

**Ohio Environmental Protection Agency
Standard Operating Procedures**

Compliance Assurance through Enforcement Program

This directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to Ohio EPA personnel to achieve a uniform Compliance Assurance through Enforcement Program for Ohio EPA. This directive does not have general application and is not being enforced as having the force of law, nor does it create or extend any legal rights or defenses to persons regulated by Ohio EPA.

I. GENERAL GOALS OF COMPLIANCE ASSURANCE THROUGH ENFORCEMENT

The purpose of Ohio EPA's Compliance Assurance through Enforcement Program is to ensure that the public benefits of environmental protection established in Ohio EPA's rules, permits, orders and licenses are properly achieved and maintained. The four general goals of Ohio EPA's Compliance Assurance through Enforcement Program are:

- Ensuring that violators return to compliance in a timely manner and giving them the tools and information necessary to help prevent violations from occurring;
- Ensuring that Ohio EPA complies with Ohio Rev. Code Section 119.14 by providing additional enforcement tools instead of penalties to abate first-time paperwork violations committed by businesses.
- Deterring violations and ensuring that violations have consequences which may include penalties; and
- Mitigating environmental and programmatic harm caused by violations.

Achieving the first goal, by ensuring that violators return to compliance in a timely manner and giving them the tools and information necessary to prevent violations, will have the greatest impact on maintaining the public health and welfare benefits of environmental protection. Providing tools instead of penalties, such as notices, warning letters, and the offering of technical assistance, will allow Ohio EPA to meet the second goal of complying with the General Assembly's directive that penalties for first-time paperwork violations committed by businesses should be waived (with some exceptions). The third goal, deterring violations and ensuring consequences for violations, is also a necessary component of a successful compliance assurance through enforcement program. If violators suffer no disadvantage from their violations, but instead are allowed to benefit economically from them, there will be no incentive to comply, and complying entities will suffer a competitive disadvantage. Achieving the final goal, by mitigating environmental and programmatic harm caused by violations, maintains the public health and welfare benefits of environmental protection while holding violators financially accountable for their violations.

A. Objectives for Achieving Goals of Compliance Assurance through Enforcement

The following objectives underlie the Ohio EPA's Compliance Assurance through Enforcement Program:

1. Achieving compliance with Ohio's environmental laws is a primary focus of Ohio EPA.
2. Compliance assurance methods range *from* technical assistance, education and outreach *to* civil and criminal enforcement through referral to the Ohio Attorney General, with several steps in between depending upon specific circumstances.
3. In selecting a compliance assurance method, the primary objective is to select the tool that is most likely to result in timely compliance and the best environmental protection.
4. Providing access to an online compliance database available to the agency and to the public through Ohio EPA's webpage which will provide for transparency, accountability and improved compliance.
5. Priority of compliance inspections should be principally based on five criteria:
 - Reduction of risk to public health and welfare;
 - Pollution prevention or waste minimization;
 - Preservation of the integrity of the regulatory structure;
 - US EPA priorities as expressed in delegation agreements and grant obligations; and
 - Deterrence.

II. COMPLIANCE ASSURANCE THROUGH ENFORCEMENT TOOLS

Within the legal constraints of the various programs, the following tools should be used as needed by each Ohio EPA division to obtain timely compliance and to deter future violations. These tools do not necessarily need to be used in a linear fashion but should be employed strategically in a manner calculated to timely return an entity to compliance and provide for deterrence:

- Inspection or Warning Letter Identifying a Risk of a Potential Violation
- Notice of Violation ("NOV") Letter
- Advanced Warning Letter
 - Program Chief's Warning Letter
 - Director's Warning Letter
 - Bilateral Compliance Agreements (BCAs)
- Administrative Enforcement
 - Unilateral Director's Final Findings and Orders
 - Expedited Settlement Agreement ("ESA")
 - Conditioned Licenses
 - Negotiated Director's Final Findings and Orders
- Referral to Ohio Attorney General for Enforcement.
- Referral to US EPA

1. Inspection or Warning Letter Identifying a Risk of a Potential Violation

An inspection or warning letter identifying a risk of a potential violation is an informal tool that may be used for ensuring continued compliance. This inspection or warning letter will typically be written by inspectors to inform the regulated entity of apparent conditions that could likely lead to a violation if not addressed soon and request preventive actions. An inspector may choose to issue this letter to address conditions that could lead to violations that are few in number, minor, and easily corrected in a limited time with minimal oversight by Ohio EPA.

Inspection or warning letters should include technical assistance advice particularly when compliance challenges may be due to inexperience or misinformation. For a complex or multi-media issue, the agency may need to refer the regulated entity to a specific person at Ohio EPA or a technology that may assist the regulated entity in resolving the issue and preventing its reoccurrence. In that instance, the letter should include an explanation of the deficiency, the name of a contact person with a telephone number and/or e-mail address for the regulated entity to contact for assistance, a suggested timeline for obtaining technical assistance, and a general description of Ohio EPA's Compliance Assurance through Enforcement Program including consequences of future non-compliance.

If a more severe compliance tool is used against the regulated entity at a later date, the deficiency that generated an inspection identifying a risk of a potential violation should not be cited. This tool should not be used when a regulated entity has violated rules or laws, although Ohio EPA should always be willing to offer technical assistance when possible.

2. Notice of Violation ("NOV") Letter

A notice of violation (NOV) letter is a means for Ohio EPA to inform a regulated entity that violations of statutes, rules, orders or permits have occurred. A NOV letter includes a listing of the violations at the facility, a reference to a possible civil penalty, a description of the steps the regulated entity should take to return the facility to compliance in a timely manner or a request for a compliance plan and schedule to be submitted in a timely manner.

A NOV letter is to be issued to the regulated entity no later than twenty-one (21) days after discovering a violation.

An exit conference should be held with the regulated entity at the conclusion of any inspection whenever possible to summarize the results of an inspection and the actions that need to be taken by the regulated entity. The exit conference should include technical compliance assistance whenever possible, especially when compliance issues may be due to inexperience or misinformation. It is also acceptable to have the exit conference by phone if the regulated entity is not available. For a complex or multi-media issue, an inspector may need to refer the regulated entity to a specific person at Ohio EPA or another agency or business with the expertise to assist the regulated entity in resolving either the violation or the conditions that could likely lead to a violation if not addressed soon. In that instance, the NOV letter should include an explanation of the compliance issue, the name of a contact person and telephone number and/or e-mail address for the regulated entity to contact for assistance, a suggested

timeline for obtaining technical assistance, and a general description of Ohio EPA's Compliance Assurance through Enforcement Program including consequences of future noncompliance.

If the inspector determines that a regulated entity has committed a violation that reaches the level of significant noncompliance (as defined in the Program Specific Enforcement Policy under Section III) or otherwise needs to be tracked through the agency's enforcement program, and such violation has not been abated within forty-five (45) days of its discovery, the inspector should promptly arrange a compliance conference where representatives of the regulated entity and Ohio EPA meet to review and discuss the violations and the regulated entity's compliance efforts. Such compliance conference should be held within thirty (30) days of the expiration of the forty-five (45) day period referenced above.

