

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT**

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TITLE: Violations Requiring ~~a~~An Extended Time Period ~~T~~o Correct

AUTHORITY: The Solid Waste Management Act, the Act of July 7, 1980 P.L. 380, No. 97 as amended; the Municipal Waste Planning, Recycling & Waste Reduction Act, Act of 1988, P.L. 556, No. 101, as amended; ~~the Storage Tank and Spill Prevention Act (Tank Act) of 1989, P.L. 169, No. 32, as amended; the Hazardous Sites Clean Up Act (HSCA), Act of October 18, 1988 P.L. 756, No. 108, and the regulations promulgated under the Acts.~~

POLICY: It is the policy of the Bureau of Waste Management (BWM) that all violations will be corrected within 180 days of determination of the violation, whenever possible. If a violation cannot be corrected within the 180-day timeframe, the Department ~~shall~~should pursue enforcement through an Order, Court Order, Consent Order and Agreement, or any other enforcement document determined to be appropriate by Regional Counsel. The enforcement action may include ~~permitting requirements to~~ obtain a permit or modification of existing permit conditions.

PURPOSE: The purpose of this policy is to ensure that violations are corrected within 180 days from the date the Department determined that a violation occurred and that uncorrected violations become the subject of an enforceable document in a similar fashion across all DEP regions. The policy is designed to achieve a certain amount of consistency across the DEP regional offices and to further ensure that status of the violations ~~are~~is properly tracked by BWM staff.

APPLICABILITY: This policy applies to all personnel and activities of the BWM including, but not limited to: ~~permitting, enforcement, resource recovery and planning, grants, monitoring, administration, state and federal Superfund activities,~~ emergency response special programs and inter-agency bureau agreements.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect existing statutory or regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

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DEFINITIONS, TERMS AND ABBREVIATIONS:

Civil Penalty Assessment Matrix - A gravity-based table developed by the Department to ensure uniform calculation of civil penalty amounts for similar violations across all DEP regions. The matrix considers degrees of willfulness by the violator when committing the violation as opposed to the severity of the violation. The matrix is part of the Department's approved program for obtaining federal authorization to implement the hazardous waste program in Pennsylvania.

eFACTS - The Environment, Facility, Application, Compliance Tracking System developed to combine electronic data from legacy systems into one Department-wide database to provide the means for a holistic view of the clients and sites (including facilities) that DEP regulates.

Notice of Violation (NOV) - A written notification to a person that conditions exist that have been determined to be not in compliance with applicable statutes and/or regulations.

PROCEDURES: In the course of performing an inspection, an inspector may cite a violation that will require more than 180 calendar days to be corrected by a facility. A facility may need an extended period of time to resolve conditions such as groundwater pollution, unlawful or unpermitted waste disposal, soils contamination, facility upgrades, regulatory event deadlines, etc. There may also be instances where the facility representative disagrees with an inspector that a particular condition is a violation of the regulations that may often require more time to resolve. In all such cases, regional staff should follow this guidance as closely as possible to resolve the violation. It is understood that specific cases may require different time frames or a different order in which steps are completed before a violation is resolved.

During the inspection, the inspector should explain to the facility representative why the existing condition is in violation of the regulations, and cite the violation on the inspection report. At the conclusion of the inspection, after the exit conference, the inspector should have the facility representative sign the inspection report. Prior to leaving the facility, the inspector should leave a copy of the report with the facility representative. Inspections at larger facilities may require more than one day to complete, or issues raised during the inspection may not be resolved without a thorough review of the regulations, or consultation with a supervisor. Results of an inspection may also be "Not Determined" while waiting for sample test results or for a facility to supply essential information. In these and similar cases it may not be practical to complete an inspection report and leave a copy with the facility on that day.

Immediately following an inspection that has raised complicated issues, the inspector should review and discuss the inspection and the subject conditions with ~~at their~~ ~~s~~Supervisor. If it is determined that more than 180 calendar days are required to return the facility to compliance, the ~~s~~Supervisor should inform the ~~e~~Operations ~~m~~Manager and discuss the inspection and the conditions determined to be in violation. The ~~e~~Operations ~~m~~Manager may ask the ~~r~~Regional ~~e~~Compliance ~~s~~Specialist to join the meeting, as an escalated enforcement action (administrative order, consent order, etc.) may be required to direct the facility to correct the violations. The type of escalated enforcement action and possible civil penalty requirements should be reviewed. If a determination for escalated enforcement is made, the ~~e~~Compliance ~~s~~Specialist may begin to draft the document and begin any necessary penalty calculations. Penalty calculations must follow the appropriate program civil penalty policy and penalty matrix. The Operations ~~m~~Manager will brief the Program ~~m~~Manager of the situation, ~~and also inform the regional counsel of a pending 'request for assistance'.~~

The Supervisor or Operations ~~m~~Manager may request that representatives of the facility attend a meeting with ~~Department~~EP officials ~~at the regional office~~ to discuss the conditions that are determined to be in violation and not in compliance with statutes or regulations. This meeting should be presented as the best opportunity for the facility to bring forth information that might serve to mitigate the violations. If the facility representative decides to attend such a meeting and includes its legal counsel, ~~the~~ ~~Department~~EP should also have ~~r~~Regional ~~e~~Counsel present.

A formal Notice of Violation (NOV) is normally a preliminary step to an escalated enforcement action. When conditions at a facility require more than 180 days to return to compliance, the ~~inspector~~ ~~Department~~DEP should issue ~~an~~ ~~formal~~ ~~Notice~~ ~~of~~ ~~Violation~~ (~~NOV~~) to the facility ~~by mail~~ as soon as possible. The NOV should cite all of the violations in writing, recommend time frames to correct minor violations and initiate steps to correct the violations that require a longer time period. ~~The NOV, b~~Because it is not an appealable document, ~~the NOV~~ can only “suggest” or “recommend” a corrective action within a specific time period. The NOV should be followed up with a partial inspection within 30 days of the initial inspection but after the date when violation correction is expected to commence. The follow-up inspection will be used to ensure that the minor violations have been returned to compliance, and the facility has started to address the other violations. The inspector will document all such work in an inspection report, which will be entered into eFACTS. The importance of accurate documentation in all cases, and especially those requiring significant time for correction is very important, as violation duration or speed of compliance is one of the attributes considered in a civil penalty calculation.

The inspection and violations should be entered into eFACTS within the 10-day post-inspection period allowed by the eFACTS data entry guidelines.

In all cases that require an extended time period for correction, ~~the~~ ~~Department~~DEP ~~will~~ should pursue enforcement against the facility through an Order, Court Order, Consent

Order and Agreement or other document determined to be appropriate by Regional Counsel. The type of document, compliance schedule, timeframe involved, etc. will depend upon the negotiation process, ~~department~~DEP staffing levels and the specifics of individual cases. In limited situations, due to extenuating circumstances, the Regional or Bureau Director, with the notification and concurrence of the Secretary, may allow correction of violations to proceed beyond 180 days without an enforcement document.

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