

**New Jersey Department of Environmental Protection
Site Remediation and Waste Management
September 18, 2006**

NOTICE

The Department has amended subchapter 10 of the Department Oversight of the Remediation of Contaminated Sites Rule, N.J.A.C. 7:26C (Oversight Rule), to set forth penalties for violations of portions of the Underground Storage Tank Rule, N.J.A.C. 7:14B (UST Rule), the Industrial Site Recovery Act Rule, N.J.A.C. 26B (ISRA Rule), the Oversight Rule, and the Technical Requirements for Site Remediation Rules, N.J.A.C. 7:26E (Technical Requirements). Through the amendments the Department has identified these violations as either minor or non-minor in accordance N.J.S.A. 13:1D-125 et seq, commonly known as the Grace Period Law. In addition, the Department has amended Subchapter 3 of the Oversight Rules regarding the Memoranda of Agreement (MOA) application and termination process, establishing a period of time, consistent with the grace period applicable for non-MOA cases, for the correction of deficiencies prior to MOA termination. The rule adoption was published in the New Jersey Register on September 18, 2006, and the rule became effective on that date.

Implementation of the Grace Period Rule

The adoption of the Grace Period rule necessitates some policy and procedural changes for SRWM that will affect parties responsible for conducting remediation, as summarized below.

Notices of Deficiencies

The Department currently relays the results of its review of remediation-related submittals and activities in the form of comment or deficiency letters. The Department intends to modify this process slightly by changing the name and form of this communication. Instead of a comment or deficiency letter the Department will issue a Notice of Deficiency (NOD) to the person(s) responsible for conducting remediation that details the deficiencies that need to be addressed. The NOD will link each deficiency to the related regulatory requirement. The party must address each deficiency in accordance with the timeframe established in the NOD. Failure to address deficiencies will result in the Department's issuance of a Notice of Violation (NOV), or a Notice of Intent to Terminate (NOIT) for MOA cases. Non-compliance with the NOV or NOIT, or the occurrence of a non-minor violation, will lead to assessment of penalties prescribed by the Grace Period Rule or the termination of the MOA.

If a party fails to submit a required document at all, the Case Manager will issue a NOV or NOIT, for all violations, instead of a NOD since no submittal will have been made for

the Department to evaluate. If a submittal is made in response to the NOV or NOIT, the Case Manager will review the submittal and issue a NOD for deficiencies. If no submittal is made in response to the NOV or NOIT, penalties or termination will follow.

Point of Contact

Previously the Department's communication was directed to the person designated by the person responsible for conducting remediation. That may have been their attorney or consultant or registered agent. Moving forward the Department will direct all correspondence to the person responsible for conducting remediation. Designated contacts will receive a copy of the correspondence as well. This change is needed for two reasons. First the Department wants to clearly place responsibility for addressing deficiencies and meeting compliance deadlines on the appropriate party. That party may be a person who committed to conduct remediation by applying for a MOA, a party who executed an ACO or Remediation Agreement, or a party who is obligated to conduct remediation by the UST or ISRA statutes. Secondly, the Department's database facilitates issuance of enforcement actions against parties who fail to meet their obligations. Since such actions are taken against the person who has the obligation, all prior correspondence will be directed to that same party to avoid a situation where a party may receive an enforcement action and claim that prior communication of requirements was not received.

Timeframes for Correction of Deficiencies

Currently the timeframes that Case Managers allow for the correction and re-submittal of a deficient document, and for the completion of field work related to remediation, varies in consideration of the scope of the project, site-specific conditions, and the oversight document or rule governing remediation. Generally these variations will continue to be allowed with some standardization. When determining the timeframe for corrective actions included in NODs, Case Managers will consider the amount of time needed to accomplish the corrective action. This timeframe may be adjusted in consideration of additional factors including the risk posed by site conditions, the compliance history of the party, and site specific conditions that may extend or shorten the time needed to accomplish the corrective action. Finally, extended corrective action time may be afforded for deficiencies if the Department's response was not timely.

Extension Requests

Parties responsible for conducting remediation are encouraged to promptly raise & resolve disputes with their Case Manager. Time allowed for the resolution of issues will be determined by the compliance date in the NOD. Extension requests must be in writing, must specify which corrective action the extension request applies to, how long is needed and why, and must be received at least 7 days prior to the compliance date in the NOD or approved applicable schedule. Extension requests will be granted or denied in consideration of the details provided in the request and the risks posed by site-specific conditions.

Note that the above only applies to extensions to compliance dates in the NOD or approved applicable schedule. It does not apply to compliance dates included in an

enforcement document such as a NOV. The extension request procedures which apply once an enforcement action is issued are included in the Grace Period Rule at N.J.A.C. 7:26C-10.3(d)4. These procedures limit extension approvals to a single extension of up to 90 days.

