DEPARTMENT OF ENVIRONMENTAL PROTECTION

**BUREAU OF WASTE MANAGEMENT**

**DOCUMENT NUMBER:** 250-4000-002

**EFFECTIVE DATE:** Upon Publication as final in the *Pennsylvania Bulletin*

**TITLE:** Enforcement Actions

**AUTHORITY:** The Solid Waste Management Act, 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 Waste Tire Recycling Act, Act of December 19, 1996, P.L. 1478, No. 190, as amended; the Waste Transportation Safety Act, Act of June 29, 2002, P.L. 596, No. 90; the Disposal Fee Provisions, Act of June 29, 2002, P.L. 596, No. 90; the Environmental Stewardship and Watershed Protection Act, Act of December 15, 1999, P.L. 949, No. 68, as amended; the Administrative Code, Act of April 9, 1929, P.L. 177, No. 175, as amended;

**POLICY:** It is the policy of the Bureau of Waste Management (BWM) that cases requiring enforcement and/or civil penalties should be handled in a similar fashion across all DEP regions. This policy acknowledges that each enforcement case has different circumstances and may require the use of different enforcement actions.

**PURPOSE:** This policy is intended to provide guidelines to BWM staff to implement the provisions relating to enforcement actions contained in the Department’s *Standards and Guidelines for Identifying, Tracking and Resolving Violations* issued on April 6, 2004.The purpose of this policy is to ensure that all BWM staff use comparable formats when addressing similar violations across DEP regions. The use of the specific documents described herein will vary by the specifics of the enforcement action being developed. This policy describes the documents available and establishes guidelines on how they should be applied.

**APPLICABILITY:** This policy shall apply to all BWM staff that take enforcement actions.

**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 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:**

*Action in Equity.* An action in which a person seeks equitable relief rather than damages.

*Administrative Order.*A Department directive issued to a person to correct conditions that are not in compliance with a statute or regulation.

*Civil Penalty Assessment (CPA).*A formal monetary penalty assessed against a person by the Department.

*Civil Penalty Assessment Matrix.*A gravity-based table developed by the Department as an aid in calculating civil penalty amounts for violations. The matrix is based on statutory criteria and considers degrees of willfulness by the violator when committing the violation, as well as the severity of the violation, and other factors. The matrix is part of the Department’s approved program for obtaining federal authorization to implement the hazardous waste program in Pennsylvania.

*Consent Assessment of Civil Penalty (CACP).*A consensual document authored by the Department and agreed to by persons for the assessment of a civil penalty resulting from violations identified during an inspection.

*Consent Order and Agreement (COA).*A negotiated document in which a person admits to the existence of facts that amount to violations, agrees to abate the violations usually pursuant to a schedule, and may agree to pay a negotiated civil penalty.

*eFACTS.* Environment, Facility, Application, Compliance Tracking System. A comprehensive electronic environmental information system that allows the public to search and obtain information on authorizations, clients, sites, facilities, inspections and enforcement actions.

*Environmental Stewardship Fund.*A special fund that is established under Section 6104 of the Environmental Stewardship and Watershed Protection Act. This fund includes deposits of the disposal fee for municipal waste landfills established under 27 Pa.C.S.A. Section 6301.

*Field Order.* Unilateral enforcement actions taken by BWM staff (with supervisor concurrence) directing a person to correct violations.

*Notice of Proposed Assessment (NOPA).*A document sent by the Department to a person informing them of the Department’s intention to assess a proposed civil penalty against the person for violations identified by the Department.

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

*Solid Waste Abatement Fund.* A special fund established under Section 701 of the Solid Waste Management Act to receive all fines, penalties and bond forfeitures collected under the Solid Waste Management Act and Sections 1704 and 1705 of the Municipal Waste Planning, Recycling and Waste Reduction Act.

*Summary Citation.*A non-traffic criminal citation issued by the Department to address violations found during an inspection.

*Used Tire Pile Remediation Restricted Account.* A restricted account established in Section 110 of the Waste Tire Recycling Act to receive all penalties collected under Section 108 and 108.1 of the Act and authorization fees collected under Section 106 of the Act.

*Waste Transportation Safety Account***.** A restricted account established under Section 6204 of the Waste Transportation Safety Act to receive all fees, fines and penalties collected under the Act.