All violations of Ohio's environmental laws alleged by Ohio EPA and its inspection designees should be cited appropriately in written correspondence and forwarded to the regulated entity, and filed in accordance with the guidelines of Ohio EPA's Compliance Assurance through Enforcement Program.

3. Advanced Warning Letters and Bilateral Compliance Agreements (BCA)

a. Program Chief's Warning Letter

A Program Chief's Warning Letter may be sent to a company for reasons including the following:

- i. The violation(s) resulted in minimal or no environmental harm and the company quickly returned to compliance. In this situation, the purpose of the warning letter is to reinforce the seriousness, to prevent recurrence of the violation(s) that have been corrected, and to remind the company of its obligations under Ohio's environmental laws.
- ii. The violation(s) resulted in minimal or no environmental harm, but the company has yet to demonstrate it has abated the violation(s) or has failed to submit an acceptable plan to return to compliance or the additional information requested by the agency. In this situation, the purpose of the warning letter is to give the violator one last chance to comply without additional escalated enforcement action being recommended to the Director to address noncompliance.

b. Bilateral Compliance Agreements

This compliance tool is a letter of agreement signed by the Division Chief and the regulated entity that memorializes steps that will be taken in an agreed schedule to address noncompliance. This tool has historically been used by the Division of Drinking and Groundwater and has proven to be an effective tool to address violations that are relatively simple to correct thus avoiding the need to pursue a more formal enforcement response. It is recognized that this agreement is not, for practical purposes, enforceable. Accordingly, if the entity fails to fulfill the agreed to commitments in the BCA, it is expected that the program recommend pursuing a more escalated enforcement tool such as Findings and Orders or AGO referral.

c. Director's Warning Letter

A Director's Warning Letter may be appropriate following a compliance conference when the regulated entity needs to be placed on notice that Ohio EPA is on the verge of going to the next stage in the enforcement process which could include a recommendation to the Director that enforceable orders including a financial penalty and/or a referral to the Ohio Attorney General be pursued. This tool may also be helpful if getting the attention of a regulated entity's corporate management may result in more timely compliance. This letter is not a final action of the Director.

4. Expedited Settlement Agreement ("ESA")

An Expedited Settlement Agreement ("ESA") is an enforcement tool where the Director of Ohio EPA offers an expedited settlement agreement that includes a nominal penalty, in the range of a minimum of \$500.00 to a maximum of \$10,000 or \$20,000 (depending on the program) in exchange for prompt, documented abatement of the documented violations and an agreement that the regulated entity will not contest the settlement agreement. The regulated entity is not required to admit or deny committing the specific violations under this program. The Expedited Settlement Agreement provides the regulated entity with an incentive for prompt compliance with Ohio's environmental laws and reduces the time and resources spent on contested cases. These will be issued under Ohio Rev. Code § 3745.01 and the applicable program's enforcement authority as a final action.

When a program's enforcement staff determines that a regulated entity's noncompliance requires a formal enforcement response and identifies an ESA as the appropriate enforcement tool, the enforcement staff and its legal counsel should prepare the proposed ESA for review and approval by the Enforcement Coordinator, Program Chief, the program's supervising attorney, the Deputy Director of Legal Affairs (sometimes referred to as the Director's Chief Legal Counsel) and the Director. This referral package should be submitted to the official review and approval/sign-off process within sixty (60) days of the Enforcement Committee's determination that an ESA is the appropriate enforcement tool. Official in-house approval of a final settlement, in the form of an ESA, may occur after signing by the regulated entity's representative if its terms are within the parameters of the proposed ESA.

A. Eligibility

An ESA may be appropriate when a violation, or a series of violations, is significant enough to warrant a financial penalty of at least \$1,000 (before discounting) and the needed injunctive relief to abate the violation, or series of violations, is both apparent and minimal. The compliance action must be able to meet the ESA timeline, which is sixty (60) days, calculated *from* the date of the regulated entity's receipt of the offer to resolve violations through an ESA to the date of the signed agreement and receipt of the penalty. If the violations cannot be expected to be abated within 60 days of receipt of the Director's Invitation to Negotiate (ITN), then the ESA is not an appropriate compliance tool to address the violations at issue. An ESA may also be appropriate when a regulated entity has already abated the violation(s) in response to an inspection or the receipt of an NOV or when there are no actions which need to be taken to abate the violation(s).

B. ESA Guidelines

1. A compliance schedule not to exceed sixty (60) days of receipt of the Director's Invitation to Negotiate (ITN) that clearly spells out the steps necessary to bring the entity back into compliance. (Note: there is an opportunity to toll the 60-day requirement if an ability to pay request has been promptly submitted until such time as Ohio EPA makes a determination on such request.)
2. The minimum amount of a cumulative penalty (after discounting) shall be \$250.00 and the maximum amount shall be \$10,000.00 or \$20,000 (depending on the program) for all cumulative violations.
3. The public benefit of quick compliance that justifies offering a discount from the standard penalty calculation must be documented in the case materials and in the ESA offer letter to the regulated entity.
4. A rejected ESA shall be immediately placed into an escalated enforcement category such as Findings and Orders, or referral to the Ohio Attorney General or US EPA, unless new information is obtained by Ohio EPA indicating that escalated enforcement is inappropriate.
5. Ohio EPA may offer an ESA for a particular violation only one time. Thus, for example, if an entity violates a PTI requirement and the matter is resolved through an ESA, subsequent violations of the same PTI requirements by the same entity will not be eligible for an ESA.
6. Ohio EPA has the discretion to offer an ESA to resolve a violation, or series of violations, even when such an offer was previously rejected to resolve a different violation, or series of violations.
7. An ESA shall always be drafted to require the regulated entity to waive its administrative and judicial review rights for the matters resolved therein.
8. An ESA shall always be drafted to allow the regulated entity to sign the document without admitting or denying the allegations contained therein.
9. An ESA shall always be drafted to require Ohio EPA to waive any further enforcement action by Ohio EPA against the regulated entity pertaining to the allegations contained therein.
10. An ESA shall always be drafted to require the regulated entity to waive any objections that it may have regarding jurisdiction of Ohio EPA.
11. Penalties and discounts will be identified in program specific addendums.
12. An ESA should not contain obligations that require the regulated entity to perform any additional corrective actions beyond the abatement that is required to be completed within the ESA's initial 60-day period.

