

BEI FAQs Draft

- 1) I received a NOD, NOV, NOIT, AONOCAPA, can I obtain an extension?

Requests for extension to deadlines specified in the NOD or approved applicable schedule, which are written, timely (at least one week prior to the compliance due date) and complete will be considered and either approved or denied. Once an enforcement action such as an NOV or NOIT is issued, procedures for requesting an extension to compliance dates included in the enforcement action are outlined in the Oversight Rule at N.J.A.C. 7:26C-10.3(d)4. These procedures limit extension approvals to minor violations only and allow only one extension of up to 90 days. Once an AONOCAPA is issued, extension requests will not be granted.

- 2) What is the difference between a minor and non-minor violation?

Minor violations are those violations for which the Department will allow a period of time (a grace period) to correct the violations prior to the assessment of penalties provided: 1) the violation is not the result of a purposeful, knowing, reckless or criminally negligent conduct of the party responsible for the violation, 2) the act or condition constituting the violation has existed less than 12 months from discovery, 3) the party responsible for the violation has not been identified in a previous enforcement action as responsible for the same violation within the preceding 12 months, and 4) the party responsible has not been identified as responsible for the same or similar violations that indicates a pattern of illegal conduct. Non-minor violations are violations for which the Department may assess a penalty without allowing a grace period for the correction of the violation prior to the assessment of penalties. N.J.A.C. 7:26C-10.3 and 10.4 outline the definition of minor and non-minor violations and establish the type of violation for select citations within the ISRA Rule at N.J.A.C. 7:26B, Oversight Rule at N.J.A.C. 7:26C, Technical Requirements Rule at N.J.A.C. 7:26E, UST Rule at N.J.A.C. 7:14B, and Spill Act Rule at N.J.A.C. 7:1E.

- 3) What is a compliance status notice?

A Compliance Status Notice is used to advise parties of non-compliance or partial compliance with a NOV or penalty document pending the Department's next action. The Compliance Status Notice will identify any violations that have been corrected and will state that the uncorrected violations will be the subject of further enforcement action. Note that if a party comes into compliance at some point after the due date penalties may still be assessed for the period of non-compliance. A Compliance Status Notice may also authorize parties to proceed with specific, limited activities (i.e., receptor evaluation) provided that the activities are not affected by the uncorrected violations. This authorization to proceed does not represent an approval of the submittal.

Since failure to comply with all violations in a NOIT results in MOA Termination a Compliance Status Notice might not be issued prior to the MOA Termination letter.

- 4) Can I settle my penalty before being in compliance with the AONOCAPA?

The penalty aspect of the AONOCAPA can only be settled upon compliance with the ordered items outlined in the AONOCAPA or upon execution of an Administrative Consent Order agreeing to complete the remediation of the contaminated site.

- 5) What happens if I don't fully comply with an NOV?

A Compliance Status Notice will be issued advising the responsible party(ies) of non-compliance or partial compliance with a NOV and the Department may at its discretion initiate further enforcement action for the outstanding violations.

- 6) Can I request a Technical Review Panel (TRP) review after I receive an NOV or ANOCAPA?

Parties conducting remediation may request that disputed issues be reviewed by the Technical Review Panel following the instructions in the Technical Review Panel guidance on the SRP web site. The request must be received prior to the compliance date established in a NOD or applicable schedule. If the TRP decides to consider the issue, the compliance dates in the NOD may be held in abeyance if a stay is requested. Once a NOV or AONOCAPA is issued a Technical Review Panel review cannot be requested.

- 7) I have a conditional NFA from the Department and I received a NOV for failure to complete a biennial certification for a Deed Notice (DN) or Classification Exception Area (CEA). Can I be penalized even though I have an NFA?

When a remedial action requires an institutional control and possibly an engineering control to ensure the protectiveness of the remedial action, a CEA and/or Deed Notice is/are established. When a NFA determination is completed with an institutional and/or engineering control in place, the NFA received from the Department is a Limited Restricted Use or Restricted Use NFA. These NFAs contain requirements to monitor and maintain the protectiveness of the institutional and engineering control(s) established at the site. The obligation to monitor and maintain the institutional and engineering controls remains in place while these controls are required to ensure the protectiveness of the remedial action. Failure to continue to monitor and maintain these controls is a non-minor violation and is subject to enforcement action including penalty assessment.

- 8) If a case is referred to BEI for issuance of an enforcement action, does the compliance manager become the new case manager?

Upon referral, a compliance manager is assigned to work in conjunction with the assigned case manager to prepare the enforcement action and facilitate compliance. If compliance is obtained the compliance manager will facilitate settlement of the penalty and memorialize the settlement within a settlement agreement. If the AONOCAPA is settled ahead of compliance through execution of an Administrative Consent Order, the compliance manager prepares the Administrative Consent Order and facilitates penalty settlement. The case manager remains the Department's technical contact for the case.

- 9) My oversight document is an MOA. What happens if I don't comply with an NOD?

Non-compliance with a NOD for a case under Department oversight through an MOA will result in the issuance of a Notice of Intent to Terminate (NOIT). The NOIT outlines the outstanding violations of the applicable rules and provides for a grace period to address all minor violations. If the violations are not satisfied the Department will move to terminate the MOA. Once terminated, should the MOA applicant wish to reactivate the MOA, the applicant is subject to an increased application fee.

When MOAs are terminated, the Department will evaluate the site specific conditions and determine whether additional enforcement actions, such as the issuance of a Spill Act directive, are required.

- 10) Is there more than one type of directive and what are the differences between them?

The Department may issue a Spill Act Directive that requires the directed party(ies) to conduct an investigation and/or remediation of the contaminated site as specified in the directive. If the Department has little confidence in a party's willingness or ability to conduct remediation, or if the site is scheduled for remediation using public funds, the Department may issue a Spill Act Directive that requires the responsible party(ies) to pay for the Department's investigation and/or remediation costs associated with the tasks identified within the directive. Finally, the Department may issue a Spill Act Directive upon the request of a party conducting remediation, in an effort to compel other parties to participate or to assist in the cost recovery efforts of the party conducting the remediation. Such requests must include information that the Department requires for directive issuance (See http://www.nj.gov/dep/srp/compliance/treble_request.htm).