Extensions to compliance dates included in a NOD or a NOV/NOIT that are requested due to processing delays on the part of the Department shall be granted (e.g. well search request backlog).

Rejectable Document Policy

The Policy on Document Rejection, which has been posted for several years on SRWM's web site, put forth the SRWM's procedure for handling submittals which are missing key required components, or that depart substantially from providing the technical information required to allow for meaningful Department review. The adoption of the Grace Period Rule makes this policy obsolete so it has been removed from the web site and is no longer an effective SRWM policy. Submittals, which would have previously been rejected under this policy, will now be the subject of a NOD. Because these documents depart so significantly from the requirements of the Technical Requirements that review is not possible or meaningful, the NOD will necessarily be lacking in details. The submittal sent in response to the NOD must be fully compliant with the Technical Requirements or a NOV or NOIT will be issued. Basically, when a party submits a document of such poor quality they have wasted their opportunity to gain meaningful Department input prior to becoming subject to the Grace Period requirements.

Technical Review Panel

The Department established the Technical Review Panel (TRP) as a forum to resolve site-specific technical disputes. With the adoption of the Grace Period Rule clarification is needed regarding the role of the TRP. Parties conducting remediation may still request that disputed issues be reviewed by following the "Review of Technical Disputes Arising in Remediation and Landfill Closure" procedure (TRP Guidance). They must follow the instructions in the TRP guidance on the SRWM web site, and the request must be received prior to the compliance date established in a NOD or applicable schedule. Note that the TRP is not an option for issues that are the subject of an enforcement action. This means that a party may not submit a request for TRP review of an issue that has been included in a NOV, AONOCAPA or other enforcement action, and if such a request is received it will be denied. To further clarify, requests must be received prior to the compliance date specified in a NOD or applicable schedule. If a TRP request is received just prior to a compliance date, and if a reviewer in the management chain or the TRP decides that it will not consider the issue, the reviewer or TRP may establish a new compliance date. The duration of the extension allowed for compliance when a request is denied will not exceed the length of the original corrective action timeframe in the NOD, approved schedule or rule requirement. If the TRP agrees to consider the issue raised, and if a stay was requested as part of the request, the TRP will hold the compliance date in abeyance and enforcement action will not proceed until such time that a new compliance date is exceeded. The TRP's decision will be issued in writing and a new compliance date will be established. Also, it should be noted the Grace Period Rule does

not change the fact that all reasonable attempts should be made to resolve technical disputes through discussions between party responsible for conducting remediation and SRWM case team members prior to submitting a TRP request.

Variance Requests

Requests for variances from the requirements of the Technical Requirement should be included in submittals for Department approval before implementation whenever possible. If a submittal that is made in response to a NOD includes a variance request as a means to address a deficiency noted by the Department, the variance request must be justified in accordance with N.J.A.C. 7:26E-1.6(c). If the Department is able to approve the variance request then the deficiency has been satisfied. If the Department is not able to approve the requested variance because it is not adequately justified or is not technically sound, the deficiency will become a violation and included in a NOV or NOIT. A grace period will be allowed for the correction of minor violations prior to the assessment of penalties.

Minor and Non-minor Violations

The process of technical submittal review and comment that currently occurs is being replaced by a similar process. The Department will conduct a review of the submittal and the issue a NOD, instead of a comment letter, prior to the application of the Grace Period Rule. Parties responsible for conducting remediation should evaluate each deficiency included in a NOD against the violations table at N.J.A.C. 7:26C-10.4(c). Deficiencies included in a NOD that are not adequately addressed within the specified timeframe will become violations. Whether they will be minor or non-minor violations can be determined by reference to this table. Minor violations included in a NOV or NOIT will be afforded a grace period for correction. Non-minor violations will be subject to penalty or MOA termination. This means that some deficiencies included in a NOD may immediately warrant a penalty assessment or termination of a MOA if not corrected pursuant to the NOD.

Conditional Approvals

In order to efficiently implement the Grace Period Rule the Department has determined that it must move away from issuing conditional approvals. Conditional approvals blur the line between compliance and non-compliance, cast doubt upon the date that a violation may have occurred, and place the Case Manager in the difficult position of enforcing conditions of approval after the fact. The Department therefore expects that parties conducting remediation will submit documents that can be approved unconditionally. Prior to approving a submittal the Department will seek written agreement from the party responsible for conducting remediation that it accepts and incorporates all Department requirements into the subject work plan or report. Depending upon the scope and nature of the deficiencies a new submittal may be required, an amendment or addendum may be required, or simply a letter documenting correction of the deficiency may suffice. The consequence of not addressing noted deficiencies within the specified timeframe would be the issuance of a NOV or a NOIT for MOA cases. Non-compliance with the NOV or NOIT will lead to assessment of penalties prescribed by the Grace Period Rule or the termination of the MOA.