



**Michigan Department of
Environmental Quality**

Enforcement Overview



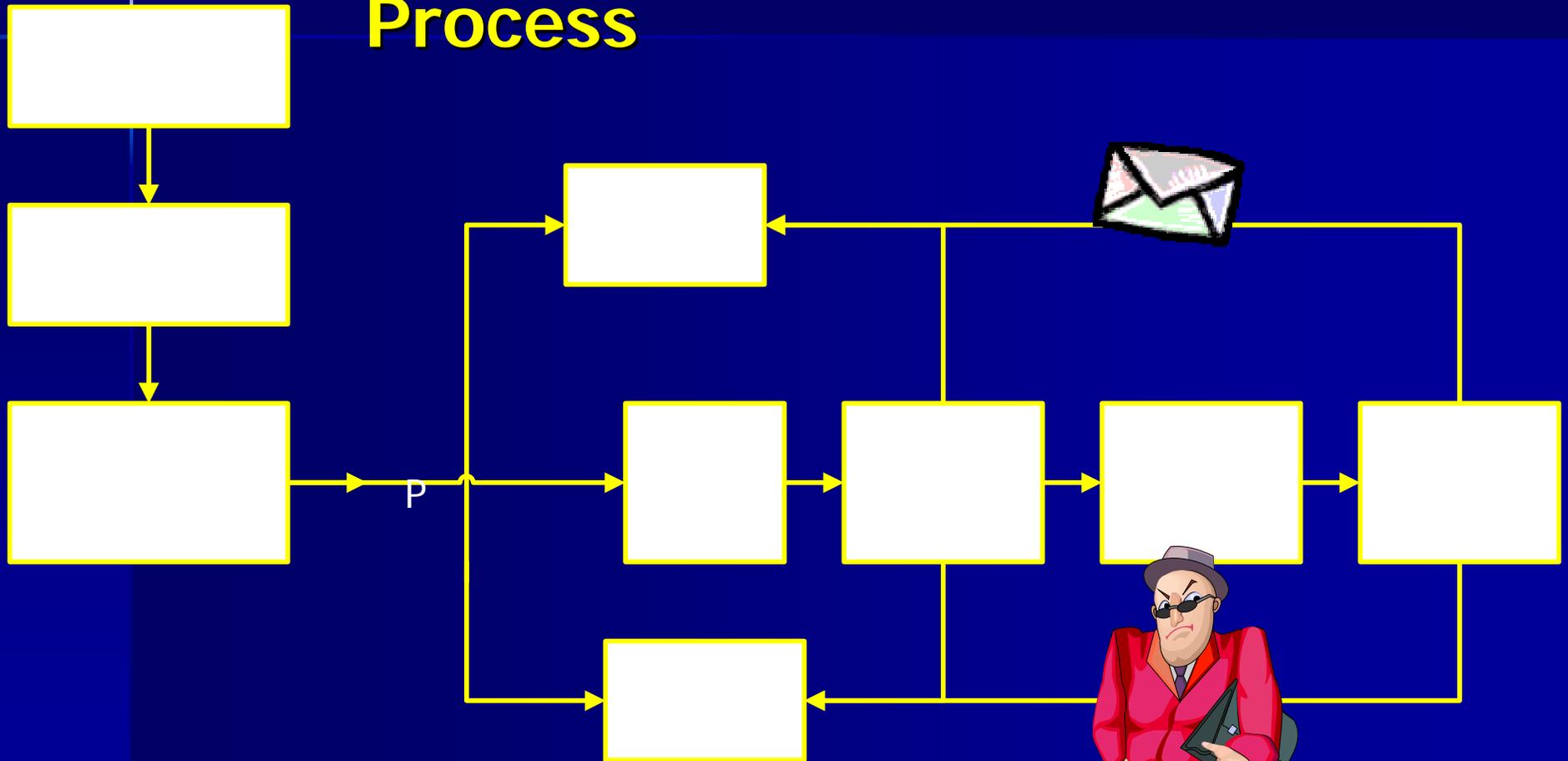
Key MDEQ Regulatory Offices and Divisions

