

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

SUBCHAPTER 7. REMEDIATION FUNDING SOURCE

7:26C-7.1 Scope

(a) This subchapter identifies:

1. The types of remediation funding sources available;
2. The requirements for the establishment, maintenance, and disbursement of the remediation funding source; and
3. The requirements for payment of the remediation funding source surcharge.

7:26C-7.2 Establishing remediation funding sources

(a) Any person required to conduct remediation at a contaminated site, pursuant to a court order, an administrative consent order, a remediation agreement or a Department approved remedial action workplan for an industrial establishment shall establish and maintain a remediation funding source pursuant to this subchapter, except as provided in (b) below.

(b) If the Department approves an innovative remedial action technology, or an unrestricted use or limited restricted use remedial action for all or part of the remedial action at a contaminated site or area(s) of concern, or if a person has received approval for a property tax exemption pursuant to the Environment Opportunity Zone Act, N.J.S.A. 54:4-3.149 et seq.:

1. Any person otherwise required to establish a remediation funding source for the site or area of concern is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action; and
2. The Department will release any existing remediation funding source consistent with (b)1 above and pursuant to N.J.A.C. 7:26C-7.1 1.

(c) Any person required to establish a remediation funding source shall establish and maintain a remediation funding source:

1. In an amount equal to or greater than the estimated cost of implementing the remediation, including, without limitation, the estimated cost of monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8; and
2. For a period not less than the actual time necessary to complete the remediation, including, without limitation monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8.

(d) The person required to establish a remediation funding source may use any one or any combination of the following forms:

1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-7.4;

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-7.5;
3. A line of credit agreement in accordance with N.J.A.C. 7:26C-7.6;
4. A self-guarantee in accordance with N.J.A.C. 7:26C-7.7; or
5. A loan or a grant in accordance with N.J.A.C. 7:26C-6 and 19:31-8.

(e) Any person may establish a remediation funding source pursuant to this section, other than a self-guarantee, for any other person required to establish a remediation funding source.

7:26C-7.3 Determination of remediation funding source amount

(a) A person required to establish a remediation funding source shall submit the information required by (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a)2, to the Department:

1. Within 30 calendar days after receipt of an administrative consent order from the Department pursuant to N.J.A.C. 7:26C-5.3;
2. Upon submission to the Department of an application for a remediation agreement pursuant to the Industrial Site Recovery Act Rules at N.J.A.C. 7:26B-4.; or
3. Upon submission to the Department of a remedial action workplan for an industrial establishment pursuant to the Industrial Site Recovery Act Rules at N.J.A.C. 7:26B-6.

(b) The person establishing a remediation funding source shall submit the following information pursuant to (a) above:

1. A list of all known areas of concern at the site; and
2. A cost estimate for the remediation of the site performed in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

(c) The Department may, in its discretion:

1. Require the submission of any documentation including, but not limited to, any workplans or reports that were used to determine the cost estimate submitted pursuant to (b)2 above; and
2. Request a revised cost estimate if the documentation used to determine the cost estimate is incomplete, inaccurate or deficient.

7:26C-7.4 Remediation trust fund requirements

(a) Any person who chooses to establish a remediation trust fund agreement as a remediation funding source pursuant to this subchapter shall submit the original remediation trust fund agreement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to 13, 14 calendar days after:

- i. The receipt of the Department's approval of the remedial action workplan; or
- ii. The execution of a remediation agreement;

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

3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The remediation trust fund agreement shall be executed by an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency and shall specify the following:

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

2. That the remediation trust fund cannot be revoked or terminated without the prior written approval of the Department;

3. That the trustee may only disburse those funds from the remediation trust fund that the Department approves in writing be disbursed pursuant to N. J.A. C. 7:26C-7.1 0;

4. That the funds in the remediation trust fund shall be utilized solely for the purposes of conducting the remediation and for management of the remediation trust fund; and

5. That the Department is the sole beneficiary of the remediation trust fund;

(c) Any person using a remediation trust fund to satisfy the requirements of this subchapter shall annually, at least thirty (30) calendar days prior to the anniversary date of establishment of the remediation trust fund, submit to the Department a written statement from the trustee confirming the value of the trust in an amount that the Department has approved, and continuation of the trust for the next 12-month period.

