

An Overview of the Administrative Enforcement Process

This document is provided as guidance and should not be relied upon as legal advice.

Introduction

This information sheet has been prepared to help you better understand the Department's enforcement process. Since you received a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/NOEC), we want you to adequately prepare to meet with staff to resolve this matter of regulatory concern. It is the Department's foremost goal to assist you in maintaining full compliance. Enforcement is one tool to help ensure that obligations to safeguard the environment are met through strict adherence to regulations and environmental permit requirements, terms, and conditions are fulfilled. The following are answers to questions most frequently asked by people involved in this process.

What is a Notice of Alleged Violation/Notice of Enforcement Conference (NOAV/NOEC)?

The NOAV/NOEC is the first step in the administrative enforcement process. When it is discovered that an environmental law or regulation may have been violated, a NOAV/NOEC may be issued. The notice outlines the Department's findings, identifies the law, regulation, or permit requirement the Department believes was violated, and invites the responsible party (Individual/Entity) to attend an enforcement conference. The Individual/Entity may accept the Department's findings and elect not to attend a conference, in which case an order is drafted, if appropriate, for the Individual/Entity's review and signature.

Why is an enforcement action necessary?

There are different factors considered by staff when deciding to initiate an enforcement action. Most fall within the following: 1) the specific type of alleged violation identified may require the Department to take

a formal enforcement action, 2) the alleged violation is serious or a threat to public health or the environment, or 3) the alleged violation has not been corrected within a reasonable period of time.

What is an enforcement conference and what can I do to prepare for it?

The enforcement conference is a voluntary, informal meeting between Department staff and the Individual/Entity. The NOAV/NOEC you received contains a summary of known issues of regulatory concern and provides the basis for discussion. It is important to be fully prepared to present any information that will enable staff to make a fair and sound decision concerning the allegations. You should also be prepared to report any corrective action(s) taken or planned.

Who should I bring to the conference and who from the Department will be present?

People who are most familiar with the issues and who have decision-making authority on behalf of the Individual/Entity should plan to attend. You may have legal and/or technical representation if you choose. An enforcement project manager, regional staff, technical support, and other compliance personnel involved with the matter will represent the Department. A staff attorney representing the Department is generally not in attendance. However, if you choose to have legal counsel present, you are asked to notify the Department at least five days prior to the conference and the Department may decide to have agency legal counsel attend. Also, if the Department determines it is necessary for legal counsel to be present you will be notified at least five days prior to the conference. The enforcement conference is closed to the public and media.

What can I expect to happen at the enforcement conference and what may result?

As the Individual/Entity, you can expect a fair evaluation of the circumstances surrounding the issues of concern. Staff will ask questions and determine a reasonable response based on consideration of the facts. After the conference, staff will review the information gathered and decide on one of four possible outcomes: 1) the Department determines that the event is not a violation and is dismissed; 2) the Department determines the violation is properly alleged, but there is justification to resolve the matter without the issuance of an order; 3) the Department determines the violation is properly alleged, and you are given the opportunity to resolve the issue by entering into a Consent Order with the Department; or 4) the Department determines the violation is properly alleged, and an Administrative (unilateral) Order is issued.

What is a Consent Order?

A Consent Order is a legally binding, enforceable document, with terms and conditions agreed upon by you and the Department. In signing a Consent Order, you waive your right to an administrative appeal, but the additional time and costs associated with an administrative hearing and other potential court-related costs are avoided.

What is the purpose of a civil penalty; how is the penalty amount determined; and who gets the money?

Civil penalties are issued for the violation of federal and state environmental laws. The decision to assess a penalty depends upon the type of violation alleged and other factors. Among other factors, civil penalties are intended to deter future noncompliance and eliminate any economic incentive for noncompliance. The penalty is calculated in accordance with the Department's Uniform Enforcement Policy. The amount of the civil penalty is designed to reflect the frequency, duration, and severity of the violation(s). Some other factors may be considered, such as compliance history, degree of negligence or willfulness, and economic benefit gained

through noncompliance. The money collected is either sent to the State's General Fund, or a portion to the county in which the violation occurred, or otherwise dispersed as required by state law.

If I have corrected the noted violations, why would a civil penalty still be assessed?

To promote fairness and consistency within the administrative enforcement process, civil penalties are typically assessed for certain violations. However, if you demonstrate good faith efforts to promptly correct the alleged violation, staff will favorably consider these actions when calculating any penalty. Other factors that may affect the penalty amount include measures taken to prevent recurrence and other mitigating factors.

Why should I attempt to resolve the enforcement action with a Consent Order?

There are often significant savings in time and money when the parties in an enforcement action can reach an agreed upon resolution. If, however, an agreement to the terms, conditions and/or any civil penalty proposed in a Consent Order cannot be reached, the Department may issue an Administrative Order (unilateral) without your consent. The Administrative Order would include findings of fact, conclusions of law, and contain specific requirements addressing the violation(s) and the civil penalty may be higher based on factors under consideration.

If an agreed upon resolution is not reached and an order is issued without my consent, what are my options?

Within thirty calendar days after the mailing of a decision (Administrative Order), an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the Department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Please refer to S.C. Code Ann. § 48-6-30(D) (1) & (2).