



# NETWORK NJ

Newsletter of the New Jersey Chapter of the Society of Women  
Environmental Professionals ([www.njswep.org](http://www.njswep.org))

## Spotlight: Oversight Costs or Over-the-Top Costs?

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For any of us who practice in the environmental field in New Jersey on a routine basis, we have been the unhappy recipients of invoices from NJDEP designated as "oversight cost" invoices. Essentially, oversight invoices are intended to reimburse NJDEP for costs associated with its review of environmental reports submitted by the regulated community.

For those of us who believed that NJDEP salaries and overhead were covered by the taxes New Jersey citizens pay, it was a shock to learn that they are not. Rather, the environmentally regulated community not only must pay lawyers and consultants to shepherd a site through the contamination cleanup process, but also must pay NJDEP personnel to review and critique the consultants' reports.

The reason this oversight invoice system exists is that the Legislature elected not to provide funding for NJDEP's review process, while at the same time espousing more rapid cleanup of contaminated sites. NJDEP was, therefore, left to develop its own funding mechanism.

Over the protestations of industry, NJDEP promulgated regulations in 1992, the purpose of which was to establish a manner and procedure to bill the entities undertaking a cleanup for NJDEP's own internal costs. DuPont challenged the entire process in court, but the Appellate Division upheld the system, requiring only slight modifications and warning NJDEP that fees charged as oversight costs had to be within the "bounds of reason." E.I. DuPont de Nemours and Company v. State of New Jersey, Department of Environmental Protection, 283 N.J. Super. 331, 346 (App. Div. 1995). In what can only be described as "reaching," the court in DuPont found that the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et. seq., definition of "cleanup and removal costs," as well as certain "investigation" provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-10c, authorized the promulgation of the oversight cost regulations.

Even today the oversight regulations found at N.J.A.C. 7:26C-9 provide no real ceiling on what NJDEP can charge as “oversight” costs. Moreover, until the passage of N.J.S.A. 58:10B-2.1 in 2002, the only ceiling was that provided by the court in DuPont – the “bounds of reason” approach.

With the enactment of N.J.S.A 58:10B-2.1, regulated entities have a statutory mechanism for reviewing an invoice against acceptable charges. For example, liable parties under the Spill Act and associated statutes are responsible not just for direct (salary) costs, but also for indirect (overhead) costs. Non-liable parties and homeowners are only responsible for direct costs. Most importantly, no one should be paying overhead costs in excess of 7 ½% of the “cost of the remediation of a contaminated site or the cleanup and removal of a discharged hazardous substance.”

This statute, combined with the procedure available to challenge oversight costs found at N.J.A.C. 7:26C-9.4 means that unless you are very comfortable with an invoice, challenge it. The requirements for doing so are modest – in general, a writing explaining why you are challenging the invoice, submitted within 30 days of receipt and thereby preserving your appellate rights. See N.J.A.C. 7:26C-9.4. The cost of not doing so is severe: the full amount of the invoice becomes due and owing. N.J.A.C. 7:26C-9.4(i).

By simply requesting review in a timely fashion and stating your case within the regulatory parameters, NJDEP may negotiate the scope of the invoice with you, may withdraw all or part of it, or may compromise the amount allegedly due. In short, barring an invoice which everyone agrees is proper in amount and scope – after you’ve deciphered it – the standard operating procedure should be to challenge it. There is no downside, and a very great potential upside.

### **SWEP Mission Statement**

*"SWEP was founded in 1994 with the mission to promote personal and professional development, support other women environmental professionals including students, and help women network and gain influence in environmental law, science, business and policy. The goal of the NJ Chapter is to provide networking opportunities for members, encourage information exchange, and provide a forum for the discussion of women's issues and general development issues. Membership benefits include: a) bi-monthly newsletter, b) bi-monthly seminars, c) opportunities to market yourself and your company, d) networking luncheons, e) a chance to mentor others in the field etc."*