

You Received an NJDEP AONOCAPA. What next?

October 13, 2026
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An Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”) is a formal NJDEP enforcement document that alleges violations of environmental law, may require corrective action, and imposes a civil administrative penalty.

Unlike a Notice of Violation, an AONOCAPA may be contested through NJDEP’s administrative hearing process. Companies receiving an AONOCAPA should therefore promptly identify the applicable hearing deadline and evaluate both the underlying violation and the penalty assessment before determining how to respond.

It is critical to act promptly. Failing to submit a timely hearing request will cause the AONOCAPA to become final and eliminates the opportunity to contest the alleged violations and penalty.

Determine the Response Deadline

The first issue is timing.

There is no single response deadline that applies to every NJDEP AONOCAPA. The deadline depends on the regulatory program and may range from approximately 10 to 35 days. The applicable deadline should be stated in the enforcement document, and companies should review it and the governing regulations immediately upon receipt.

Review the Facts, Legal Issues, and Penalty

Once the deadline is identified, the company should review NJDEP’s allegations and the available record.

That review may include permits, inspection reports, sampling data, operating records, correspondence, photographs, consultant reports, and prior enforcement history.

The company should consider several separate issues.

- Did the alleged violation occur?
- Does the cited requirement apply?
- Does NJDEP have all of the relevant facts?
- Has the violation been corrected?

- Is the penalty calculation consistent with the applicable regulations?

The underlying violation and the penalty assessment should not necessarily be viewed as the same issue. A company may agree that corrective action is appropriate while disputing the amount of the penalty or aspects of NJDEP's factual or legal conclusions.

Prepare the Administrative Hearing Request

Once the matter has been evaluated, a company that intends to contest the AONOCAPA should prepare and submit its hearing request on time.

A hearing request is a formal document with specific procedural requirements and potentially significant consequences. NJDEP's current guidance requires enforcement hearing requests to address the allegations being admitted, denied, or contested; identify the issues in dispute; state the defenses being asserted; and provide supporting information. NJDEP may treat an incomplete request as deficient and may deny a request if required deficiencies are not corrected.

Companies should therefore avoid treating the hearing request as a simple notice of disagreement with NJDEP. Instead, the hearing request is better understood as analogous to an answer in litigation: it begins defining the issues that are actually in dispute.

Consider the Appropriate Resolution

Requesting an administrative hearing does not mean that every matter will proceed to a contested hearing before an Administrative Law Judge.

NJDEP's administrative process allows for settlement discussions, and its Office of Administrative Hearings and Dispute Resolution also offers an alternative dispute resolution process.

The appropriate strategy will depend on the strength of the company's factual and legal position, the amount of the penalty, the status of corrective action, prior enforcement history, and the business consequences of the dispute.

The important point is to make that decision after preserving the company's rights through an appropriate and timely hearing request.

An AONOCAPA is both an environmental compliance matter and a formal enforcement matter. Responding effectively requires attention to the immediate deadline while developing the facts needed to determine whether the best approach is to contest, negotiate, comply, or pursue a combination of those options.