**PROCEDURES:**

If the Department determines that a violation has occurred, after evaluating information from any source, the standards and guidelines identified in Sections II-IV of the *Standards and Guidelines for Identifying, Tracking and Resolving Violations* apply to these violations.

**I. DOCUMENTATION AND NOTIFICATION**

Any violation determined by the BWM staff during an inspection should be brought to the attention of the regulated facility on the date of the inspection and documented in a written report . 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 "Not Determined." 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. An alternate time frame may be established, if necessary and approved by the Supervisor or Operations Manager. Written notification of the violation should be given to the person 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 the violation.

If a violation is not resolved within 14 calendar days after: the notification of completion of an inspection; expiration of a permit where no renewal application has been received by the Department in a timely manner; non-compliance with an obligation under a permit, consent order and agreement, consent decree, final order, and/or other enforceable documents; and/or any other event where the Department has determined that a violation exists, a Notice of Violation should be issued in writing to the violator, unless the Supervisor or Operations Manager agrees that an extended time frame for issuing the Notice of Violation is acceptable in the specific case. For minor violations, a facility inspection report may serve as a Notice of Violation. For more serious violations, a Notice of Violation will be sent to the responsible person.

The issuance of a Notice of Violation may be waived by the Supervisor or Operations Manager in cases where the regulated entity has not 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.

The Notice of Violation should: clearly and concisely identify each violation, the basis 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. 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.

If a civil penalty has been calculated, but an enforcement action has not yet been taken, BWM staff may elect to draft a letter entitled a “Notice of Proposed Assessment” or “NOPA.” The issuance of this letter is optional, but its use is encouraged. The regional offices may determine that it is not necessary under the circumstances of a particular case. This document informs the person that the Department intends to assess a civil penalty that will fall within a calculated range of penalties based on statutory and regulatory criteria and the appropriate civil penalty matrix. The NOPA letter will state the amount of the proposed civil penalty and will also suggest that the person attend a meeting at the appropriate Department office or participate in a telephone or web conference, to discuss the civil penalty and the reasons for it. Persons are invited to present information that may mitigate the civil penalty amount.

# II. ENFORCEMENT ACTIONS

The Department may decide to proceed with an enforcement action on the basis of the following factors, among others: the extent or seriousness of the violation, the ability of the person to correct the violation, the time frame in which the violation could be corrected, the prior violation history of the person and the need for an enforcement action. Unilateral enforcement actions that are appealable include: the issuance of a Field Order, Summary Citation, Civil Penalty Assessment, and Administrative Order. A unilateral enforcement action may also be taken by filing an Action in Equity. In deciding which type of enforcement action should be taken, the Department should consider, among other factors: the most efficient method of resolving the violations, the immediacy of the need to resolve the violations, the nature of the violation (ex. administrative or operational), the need for a substantial change in behavior, the extent of the violation’s effects, the severity of the violation, the threat of human health or environmental harm and previous violation history of the person. Except for Field Orders and Summary Citations, all unilateral enforcement actions must be approved by a regional attorney.

If the enforcement action includes the assessment of or request for payment of a civil penalty, BWM staff should refer to statutory and regulatory criteria, as well as the guidance of the appropriate program Civil Penalty Assessment Matrix for calculation of an appropriate penalty. Collected fines and civil penalties are deposited into; the Environmental Stewardship Fund, Solid Waste Abatement Fund, Storage Tank Fund, Waste Transportation Safety Account or Used Tire Pile Remediation Restricted Account.

# FIELD ORDER

A Field Order may only be issued pursuant to specific procedures and on a specific form approved by the Office of Chief Counsel for unilateral enforcement actions taken by BWM staff. Under the approved procedures and form, the BWM staff (with supervisor concurrence) may issue the Field Order without obtaining prior approval from a regional attorney. A field order is appealable.

**SUMMARY CITATION**

Summary citations are often filed for waste transportation violations but also may be filed for other violations of operational regulations. The Summary Citations request that the Magisterial District Judge impose a penalty for the violations. The person receiving the Citation has the right to defend against it before the Magisterial District Judge at the Magisterial District Office for the area in which the alleged violation occurred.