C. Procedures

After determining that a violation, or a series of violations, is eligible and that compliance may be achieved in a timely manner through an ESA, the program should prepare the following documents:

1. A cover briefing memo to the Director of Ohio EPA recommending the ESA with supporting documentation, including:
 - a. A description of the alleged violation(s);
 - b. The regulated entity's compliance history;
 - c. The original penalty range and its statutory authority;
 - d. The proposed discounted penalty;
 - e. The reasons for offering a discounted penalty; and
 - f. The general ESA program requirements including benefits and settlement deadlines;

2. A proposed ITN to the regulated entity offering to resolve the alleged violation, or series of violations, through an ESA, including:
 - a. A description of the alleged violation(s);
 - b. The regulated entity's compliance history;
 - c. The original penalty range and its statutory authority;
 - d. The proposed discounted penalty;
 - e. The reasons, including public benefits, for offering a discounted penalty;
 - f. The general ESA requirements including benefits and settlement deadlines; and
 - g. Ohio EPA's compliance plan for the regulated entity if the ESA is not voluntarily accepted.

3. An ESA, including the following information: (current boilerplate)
 - a. The authority of Ohio EPA for the ESA;
 - b. The purpose and benefits of the ESA;
 - c. A description of the alleged violation(s);
 - d. A description of the corrective actions that must be completed as a condition of the ESA being executed;
 - e. Ohio EPA's reservation of rights;
 - f. A "no admission" statement for the regulated entity;
 - g. A waiver of administrative or judicial review of ESA;
 - h. Effective date; and
 - i. Signature lines.

5. Director's Final Findings and Orders (Traditional In-House Settlement)

A five-year statute of limitations applies to environmental violations for which Ohio EPA will seek a civil penalty. In order to ensure that the agency brings enforcement actions within the five year time frame, time-specific performance standards are required for cases in which a civil penalty is being sought, either in-house or through referral to the Ohio Attorney General. When a program's enforcement staff determines that a regulated entity's noncompliance requires a formal enforcement response and identifies Director's Final Findings and Orders as the

appropriate enforcement tool (either consensual or unilateral), the enforcement staff and its legal counsel should prepare Proposed Director's Findings and Orders for review and approval by the Enforcement Coordinator, Program Chief, the program's supervising attorney, the Deputy Director of Legal Affairs (sometimes referred to as the Director's Chief Legal Counsel) and the Director. This referral package should be submitted to the official review and approval/sign-off process within ninety (90) days of the Enforcement Committee's determination that Director's Final Findings and Orders are the appropriate enforcement tool. Official in-house approval of a final settlement, in the form of Director's Final Findings and Orders, may occur after signing by the regulated entity's representative if its terms are within the parameters of the Proposed Director's Findings and Orders.

From the date of approval of the Proposed Findings and Orders by the Director, Ohio EPA has nine (9) months to negotiate a final settlement. If Ohio EPA is unable to reach a settlement within the nine-month period, a referral to the Ohio Attorney General should be made unless information has been obtained that would deem the referral or its timing to be inappropriate.

6. Referral to the Ohio Attorney General for Enforcement

A five-year statute of limitations applies to environmental violations for which Ohio EPA will seek a civil penalty. In order to ensure that the agency brings enforcement actions within the five year time frame, time-specific performance standards are required for cases in which a civil penalty is being sought, either in-house or through referral to the Ohio Attorney General.

When a program's enforcement staff determines that a regulated entity's noncompliance requires a formal enforcement response and identifies referral to the Ohio Attorney General as the appropriate enforcement tool, the enforcement staff and its legal counsel should prepare a referral package for review and approval by the Enforcement Coordinator, Program Chief, the program's supervising attorney, the Deputy Director of Legal Affairs (sometimes referred to as the Director's Chief Legal Counsel) and the Director. This referral package should be submitted to the official review and approval/sign-off process within ninety (90) days of the Enforcement Committee's determination that referral to the Ohio Attorney General is the appropriate enforcement tool. In order for the agency to meet its compliance and enforcement goals, the referral letter to the Ohio Attorney General should include a request that, if it is determined that sufficient evidence supports the referred violation(s), a complaint be filed in the proper court within one year if settlement is not achieved.

7. Referral to US EPA

In some instances, referral of an enforcement case to US EPA Region 5 may be appropriate for some Ohio EPA programs. Ohio EPA may also jointly enforce a case with US EPA or request other assistance from US EPA. Timelines for referring a matter to US EPA Region 5 should not exceed the timelines for referring a matter to the Ohio Attorney General.

8. Criminal Enforcement

When a violation is determined to potentially reach a level that warrants criminal investigation, the program's enforcement staff will request the Office of Special Investigations (OSI) to conduct an investigation per the procedures outlined in the Memorandum of Agreement between OSI and the Ohio EPA programs.

9. Supplemental Environmental Projects

See Ohio EPA's existing policy on Supplemental Environmental Projects.

10. Compliance and Enforcement Plan Requirement

If the inspector determines that a regulated entity has committed a violation that reaches the level of significant noncompliance (as defined in the Program Specific Enforcement Policy under Section III) or otherwise needs to be tracked through the agency's enforcement program, the inspector should within thirty (30) days of such determination draft and submit a Proposed Compliance and Enforcement Plan (as defined in Chapter II, Section 10 below) to the program's Enforcement Committee, or its designee. The Enforcement Committee, or its designee, shall consider the proposed plan and either adopt or modify the plan within thirty (30) days of receiving it and submit a recommended Compliance and Enforcement Plan to the program's supervising attorney for final review and approval. The Enforcement Committee, or its designee, should ensure that the approved Compliance and Enforcement Plan is available to the appropriate agency staff members, including the agency's Chief Legal Counsel, by having it posted in the confidential section of the Ohio EPA Compliance Database so that it can be enforced in a timely manner and that agency staff members are held accountable for its proper execution. The agency's Chief Legal Counsel may recommend revisions to the submitted plan to meet the agency's enforcement objectives as articulated by the Director. The timely drafting and submittal of a Proposed Compliance and Enforcement Plan in response to a violation that reaches the level of significant noncompliance is critical to the success of the agency's enforcement program.

This plan should include the following information:

- A. A description of the most recent violation, or series of violations;
- B. The regulated entity's compliance history, including prior instances of noncompliance such as specific dates and violations cited in notices of violations during the previous five year period;
- C. The enforcement tools utilized;
- D. An assessment of the cooperativeness of the regulated entity, with summaries of previous interactions;
- E. A description, or estimate, of the environmental harm resulting from the regulated entity's noncompliance;
- F. A description of the abatement options required to resolve the noncompliance;
- G. A description of any additional monitoring and/or testing required for the entity to demonstrate compliance;

- H. A recommendation for enforcement action to be taken, with timelines;
- I. If Ohio EPA requires the regulated entity to engage in monitoring and/or testing and submit results to Ohio EPA in conjunction with any enforcement action, the Compliance and Enforcement Plan shall explain the goals and objectives of such monitoring and/or testing. Each written analysis by Ohio EPA of monitoring and/or testing data received shall promptly be added to the Compliance and Enforcement Plan as an addendum; and
- J. A description of any technical assistance to be provided to assist the entity in achieving compliance, including whether a referral to OCAPP would be appropriate.

