

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standards And Guidelines For
Identifying, Tracking, And Resolving Violations
April 4, 2004

All programs should incorporate in their internal guidance documents the following standards and guidelines for identifying, tracking, and resolving violations. However, where specific statutes, regulations, memorandums of understandings, grant agreements, and/or other official policy documents contain more stringent standards and guidelines for your program, then incorporate the more stringent standards and guidelines, and identify the source of those more stringent standards and guidelines in the internal guidance documents.

Within 30 days, programs should review their existing guidance and develop an implementation plan for incorporation of these standards and guidelines. Revisions to existing guidance or drafting of new guidance should be completed within 90 days and finalized within six months of this issuance of this directive. As appropriate, programs should define in their implementation plan any special needs and associated timeframes for working these changes through EPA or OSM as needed under program delegation. The Office of Policy will be monitoring this effort.

The implementation plan should include a notification to the Secretary of any program specific constraints that prevent the incorporation or implementation of these standards and guidelines.

I. Identifying That A Violation Has Occurred

A. On-Site Inspections

1. All programs should define the different types of on-site inspections – *e.g.* routine, complete, partial, follow-up, etc. – and identify the activities/facilities where each type of inspection should be done.
2. All programs should define the frequency and type(s) of inspection for each activity/regulated facility that is inspected by their program. For regulated facilities that have implemented a comprehensive environmental management system that is reviewed and/or certified by a third party, including, but not limited to ISO 14001, all programs should reduce the frequency of inspections at such facilities where possible.
3. All programs should identify their guidelines for how the inspector should prepare for an on-site inspection – *e.g.* review the Department's files for current permits, permit applications, permits that have expired and no application is pending, required information reported by the regulated entity, complaints, prior inspection reports, Notices of Violation, settlement documents,

past and current enforcement actions, etc. and consultation with the appropriate permit staff.

4. All programs should identify their guidelines for how to conduct an on-site inspection, including guidelines on the procedures, including chain of custody, for taking samples during an inspection, and other actions – *e.g.* review and evaluation of facility operations and/or permitted or regulated areas, focus on prior areas of non-compliance, review of specified plans and records, opportunities for compliance assistance such as recommending Pollution Prevention and Energy Efficiency site visits, and exit interview with responsible person to inform them of the findings of the inspection, *etc.*
5. All programs should incorporate the Department standard requiring the updating of a data system (default is eFACTS) to identify that an inspection has occurred within 10 working days of the inspection. If evidence of violation(s) is identified during the inspection, then that evidence should be evaluated pursuant to the program guidelines developed under Section I.D, below, to determine if violation(s) exist. If the Department determines that violation(s) exist, then the Department-determined violation(s) should be tracked and resolved under the standards and guidelines identified in Sections II-IV, below.
6. All programs should identify the types of regulated facilities where inspections must be coordinated with other programs to ensure complete compliance at the facility (such as coordinated WQ/WS inspections of a drinking water treatment plant with a NPDES permit for its filter backwash), and should identify the types of regulated facilities where inspections can be coordinated with other programs to facilitate complete compliance at the facility.

B. Review Of Information In Required Reports

All programs should identify their guidelines, including the frequency and criteria, for reviewing and analyzing, including analyzing trends over time, of all reports received from the regulated community (*i.e.* discharge monitoring reports, continuous emission monitoring reports, quarterly reports on clean-up actions under a consent order and agreement, *etc.*) or inspection reports from third-party inspectors, as required under statute, regulation, permit, and/or settlement agreement. For regulated facilities that have implemented a comprehensive environmental management system that is reviewed and/or certified by a third party, including, but not limited to ISO 14001, all programs should reduce the frequency of reports at such facilities where possible.

All programs should review all of the reporting obligations contained in applicable statutes, regulations and standard permit conditions to determine if there are any obligations that are no longer appropriate for compliance determination or program management purposes. This review should also include an analysis of resources needed and resources available to processes and review these reports. Reporting the findings of this review to the Secretary should be incorporated into the Implementation Plan.

C. Response To Complaints, Including Those Referred From Other Agencies

All programs should incorporate the Department's Complaint Response Policy, dated 1995. [see attachment]

D. Evaluating The Information To Determine A Violation

All programs should identify their guidelines for evaluating the information that they receive from on-site inspections, reports from the regulated community, response to a complaint, follow-up to a referral by an authorized third party (e.g. County Conservation District and Tank Inspectors), or other sources of information to determine whether any violation(s) exist of the statutory, regulatory, permit, settlement document, and/or other enforceable obligations applicable to the activity/facility at issue.

