

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

**UNIFORM ENFORCEMENT POLICY
FOR THE
OFFICE OF ENVIRONMENTAL QUALITY CONTROL**

I. GENERAL PURPOSE

1. This policy shall govern enforcement procedures for the environmental programs within the Office of Environmental Quality Control.
2. This policy is intended to provide uniform procedures for the conduct of enforcement actions and to provide uniform criteria for the assessment of civil penalties.

II. CIVIL ENFORCEMENT PROCEDURES

1. When, based upon available information, it is determined that there is a violation of any applicable statute, regulation, standard, or permit, and the violation can be adequately documented, a Notice of Violation will be forwarded by certified mail to the responsible party ("party").
2. The Notice of Violation will specify the alleged violation(s) and require that the party respond within a specified period of time as to the measure(s) he has taken or will take to address the same. If the Department determines that a response to the Notice of Violation is nonessential and that a conference to discuss the violation(s) is desirable, a consolidated Notice of Violation and Notice of Enforcement Conference may be transmitted; the Notice of Enforcement Conference will be in accordance with item 4 (a) below.
3. If the party fails to take the appropriate action(s) or fails to respond adequately to the Notice of Violation, the Department may:
 - (a) Seek relief through the courts by referral of the matter to the Legal Office; or,

- (b) Pursue the matter administratively.
4. If the matter is pursued administratively, the following procedures will be followed:
- (a) A Notice of Enforcement Conference will be forwarded by certified mail to the party. This Notice will require that the party attend a conference on a specified date, time, and location to "demonstrate" why the Department should not pursue further enforcement action.
 - (b) If a determination is made as a result of the conference that a Consent Order can be mutually agreed to, the Department may issue such order.
 - (c) If agreement on a Consent Order cannot be reached, the Department may issue an order, without the party's consent, requiring compliance with the statute, regulation, standard, or permit allegedly violated. An Administrative Order will be forwarded to the party by certified mail or personal delivery. The order will give the party at least fifteen (15) days to contest its provisions in accordance with Department Regulation 61-72. Should no hearing be requested, the order will become effective as issued at the end of the fifteen (15) days.
 - (d) If a party fails to attend a scheduled Enforcement Conference, the Department may issue an Administrative Order without the party's consent. The party will have fifteen (15) days to contest the requirements of the order in accordance with Regulation 61-72.
 - (e) All orders shall be forwarded to the Commissioner through the Legal Office.
 - (f) If a party appeals an Administrative Order within the fifteen (15) day period, the receipt and processing of appeals shall be in accordance with the Uniform Procedure for Processing Notices of Appeal, dated May 29, 1991. Reports of Hearing Officers shall be in accordance with the Hearing Officer Procedures, dated May 7, 1991.
5. Upon a determination that conditions or provisions of a

previous order have not been met, the Department will forward a Notice of Violation, ascertain the reasons for noncompliance, and initiate one or more of the following actions:

- (a) Amend the original order to include a revised schedule of compliance, necessary modifications, and assessment of civil penalties; such orders may be issued and contested as in 4 (c) above;
- (b) Issue a new order to include a revised schedule, necessary modifications, and assessment of civil penalties; such orders may be issued and contested as in 4 (c), above; or
- (c) Refer the matter to the Legal Office for action as deemed appropriate.

III. A. CIVIL PENALTY ASSESSMENT GUIDELINES

- 1. The following guidelines are provided for the administrative assessment of civil penalties that are provided by law for the violation of any statute, regulation, standard, permit, or order.
- 2. The guidelines are provided for the following general purposes: to provide uniform and objective criteria against which penalties are assessed for violations; to enhance and achieve compliance; to punish and deter future violations; to ensure that penalties are appropriate for the gravity of the violation committed; to eliminate economic incentives for noncompliance; and to promote fairness and consistency in the assessment of penalties for similar violations.
- 3. Any one or combination of factors shall be considered in the assessment of civil penalties:
 - (a) Degree of harm or potential for harm to the public health, safety or environment;
 - (b) Extent of deviation from the requirements of the statute, regulation, standard or permit;
 - (c) Frequency or duration of the violation. This may include multiple or multi-day violations;
 - (d) Economic benefit as a result of noncompliance.

This may include any evidence of economic advantage gained through noncompliance. In calculating economic benefit, enforcement staff may utilize the EPA computer model as appropriate;

- (e) Cost of restoration of the environment or abatement of the environmental harm;
 - (f) Past performance record or past history of violations;
 - (g) Degree of willfulness and/or negligence;
 - (h) Other pertinent factors that measure the seriousness or frequency of the violation, or the conduct of the party.
4. Circumstances may warrant the downward adjustment of a civil penalty. It will be the responsibility of the party to present documentation of mitigating circumstances that may be considered by staff in setting the amount of the civil penalty. Any one or combination of the following factors may be considered in making a downward adjustment in the amount of a civil penalty:
- (a) The degree of cooperation by the party in remedying the violation or resolving the problem;
 - (b) Any measures taken to avoid repetition of the violation. However, no downward adjustment shall be made for measures taken for the sole purpose of coming into regulatory compliance.
 - (c) Good faith efforts to comply with requirements. However, no downward adjustment shall be made for good faith efforts consisting solely of coming into regulatory compliance.
 - (d) Ability to pay. The party must present complete financial information as requested by enforcement staff to make this determination. In making this determination, enforcement staff may use the EPA computer model as appropriate;
 - (e) Other pertinent factors.

