

EARNING ADJUSTMENTS TO THE DIRECT OVERSIGHT REQUIREMENTS ADMINISTRATIVE
REQUIREMENTS FOR THE REMEDIATION OF CONTAMINATED SITES (ARRCS) N.J.A.C.

7:26C-14

The Site Remediation Reform Act (SRRA, N.J.S.A. 58:10C-1 et seq.) established a statutory timeframe for the completion of the remedial investigation [either May 7, 2014 (N.J.S.A. 58:10C-27) or May 7, 2016 provided certain criteria for an extension were met (N.J.S.A. 58:10C-27.1)] for sites where a discharge had been discovered prior to May 7, 1999. In addition, SRRA authorized the New Jersey Department of Environmental Protection (Department) to establish mandatory and expedited site-specific timeframes for certain aspects of the remediation, including but not limited to the submission of a complete report for each phase of remediation, submission of an initial receptor evaluation, and addressing immediate environmental concern conditions. [see the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C-3.3 and 3.4]. These defined timeframes apply to the site, not the person responsible for conducting the remediation, and therefore do not change if there is a change in the person responsible for conducting remediation.

If a statutory, mandatory, or expedited site-specific timeframe is missed, the site is subject to the direct oversight of the Department (see ARRCS, N.J.A.C. 7:26C-14.2(a)). The direct oversight requirements are a much more proscriptive process for the person responsible for conducting the remediation. Some of the direct oversight requirements include, but are not limited to, the posting of a remediation trust fund in which only the Department can authorize disbursements, approval of all submissions, and the Department will direct how the remediation proceeds. A complete list of the direct oversight requirements can be found in ARRCS at N.J.A.C. 7:26C-14.2(b).

ARRCS does include a provision that allows the Department to make adjustments to certain direct oversight requirements when the Department determines that such adjustments are in the public interest and protective of public health and safety and the environment.

The Site Remediation and Waste Management Program, Bureau of Enforcement and Investigations (BEI) is executing Adjusted Direct Oversight Administrative Consent Orders (Adjusted DO ACOs) that allow for the person responsible for conducting the remediation to earn adjustments to the direct oversight requirements. Without the benefits of an Adjusted DO ACO, the person responsible for conducting the remediation must strictly comply with all of the direct oversight requirements set forth at N.J.A.C. 7:26C-14.2(b).

1. Who is subject to direct oversight?

Any site for which a mandatory, statutory, or expedited site-specific timeframe is missed is subject to the direct oversight pursuant to N.J.A.C. 7:26C-14.2(a).

2. When should the direct oversight requirements be implemented?

The person responsible for conducting the remediation is required to comply with the provisions of direct oversight as soon as a statutory, mandatory, or expedited site-specific timeframe is missed. No notice from the Department indicating the site is in direct oversight is required. Once a site has missed a mandatory, statutory, or expedited site-specific timeframe, the site is immediately subject to the direct oversight requirements. A detailed list of the direct oversight requirements can be found at N.J.A.C. 7:26C-14.2(b).

3. What is an Adjusted DO ACO?

An Adjusted DO ACO is designed to allow for the ability to memorialize adjustments to certain direct oversight requirements earned by the person responsible for conducting the remediation by demonstrated compliance with the direct oversight requirements in N.J.A.C. 7:26C-14. Adjustments are designed to make the direct oversight process less onerous for sites that are being brought into compliance and for which the person responsible for conducting the remediation agrees to remain in full compliance with all statutory and regulatory requirements. In addition, in most situations, the execution of an Adjusted DO ACO by the person responsible for conducting the remediation allows the site to return to compliance without the Department having to issue an Order, or other enforcement action, with penalties. In many instances this will also avoid costly and time-consuming litigation.

4. What are the first steps needed to be eligible to enter into an Adjusted DO ACO?

In order to enter into an Adjusted DO ACO, the person responsible for conducting the remediation must be current on payment of the annual remediation fees and:

- Retain a Licensed Site Remediation Professional (LSRP), if they have not already retained one (N.J.A.C. 7:26C-14.2(b)1);
- Within 30 days of triggering direct oversight, submit a proposed public participation plan (N.J.A.C. 7:26C-14.2(b)9);
- Within 60 days of triggering direct oversight, submit an initial remediation cost review (N.J.A.C. 7:26C-14.2(b)4);
- Contact the Bureau Chief of the Bureau of Enforcement & Investigations, at (609) 633-1480; and
- Agree to settle any penalty obligation, if warranted, and sign an Adjusted DO ACO.

The Department may then authorize the first adjustment to N.J.A.C. 7:26C-14.2(b)5, (establishment of a remediation trust fund) and allow the establishment of any non-self-guarantee remediation funding source mechanism in an amount equal to the amount of the estimated cost of the remediation.

5. Can additional adjustments to direct oversight be earned? If yes, what are they?

Yes, the person responsible for conducting the remediation that complies with the Adjusted DO ACO may earn additional adjustments to N.J.A.C. 7:26C-14.2(b). For example, if the site is in direct oversight for missing the May 7, 2014 statutory deadline for submission of a complete remedial investigation report (RIR) and the revised due date for submission of the RIR established in the Adjusted DO ACO is met, the Department may make additional adjustments including:

- Proceed with the remediation without prior Department approval;
- Pay annual remediation fees in lieu of the Direct Oversight costs;
- Submittals continue to go through the Inspection/Review process;
- Feasibility Study is not required to be submitted; and,
- Person responsible for conducting the remediation chooses the protective remedy.

6. What happens if the person signing the Adjusted DO ACO fails to comply?

Upon receiving written notification from the Department, the party will be subject to all statutory and regulatory requirements of direct oversight, and will be required to proceed with the remediation as the Department directs, pursuant to N.J.A.C. 7:26C-14.2(b), and the following:

- Replace any existing remediation funding source with, or otherwise establish and maintain, a remediation trust fund pursuant to N.J.A.C. 7:26C-14.2(b)5, in the full amount of the most recent LSRP-certified cost estimate of remediation or as the Department otherwise directs;
- Not make any disbursements from the remediation trust fund without the Department's prior written approval, pursuant to N.J.A.C. 7:26C-14.2(b)7;
- Submit to the Department a feasibility study (conducted and prepared in accordance with the U.S. Environmental Protection Agency, "The Feasibility Study: Detailed Analysis of Remedial Action Alternatives," (March 1990) OSWER 9355.3-01FS4, NTIS: PB90-272675INX) of potential remedial alternatives for each area of concern at the site, pursuant to N.J.A.C. 7:26C-14.2(b)2;
- Implement, as the Department directs, each remedial action at the contaminated site, pursuant to N.J.A.C. 7:26C-14.2(b)3; and
- Pay all oversight costs.

In addition, if the person responsible for conducting the remediation fails to comply with any of the provisions of the ACO, including timely payment of all annual remediation fees, oversight fees and RFS 1 percent surcharge fees, they will be subject to stipulated penalties pursuant to the terms of the ACO.

7. Should remediation of a site that has missed a mandatory, statutory or expedited timeframe continue prior to entering into an Adjusted DO ACO?

Yes, remediation can and should continue without an ACO, however, penalties for failure to comply with Direct Oversight accrue on a per day basis. Bringing the site into compliance may reduce a person's penalty exposure.