E. Evaluation of Existing Department Permit Fee Structures

All programs should evaluate their existing permit fee structures to determine whether the existing fees are sufficient to cover the Commonwealth's costs of conducting annual, periodic or follow-up inspections of the permitted facilities. If the fees are not sufficient, all programs should revise their fees structure to enable the Department to recover the Commonwealth's costs to conduct annual, periodic or follow-up inspections. The costs to the Commonwealth that need to be recovered include salaries and related overhead costs of employees, travel or equipment expenses, Department contractor or consultant expenses and sampling and laboratory analysis costs.

If, after evaluating the information from whatever source, the Department determines that a violation has occurred, then the standards and guidelines identified in Sections II – IV, below, apply to each Department-determined violation.

II. Notifying The Violator/Responsible Person That A Violation Has Occurred

A. Violations Determined During Inspections

1. All programs should incorporate the Department standard requiring that all violations be documented in writing in an inspection report on the date of the inspection and presented to the facility before ending the inspection, if possible. If the violation(s) cannot be determined on the date of the inspection because the receipt of sample results and/or further information is necessary, the "Inspection Results" field should be marked as "Pending." The determination of the violation and the completion of the inspection report should be done within 14 calendar days after receiving this necessary further information. Programs may establish an alternate time frame, if necessary and approved by the Regional Director, Bureau Director, or District Mining Manager. All violations, and the bases for the violations, should be clearly and concisely identified on the inspection report. Alternate time frames should be reported to the Secretary in the Weekly Report.
2. All programs should incorporate the Department standard requiring notification in writing to the violator, or a legal representative of the violator, of the results of the Department's inspection on the date of the inspection, or within 14 calendar days after the Department has received any further information necessary to determine the existence of a violation.
3. For any violations that are not resolved within 14 calendar days after the Department has notified the violator, or a legal representative of the violator, of the results of the inspection (and the Regional Director, Bureau Director, or District Mining Manager has not agreed to an extended time frame), all programs should incorporate the Department standard requiring that a Notice of Violation be issued in writing according to Section II.B, below. Case-specific time extensions to this standard should be reported to the Secretary in the Weekly Report.

B. Notice Of Violations

No later than 14 calendar days after: the completion of an inspection; expiration of a permit where no renewal application has been timely received by the Department; non-compliance with an obligation under a permit, consent order and agreement, consent decree, final order, and/or other enforceable document; and/or any other event where the Department has determined that a violation exists, all programs should incorporate the Department standard requiring that a Notice of Violation be issued in writing to the violator, or a legal representative of the violator, unless the violation has been resolved within the 14 calendar day period, or the Regional Director, Bureau Director, or District Mining Manager agrees that an extended time frame for issuing the Notice of Violation is acceptable in the specific case.

The issuance of a Notice of Violation may be waived by the Regional Director, Bureau Director, or District Mining Manager in cases where neither the regulated entity nor any person or entity legally related to the regulated entity have been issued a Notice of Violation or any enforcement action within the past three (3) years and the regulated entity is working towards correcting the current non-compliance in a timely manner. Case-specific time extensions to this standard and waivers should be reported to the Secretary in the Weekly Report.

The Notice of Violation should: clearly and concisely identify each violation, the bases for each violation, the requested actions (including a meeting, if applicable) to resolve each violation, and the requested due date(s) for those actions; and comport with the Department's Model Notice of Violation and Instructions, dated October, 2003 [see attachment]. The Notice of Violation should be closed out in the data system (default is eFACTS) when the violations identified in the NOV have been resolved and the violator should be notified in writing that the Department considers the violation(s) resolved.

Notwithstanding the above, the Department reserves the right to issue a Notice of Violation anytime during the 14 day calendar period identified above, and the Department reserves the right to issue a Notice of Violation and/or to take any enforcement action necessary, including assessing a civil penalty for identified violations. NOV's that are issued for violations that were resolved within a 14 calendar day timeframe should be approved by the Regional Director, Bureau Director, or District Mining Manager and their issuance should be reported to the Secretary in the Weekly Report.

C. Violator/Responsible Person Not Known

As appropriate, all programs should identify their guidelines for handling violations where the violator/responsible party is not known when the Department has determined that a violation exists.

III. Tracking And Resolving Violations

A. Tracking Violations

1. All programs should incorporate the Department standard requiring the updating of a data system (default is eFACTS) for recording all violations within 10 working days of the completion of the inspection or the mailing of the Notice of Violation as required under Section II.B, above.
2. All programs should incorporate the Department standard that all Department-determined violations be monitored by Department staff and tracked in a data system (default is eFACTS) until all of

the violations are resolved. NOTE – This will also require guidelines on how to handle violations that are not physically correctable such as a violation of a discharge or emission limit.

