

## **Enforcement and Compliance Process**

### **Frequently Asked Questions**

**In general, once a permit is issued, how does MDE assure that the permittee meets permit conditions?**

MDE enforcement and compliance staff perform on-site inspections, analyze self-monitoring reports submitted by the permittee as a condition of their permit, collect samples of the discharge/emission and follow-up on citizen complaints. This information is reviewed and if the facility has failed to comply with permit conditions, the Agency will consider taking enforcement action.

**Does MDE inspect all of its permittees every year?**

No. MDE performs about 116,000 inspections, audits and spot checks per year at about 55,000 sites to determine permit compliance. To make the most of MDE's limited number of inspectors, our programs prioritize their permittees depending on the risk to the public health and environment. Our goal is to inspect as many of our permittees as possible. EPA oversees our inspection activities.

**So, how do you know if everyone is complying with their permit?**

MDE does not know at any one time whether a particular facility is in compliance, just as the police do not know if all drivers are going the speed limit. However, the Agency prioritizes its surveillance to cover the facilities with a history of compliance problems and those that, if they do violate permit conditions, have the potential to cause the most harm to the public health and the environment. Between on-site inspections, review of self-monitoring reports, response to citizen complaints and other means, MDE performs some form of oversight for most permitted entities.

**How does MDE choose which facilities are inspected?**

MDE issues about 11,000 permits each year. Our enforcement and compliance programs prioritize the permittees' risk to the environment and public health and inspect the ones that rank high based on what the facility does, their compliance history, location and other factors. This prioritization is necessary due to a limited number of inspectors and the fact that we regulate over 300,000 emissions, discharges, pieces of equipment, etc. that have the potential to affect the environment.

**Does MDE pursue formal enforcement actions for all violations it discovers?**

No. Given the limited enforcement staff and the number of violations it discovers, MDE enforcement personnel have to choose the appropriate type of response necessary to get a noncompliant facility back into compliance. MDE usually chooses responses that will get the offender back into compliance in the shortest amount of time. Violations range from minor to significant and enforcement responses vary accordingly. MDE may provide compliance assistance where the violation can be corrected immediately or in a

short amount of time; issue administrative orders or seek injunctive relief; take action to revoke the facility's permit; and/or seek civil or criminal penalties including jail time. Formal enforcement actions can consume substantial resources and are not always the most efficient solution to a compliance problem. Minor violations are treated differently from significant ones.

### **What is a minor violation?**

Minor violations include:

- A minor excursion from prescribed numerical standards, i.e. permit limits;
- Minor record-keeping violations;
- First offenses that present no imminent threat to public health or the environment;  
or
- A minor deviation that can be corrected immediately or in short order.

### **What enforcement options does MDE use for minor violations?**

If the facility is cooperative, the inspector may request that the facility correct the violation within a specified time frame. A follow up inspection or other measure will be taken to verify that the correction has occurred. The inspector may request that a violation be corrected prior to leaving the facility, in which case no follow-up is needed. These minor violations are documented by the inspector and become part of the record for that facility.

### **In the enforcement process, what is “compliance assistance”?**

When a minor violation is discovered by an inspector, the inspector may recommend a way to correct the violation or the facility may voluntarily correct the violation. If the facility corrects the minor violation without a formal enforcement action and it is documented by the inspector, this constitutes “compliance assistance”.

### **Can a minor violation become significant?**

If the minor violation is not corrected timely or is part of a recurring pattern, it may be deemed worthy of formal enforcement. Factors such as past compliance history, willfulness of the violation, the degree of harm or potential harm, the ability of the facility to make timely corrections and other appropriate factors are considered when making this determination.

### **What is a significant violation?**

Certain violations uncovered during an inspection are considered significant on their face, such as:

- Major excursions from prescribed standards;
- Offenses that pose a direct threat to public health or the environment;
- An offense that is part of a pattern of chronic, non-compliant behavior;
- An offense that requires a significant amount of time or capital to correct; or

- A violation deemed significant under federal criteria.

### **What types of enforcement options are available to MDE?**

MDE's enforcement options include: administrative actions, which are heard before the Office of Administrative Hearings; and judicial actions, which are civil or criminal proceedings heard in court. Administrative and civil actions can result in orders and/or penalties. Criminal proceedings can result in fines and/or imprisonment.

### **How does MDE determine the penalties that it assesses?**

MDE's policy is to assess fair and equitable penalties in keeping with the factors specified by the governing law and commensurate with the nature of the violations. The Department must consider the following factors in assessing administrative penalties:

- The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator and the extent to which the violator exercised reasonable care;
- Any actual harm to the environment or to human health, including injury to or impairment of the air, waters or natural resources of this State;
- The cost of cleanup and the cost of restoration of the natural resource;
- The nature and degree of injury to or interference with general welfare, health and property;
- The extent to which the location of the violation, including the location near waters of this State or areas of human population, creates the potential for harm to the environment or to human health and safety;
- The available technology and economic reasonableness of controlling, reducing or eliminating the violation;
- The degree of hazard posed by the particular pollutant or pollutants involved; and
- The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

### **What are the limits of the civil penalties that MDE can seek?**

The amount varies depending on the program and can vary widely. There are judicially imposed civil penalties and administratively imposed civil penalties. Not all programs have both. In general, amounts can be as much as \$25,000 a day per violation for judicially imposed civil penalties. Administratively imposed civil penalties are typically \$1000 a day per violation but some programs can have higher limits.

### **What are the limits of the criminal penalties that MDE can seek?**

Limits for criminal penalties vary with the program. Not all programs have criminal penalties available.