The Compliance and Enforcement Plan shall be regularly updated to include a subsequent violation, series of violations, written analysis of any required monitoring or testing results, abatement of violations, and changes in enforcement strategies for timely compliance. The Compliance and Enforcement Plan should serve as a comprehensive history of the agency's attempts to achieve timely compliance and the regulated entity's successes and failures in achieving timely compliance. To that end, language from a previously approved Compliance and Enforcement Plan should not be removed. A copy of the Compliance and Enforcement Plan shall be included in the materials for the Director's review relating to a recommendation and/or request for an Expedited Settlement Agreement, Proposed and Final Director's Findings and Orders, and referral to the Ohio Attorney General or US EPA Region 5 for enforcement.

11. Prohibitions

Ohio EPA has a dual role: addressing non-compliance and issuing permits. Both are important in protecting public health and the environment. In the absence of a statute or rule that requires Ohio EPA to consider enforcement issues when issuing a permit or license, the agency should not leverage its permitting authority to improve its position in an on-going enforcement action.

III. PROGRAM SPECIFIC ENFORCEMENT GUIDANCE

The chief of each program shall maintain a current program-specific enforcement policy that is consistent with the general policy, subject to the Ohio EPA Director's approval, including the following components:

- A. A definition of "general noncompliance" including examples;
- B. A definition of "significant noncompliance" including examples;
- C. Criteria for evaluating the need for an administrative penalty;
- D. Criteria for determining the amount of an administrative penalty;
- E. A procedure for disclosing penalty calculations to a regulated entity;
- F. A procedure for submitting documents for inclusion in an agency-wide compliance database available to the public through Ohio EPA's webpage;
- G. A procedure for closing enforcement, including a "Return to Compliance Letter" to be sent to the regulated entity and included in the agency-wide compliance database;
- H. Criteria for evaluating the program's compliance enforcement activities.

Each program-specific enforcement policy will be included in the general policy as an addendum.

IV. ADDENDUMS: PROGRAM-SPECIFIC ENFORCEMENT GUIDANCE

ADDENDUM A: AIR COMPLIANCE ENFORCEMENT GUIDANCE

1. A definition of “general noncompliance” including examples.

“General noncompliance” in the air pollution control program means the violation of a permit, rule, order or law that ordinarily does not require further enforcement action by the DAPC, other than a field office NOV letter. These are generally first-time, minor, and short-term excursions that involve negligible environmental harm. Examples of violations considered as “general noncompliance” include the following:

- a. A first-time open burning rule violation for a small fire that does not involve the burning of tires or other petroleum-based waste or does not result in a significant economic benefit to the violator;
- b. A first-time failure to obtain a PTI, PTO or PTIO prior to installing or operating an air contaminant source, excluding entities with knowledge of such rules, and that does not involve any violation of an emission limitation, control equipment requirement, or new source review (“NSR”) requirement;
- c. A first-time, isolated violation of any record-keeping or reporting requirement that does not result in any actual or possible environmental harm, in accordance with State law and Governor’s Executive Orders;
- d. A first-time failure to perform an asbestos survey and/or the failure to submit a notification prior to beginning any demolition or renovation operation, where there is substantial compliance with work practice requirements;
- e. A first-time violation of the requirements of the Risk Management Plan rules as determined during facility audits;
- f. An emission limitation violation where the correction to the violation involves establishing a higher emission limitation, which if originally applied to the violator, would not have resulted in any violation; and
- g. Any other violation deemed to be general noncompliance by the Chief of DAPC.

2. A definition of “significant noncompliance” including examples.

“Significant noncompliance” in the air pollution control program means the violation of a permit, rule, order or law that may require further enforcement action by the DAPC beyond a field office NOV letter. Examples of violations considered as “significant noncompliance” include the following:

- a. A violation of the open burning rules that involves a large fire, a fire involving the burning of tires or other petroleum-based waste, or results in a significant

- economic benefit to the violator.
- b. A repeat failure to obtain a PTI, PTO or PTIO prior to installing or operating an air contaminant source, any failure to obtain such permits involving entities with knowledge of such rules, and any such failure also involving the violation of an emission limitation, control equipment requirement, or NSR requirement.
 - c. Repeated violations of a previously cited general noncompliance event.
 - d. A failure to comply with the substantial requirements of an inspector's warning letter or NOV letter.
 - e. A violation of the Stage I vapor balance rules for unloading of gasoline at a gasoline dispensing facility without the use of a vapor balance system.
 - f. Any violation that meets the USEPA's criteria for a "high priority violator" ("HPV") as identified in the Workbook titled "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)," June 23, 1999.
 - g. Any violation resulting in a significant economic benefit, i.e., equal to or exceeding \$5,000.
 - h. Malfunctions resulting in a documented health nuisance, i.e., ambient air concentrations, predicted from dispersion modeling, that would be considered to be a public health threat, including exceedances of the NAAQS or actual monitored violations directly attributable to the source.
 - i. Any documented work practice violation of the asbestos emission control standards.
 - j. Any violation of the asbestos inspection and notification requirements of the asbestos emission control standards where the amount of regulated asbestos-containing material cannot be determined.
 - k. Any substantial violation of a Title V permit, synthetic minor PTI, or Federally Enforceable State Operating Permit ("FESOP").
 - l. An emission or significant procedural violation continuing, or likely to continue regularly or intermittently for at least seven days and has not been adequately addressed or resolved by the violator.
 - m. Any other violation deemed to be significant noncompliance by the Chief of DAPC.

3. Criteria for evaluating the need for an administrative penalty.

Administrative penalties are not needed in at least the following instances:

- a. First-time paperwork violations (excluding the failure to obtain permits) covered by State law and by the Governor's Executive Orders.
- b. Any nuisance case involving only odors.
- c. Asbestos notification cases where there is substantial compliance with work practice requirements and the violation is a first-time offense.
- d. First-time open burning violations not involving large fires or fires containing tires or other petroleum-based waste materials.
- e. Violations exceeding the five-year statute of limitations law.
- f. Violations for which an Enforcement Action Request was not submitted within 18

months of discovery.

- g. First-time, unknowing violations for installation or operation of an air contaminant source without applying for and obtaining installation and operating permits for sources otherwise in compliance with best available technology.

4. Criteria determining the amount of an administrative penalty.

Administrative penalties for cases to be resolved with administrative orders are to be determined using the appropriate penalty protocol, i.e., either USEPA's Clean Air Act Stationary Source Civil Penalty Policy or any special penalty worksheets developed by DAPC for special cases, such as risk management plan and stage II vapor control requirement violations. For other types of violations not covered by specific worksheets, the penalty factors are as follows:

- a. For open burning violations, the penalty amount is up to \$250 per violation per day for residential open burning, and up to \$1,000 per violation per day for non-residential open burning. For cases also having a significant amount of economic benefit, the previous penalty amounts should be increased by the amount of economic benefit accrued.
- b. For Stage I vapor balance system violations at gasoline dispensing facilities, the penalty amount is \$1,000 per violation for not using the vapor balance system or employing a defective vapor balance system while transferring gasoline.
- c. For government fleet violations, the penalty amount is up to \$5,000 per violation for not testing and certifying compliance for a particular year.

