the Department shall make the information available to the public on the 14 calendar days after receipt by the person of the written notice; or

2. To the extent that the Department determines that the information submitted is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The Department shall send written notification of this determination to the person by certified mail, return receipt requested.

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**N.J.A.C. 7:26C-15.5 Exchange of confidential information between the Department
other public agencies**

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section.

(b) The Department may disclose confidential information to another state agency or to a Federal agency if:

1. The Department is required by law to disclose the information;
2. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;
3. The request sets forth the official purpose for which the information is needed;
4. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
5. The other state or Federal agency has first furnished to the Department a written legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;
6. The other agency has obtained the written consent of the affected person to the proposed disclosure; and

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7. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in this subchapter, the Department shall notify in writing the owner or operator who supplied the confidential information of:

1. Its disclosure to another agency;
2. The date on which disclosure was made;
3. The name of the agency to which disclosed; and
4. A description of the information disclosed.

(d) When USEPA supplies information to the Department which was submitted to USEPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from USEPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

(e) Notwithstanding any other provision of this subchapter, any information obtained by the Department shall be available to USEPA and U.S. Department of Justice upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to USEPA when providing information as required in this section.

(f) Access to any information for which a confidentiality claim has been made will be limited to Department employees, representative and contractors, whose activities

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necessitate such access. Also USEPA employees may have access to confidential information subject to (f) above.

N.J.A.C. 7:26C-15.6 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department if the contract in question provides that the contractor and the contractor's employees, agents and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to anyone the Department has not authorized in writing, shall store the information in locked cabinets in secure rooms, and shall return to the Department all copies of the information, and any abstracts or extracts there from, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(b) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure to its contractors;
2. The date on which disclosure was made;
3. The name of the contractor to which disclosure was made; and
4. A description of the information disclosed.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

N.J.A.C. 7:26C-15.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the person who made the confidentiality claim to such disclosure.

(b) The giving of consent by the person who made the confidentiality claim to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

N.J.A.C. 7:26C-15.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an immediate and substantial danger to the public health and safety or the environment, the Department may disclose confidential information to any person whose role in alleviating the danger to public health and safety or the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in addressing the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall the disclosure of itself be grounds for any determination that information is no longer entitled to confidential treatment.

(c) Within 30 calendar days after the disclosure of the information, the Department shall notify in writing the person who supplied the confidential information of:

1. Its disclosure;
2. The date on which disclosure was made;

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3. The name of the person to which disclosure was made; and

4. A description of the information disclosed.

N.J.A.C. 7:26C-15.9 Security procedures

(a) Submissions to the Department will be opened only by persons authorized by the Department engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL".

(c) The Department shall store all submissions entitled to confidential treatment as determined by this subchapter in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

N.J.A.C. 7:26C-15.10 Wrongful access or disclosure penalties

(a) A person may not disclose, seek access to, obtain or have possession of any confidential information obtained by the Department, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her

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possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.
2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.