B. Penalty Calculation Guide for Repeat Violations

The following guidelines are being provided for those instances where the Department has determined that the violations are considered repeat violations. "Repeat violations," for the purposes of this guidance, are those violations that are similar or are related to violations that were addressed in a previous enforcement action involving the same party at the same facility or site.

STEP 1 Determine the total number of alleged violations incurred and the period of time during which they occurred. Confirm all the pertinent facts.

STEP 2 Calculate the **statutory maximum** penalty amount.

Statutory Maximum Penalty = No. of violations x Days of violation x (statutory maximum penalties per violation per day of violation as set forth in the applicable Act).

[NOTE: This amount is calculated only to determine the potential maximum penalty liability. The total civil penalty settlement amount cannot, by law, exceed this amount.]

STEP 3 Calculate the violation "**gravity component**" using the program-specific penalty determination methodology, i.e., established procedures using penalty matrices, case peer review, etc.

STEP 4 Multiply the gravity component by .5 to 1.0 (50%-100%) to derive a "**violation recurrence component**" for a repeat violation within a three (3) year period.

Third or subsequent repeat violation(s): Multiply the gravity component by 1.0 to 3.0 (100%-300%) for a third or subsequent repeat violation within a five (5) year period.

STEP 5 Multiply the gravity component by zero to 1.5 (0%-150%) to derive a "**recalcitrance component.**"

[NOTE: The penalty may be adjusted upward to address the documented demonstration of uncooperativeness, i.e., unjustified delays in preventing, correcting, or mitigating violations, violations of previous orders, failure to provide timely or complete information, etc.]

[SECOND NOTE: If this component was considered as part of the process used to calculate the gravity component, enter zero.]

STEP 6 Determine appropriate **"adjustments"** to the civil penalty, i.e., 1) economic benefit, 2) other pertinent, mitigating factors associated with the recurrence of the violation(s), 3) voluntary disclosure of the violation, pursuant to the S.C. Environmental Audit and Voluntary Disclosure Act, or 4) program-specific adjustment amounts.

[NOTE: Economic benefit may have been an issue as part of the original enforcement action, e.g., capital expenditures made to install pollution control equipment. Accordingly, economic benefit derived from repeat violations may be the result of failing to properly operate or maintain the equipment, e.g., failing to purchase the chemicals necessary for adequate treatment, failure to run or repair the equipment as necessary to comply, or expenditure avoidance generally.

This calculation can only be made using either actual costs or reasonable capital and operational cost estimates for installing and operating pollution control equipment that would have allowed the responsible party to be in compliance. In calculating economic benefit, enforcement staff may utilize the EPA computer model as appropriate. If this information is not available at the time of the enforcement conference, then the penalty may be adjusted at a later date to include this penalty component.]

STEP 7 Those entities which have been evaluated as having repeat violations should also be considered on a multimedia basis and/or on a

corporate-wide basis. Those situations of noncompliance that are determined to be multimedia and/or corporate-wide, including those violations that have caused environmental harm or are a threat to the public's health, should be referred to the Deputy Commissioner for EQC by the Bureau Chief. The Deputy Commissioner may conduct a conference with appropriate representatives of the entity. If the Deputy Commissioner, in consultation with the Commissioner, determines that sanctions other than further orders are required, Department staff will initiate the appropriate actions, to include but not be limited to, preparation of an order to revoke some or all permits held by the entity, preparation of an order requiring cessation of operations, or initiation of a court action seeking specific relief.

SUMMARY

The total civil penalty settlement amount is based upon the following formula:

Civil Penalty = Gravity Component + Violation Recurrence Component + Recalcitrance Component +/- Adjustments.

NOTE: It is recommended that a civil penalty assessment rationale be developed for each enforcement action for which a civil penalty is assessed. This rationale should be retained pending resolution of the enforcement action.

SECOND NOTE: This guide does not apply to programs for which penalty amounts for repeat violations are set forth in either statute or regulation.

Nothing contained herein shall be construed to limit the authority of the Commissioner to take necessary action without following the steps of this Penalty Calculation Guide.

IV. GENERAL PROVISIONS

1. Where a condition exists or a violation has occurred which

may result in a serious risk to the health and safety of persons or the environment, the Department may take appropriate action as authorized by statute or regulation to address the problem.

2. This policy does not preclude the use of criminal sanctions in appropriate circumstances. Procedures for the referral of enforcement matters for criminal investigation and prosecution are contained in the "Uniform Criminal Referral Policy for Environmental Quality Control," approved by the Board of Health and Environmental Control on August 8, 1991, which procedures are adopted and incorporated herein by reference, and shall be followed for criminal enforcement matters.
3. Reports on Consent and Administrative Orders issued each month by the Office of Environmental Quality Control shall be made to the Board.
4. Each Bureau within the Office of Environmental Quality may establish a Bureau policy on enforcement procedures and the assessment of civil penalties provided such procedures are consistent with this policy.
5. The procedures set out in this policy are intended as guidance for Environmental Quality Control staff. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party involved in enforcement proceedings or matters of litigation with the Department. The Department reserves the right to act in variance with this policy.

This policy replaces the Uniform Enforcement Policy approved by the DHEC Board on June 24, 1982, and amended August 25, 1983 and December 12, 1991.

September 9, 1999