Administrative penalties for cases to be resolved with expedited settlement agreements ("ESAs") are to be determined using the appropriate penalty policy and then applying a discount to be determined in each specific case, but with a default value of 50 percent. For ESAs, DAPC applies a minimum penalty of \$500 (after discounting), and a maximum cumulative penalty of \$20,000 (after discounting). Per the general enforcement guidance, only violations involving a minimum penalty of \$1,000 (before discounting) will be candidates for ESAs.

5. A procedure for disclosing penalty calculations to a regulated entity.

For entities that will be receiving administrative orders from Ohio EPA, a penalty calculation worksheet is to be enclosed with the orders. This worksheet forms a basis for discussion of the penalty elements and for reaching settlement agreements. Penalty calculation worksheets are provided to regulated entities for all cases involving use of the USEPA's Clean Air Act Stationary Source Civil Penalty Policy and any special penalty worksheets developed by DAPC for special cases, such as risk management plan and stage II vapor control requirement violations. For other cases where a worksheet is unnecessary because the penalties are based on a fixed amount per violation, the derivation of the penalty amount will be identified in the findings section of the administrative orders.

For entities that will be receiving ESAs from Ohio EPA, a penalty calculation worksheet will be enclosed with the document being sent to the entity for signing. This worksheet will also summarize the penalty amount that would be due for the violation(s) should the ESA tool not be

pursued.

6. **A procedure for submitting documents for inclusion in an agency-wide non-compliance database available to the public through Ohio EPA's webpage.**

This procedure will be added to this Addendum upon development by the Ohio EPA task group established to formulate this procedure agency-wide.

7. **A procedure for closing enforcement, including a Resolution of Violations letter to be sent to the regulated entity and included in the agency-wide non-compliance database.**

Enforcement cases may be closed at both the field office and Central Office levels. At the field office level, cases may be closed when compliance is achieved after issuance of an NOV letter and no further enforcement action is appropriate under DAPC enforcement guidance. The decision to close an enforcement case at the field office level shall be made in concurrence with the Central Office enforcement contact person during regularly scheduled enforcement conference calls with each office, USEPA contacts and the Central Office enforcement contact person or at some other time. Cases at the Central Office level are closed at the time it is decided no further enforcement action is necessary or when administrative orders or an expedited settlement agreement are issued, or when referrals are made to the Attorney General's Office or USEPA.

Resolution of an enforcement case at the field office level is to be accompanied by a letter to the entity informing it that the violations have been addressed and no further action is contemplated by the field office in consultation with Central Office.

Closure of an enforcement case at Central Office with no further action will be accomplished through a similar letter from the Ohio EPA Legal Office indicating the resolution of the matter. For cases resolved by ESAs, the issuance of such agreements is the indication that the matter is settled because compliance is a requirement for issuance of such agreements. For cases resolved by administrative orders, the completion of all milestones therein shall be the entities indication that the matter is settled. In the case of administrative orders, entities may request termination of the orders to ensure closure. For cases resolved by a referral to the Attorney General's Office, the Ohio EPA Legal Office may send the entity a written notice that its violations have been referred to that office for enforcement action.

All Resolution of Violations letters are to be included in the agency-wide noncompliance database as developed by the Ohio EPA task group.

8. **Criteria for evaluating the program's compliance enforcement activities.**

The DAPC will establish goals for its compliance enforcement program at the beginning of each calendar year in consultation with the Director's Office. Example criteria that have traditionally been used to track activities and that can apply to future activities are as follows:

- a. The number of enforcement cases resolved.
- b. The number of administrative orders offered.
- c. The number of administrative orders issued.
- d. The number of expedited settlement agreements offered.
- e. The number of expedited settlement agreements issued.
- f. The number of enforcement cases pending.
- g. The facility compliance percentage statewide.
- h. The facility compliance percentages by field office.
- i. The timeliness of case resolutions in general.
- j. The timeliness of HPV case resolutions.
- k. The timeliness of ESA case resolutions.
- l. The number of full compliance evaluations conducted by each field office versus the commitment made to USEPA during grant development.
- m. The number of case resolutions at the Attorney General's Office.
- n. The number of "old" cases still pending at the end of each calendar year.

ADDENDUM B: DRINKING WATER COMPLIANCE ENFORCEMENT GUIDANCE

DRINKING WATER COMPLIANCE ENFORCEMENT POLICY

I. General Compliance Strategy

Enforcement actions within the Division of Drinking and Ground Waters (DDAGW) primarily focus on addressing Public Water Systems (PWS) that are considered to be in significant noncompliance. As of October, 2010, US EPA has begun implementing a new methodology called the Enforcement Targeting Tool (ETT) which is a scoring system that rates noncompliance and defines those systems that are considered to be in “significant noncompliance”. As a delegated program, we are using the ETT and its scoring methodology to drive our enforcement priorities. The ETT defines any system with a score greater than or equal to 11 to be in significant noncompliance.

Our goal will be to address public water system violations before they reach a score of 11. To meet USEPA requirements, DDAGW must address all systems with a score greater than or equal to 11. Currently we have approximately 10-15 systems per quarter with a score of 11 or greater that are not already in the process of being addressed. To address these systems, they must return to compliance or have a formal enforcement action taken. DDAGW will employ the following steps to address these systems to bring them back into compliance:

- i. The quarterly ETT sent by USEPA Region 5 will be used by DDAGW for developing the Compliance and Enforcement Plan (CEP). Once the list is verified, Central Office and the District Offices will work together to prepare a CEP for every unaddressed system with a score of 11 or greater within 30 days. The underlying violations should be verified by the appropriate office before inclusion in the CEP. In some cases, the case may be requested for immediate referral to CO for formal enforcement. The District will present the CEPs at a District Office Compliance Coordinator (DOCC) meeting within 60 days of the final quarterly ETT list. The plan will be finalized after the DOCC meeting. The plan may include the district executing a sanitary survey, LSSV, district office compliance meeting, warning letter, or referral for an enforcement action. CEPs will be updated and reheard periodically as determined during the DOCC meeting until the system has returned to compliance or the case is referred for enforcement.
- ii. If the system is still in noncompliance after the timeframes set forth in the CEP, the case will be referred to CO for formal enforcement. The EC will decide whether to prepare a BCA, a conditioned license, proposed F&Os or an ESA. Some cases may require immediate referral to the Attorney General’s Office.

