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SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope

This chapter identifies the administrative procedures for a person to participate in the remediation of a contaminated site or of a potentially contaminated site under Department oversight and presents the procedures to determine the applicable oversight document.

7:26C-1.2 Certifications

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

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

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

2. For remediation funding sources:

"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-7 shall be maintained 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 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."

(b) The certifications required in (a)1 and 2 above shall be signed and dated original certifications, not photocopies, and shall be notarized.

(c) The person submitting the certification required by (a)1 and 2 above shall ensure that they are signed as follows:

1. For a corporation, by a principal executive officer of at least the level of vice president;

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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.

(d) A duly authorized representative of the person described in (c)1 through 3 above may sign the certification required in (a)1 and 2 above. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (c) above;

2. The authorization specifies either an individual or a position having a responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Department along with the certification;

7:26C-1.3 Definitions

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

"Administrative consent order" means an administrative order which is signed by one or more persons and the Department; and may be in the form of a memorandum of understanding for public entities at the Department's discretion.

"Applicant" means a corporation, partnership, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district 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.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.).

"Commissioner" means the Commissioner of the 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

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Requirements for Site Remediation, N.J.A.C. 7:26E.

"Contamination" or "contaminant" means any discharged hazardous substance as defined in N.J.S.A. 58:10-23.11b, hazardous waste as defined in N.J.S.A. 13:1E-38, or pollutant as defined in N.J.S.A. 58:10A-3.

"Covenant not to sue" means a document which shall be identical in wording to Appendix C, incorporated herein by reference.

"Deed notice" means a document defined as such pursuant to the Technical Requirements for Site Remediation, 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 cleanup 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 subject to liability for the hazardous substance that was discharged.

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

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

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

"EPA" means the United States Environmental Protection Agency.

"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.

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

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

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

"Industrial establishment" means any place defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13-1K-8.

"Innovative remedial action technology" means a remedial action defined as such pursuant to the

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Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

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

"Memorandum of agreement" means a written agreement between the Department and one or more persons to conduct remediation of a site or an area of concern.

"Memorandum of understanding" means an oversight document executed by the Department and a public entity, similar to the form of an administrative consent order.

"Multiple responsible parties" means five or more unrelated responsible parties, as determined by the Department, involved at a contaminated site.

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

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

"Operator" means any person defined as such pursuant to the Industrial Site Recovery Act, N.J.S.A. 13-1K-6 et seq. and 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, calculated in accordance with the formula included at N.J.A.C. 7:26C-9.3.

"Oversight document" means any document the Department or a court issues to define the role of a person participating in the remediation of a contaminated site or area of concern, and may include, without limitation, an administrative order, administrative consent order, court order memorandum of understanding, memorandum of agreement, or remediation agreement.

"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

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understanding of the term.

"Person responsible for conducting remediation" means a person responsible for conducting remediation as defined pursuant to the Technical Requirements for Site Remediation, N.J.A.C.7:26E-1.8.

"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 Water Pollution Control Act N.J.S.A. 58:10A-1 et seq.

"Preliminary assessment" means the first phase in the process of identifying areas of concern defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-3.1.

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

"RCRA" means the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.).

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

"Remedial action workplan" or "RAW" means a plan for the remedial action to be undertaken a contaminated site defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

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

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

"Remediation costs" means all costs associated with the remediation, including the Department's oversight costs.

"Responsible party" means a person who is in any way responsible for a contaminated site, or for the contaminants at a site including, for the purposes of this chapter, each owner or operator, and any other person obligated by law to clean up and remove contaminants at a site.

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

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

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

"Underground storage tank" means an underground storage tank defined as such pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-1.8.

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

7:26C-1.4 Dispute resolution

(a) Any person conducting remediation with Department oversight may initiate the Department's dispute resolution process or the expedited dispute resolution process set forth in this section to resolve certain issues which arise that were not resolved at the case manager level, except as noted in (l) below.

(b) Any person conducting remediation with Department oversight may initiate this process by submitting a written request, to the section chief of the case manager overseeing the remediation of the site to initiate the dispute resolution process, which shall include all of the following:

1. The site name, address, and contaminated site list number,
2. The name of the case manager overseeing the remediation of the site;
3. The name, address, and telephone number, of the person making the request;
4. A summary of the issue not resolved including a brief discussion of why the Department's decision is not appropriate;
5. A description of previous efforts to resolve the issue;
6. A recommendation for resolution of the issue not resolved; and
7. A request for a meeting with the Department, if appropriate or desired.

