

NJDEP NOV vs. AONOCAPA: What's the Difference?

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By Matthew Karmel



A Notice of Violation (“NOV”) and an Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”) are both commonly used NJDEP enforcement documents, but they have significantly different consequences.

An NOV generally puts a company on notice of an alleged violation and provides an opportunity to achieve compliance.

An AONOCAPA is a formal enforcement action that can order corrective action, impose a civil administrative penalty, and provide the recipient with a limited period to request an administrative hearing. If a hearing is not requested, the recipient generally waives objections to the alleged violation and penalty determination.

Understanding which document NJDEP has issued is therefore important to determining the appropriate response.

What Is an NJDEP Notice of Violation?

NJDEP describes an NOV as an enforcement action that advises a regulated party that a violation has occurred. An NOV typically identifies the violation, the date it was discovered, and a compliance deadline.

NOVs do not themselves carry civil administrative penalties. NJDEP also states that an NOV cannot be appealed through its administrative hearing process. In many instances, if the violation is corrected, no further enforcement action follows.

That does not mean an NOV should be ignored. An NOV may become the basis for additional enforcement if NJDEP concludes that compliance was not achieved or determines that further action is appropriate.

For this reason, companies should use the NOV stage to evaluate the factual and technical basis for NJDEP’s allegations and determine what corrective action may be required.

What Is an AONOCAPA?

An AONOCAPA is more significant.

According to NJDEP, an AONOCAPA may be issued after a company fails to comply with an NOV or where NJDEP determines that a violation is not minor. Unlike an NOV, an AONOCAPA carries a civil administrative penalty and may also order specific corrective action.

An AONOCAPA must be contested through the administrative hearing process within the applicable time frames. If not, the recipient is generally deemed to have waived all objections to the alleged violation, the required corrective actions, and any

penalty assessments.

The deadline for requesting a hearing is not uniform across all NJDEP programs. Hearing deadlines may vary depending on the program and document, generally ranging from approximately 10 to 35 days. The specific enforcement document and applicable regulations should therefore be reviewed immediately.

Contesting an AONOCAPA through a hearing request should be done in all instances and does not generally require extensive litigation but is essential to preserve objections and provide a basis for negotiating a resolution of the alleged violations.

Why the Difference Matters

The distinction affects both timing and strategy.

With an NOV, the immediate focus may be on investigating the violation, addressing compliance, and determining whether NJDEP's allegations are accurate.

With an AONOCAPA, the company must also consider whether to preserve its right to an administrative hearing, whether the penalty is appropriate, and whether NJDEP's factual and legal conclusions should be challenged.

Companies receiving correspondence from NJDEP should therefore begin by identifying exactly what NJDEP has issued.

An NOV and an AONOCAPA may arise out of similar facts, but they do not necessarily create the same obligations, deadlines, or rights.