1. BCAs will be employed if the EC believes the corrective actions necessary to abate the violations are straight forward and the PWS's actions and cooperativeness indicate that compliance can be achieved outside of an enforceable mechanism. BCA's should be to the Assistant Chief for sign off within 14 days of the EC meeting.
2. For those PWSs not addressed through a BCA, the following enforcement tools will generally be employed. For systems required to obtain a license, a conditioned license will be the primary enforcement tool. The conditioned license may contain an administrative penalty calculated in accordance with OAC Rule 3745-81-04, as recommended by the EC depending on the level of outreach conducted and the recalcitrance. For more complicated cases, Findings and Orders may be negotiated. For systems which failed to obtain their LTO or systems that are exempt from obtaining licenses, F&Os or an ESA will be the primary tools. If the noncompliance requires immediate resolution because of threats to human health or if a PWS demonstrates a level of recalcitrance such that negotiation is not appropriate, the case will be referred to the AGO. Enforcement actions should be drafted and to the appropriate CO supervisor within 21 days of the EC meeting.

B. Determining Significant Noncompliance.

- I. As set forth above, the definition of "significant noncompliance" for PWSs will be determined in accordance with US EPA's Enforcement Targeting Tool (ETT) which USEPA began using in October 2010. Any PWS with a score of 11 or greater is in "significant noncompliance."

DDAGW will do the following to minimize the number of systems over 10:

1. Routinely check for violations that should be rescinded for violations that were sent in error; (for example, a monitoring violation where the sample was collected but the results were not reported by the laboratory). A letter will be sent to the pws for inclusion in the non-compliance database and the violation rescinded in SDWIS with a notation if it was reported late. Laboratory reporting violations will be addressed separately.
2. Routinely check for violations where the system has returned to compliance (for example, the system has taken their next routine sample following a monitoring violation.) An AOX or SOX code indicating return to compliance will be entered in SDWIS, but a letter will not be sent to the system.

3. Run the Ohio ETT list regularly to anticipate the systems that will be on USEPA's quarterly list and conduct reminder phone calls to attempt to return these systems to compliance. CEP's may be started based on this list if it appears the system will be over 10 when USEPA's list is sent.
- J. Definition of "general noncompliance". Any PWS with a score of less than 11 will be considered "general noncompliance." As the systems in significant noncompliance are addressed, DDAGW's secondary focus will be on systems which fail to get their required license to operate and have other violations, and systems about to reach a score of 11 (8 – 10). DDAGW will use the mechanisms in A. to prevent significant noncompliance. DDAGW will address these sites with District Office Warning Letters, site visits, calls, meetings, etc.

C. Penalty Considerations.

- i. Criteria for evaluating the need for an administrative penalty. DDAGW has the ability to seek an administrative penalty as set forth in OAC Rule 3745-81-04. In addition, DDAGW may seek civil penalties of up to \$25,000.00 per day per violation. The enforcement committee hears each case and determines if an administrative penalty will be assessed unilaterally as part of a conditioned license or through normal unilateral Findings and Orders, or whether a civil penalty will be assessed and proposed as part of proposed Findings and Orders. When deciding on whether to pursue a penalty the EC will consider the amount of outreach and compliance assistance offered the owner, length of ownership and number of violations and the relative recalcitrance or cooperation of the owner.
- ii. Criteria for determining the amount of an administrative penalty. Administrative penalties are assessed per OAC Rule 3745-81-04. Civil penalties are calculated in accordance with DDAGW's civil penalty policy (attached).
- iii. Procedure for disclosing penalty calculations to a regulated entity. Civil penalty calculations and the Guide to the Enforcement Process (attached) are sent with the action if proposed. The rule is cited for unilateral penalties.

D. Compliance Database.

DDAGW will include all notices of violation, rescind letters, final enforcement actions, AGO referral letters and enforcement termination letters in the Agency non-compliance database.

E. Procedure for Closing Enforcement.

When a PWS complies with an enforcement action, a return to compliance letter or termination letter, whichever is most appropriate, will be sent before closing the case. This document will be included in the agency-wide compliance database. For actions on a License to Operate (LTO), a termination letter will not be sent as the Orders terminate upon renewal of the LTO or other subsequent LTO action.

F. Criteria for Evaluating the Program's Compliance Enforcement Activities.

Overall compliance rates are tracked through the Shared Goals. Shared Goals are set with USEPA, and DDAGW works to achieve the compliance rates. Quarterly, the compliance rates are assessed for progress. DDAGW regularly reports on the Shared Goals with USEPA. Compliance with the enforcement action will be tracked in SDWIS through compliance schedules. DDAGW can track the length of time from the EC meeting until drafts are circulated for comment and from proposal (ITN) until finalization. Once finalized, DDAGW tracks compliance with the terms of the orders and sends quarterly reports to the district for overdue and pending deadlines. Violations outside those addressed in the enforcement action or violations of the enforcement action will cause the system to be re-heard at the EC for escalated enforcement.

ADDENDUM C: SURFACE WATER COMPLIANCE ENFORCEMENT GUIDANCE

Compliance Strategy:

The Division of Surface Water (DSW) enforces several programmatic areas. The vast majority of our formal enforcement action resources are directed to the National Pollutant Discharge Elimination System (NPDES) program, with a lesser degree to the 401 wetland, storm water, pretreatment, Operator Certification, and PTI programs. Given the complexity of many of the regulated NPDES wastewater treatment facilities and their demand for skilled operational resources, it is very unlikely that any facility can go for an extended period of time without any violations. Coupled with the nature of Ohio's complex NPDES permits, many violations will be generated annually, and must be carefully tracked.

DSW monitors these violations through the USEPA generated Annual Noncompliance Report (ANCR), and our own realtime database for minor NPDES permits. For major NPDES permits, we follow the USEPA quarterly report, we typically are in the 7-8% range for SNC. Minor NPDES compliance however is an area for improvement.

Regarding minor NPDES permits, the ANCR indicates significant noncompliance (SNC) running at roughly 22% of our total universe of minors (3,023). To deal with this universe of non-compliant facilities we have prioritized those minor NPDES facilities with effluent related SNC, which is approximately 11%, or around 340 NPDES permitted facilities.

In January 2010, each district office (DO), with direction from DSW, CO, developed a district specific SNC reduction plan. DSW, CO developed a Six Month SNC report that is sent to each DO enforcement supervisor on a semiannual basis that is used to track progress and maintain oversight on SNC reduction efforts.

It should be noted that SNC designation under the NPDES permit program is, at times, a very dynamic/transitory process with facilities listed in one particular six month report, and then off the next. District staff are aware of those facilities who regularly appear on the SNC list, and those whom are typically compliant who may be on the SNC list.

Currently DO staff are fully engaged to complete a compliance plan for each facility in SNC by the end of September in accordance with the following:

MINORS IN SNC:

For those minors which we find often in SNC, or recall from previous SNC reports, a compliance plan will be required, and shall be developed with the suggested information as stated in CATE on page 8/9.

For those minor entities which have been listed, and would otherwise be considered typically compliant, DSW, recommends that a compliance plan will not be needed at this time. It's recommended to watch these facilities to see that they in fact do not remain on the list.

MAJORS IN SNC:

The DO will draft a compliance plan for any major facility found to be in SNC.