(c) The section chief shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (b)

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above. The written response shall include the name, address, and telephone number of the bureau chief.

(d) If the requester is not satisfied with the resolution provided by the section chief, the requester may submit a written request for resolution of the issue to the bureau chief identified in the written response in (c) above. The written request shall include all the information in (b) above.

(e) The bureau chief shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (d) above. The written response shall include the name, address, and telephone number of the assistant director.

(f) If the requester is not satisfied with the resolution provided by the bureau chief, the requester may submit a written request for resolution to the assistant director identified in the written response in (e) above. The written request shall include all the information in (b) above.

(g) The assistant director shall contact the requester by telephone to provide a response and shall provide a written response within seven calendar days after receipt of the written request in (f) above. The written response shall include the name, address, and telephone number of the director

(h) If the requester is not satisfied with the resolution provided by the assistant director, the requester may continue the process in (b) through (g) above with the Director, Assistant Commissioner, and Commissioner or his or her designee.

(i) Any person may initiate the expedited dispute resolution process, instead of the process set forth in (b) through (h) above, by making a written request to the Commissioner or his or her designee for an expedited review of the issues. The Commissioner or his or her designee shall issue a decision regarding the disputed issues within 21 calendar days after receipt of the request.

(j) If resolution of the disputed issues is not achieved through the process set forth in (b) through (i) above, the person may initiate the Department's alternate dispute resolution process by submitting a written request to the Commissioner.

(k) If resolution cannot be achieved through the alternate dispute resolution process and the Department determines the matter to be a contested case, the Department may transfer the matter to the Office of Administrative Law for scheduling of an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:1413-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(l) The dispute resolution process set forth in (b) through (j) above does not apply to:

1. Issues regarding oversight costs;
 - i. Issues regarding oversight costs shall be resolved pursuant to N.J.A.C. 7:26C-9.4; or
2. Technical issues which arise during Department oversight of remediation; or

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3. Legal issues.

(m) The Department shall not act upon a request for dispute resolution unless it is submitted in writing and includes all the information in (b) above.

7:26C-1.5 General provisions

(a) Any person that the Department allows to participate in the remediation of a contaminated site with Department oversight shall comply with the provisions of this section.

(b) A person conducting a remediation of the contaminated site with Department oversight shall pay all applicable oversight costs pursuant to N.J.A.C. 7:26C-9.

(c) Any person conducting remediation at a site pursuant to an oversight document or a court order shall, in addition to any other obligation required by law, notify the Department immediately upon knowledge of any condition posing an immediate environmental concern to the public health and safety or the environment. The Department may stop any remediation and any construction, improvement, or change at the contaminated site due to the immediate environmental concern caused by contaminants.

(d) Nothing in this chapter shall be construed as limiting:

1. Any legal, equitable or administrative remedies against any person which the Department may have under any applicable law or regulation;

2. The Department's discretion to pursue or to refrain from pursuing any such remedies; or

3. Except as otherwise stated in this chapter, any legal, equitable or administrative remedy which the party responsible for conducting the remediation may have under any applicable law or regulation.

(e) Failure to comply with the requirements associated with this chapter may result in the Department instituting proceedings to assess and collect civil or civil administrative penalties or penalties pursuant to N.J.A.C. 7:26C-10, or any other legal or equitable relief.

(f) The participation by any person in any of the procedures outlined in this chapter shall not relieve that person from responsibility to comply with all other applicable statutes and regulations. Except as otherwise stated in this chapter, nothing shall be construed as limiting any legal, equitable or administrative remedies which the party conducting remediation may have under any applicable law or regulation.

(g) Nothing in this chapter prohibits a person from assessing or investigating a potentially contaminated site without the Department's oversight unless:

1. The Department issues a directive pursuant to N.J.S.A. 58:10-23.11f; or

2. The person has actual notice that the Department has begun publicly funded remediation.

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7:26C-1.6 Forms and submissions

Unless otherwise instructed by the Department, any person may obtain any forms or applications required by this chapter at the following address, and shall submit all forms, applications and documents required by this chapter to:

New Jersey Department of Environmental Protection

Division of Remediation Support

401 East State Street, 5th floor

Case Assignment Section

PO Box 434

Trenton, New Jersey 08625-0434

7:26C-1.7 Liberal construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of the law.

7:26C-1.8 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.