

DIRECT OVERSIGHT

N.J.A.C. 7:26C-14

Direct Oversight

- When must remediation proceed under the Department's Direct Oversight?
- What is the scope of the Department's Direct Oversight?
- Does the Department's Direct Oversight end once violations are corrected?

2 Types of DO & Multiple Possible Triggers

Discretionary (Department notifies you → comply)

- Site-specific conditions:
 - 1) Chromate waste; 2) injury to > 1 natural resource; 3) sediments w/ PCBs, mercury, arsenic or dioxin contamination; 4) site is highest priority

Compulsory (Trigger occurs → comply)

- Subject of 2 enforcement actions within 5 years after 5/7/09
- Missed timeframe
 - 1) Mandatory; 2) Expedited site-specific; 3) ACO/Order timeframe; 4) Statutory RI timeframe, including the extension to 5/2016

Basic Principles

- DO applies to entire site, i.e. all known CAOCs, or the entire site if ISRA-subject (excluding new triggers)
- Once a DO case, always a DO case, even after compliance is achieved (statute does not provide for an “off ramp”)

Requirements – N.J.A.C. 7:26C-14.2

- Remediate as Department directs, using an LSRP
- Do a feasibility study; Implement remedy the Department selects
- Submit cost estimate & establish Remediation Trust Fund in that amount; DEP must approve disbursements; Pay RFS surcharge
- Simultaneous submissions
- Submit & implement public participation plan

May 2014 RI Extension Sites

- Parties who received and maintained extension have until 5/7/16 to complete their RI
- If complete RI is submitted by 5/7/16 RFS related to the extension will be released
- If RI is not complete by 5/7/16 DO trigger will occur and N.J.A.C. 7:26C-14.2 applies
- Failure to comply with DO carries a non-minor \$25,000/day penalty

RI Extension Stats (as of 11/24/15)

- 1200 of cases missed the 2014 deadline and did not apply for extension
- 84 extensions revoked
- 1023 cases that applied for and maintained extension and still have until May 2016 to complete the RI

Adjustments to Direct Oversight Pursuant to N.J.A.C 7:26C-14.4?

- Department may adjust DO requirements when protective of public health and the environment and in the public interest
- Enforcement decisions are subject to the Department's discretion
- If DO requirements are adjusted it will be based on criteria at 14.4

Adjustments to DO

Things the Dept will consider include but are not limited to:

- Whether conditions for discretionary DO exist
- Current compliance status
- Status of evaluation of potential receptors & resolution of impacts to receptors
- Enforcement history