- Air Quality (AQD)
- Land and Water Management (LWMD)
- Remediation and Redevelopment (RRD)
- Office of Geological Survey (OGS)
- Waste and Hazardous Materials (WHMD)
- Water Bureau (WB)
- Office of Civil Enforcement Coordination
- Office of Criminal Investigations

Key Regulatory Programs

- Air: Stationary Source enforcement, Asbestos, and Dry Cleaners
- LWMD: Wetlands, Inland Lakes and Streams, Shoreline Protection, Sand Dunes
- RRD: Brownfields, Underground Storage Tanks, Release Cleanups, CERCLA Actions
- OGS: Well abandonment: oil, gas and mineral; mining
- WHMD: Solid, Hazardous and nuclear waste, scrap tires
- WB: NPDES, Groundwater Discharge, nonpoint source discharges, storm water
- OCEC: SEP's, high-profile and/or multi-media enforcement cases
- OCI: Criminal Investigations

Field Components: Compliance and Enforcement Process



**INSPECTION
SELECTION**

Inspection Selection

- Sites are selected for inspection at the discretion of the field inspector, the district supervisor, Multi-Media Coordinator, the Department of Attorney General, and/or the Office of Civil Enforcement Coordination.
- Selection can be based on statute, policy, or in response to citizen complaint.
- Monthly district review meeting

Inspection Performed

- Inspections are unannounced, and can consist of one multi-media inspection, or several separate program inspections.
- Inspections are documented with a written report, which can contain sketches and photographs (if necessary).

Evaluation of Response

- Compliance letters and Letters of Warning may require a response by the regulated entity.
- Response is evaluated by the Department.
- Acceptable responses are managed by the inspecting entity.
- Unacceptable or non-responses may be referred for Enforcement.

Evaluation of Findings

- Results of inspections are evaluated by the Department.
- Considerations include:
 - Previous inspections
 - On-going violations
 - Corrective actions
 - Cooperation

Preparation of Response

- Directly related to results of inspection
 - Compliance letter: no action required
 - Letter of warning: first written notice
 - Enforcement referral: indication of impending legal action

Enforcement Scheme

- Inspection
- Verbal Notice
- Letter of Violation
 - ↩ Fast Track Orders
- Referral to Compliance and Enforcement for Civil/Administrative Action and/or referral to OCI
- Parallel Proceedings



Enforcement Scheme

- Once a case is referred to C & E:
 - Escalation Letter
 - Administrative Consent Order (ACO)
 - Referral of Department of Attorney General and/or US EPA

