

Direct Oversight and Administrative Consent Orders (ACOs)

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Sites have “records/profiles” in our master database, NJEMS. When a site misses a timeframe the database does not automatically do anything to reflect such.

Before Direct Oversight



The first two goals in a remedial process are:

- ▶ protect receptors
- ▶ meet regulatory timeframes

DEP does take enforcement action for these violations.

Direct Oversight



Direct Oversight is not a Program!

Direct Oversight



Discretionary DO (full)

The Department may put a site in discretionary DO under
N.J.A.C. 7:26C-14.3

Compulsory DO (full or adjusted)

Responsible parties trigger compulsory direct oversight by missing
statutory, mandatory or expedited site-specific timeframes for
key documents.

N.J.A.C. 7:26C-14.2

Timeframes



- ▶ SRRA established a **statutory** timeframe for the completion of the remedial investigation either May 7, 2014, or May 7, 2016, provided certain criteria for an extension were met for sites where a discharge had been discovered prior to May 7, 1999.

- ▶ In addition, SRRA authorized the Department to establish **mandatory** (N.J.A.C. 7:26C-3.3) and **expedited site-specific** (N.J.A.C. 7:26C-3.4) timeframes for certain aspects and phases of the remediation, including but not limited to:
 - ▶ IRE
 - ▶ PA/SI (ISRA), SI (UST)
 - ▶ RIR
 - ▶ RAR
 - ▶ LNAPL Reporting form
 - ▶ IEC Response Action form

Timeframes



For discharges prior to 5/7/1999, there is only a statutory timeframe for the RIR.

For discharges after 5/7/1999, there is a regulatory and mandatory timeframe for the RIR.

Please note: this discussion does NOT cover administrative violations pursuant to ISRA or UST. Any such violation must be considered separately.

Timeframes



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 the remediation.



Direct Oversight



Once a site triggers compulsory DO, the Department will typically offer earned adjustments via an adjusted DO ACO. Some sites are not offered adjustments and will be in Full DO. Adjusted DO ACOs started in 2016.

Full DO = DEP case manager and oversight fees.

Almost all sites do not comply with direct oversight requirements within the required 90 days of triggering DO.

Direct Oversight



How many sites are in direct oversight? We don't track this number because there is no one place to track it and the universe changes daily.

There can be many different violations at a site, only one of which is DO.

ACO Process



What is being done to streamline the ACO process so that DO cases can move forward?

We are not aware of generic/global issues regarding the ACO process.

Please remember that most adjusted DO ACOs require the public notice process which is a minimum of 60 days.

If you have specific cases with an issue, please contact me directly so I can investigate and resolve.

ACO Process



Unless the site has a Department case oversight manager assigned (aka Full DO), a site can and should move forward as RPs have the affirmative obligation to remediate.

Remediation should not be halted while resolving compliance issues.

ACO Process



What if the remedial action at a DO site is completed before the ACO is finalized?

The RAR, RAP if applicable, and RAO should be submitted.

The Department will then decide on an ACO or settlement agreement.

ACO Process



Compliance Assistance unit conducts negotiations.

The enforcement manager writes the ACO.

Typically, enforcement managers do not begin to craft an ACO until certain criteria are met.

ACO Process



For cases that are offered an adjusted DO ACO, the Department generally requires the following before the enforcement manager will write the ACO:

- ✓ Cost estimate for remaining remediation
- ✓ Proposed document submittal dates
- ✓ Remediation Funding Source
- ✓ Public Participation Plan
- ✓ Agreement to execute ACO, pay penalty and any overdue annual remediation fees

Contacts



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609 633 1480 A staff member is available every day to answer general questions.

For PP ACOs use: prepurchase.aco@dep.nj.gov

https://www.state.nj.us/dep/srp/enforcement/earning_adjustments_do_arrcs.pdf

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Questions?