# CIVIL PENALTY ASSESSMENT

If a CACP or COA cannot be entered into BWM staff may draft a CPA, which must be approved in advance by a regional attorney. A CPA follows a standardized format developed by the Office of Chief Counsel and the contents must be approved by a regional attorney. The issuance of a CPA does not require agreement by the person and constitutes an appealable action. A CPA must be in a separate document from an Administrative Order. A CPA often follows an Administrative Order or may be issued at the same time as an Order. A CPA is always calculated using statutory and regulatory criteria, as well as with the guidance of the appropriate program Civil Penalty Assessment Matrix. Penalties will be deposited in the appropriate fund or restricted account.

# ADMINISTRATIVE ORDER

If the person is not in compliance, BWM staff, in conjunction with a regional attorney, should draft an Administrative Order directing that corrective action be taken to achieve compliance. The Order should follow a standardized format developed by the Office of Chief Counsel and the contents must be approved by the Regional Counsel. The Order usually includes a requirement that a specific action be completed within a certain time frame. Orders are appealable and generally contain:

* A factual background that includes a description of the violation and how it was detected;
* A description of the statute, regulation or permit condition violated;
* Corrective actions to be taken by the person in a specific timeframe, and
* A Notice of Appeal.

An Administrative Order should not include a CPA. Regional Counsel must always review and approve an Administrative Order prior to its issuance by the Regional Program Manager or Assistant Regional Director, as applicable.

# ACTION IN EQUITY

The Department may file an action in equity with a court of competent jurisdiction, including the appropriate Court of Common Pleas and the Commonwealth Court, to recover costs of abatement incurred by the Department and to seek injunctive relief. The filing of an Action in Equity must be approved by the Regional Counsel.

**III. ENFORCEABLE DOCUMENTS**

Depending upon the time frame within which a violation can be resolved, its resolution may need to be incorporated into a legally enforceable document. If the violation can be resolved within 180 calendar days after the date the Department notified the person of the violation, its resolution may be incorporated into an enforceable document, such as a final permit, Field Order, CPA, CACP, COA or Administrative Order, but such course of action is not necessary. However, if the underlying violation cannot be resolved within the 180-day time period, the violation should be resolved through an enforceable document, unless the Operations Manager or Program Manager agrees that an enforceable document is not warranted. If an enforceable document is required, negotiations for that document should be finalized within that 180-day time period, unless the Operations Manager or Program Manager agrees that an extended time frame is acceptable.

# CACP

The Department and a person may agree upon a CACP if the person agrees to the penalty amount, the existence of the violation or facts underlying the violation, and waives their right to an appeal. The CACP follows a standardized format developed by the Office of Chief Counsel. The penalty amount is often based on the appropriate program penalty matrix. A CACP will not be signed by the Department unless the person agrees to the facts underlying the violations and the violations have been corrected. The issuance of a CACP is not an appealable action. A CACP may need to be approved by a regional attorney and the Regional Director if the amount of the penalty is in excess of a predetermined amount. Penalties will be deposited in the appropriate fund or restricted account.

# COA

The Department may enter into a COA with a person if the person agrees to the existence of the violation or the facts underlying the violation and the need to correct the violation. The COA follows a standardized format developed by the Office of Chief Counsel. The COA will contain agreed upon corrections of violations and an agreed upon timeframe for the corrections and may contain an agreed upon penalty amount. Generally, the Department only waives its rights in a COA to seek civil penalties above the amount already specified in the document, if an amount is specified. The Department reserves all other rights to institute equitable, administrative, civil and criminal actions with respect to any matter addressed in the COA, including the right to require additional compliance measures. The order section of the document enumerates the actions that must be taken by the person to correct the violations. The schedule to abate the violations and penalties contained in a COA are entered into eFACTS and tracked by the BWM staff responsible for tracking the milestones in the COA. A COA is mutually agreed to by the person and the Department and is non-appealable by the person. Because it is a settlement of claims that the Department has against a responsible person, a COA must be approved in advance by a regional attorney. Penalties will be deposited in the appropriate fund or restricted account.

# CLOSED VIOLATIONS

All material obligations, corrective actions or milestones for the resolution of a violation that are contained in a final permit, CACP, COA, or other enforceable document are monitored by Department staff and tracked in eFACTS. eFACTS should be updated within 10 working days of compliance with each material obligation. Resolved violations should also be “closed out” in eFACTS within 10 working days of final compliance with the enforceable document.