DIVISION ENFORCEMENT DOCUMENTS IN ORDER OF ESCULATION

AQD	ERD	DWRPD	GSD	LWMD	STD	SWQD	WMD
<ul style="list-style-type: none"> • INSPECTION • VERBAL NOTICE • LETTER OF VIOLATION • DISTRICT SUPER. LETTER • REFERRAL TO C&E • ESCULATION LETTER • ADMIN. CONSENT ORDER • REFERRAL TO A.G. 	<ul style="list-style-type: none"> ♦ NOTICE LETTERS ♦ DEMAND LETTER ♦ USE OF PUBLIC FUNDS LETTER ♦ 2ND DEMAND LETTER ♦ NOTICE OF INTENT TO SUE ♦ ADMIN. CONSENT ORDER 	<ul style="list-style-type: none"> • INSPECTION • VERBAL NOTICE • LETTER NOTICE • DISTRICT SUPER. LETTER • NOTICE OF VIOLATION • ADMIN. CONSENT ORDER • REFERRAL TO A.G. 	<ul style="list-style-type: none"> • INSPECTION • VERBAL NOTICE • INSPECTION FORM • NOTICE OF NON COMPLIANCE • REFERRAL TO C&E • NOTICE OF VIOLATION • ADMIN. CONSENT ORDER • FINAL ORDER OF DIRECTOR OF WELLS • REFERRAL TO A.G. 	<ul style="list-style-type: none"> • INSPECTION • VERBAL NOTICE • NOTICE OF VIOLATION • FOLLOW UP LETTERS • AMIN. CONSENT ORDER • REFERRAL TO A.G. • REFERRAL TO OFFICE OF CRIMINAL INVEST. 	<ul style="list-style-type: none"> • INVEST. REPORT • RED TAG • LATE REPORT PENALTY • ADMIN. CONSENT ORDER • UNILAT. DIRECTOR'S FINAL ORDER • ENF. LETTERS 	<ul style="list-style-type: none"> • INSPECTION • VERBAL NOTICE • LETTER • NOTICE LETTER • NOTICE OF NON COMPLIANCE • NOTICE OF VIOLATION • REFERRAL TO C&E • 10 DAY LETTER • ADMIN. CONSENT ORDER • REFERRAL TO A.G. 	<ul style="list-style-type: none"> • INSPECTI • VERBAL NOTICE • LETTER O WARNING • 2ND LETTE WARNIG • REFERRAL NOTICE OI VIOLATION • ADMIN. CONSENT ORDER • REFERRAL A.G.
<p>OTHER DOCUMENTS</p> <ul style="list-style-type: none"> • PENALTY ORDERS • DIRECTOR FINAL ORDER • CEASE AND DESIST ORDER 	<p>OTHER DOCUMENTS</p> <ul style="list-style-type: none"> ♦ COVENANTS NOT TO SUE 	<p>OTHER DOCUMENTS</p> <ul style="list-style-type: none"> • DIRECTOR ORDER • CERTIFICATE OF NON COMPLIANCE • PENALTY ORDER 				<p>OTHER DOCUMENTS</p> <ul style="list-style-type: none"> • DIRECTOR FINAL ORDER • DISTRICT ADMIN. AGREEMENT 	<p>OTHER DOCUMENTS</p> <ul style="list-style-type: none"> • DIRECTOR FINAL ORDER

Statutory Penalty Authority

- Air: 324.5529, 5531
 - \$10,000 day/violation up to \$100,000 max (admin)
 - \$25,000/day/violation up to \$250,000 max (substantive)