(d) The person required to establish the remediation funding source may at any time submit a written request to the Department to substitute the remediation trust fund agreement with an alternate remediation funding source pursuant to this subchapter. The Department shall return the original remediation trust fund agreement to the trustee for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

7:26C-7.5 Environmental insurance policy requirements

(a) Any person who chooses to establish an environmental insurance policy as a remediation funding source pursuant to this subchapter shall submit an original environmental insurance policy pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 30 calendar days after:

- i. The receipt of the Department's approval of the remedial action workplan, or
- ii. The execution of a remediation agreement;

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

3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The environmental insurance policy shall be issued by an entity licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey and shall specify the following:

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

2. That the environmental insurance policy cannot be revoked or terminated without the prior written approval of the Department;

3. That the insurer may only disburse those funds from the environmental insurance policy that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;

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

5. That the Department is the sole beneficiary of the environmental insurance policy.

(c) Any person using an environmental insurance policy to satisfy the requirements of this subchapter shall annually, at least thirty (30) calendar days prior to the anniversary date of establishment of the environmental insurance policy, 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, and renewal of the environmental insurance policy for the next 12-month period.

(d) The person required to establish the remediation funding source may at any time submit a written request to the Department to substitute the environmental insurance policy with an alternate remediation funding source pursuant to this subchapter. The Department shall return the original environmental insurance policy to that person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

7:26C-7.6 Line of credit requirements

(a) Any person who chooses to establish a line of credit agreement as a remediation funding

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

source pursuant to this subchapter shall submit an original line of credit agreement pursuant to (b) below, certified in accordance with N.J.A.C. 7:26C-1.2(a) to the Department:

1. For an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., 14 calendar days after:
 - i. The receipt of the Department's approval of the remedial action workplan; or
 - ii. The execution of a remediation agreement;
2. Along with the signed copies of an administrative consent order; or
3. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The line of credit agreement shall be issued by an entity 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 and shall specify the following:

1. The applicable case number, the program interest name, program interest number (preferred ID), site name, and site address;
2. That the line of credit agreement shall not be revoked or terminated without the prior written approval of the Department;
3. That the person providing the line of credit shall only disburse those funds from the line of credit that the Department approves in writing be disbursed pursuant to N.J.A.C. 7:26C-7.10;
4. That the funds in the line of credit shall be utilized solely for the purposes of conducting the remediation and for management of the line of credit; and
5. That the Department may access the line of credit and utilize it, or allow another person to utilize it, to conduct the remediation pursuant to N.J.A.C. 7:26C-7.12(c) and (d).

(c) Any person using a line of credit to satisfy the requirements of this subchapter shall annually, at least thirty (30) calendar days prior to the anniversary date of establishment of the line of credit, 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, and renewal of the line of credit for the next 12-month period.

(d) The person that has established the remediation funding source may at any time submit a written request to the Department to substitute the line of credit with an alternate remediation funding source pursuant to this subchapter. The Department shall return the original line of credit agreement to that person for termination after the Department has determined that an alternate remediation funding source has been established pursuant to this subchapter.

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

7:26C-7.7 Self-guarantee requirements

(a) Any person who chooses to provide a self-guarantee as a remediation funding source pursuant to this subchapter shall submit a written statement pursuant to (b), below, certified in accordance with N.J.A.C. 7:26C-1.2(a), to the Department:

1. Upon submission to the Department of an application for a remediation agreement pursuant to the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-4; or
2. Upon submission to the Department of a remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B-6;
3. Along with the signed copies of an administrative consent order; or
4. As provided in an administrative order, directive, court order, or other judicial settlement.

(b) The person requesting the Department's approval to use a self guarantee pursuant to this subchapter shall include the following in the written statement required by (a), above:

1. Information that demonstrates that the estimated cost of the remediation that the Department has approved does not exceed one-third of the tangible net worth of the person required to establish the remediation funding source;
2. Information that demonstrates that the individual or entity has sufficient net cash provided by operating activities, as defined by the American Institute for Certified Public Accountants, to pay for the remediation during the next 12-month period;
3. Audited financial statements 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, including but not limited to income statement, balance sheet and consolidated statement of cash flow, that demonstrates that the individual or entity has sufficient cash flow to pay for the remediation during the next 12-month period;
4. The applicable case number, the program interest name, and program interest number (preferred ID), site name, site address, and the estimated cost of remediation determined in accordance with N.J.A.C. 7:26C-7.3(b); and
5. A statement from the chief financial officer or similar officer that the information in the written request is true to the best of the requester's information, knowledge and belief and meets the requirements of N.J.S.A. 58:10B-3(f).

(c) The Department shall notify the person seeking to provide a self-guarantee whether or not that person satisfies the self-guarantee requirements as outlined at (b) above.

(d) The self-guarantee shall be valid for one year from the date of the Department's written approval of the self guarantee. Thereafter, the person shall:

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

1. Comply with the requirements of (a) and (b) 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) and (b) above to the Department thirty (30) calendar days prior to the date of expiration of the existing statement.

