



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

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BCA INTERNAL PROCESS GUIDELINES

To: BCA SUPERVISORS, CASE OFFICERS, AND WASHOE COUNTY DISTRICT HEALTH DEPARTMENT

FROM: GREG LOVATO, CHIEF, BUREAU OF CORRECTIVE ACTIONS 

CC: DAVID EMME, DEPUTY ADMINISTRATOR

SUBJECT: BCA PROCESS FOR ESTABLISHING LUST/CA PROJECT DEADLINES

Date: June 19, 2013

The Bureau of Corrective Actions (BCA) has developed these guidelines for use by case officers in establishing project deadlines for Leaking Underground Storage Tank and Corrective Action cleanup projects. The guidelines serve multiple purposes: promoting consistency in remediation case management, serving as an appropriate baseline for compliance assistance and enforcement action, and helping achieve project milestones within appropriate timeframes.

While the guidelines are mostly focused on setting forth a consistent process for establishing deadlines, the guidelines include select hard dates that will be applicable to all projects, such as required response dates for Release/Spill correspondence and dates for submittal of quarterly reports. The process includes decision points for: 1) determining what deadlines to set based on project phase; 2) when project schedules are required to be submitted; 3) which project submittals/actions are critical to establishing deadline dates; and 4) contingency procedures for altering project deadlines based on real-world conditions.

While these guidelines have been developed for internal use by case officers, external distribution is permitted and this document will be placed on BCA website at <http://ndep.nv.gov/bca/guidance.htm>. The timeframes and process are consistent with authorities in Federal and State laws and regulations. These authorities include, but are not limited to, the ability of an implementing agency to determine reasonable periods of time for cleanup actions under 40 CFR 280, to require a schedule for assessment activities under NAC 445A.22691, to require a schedule for corrective action for soil under NAC 445A.2271, and to require a schedule for corrective action for groundwater under NAC 445A.2273. If requested or questioned by a facility owner/operator regarding how deadlines have been established, the case officer should feel free to cite these guidelines and make them available. At some point in the future, the Bureau may also publish these guidelines on our webpage so that the regulated community is fully aware of the process that is to be used by case officers.

NDEP, BCA—Internal Guidelines for Case Officers
BCA Process for Establishing LUST/CA Project Deadlines
Version 1
June 19, 2013

These project deadlines have been established with typical cleanup case progress in mind, but some effort has been made to accommodate complex cases and routine project disruptions. However, not every circumstance can be covered by these guidelines, and case officers should use their best professional judgment in developing deadlines for projects.

- 1) **Release/Spill (R/Spill) Response.** In r-spill correspondence, the case officer should set a deadline of 45 calendar days for response to the r-spill letter for all cases. This 45-day period is considered the abatement window when a facility owner and consultant can work without the explicit involvement of the NDEP to do initial site assessment and abatement actions (NAC 445A.22695), except as may be necessary for petroleum fund reimbursement. If this abatement window should be extended for a project, it can be handled as a deadline extension as discussed in Para. 10.

- 2) **Case Officer Decision Point #1.** The next project deadline to be established will depend on case officer review of the r-spill response. The four possible outcomes of review are
 - A) “No further action” determination is granted. This is applicable to cases where abatement actions were taken, and the r-spill response contains sufficient information to provide closure under corrective action regulations. No further deadlines need to be established.
 - B) Submittal of Corrective Action Plan warranted. This is applicable to cases where the r-spill response contains sufficient information, based on the best professional judgment of the case officer, for a responsible party and consultant to select an appropriate corrective action based on site conditions. Case officer should set a deadline of 60 calendar days for preparation and submittal of a Corrective Action Plan.
 - C) Site Assessment Workplan warranted. This is applicable to cases where the r-spill response does not indicate that selection of a corrective action is currently warranted and where the collection of additional data to support corrective action selection will exceed two (2) months. Case officer should set a deadline of 60 calendar days for preparation and submittal of an Assessment Workplan.
 - D) Further assessment required but limited. This is applicable to cases where the r-spill response does not indicate that selection of a corrective action is currently warranted, but further data needs are limited, identifiable, and achievable within a short timeframe. Case officer should set a deadline of 30 calendar days for submittal of additional assessment information if the additional information does not require site sampling or 60 calendar days if additional sampling is required.

- 2) **Case Officer Decision Point #2.** [For sites requiring additional assessment information whether or not it is conducted with a workplan] Once a case officer has determined that sufficient site information has been collected to warrant selection of a corrective action, the

case officer should set a deadline of 60 calendar days for preparation and submittal of a Corrective Action Plan.

