Does Correcting an NJDEP Violation Eliminate the Penalty?



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Correcting an NJDEP violation may prevent a penalty where the violation qualifies as a “minor violation” subject to a grace period. In other cases, correcting the violation may stop additional penalties from accruing, but it does not eliminate liability for the violation that already occurred.

The result depends on the applicable NJDEP program, the nature of the violation, and when the company returns to compliance.

Minor Violations May Be Corrected Without Penalty

New Jersey’s Grace Period Law requires NJDEP to provide a period of time to correct certain violations classified as “minor.”

If the violation qualifies for a grace period and the company corrects it within the required time, NJDEP will not impose a penalty for that violation.

The deadline matters. If the company fails to correct the violation within the grace period, it loses that protection, and NJDEP may pursue formal enforcement and penalties even if the violation is subsequently corrected.

Not every violation qualifies as minor. For example, NJDEP’s site remediation program explains that a violation generally will not qualify for a grace period if it results from purposeful, knowing, reckless, or criminally negligent conduct, has existed for an extended period, or involves certain repeat violations.

Companies receiving an NOV should therefore determine promptly not only what must be corrected, but also whether the violation qualifies for a grace period and when that period expires.

Correcting Non-Minor Violations May Not Eliminate the Penalty

The result is different for violations that do not qualify for grace-period protection.

For example, under NJDEP’s NJPDES enforcement rules, permit violations may be subject to civil administrative penalties, and each day that a continuing violation persists can create additional penalty exposure.

Consider a facility that exceeds a permit limit on Monday, discovers the problem, and corrects it on Tuesday. Correcting the problem may prevent additional days of violation, but it does not necessarily eliminate NJDEP’s ability to assess a penalty for

Monday's violation.

The practical takeaway is that correcting an NJDEP violation is almost always important, but the effect of that correction depends on the type of violation.

For a qualifying minor violation, correcting the violation within the grace period may prevent a penalty entirely. If the grace period is missed — or if the violation is non-minor — correction may stop additional exposure, but it does not necessarily eliminate the penalty for the violation that already occurred.

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