7:26C-7.8 Remediation funding source surcharge

(a) A person required to establish and maintain a remediation funding source that elects to establish the remediation funding source by one or any combination of the following: a remediation trust fund, a line of credit, or an environmental insurance policy, shall submit to the Department a remediation funding source surcharge pursuant to (b) below.

(b) The person, pursuant to (a), above, shall submit the remediation funding source surcharge to the Department and shall:

1. Pay, by cashier's or certified check payable to the New Jersey Economic Development Authority, a remediation funding source surcharge in an amount equal to one percent of the Department approved amount of the remediation funding source; and
2. Submit the remediation funding source surcharge within 30 calendar days after the effective date of the oversight document, receipt of the Department's approval of the remedial action workplan for an industrial establishment being remediated pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., or court order and annually thereafter on the same date until the Department notifies the person in writing that the person has satisfied the requirements of the court order, oversight document, or Department approved remedial action workplan for an industrial establishment and the remediation funding source is no longer needed.

7:26C-7.9 Changes in the remediation funding source amount

(a) The person required to establish a remediation funding source may at any time submit to the Department a request to approve a reduction in the amount of the remediation funding source, along with a revised remediation cost estimate.

(b) The Department shall respond to requests pursuant to (a) above within 90 calendar days after the Department's receipt of such request.

(c) Upon receipt of a written approval from the Department, the person required to establish the remediation funding source may decrease the remediation funding source amount to an amount equal to the amount approved by the Department.

(d) The person required to establish the remediation funding source shall increase the remediation funding source amount to an amount equal to the revised cost estimate of the remediation within 30 calendar days after:

1. Completion of the remediation cost review required pursuant to N.J.A.C. 7-26C-5;

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

2. Execution of a remediation agreement pursuant to the Industrial Site Recovery Act Rule, N.J.A.C. 7:26B; or

3. Receipt of written notice from the Department that the cost of the remediation has increased.

7:26C-7.10 Disbursements from the remediation funding source

(a) A person who has established either a remediation trust fund, an environmental insurance policy or a line of credit in satisfaction of the requirements of this subchapter may submit to the Department once every three months a written request to use the remediation funding source to pay for the actual remediation costs, which includes 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. An updated, detailed estimate of implementing the remediation including without limitation the estimated cost of maintaining and monitoring all necessary engineering and institutional controls;

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

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

5. The amount of the disbursement requested based on (a)3 and 4 above and the remediation remaining to be completed at the site.

(b) Within 30 calendar days after the Department's receipt of the written request submitted pursuant to (a) above, the Department shall review the request and shall respond as follows:

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

2. The information is complete, however, the requested disbursement amount includes remediation costs that the Department has not approved, and therefore, the Department will only disburse funds for the approved remediation costs; or

3. The information is incomplete, indicating the missing information and the Department shall not give further consideration to the disbursement request until the requestor submits all the required information.

7:26C-7.11 Return of the remediation funding source

(a) The Department shall notify in writing the person required to establish the remediation funding source, when that person is no longer required to maintain the remediation funding source.

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

(b) The Department shall return the remediation funding source pursuant to (c) below when:

1. The Department determines that the person responsible for conducting the remediation has completed all the substantive and financial requirements of:

- i. The oversight document;
- ii. Court order; or
- iii. Department approved remedial action workplan for an industrial establishment; or

2. The Department approves in writing one of the following for the final remedial action for the site:

- i. An innovative remedial action technology;
- ii. A limited restricted use remedial action; or
- iii. An unrestricted use remedial action.

(c) When the Department makes one of the findings or approvals listed in (b) above, the Department shall allow the person responsible for establishing the remediation funding source to terminate or modify the remediation funding source consistent with the finding or approval. The Department shall only allow that person to terminate the remediation funding source if there is no additional remediation necessary at the site.

7:26C-7.12 Failure to perform the remediation

(a) The Department shall notify in writing the person required to establish a remediation funding source if the Department determines that the person responsible for conducting the remediation has failed to perform the remediation as required pursuant to an oversight document, court order or Department approved remedial action workplan. The person shall have 30 calendar days after receipt of such notice, unless otherwise extended in writing by the Department, to perform the obligation(s) not performed.

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

(c) Thirty calendar days after the person's receipt of the notification in (a) above, the Department may, in its sole discretion, perform the remediation of a site using the funds in the remediation funding source.

(d) The Department may, in its discretion, disburse all or some of the monies to a person, other than the person who established the remediation funding source pursuant to this subchapter, after that other person has completed the remediation of the contaminated site with the Department's oversight.