- 3) **Setting Deadlines in Assessment Workplans.** If it is determined that a Site Assessment Workplan is warranted, regulations require that both a “plan and schedule” be carried out (NAC 445A.22691). The facility owner/operator and consultant should take the lead in developing a schedule. The case officer should approve schedules within reason and identify specific schedule dates as being enforceable in correspondence approving the workplan. At a minimum, schedule dates in an assessment workplan that should be used to establish enforceable dates in correspondence include: a) date for commencement of any interim actions that are appropriate prior to final corrective action, i.e. free product removal, soil source removal, and etc., b) submittal dates of supplemental workplans for actions discussed but not fully detailed in the Assessment Workplan, and c) date of assessment completion as determined through the submittal of an Assessment Report.
- 4) **Setting Deadlines in Corrective Action Plans.** Regulations for both soil and groundwater cleanup require the submittal of a plan and schedule for corrective action (NAC 445A.2271 and 445A.2273). The facility owner/operator and consultant should take the lead in developing a schedule. The case officer should approve schedules within reason and identify specific schedule dates as being enforceable in correspondence approving the workplan. At a minimum, schedule dates in a corrective action plan that should be used to establish enforceable dates in correspondence include: a) submittal of supplemental workplans, where appropriate (for projects where corrective action is presented only conceptually in the Corrective Action Plan and will be supplemented by further deliverables with more detail regarding system design, pilot testing, pump tests, system optimization, and etc.), b) system installation or construction completion dates with written verification to NDEP, c) system start-up dates with written verification to NDEP, d) system evaluation and remediation progress reporting dates, and e) dates for any other cleanup actions.
- 5) **Miscellaneous Deadlines: Quarterly, Semi-annual, or Annual Reports.** Case officers should set a standard deadline for the submittal of Quarterly, Semi-annual, or Annual monitoring reports for 28 calendar days after conclusion of the monitoring period.
- 6) **Miscellaneous Deadlines: Document Revisions.** If a case officer reviews a document and finds deficiencies that must be addressed before the deliverable can be approved, the case officer should identify the deficiencies and allow 30 calendar days for submittal of a revised document. NDEP correspondence must distinguish clearly between deficiencies which impact site decision-making (e.g. where and whether specific additional assessment or analysis is needed to help make a remedy or closure decision) vs. deficiencies that are not critical for site decision-making (e.g. unsupported statements or opinions from the document preparer). The basis for how the identified deficiencies affect site decision-making should be clearly stated and summarized in the cover letter. If a revised document is still not approvable because of failure to resolve fundamental deficiencies or because of disagreement between the NDEP and facility owner regarding project requirements, the

case officer should discuss the impasse with a remediation supervisor for dispute resolution or initiation of procedures in the Compliance Assistance & Enforcement Policy.

- 7) **Miscellaneous Deadlines: Unforeseen Conditions.** In the course of site assessment or cleanup, information may be collected that alters the understanding of site conditions, resulting in the need for additional assessment not foreseen in approved workplans or causing reevaluation of appropriate corrective actions in approved Corrective Action Plans. When a case officer becomes aware of these conditions, he or she may require revisions of approved plans or the submittal of additional plans. Submittal deadlines may be set in correspondence as either 30 or 60 calendar days based on the expected level of effort required for these revisions or additional plans.
- 8) **Closure-related Deadlines:** These guidelines do not set specific deadlines for submittal of closure-related documents such as closure requests or requests for the termination of remediation systems. Specific deadlines are not set because of the variability in closure timeframes for cases. Also, it is assumed that facility owners will generally request closure without prompting by the NDEP and will be the driver for the submittal of closure documents without the need for submittal deadlines. However, if a facility owner fails to take action to request closure for a site where closure is appropriate, the case officer should discuss appropriate actions and deadlines with a remediation supervisor.
- 9) **Deadline Extensions.** The case officer should consider all requests to extend established deadlines within reason made by a facility owner or consultant in writing or e-mail. The request should be made prior to the deadline date and include a specific justification for the extension.
- 10) **Compliance Assistance & Enforcement Guidelines.** If a deadline is not met and an extension is not requested or approved, the case officer should commence the steps for compliance assistance. This includes the use of template correspondence to inform the facility owner that they have missed an established deadline and should take actions to comply with requirements. The procedures and deadlines for compliance assistance are listed in greater detail in the forthcoming Compliance Assistance & Enforcement Guidelines.