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SUBCHAPTER 5. ADMINISTRATIVE CONSENT ORDERS

7:26C-5.1 Scope

(a) This subchapter presents:

1. The types of administrative consent orders available for the remediation of sites; and
2. The procedures and timeframes for entering into administrative consent orders with the Department.

7:26C-5.2 Types and language of administrative consent orders

(a) The Department may choose to allow a person to participate in the remediation of a site through an administrative consent order as described in (b) through (f) below.

(b) The administrative consent order in Appendix A, incorporated herein by reference, is applicable in all situations provided, however, that the Department may modify that administrative consent order to allow:

1. Multiple responsible parties to conduct only the remedial investigation phase of the remediation of a contaminated site; and
2. A person to conduct only the remedial action phase of the remediation of a contaminated site when the remedial investigation phase has been completed.
3. For any person implementing the entire remediation at a site for which that person has received approval for a property tax exemption pursuant to P.L. 1995, c.413, the Environment Opportunity Zone Act, the standard administrative consent order shall be used without the remediation funding source requirements.
4. For a public entity:
 - i. Conducting the entire remediation, a memorandum of understanding in the form of the administrative consent order shall be used excluding the remediation funding source requirements;
 - ii. Conducting the remedial investigation only, a memorandum of understanding in the form of the administrative consent order shall be used excluding the remedial action section and the remediation funding source requirements; or
 - iii. Implementing the remedial action, a memorandum of understanding in the form of the administrative consent order shall be used without the remedial investigation and remediation funding source requirements.

(c) If a contaminated site does not fit within any of the specific categories described in (b) above, the Department will select the administrative consent order based upon the similarity of the contaminated site and person to the categories listed in this subchapter or upon other factors in the exercise of its discretion.

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(d) When any person agrees to pay the Department for all of its remediation costs, the administrative consent order shall be consistent with the standard administrative consent order in Appendix B, incorporated herein by reference.

(e) If the Department agrees to allow a person to implement any remediation phase at a site which is undergoing publicly funded remediation, the person shall enter into an administrative consent order which incorporates the appropriate sections of the remediation phase(s).

(f) Nothing in this section shall be construed as limiting the Department from settling additional issues in an administrative consent order.

7:26C-5.3 Procedures for entry into administrative consent orders

(a) If the Department agrees to allow a person to conduct the remediation of a site pursuant to N.J.A.C. 7:26C-5.2, the Department will provide the person with 2 copies of the appropriate administrative consent order. The person shall submit two signed originals of the administrative consent order pursuant to this subchapter, to be signed by the Department, within the time period specified below.

1. The Department will notify, in writing, the person of a time period, that shall not exceed 60 calendar days, for that person to comply with (a) above. The Department in the exercise of its enforcement discretion may extend the period for up to 30 calendar days. The Department may extend the period further as needed in instances where a decision regarding award of a grant or loan to fund remediation, pursuant to N.J.A.C. 7:26C-6 or N.J.A.C. 7:26C-11, is pending.

2. In those circumstances where the Department determines that a contaminated site involve multiple responsible parties, the Department may establish an initial period, that shall not exceed 60 calendar days, during which the responsible parties have the opportunity to organize into a single representative body. Whether or not a single representative body is formed during this initial period, the time period provided to enter into an administrative consent order shall commence as specified in the written notice given pursuant to (a)3 below.

3. In those circumstances where the Department determines that the site involves multiple responsible parties, the Department will notify in writing those responsible parties of which it is aware subsequent to the initial 60 calendar day time period referenced in (a)2 above, of a time period that shall not exceed 90 calendar days at the conclusion of which the multiple responsible parties shall comply with (a) above. The Department, in the exercise of its enforcement discretion, may extend the period for up to 30 calendar days. The Department may extend the period further as needed in instances where a decision regarding award of a grant or loan to fund remediation, pursuant to N.J.A.C. 7:26C-6 or N.J.A.C. 7:26C-11, is pending.

4. Notwithstanding (a)1, 2, and 3 above, if the Department determines that remediation is necessary to address an immediate environmental concern at a contaminated site, the Department shall specify the appropriate time period to enter into an administrative consent order.

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(b) If a person does not execute the appropriate administrative consent order within the time frame the Department establishes pursuant to (a), above, that person may participate in the publicly funded remediation of a contaminated site by paying all or part of the remediation costs. Any partial payment by a person will mitigate, but will not satisfy, the liability of the person for the Department's cleanup and removal costs, statutory penalties and treble damages.