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SUBCHAPTER 3. ADMINISTRATIVE PROCESS FOR VOLUNTARY CLEANUPS

7:26C-3.1 Scope

(a) This subchapter identifies the following:

1. The procedures and requirements for a person to request the Department's oversight of remediation through a memorandum of agreement;
2. The general requirements for a memorandum of agreement;
3. The procedures for termination of a memorandum of agreement; and
4. The procedures by which a person remediating a contaminated site pursuant to a memorandum of agreement, which the Department subsequently schedules for a publicly funded remediation, may continue the remediation of the site under a memorandum of agreement.

7:26C-3.2 Memorandum of agreement application

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

1. The name and location of the site, including street address, city or town, municipality, county, zip code, tax block and lot. In addition, submit the following information if known: Department case name and case manager name, program interest name, program interest number (preferred ID), acreage and geographic boundaries;
2. The name, address, and telephone number of the current property owner;
3. The name, address, and telephone number of the current business operator and/or business owner of the site;
4. A detailed description of the scope of remediation for which Department oversight is being requested, including a detailed schedule pursuant to N.J.A.C. 7:26E;
5. The name, address, email address, and telephone number of the applicant's contact; and
6. A check made payable to the Department in the amount of \$1,000 if the Department has terminated a prior memorandum of agreement with the applicant, for the subject site or for any other site, pursuant to N.J.A.C. 7:26C-3.3(c)1i through iii.

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

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

- i. To accept the applicant's offer to conduct the remediation; or
- ii. Not to accept the applicant's offer to conduct remediation because:

(1) The applicant has not fulfilled its prior agreement to pay the Department's oversight costs for oversight of remediation for another site; or

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

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

3. The Department has determined that the memorandum of agreement application is administratively incomplete and shall inform the applicant of any deficiencies and any additional information necessary for the Department's review.

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

7:26C-3.3 Memorandum of agreement by rule

(a) Upon the applicant's receipt of the Department's written acceptance of the applicant's offer to conduct the remediation, pursuant to N.J.A.C. 7:26C-3.2(b)1i, the applicant has a memorandum of agreement with the Department which includes:

1. The application;
2. The Department's written acceptance; and
3. The following provisions:
 - i. The applicant shall pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-9 and this obligation continues, for those oversight costs that have accrued prior to termination, after the Department's termination of the memorandum of agreement;
 - ii. The applicant shall submit all data generated or collected while conducting

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remediation pursuant to the MOA concerning the site and the contaminants at the site, and this obligation continues, for data generated or collected prior to termination, after the Department's termination of the memorandum of agreement.

iii. The applicant shall conduct all remediation pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

iv. Within 30 calendar days after the Department's receipt of any submission pursuant to the memorandum of agreement, the Department shall inform the person conducting the remediation in writing of any administrative deficiencies in the submittal, pursuant to N.J.A.C. 7:26E, that shall prevent the Department from conducting its review and of a date for the person conducting the remediation to re-forward the revised submittal to the Department. Once the Department determines that the submission is administratively complete, the Department shall notify the person conducting the remediation in writing of the timeframe required for the Department to complete the review. This review shall include a determination by the Department whether or not all remediation activities have been carried out consistent with applicable rules, standards, and guidelines; and

v. The applicant shall immediately notify the Department in writing of any change of identity, address, or telephone number of the contact.

(b) The procedure for the person responsible for conducting the remediation to have the Department terminate a memorandum of agreement is as follows:

1. The person responsible for conducting the remediation pursuant to a memorandum of agreement may request that the Department terminate the memorandum of agreement by:

i. Notifying the Department in writing of its request; and

ii. Submitting all data that the person has generated or collected concerning the site and contaminants at the site.

2. The Department shall cease review of any submittals under the memorandum of agreement on the date it receives the notice of intent to terminate described in (b)1i, above.

3. Upon receipt of the person's request, the Department will send the person requesting the termination of a memorandum of agreement a bill for its outstanding oversight costs pursuant to N.J.A.C. 7:26C-9.1.

4. The person requesting termination of the memorandum of agreement shall reimburse the Department in full for all of that person's outstanding oversight costs.

5. When the Department determines that the person requesting the termination of the memorandum of agreement has complied with the requirements of (b) 1 and 4, above, the Department will terminate the memorandum of agreement in a written letter to the person requesting the termination.

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

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

i. Has not made scheduled submissions to the Department pursuant to the schedule set forth in the MOA application which is a part of the MOA;

ii. Has failed to pay the Department's oversight costs pursuant to N.J.A.C. 7:26C-9; or

iii. Has failed to submit documents required by a memorandum of agreement in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and the Department's written comments.

2. When the Department has scheduled the site for publicly funded remediation.

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

4. To terminate a memorandum of agreement pursuant to this section, the Department will issue a notice of termination to the person responsible for conducting the remediation and to the MOA applicant, property owner and all parties designated as a contact on the MOA application or amendments thereto if any of these parties are different from the person responsible for conducting the remediation. The notification shall contain the following:

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

ii. That the memorandum of agreement is terminated;

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

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

v. That the person responsible for conducting remediation must submit all data generated or collected, concerning the site and the contaminants at the site, that has not already been submitted within 30 calendar days from the date on the Notice of Termination and that the obligation to submit the data continues after the Department's termination of the memorandum

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of agreement pursuant to N.J.A.C 7:26C-3.3(a)3ii.

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

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

(a) The Department will provide written notification to the person responsible for conducting the remediation pursuant to a memorandum of agreement when the Department schedules the site for publicly funded remediation.

(b) The Department may, in its sole discretion, allow a person to continue remediation pursuant to a memorandum of agreement at a site which the Department subsequently schedules for publicly funded remediation if:

1. The person entered into the memorandum of agreement prior to the site being scheduled for publicly funded remediation;
2. That person is conducting remediation in compliance with all applicable regulations and approved schedules;
3. The memorandum of agreement includes all the phases of the remediation for the entire site or is amended to include all of the phases of remediation for the entire site; and
4. That person submits to the Department a schedule to complete the remainder of the remediation, and the Department approves that schedule.

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