



# **CVP/SRAG Meeting**

December 13, 2017

## **Direct oversight**

**Kathleen M. Katz, Bureau Chief**

Bureau of Enforcement and Investigations

NJDEP Site Remediation and Waste Management Program





# Regulatory Requirements for Direct Oversight

- Site is subject to compulsory direct oversight when:
  - Statutory RI timeframe is missed
  - Mandatory timeframe is missed
  - Expedited site-specific timeframe is missed
  - Schedule established per ACO or court order is missed
  - Party conducting the remediation has been the object of two enforcement actions during a 5-yr period after 5/7/09





# Direct Oversight – Key Points

- All timeframes apply to the site **NOT** the party who is conducting the remediation
- No notice from the NJDEP is required for compulsory direct oversight
- Once a site is in direct oversight, it is always in direct oversight until.....





# Direct Oversight Requirements N.J.A.C. 7:26C-14.2(b)

- Remediate as NJDEP directs, using an LSRP
- Submit feasibility study
- Implement remedy the NJDEP selects
- Submit public participation plan - 30 days
- Submit remediation cost review - 60 days
- Establish Remediation Trust Fund - 90 days
- NJDEP must approve disbursements
- Pay annual RFS surcharge





# Adjustments to the Direct Oversight Requirements

- N.J.A.C 7:26C-14.4 allows:
  - NJDEP may adjust certain direct oversight requirements when its in the public interest and protective of public health and safety and the environment





# Earning Adjustments to the Direct Oversight Requirements

- A party can **earn** certain adjustments to the direct oversight requirements by:
  - Must be willing to remediate
  - Comply with the direct oversight requirements
  - Settle any penalty obligation
  - Enter into an Administrative Consent Order (ACO)





# What needs to be completed to earn DO ACO adjustments?

- The following must be in-place prior to ACO signing:
  - Public Participation Plan submitted
  - Initial RFS Cost Estimate submitted and approved
  - RFS and surcharge (1<sup>st</sup> adjustment) - any form of RFS mechanism, other than self-guarantee, is allowed & established pre-ACO





# Earning Adjustments to the Direct Oversight Requirements

- Earned Adjusted DO ACO requirements:
  - Establish new timeframes
  - If due date for submission of the RIR is met, then additional adjustments will be allowed
  - Stipulated penalties for any future non-compliance







# Earning Adjustments to the Direct Oversight Requirements

- Additional Earned Adjustments Include:
  - Proceed with the remediation without prior NJDEP approval
  - Pay annual remediation fees in lieu of direct oversight costs
  - Submittals continue to go through the Inspection/Review process
  - Feasibility Study is not required to be submitted
  - Person responsible for conducting the remediation chooses the protective remedy





# Earning Adjustments to the Direct Oversight Requirements

## ➤ Pre-purchaser ACO:

- Buyer must not be related to any person who is the discharger or any way responsible; not the owner or operator of the site; not the discharge or a person in any way responsible
- ACO must be fully executed **PRIOR** to closing on the property
- ACO will establish new timeframes
- RFS required but annual surcharge is waived





# Direct Oversight - Stats

- AONOCAPAS
  - 28 issued to date
  - 14 being drafted
  
- Full DO ACOs
  - 7 executed
  
- Adjusted DO ACOs
  - 16 executed to date
  - 33 in process
  
- Pre-purchaser ACO
  - 15 executed to date
  - 5 in process





# **CVP/SRAG Meeting**

December 13, 2017

## **When Does Direct Oversight End?**

**Kevin F. Kratina, Assistant Director**

Enforcement & Information Support Element

NJDEP Site Remediation and Waste Management Program





## When does direct oversight end?



- When a Response Action Outcome is issued for the full scope of remediation being addressed by the direct oversight case.  
(Note: As a precondition to the issuance of the RAO, all applicable remedial action permits must be obtained.)



# Can Direct Oversight be triggered after a Response Action Outcome is issued?

- Yes
- If the Final Remediation Document is either rescinded (NFA) or invalidated (RAO) because the remediation is no longer protective, new remediation timeframes will be established (N.J.A.C. 7:26C-6.4(d)). Non-compliance with subsequent missed expedited or mandatory timeframes will again trigger direct oversight.