Compliance Plan Follow-Through:

Once the compliance plan has been established in accordance with CATE and DSW's Enforcement Management System (EMS) approved by USEPA, Region 5, the district shall be responsible for monitoring the facility's actions in relation to the compliance plan. As a general matter, if the facility fails to comply with the compliance plan and continues to be in SNC or the facility remains in SNC despite complying with the steps outlined in the compliance plan, the facility will be referred to DSW, CO for consideration of further enforcement action. Because these facilities, under these circumstances, will be considered in SNC, (and injunctive relief will exceed 60 days), they are ineligible for an Expedited Settlement Agreement under the Compliance Assurance through Enforcement Policy. Accordingly, formal enforcement will consist of either Director's Final Findings and Orders or a referral to the Attorney General's Office.

Findings and Orders

Historically, DSW has employed two types of Findings and Orders when addressing cases appropriate for administrative enforcement, (1) traditional Findings and Orders that go through Enforcement Committee and Director's Office signoff and (2) streamlined Findings and Orders for those cases that are strait forward and with so little variation that they are not heard at Enforcement Committee. In these streamlined cases, the Director has delegated authority to George Elmaraghy to sign the invitation letter on his behalf.

Conversion of Some Streamlined Cases to ESAs (non SNC)

Going forward, a number of cases that have historically been handled in the streamlined process will be appropriate candidates for the Expedited Settlement Agreement as these cases are typically penalty only or if injunctive relief is required it is typically achievable within 60 days. Examples of cases that were historically part of this streamlined process that will be good candidates for the ESA approach include PTI violations, operator certification reporting cases, MS4 reporting cases. Storm water construction permit violations may also be eligible for the ESA. It is anticipated that DSW will request a similar delegation from the Director to process these ESA cases in a similar fashion as was historically done under the streamlined approach.

Continued Use of Streamlined Findings and Orders

DSW envisions some continued use of the streamlined Findings and Orders for certain facilities that are in SNC and thus not eligible for an ESA. Minor NPDES facilities in SNC will be eligible for this approach based on the criteria reviewed by DSW/CO and the supervising attorney. The criteria shall be as follows:

1. If the permittee has been subject to a compliance plan, the permittee substantially complied with the plan but remains in SNC despite efforts to correct the problem;
2. If the permittee has not been the subject of a compliance plan, the permittee has been cooperative and proactive in attempting to address the noncompliance;
3. The facility has not been the subject of a previous formal enforcement action on the part of the Agency;
4. The noncompliance is limited to a single facility;
5. The facility is in compliance with operator certification requirements;
6. The District Office has, at a minimum, done a visual inspection of the receiving stream and did not observe evidence of water quality impacts (odors, sewage fungus, sludge in stream, distressed wildlife)
7. There is no evidence of the violations causing an impact to human health;
8. If the permittee is a private entity there is no evidence of significant economic benefit resulting from the noncompliance;
9. The injunctive relief can be implemented within 24 months.

If a case meets these criteria and a streamlined case is approved, DSW will seek a non-negotiable penalty of \$5,000.00 in each and every case. In doing so, the Division will only give a legal release to some of the violations at issue. This means that if the entity fails to comply with these Orders or continues to have violations, a subsequent enforcement case will include the remainder of the historical violations that were not waived.

Streamlined Orders in Other DSW Programs:

Streamlined Orders will be considered in all other DSW programs such as storm water NPDES permits (construction, municipal and industrial), operator certification, and PTIs, if the injunctive relief will take longer than 60 days but less than 12 months to complete and otherwise meets the applicable criteria set forth above. In these cases, the Division will typically pursue a civil penalty not to exceed \$5,000.00. DSW has developed some standard penalty calculations for some of these types of cases but will be developing some additional guidelines to address gaps in certain areas.

III. PROGRAM SPECIFIC ENFORCEMENT GUIDANCE

DEFINITIONS:

A) General non-compliance (Definition):

Typically any NPDES regulated facility that does not accumulate enough violations to place them into significant non-compliance, or one characterized with chronic single event violations. Other examples of general non-compliance could be, but not limited to, the actions the Division of Surface Water (DSW) may take against facilities / owners regarding the construction of a waste water treatment works without a Permit-to-Install (PTI), or filling wetlands and other waters of the state without a 401 certification that are of a nature that would normally not create significant permitting concerns, storm water NPDES violations, and operator certification violations.

B) Significant non-compliance (Definition):

NPDES:

USEPA has established a complex definition for SNC regarding Major NPDES facilities which are referenced in the April 2009 USEPA approved DSW's Enforcement Management System (EMS) that has been maintained since 1997.

ADMINISTRATIVE PENALTY:

A) Criteria for evaluating need for administrative penalty:

DSW has penalty authority per ORC 6111.09 to collect a civil penalty of not more than \$10,000 per day of violation. All cases that are referred for enforcement have enough violations that a penalty is always warranted.

Criteria for determining need for Administrative penalty:

Civil penalties are calculated using DSW's Penalty Calculating Worksheets. The worksheets are included in the April 2009 USEPA approved EMS. The worksheets are attached; the instructions are located in Chapter V.

B) Disclosing penalty calculations:

Civil penalty calculations are public record and are typically accompany the proposed Director's Final Findings and Orders and/or provided upon request.

C) Submission procedures for documents to be entered into the Agency-wide Compliance Data Base:

Currently DSW has submission procedures, in which all final enforcement actions are posted on DSW's website. DSW will transition this information over to the agency-wide compliance data base once it is available.

D) Procedure for closing Enforcement:

In January 2011, DSW implemented an improved enforcement database with very dynamic reporting capabilities. New reports are constantly being developed as new reporting information is requested. A new report will be generated to track when facilities have complied with their associated orders. A subsequent letter will be sent out once confirmed with district staff.

E) Criteria for evaluating the program's compliance/enforcement activities:

USEPA provides review and overall evaluation along with improvement goals during their triennial OECA State Review Framework. SNC annual average is tracked and compared with the national average. The last few years SNC for Major facilities has been reduced to, and remains at, half of the national average.

For minor facilities, each district office has established an SNC reduction strategy. SNC percentages are reviewed semi-annually.

Previously established goals pertaining to the number of orders to be issued each year have been maintained.

Compliance with final DFFOs is managed thru quarterly reports sent to the district offices.

ADDENDUM D: MATERIALS AND WASTE MANAGEMENT COMPLIANCE ENFORCEMENT GUIDANCE

I. DEFINITIONS

A. Significant Noncompliance

Hazardous Waste Program:

For the hazardous waste program, DMWM has determined that a Significant Non-Complier (SNC) is a violator that has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; is a chronic or recalcitrant violator; or deviates substantially from the terms of a permit, order, agreement or from hazardous waste statutory or regulatory requirements.