B. Resolution Of Violations Via An Enforceable Document

1. All programs should incorporate the Department standard that all violations that take more than 180 calendar days to resolve be addressed via a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document unless the Regional Director, Bureau Director, or District Mining Manager agrees that an enforceable document is not warranted in the specific case. Violations that take less than 180 calendar days to resolve may be incorporated into an enforceable document, as appropriate. Case-specific extensions to this standard should be reported to the Secretary in the Weekly Report.
2. For all violations that are addressed via an enforceable document, all programs should incorporate the Department standard that the negotiations for the enforceable document, including the appropriate penalty assessment, be finalized within 180 calendar days after the date that the Department notified the violator/responsible person of the violations, unless the Regional Director, Bureau Director, or District Mining Manager agrees that an extended time frame is acceptable in the specific case. Otherwise, the Department should take the applicable enforcement action that imposes the obligations necessary to resolve the violations. Negotiations can be re-established once the violator is under an enforceable schedule. Case-specific extensions to this standard should be reported to the Secretary in the Weekly Report.

C. Tracking Enforceable Documents

1. All programs should incorporate the Department standard that all material obligations, corrective actions, or milestones for the resolution of a violation that are contained in a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document be monitored by Department staff and tracked in a data system (default is eFACTS), and be updated within 10 working days of compliance with each material obligation, corrective action, or milestone.
2. To identify that all violations have been finally resolved, all programs should incorporate the Department standard requiring the

updating of a data system (default is eFACTS) within 10 working days of final compliance with the enforceable document.

IV. Enforcement, Penalty Determination And Collection, And Permit Bars

- A. All programs should identify the criminal provisions in the statutes applicable to their programs and should inform staff that the Department will consider referring the violations that meet the requirements of those criminal provisions to the Office of Attorney General for criminal investigation and prosecution. Criminal referrals require the highest degree of confidentiality and are made through the Office of Chief Counsel.
- B. All programs should identify their guidelines for determining the types of violations or circumstances that warrant the Department bringing a civil action against a violator/responsible person in the various State and Federal courts where the Department can file civil actions, including, but not limited to, Commonwealth Court, County Court of Common Pleas, Environmental Hearing Board, United States District Court, and United States Bankruptcy Court.
- C. All programs should identify their guidelines for determining the appropriate administrative enforcement action authorized by the governing statutes.
- D. All programs should identify their guidelines for assessing civil penalties, fines, and/or other fees to ensure that such assessments are the same for the same violations across the **State and any lien provisions available to the program for recovering penalties and response costs**. All programs should incorporate the Department standard that civil penalties, fines, and/or other fees that are not paid within 60 calendar days of their due date, and no appeal is pending, are to be referred to the Office of Chief Counsel to be processed for collection.
- E. All programs should identify their guidelines for calculating civil penalties to ensure that a civil penalty includes, at a minimum, sufficient monies to recover all of the Commonwealth's costs associated with correcting the violations identified in the civil penalty assessment. The guidelines should describe how to calculate the costs to the Commonwealth that need to be recovered including salaries and related overhead costs of employees, travel or equipment expenses, Department contractors or consultants expenses, and sampling and laboratory analysis costs.

- F. For violations of obligations under a consent order and agreement, consent decree, final order, and/or other enforceable document, all programs should incorporate the Department standard for allowing settlement negotiations to continue for 60 calendar days before petitioning a court to resolve the violation because the negotiation process is not producing meaningful results, unless the Regional Director, Bureau Director or District Mining Manager recommends and the Secretary agrees that an extended time frame for negotiations is acceptable while the violator is not complying with the terms of the enforceable document. Case-specific extensions to this standard, as approved by the Secretary, should be noted in the Weekly Report.
- G. All programs with permit bar authority should identify their guidelines on the imposition of a permit bar and the process for obtaining management approval of the permit bar. All programs that do not currently have permit bar authority should determine whether the creation of this authority would benefit compliance efforts and report the findings of this determination to the Deputy Secretary for Administration.

V. Employee Training And Internal Audits

- A. All programs should identify their guidelines on the type and frequency of training for all staff involved in the determination and resolution of violations. The training should address all of the items identified above that are applicable to the program; *e.g.* inspections; identifying, tracking, and resolving violations, including those resolved through enforceable documents; circumstances warranting the initiation of civil actions against a violator; and procedures for the collection of civil penalties, fines, and/or other fees owed the Department.
- B. All programs should incorporate the Department standard that a desk manual be developed for all staff involved in the determination and resolution of violations and the desk manual should contain all of the documents necessary for the staff to perform those tasks.
- C. All programs should develop procedures and identify their schedules for conducting internal audits, and should conduct such audits according to the approved procedures and schedules to measure the quality and effectiveness of the items identified above that are applicable to the program as measured against Department standards and program guidelines.