Each facility or location will have site specific circumstances associated with violations to consider when making a SNC determination. The following are examples of violations that cause either an actual exposure or a substantial likelihood of exposure to hazardous waste or generally constitute substantial deviations from the terms of a permit, order, agreement or other Ohio hazardous waste statutory or regulatory requirements and may warrant the violator being designated a SNC:

- a violator who is operating as a hazardous waste treatment, storage or disposal facility without a permit, in accordance with Ohio Revised Code (ORC) 3734.02(E) and (F);
- a violator who transported hazardous waste to a non-authorized facility, in accordance with ORC 3734.02(F);
- a violator who fails to substantially comply with hazardous waste generator requirements, e.g., waste evaluation, personnel training, inspections, container management, contingency plan, etc.; and
- a violator who is a repeat violator or is recalcitrant.

These examples are provided for illustration only and are not meant to comprise a complete list. Additional information regarding the definition of a SNC and examples of SNCs can be found in Ohio's Hazardous Waste Enforcement Response Policy. Other violations will be considered and discussed as part of a case-by-case analysis with the DMWM Enforcement Coordinator.

Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs:

While the Director has the authority to take enforcement action for any violation of rule or statute, for the solid waste, infectious waste, and construction and demolition debris programs, DMWM has determined that a SNC is a violator who has committed an egregious violation, is

recalcitrant and has committed persistent violations of a lesser nature, or has an ongoing violation that is not corrected within a specified time.

An egregious violation is a violation that deviates substantially from the terms of a permit, license, registration, order, agreement or other statutory or regulatory requirement or has the potential to cause harm to human health and the environment. Egregious violations typically include Category 1 violations, as defined in DMWM's Solid Waste, Infectious Waste, and Construction and Demolition Debris Civil Penalty Policy (Formerly DSIWM's Civil Penalty Policy 2004). Examples of egregious violations that may warrant the violator being designated a SNC include, but are not limited to:

- noncompliance with authorizing documents such as filling beyond permitted disposal limits ("overfill") or operating beyond authorized facility boundaries;
- failure to obtain authorizing documents prior to commencing operations;
- failure to comply with authorizing documents, including Director's orders or judicial orders;
- acceptance of hazardous waste at a solid waste or C&DD facility under certain conditions;
- failure to close a facility;
- failure to control fire;
- failure to abate nuisance conditions;
- failure to fund financial assurance;
- failure to pay disposal fees;
- failure to correct open dumping violations within a specified time, and
- other violations of a very high priority nature.

A recalcitrant or persistent violator is an entity that continually or consistently violates a requirement or group of requirements over a given time frame (Initially, DMWM has set this as repeated violations within a nine month period). It is not necessary for the violations to be of the same statute, rule or authorizing requirement, but violations are typically among those identified as Category 2 violations (i.e. operational, ground water, etc.). These may also include violations that have been corrected but later recur on a chronic basis and reveal a pattern of noncompliance.

These few examples are provided for illustration only and are not meant to comprise a complete list. Other violations will be considered and discussed as part of a case-by-case analysis with the DMWM Enforcement Coordinator.

B. General Noncompliance:

Hazardous Waste, Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs:

For the Hazardous Waste, Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs, DMWM has determined that a General Non-Complier refers to a violator who does not meet the criteria listed above for a SNC.

II. ADMINISTRATIVE PENALTIES

A. When is an Administrative Penalty Necessary?

DMWM has determined that administrative penalties are appropriate when violations have risen to the level of a SNC and have not been corrected or were corrected but caused significant harm to human health, the environment, or DMWM's regulatory program. Civil penalties will also be assessed when DMWM determines that a penalty is necessary to deter violators and potential violators from future violations of Ohio's environmental laws and regulations and to recover any economic benefit gained by the violator's illegal actions.

B. How are Administrative Penalties Calculated?

For the Hazardous Waste Program DMWM implements its enforcement procedures manual, which incorporates the U.S. EPA "RCRA Civil Penalty Policy." For the Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs, DMWM has developed a penalty policy based on U.S. EPA's RCRA Civil Penalty Policy that specifically addresses the violations found in those program areas. For further details regarding penalty calculations please read the U.S. EPA RCRA Civil Penalty Policy and the DMWM Solid Waste, Infectious Waste, and Construction and Demolition Debris Civil Penalty Policy (Formerly DSIWM's Civil Penalty Policy 2004). DMWM also utilizes its enforcement procedures manual when considering penalties.

C. Disclosure of Penalty Calculations to Regulated Entities

In all instances where DMWM assesses an administrative penalty, DMWM will provide a worksheet that explains the DMWM's penalty calculations specific to an entity's violations. This penalty calculation worksheet will be transmitted with the Director's Final Findings and Orders initially sent to the violator.

III. ENFORCEMENT CLOSURE

To officially close out a violation or group of violations that have been abated, DMWM will send a Return to Compliance letter to the entity stating that DMWM considers the violations previously cited to be abated and that no further action is required. The Return to Compliance letter will be sent to the entity following DMWM's verification that the entity has abated the violation(s).

For entities subject to an escalated enforcement action that results in a Warning Letter, Expedited Settlement Agreement, Director's Final Findings and Orders, or Judicial Orders through the Ohio Attorney General's Office, DMWM will consider the escalated enforcement action closed on the effective date of one of the actions listed above, provided that the entity is complying with the requirements of those enforcement actions.

IV. COMPLIANCE DATABASE: Inclusion of Documents

Upon the completion of Ohio EPA's Compliance Database, DMWM District Offices and Central Office units will develop internal operating procedures that meet district and unit specific needs for uploading the following DMWM documents into the Compliance Database within the time frames described below.

Inspection Letter with Notice of Violation ("NOV"): An electronic copy of the official NOV sent to the violator will be placed on the public section of the Compliance Database within seven days after the issuance of the NOV.

Return to Compliance Letter ("RTC"): An electronic copy of the official RTC letter sent to the violator will be placed on the public section of the Compliance Database within seven days after the issuance of the RTC letter.

Escalated Enforcement Actions: An electronic copy of the official escalated enforcement action which includes Warning Letters, Expedited Settlement Agreements, Director's Final Findings and Orders, referrals to the Attorney General's Office ("AGO"), and Judicial Orders obtained by the AGO will be placed on the public section of the Compliance Database within seven days after the effective date of the escalated enforcement actions.

Compliance Enforcement Plan: An electronic copy of the compliance enforcement plan will be placed on the confidential section of the Compliance Database within sixty days after a SNC determination.

V. ENFORCEMENT PROGRAM EVALUATION

To determine the effectiveness of DMWM's compliance through enforcement program, DMWM's Enforcement Unit ("EU") Supervisor will on a yearly basis evaluate each case settled during the previous calendar year for adherence to enforcement performance standards and will prepare a report for the Manager of the Compliance Assurance Section. This report will identify the percentage of enforcement actions that met the internal performance standards and will provide a detailed explanation for those enforcement actions that did not adhere to the performance standards. Additionally, the EU supervisor shall provide tables identifying the average number of days to resolution of the enforcement action by case type and will provide a list of all cases settled during the year identifying the main issue of the case and the penalty amount obtained.

After reviewing the yearly case evaluations the Manager of the compliance assurance section and the EU Supervisor will discuss the results of evaluation and make changes as needed to improve enforcement performance.