- Ground Water: 324.3115
 - \$2500 to \$25,000 day/violation

- RRD: 324.20119
 - Up to \$25,000 per day

- Oil and Gas: 324.615
 - Up to \$1000/day/violation

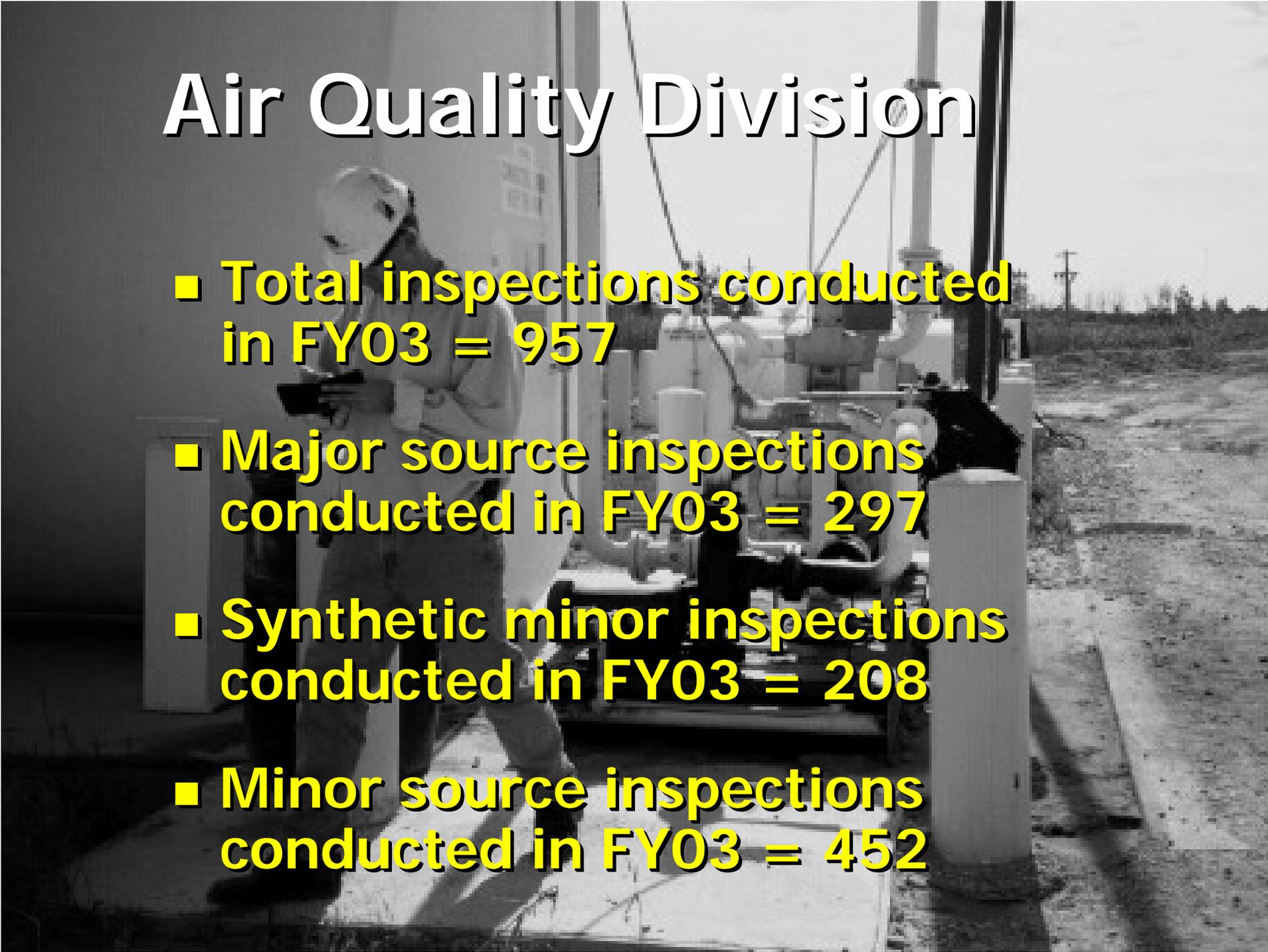
- WHMD: 324.11151
 - Permit violations \$25,000 per day up to \$250,000 max
 - Treatment or disposal violations: \$250,000 per day up to \$1,000,000 max

- LWMD: 324.31316
 - \$2500 to \$50,000 per day per violation

Enforcement Scheme

- Other Enforcement Tools or Options:
 - Penalty Orders
 - Director Final Order
 - Cease and Desist Order
 - Unilateral Administrative Order
 - Stipulated Penalties

Air Quality Division



- Total inspections conducted in FY03 = 957
- Major source inspections conducted in FY03 = 297
- Synthetic minor inspections conducted in FY03 = 208
- Minor source inspections conducted in FY03 = 452

Penalty Consideration Factors

- Damage to the environment, public health and welfare
- Extent of Violation
- Duration of Violation
- Importance to regulatory scheme or integrity of regulatory program
- Economic Benefit on Non-compliance
- Size of Violator

Surface Water Quality Division - Penalty Calculation Matrix

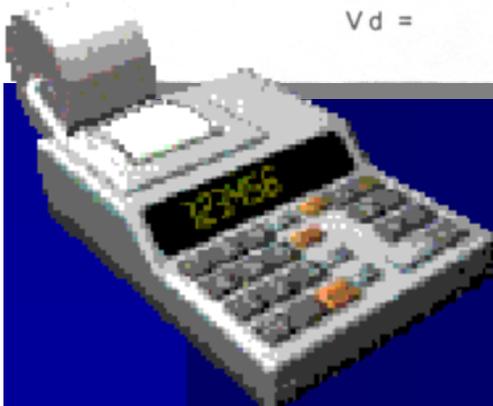
	V s	V i	V m	V r	V d
H d	\$ 20,000.00	\$ 15,000.00	\$ 12,500.00	\$ 11,000.00	\$ 10,000.00
P h	\$ 15,000.00	\$ 10,000.00	\$ 7,500.00	\$ 6,000.00	\$ 5,000.00
P m	\$ 12,500.00	\$ 7,500.00	\$ 5,000.00	\$ 3,500.00	\$ 2,500.00
P l	\$ 11,000.00	\$ 6,000.00	\$ 3,500.00	\$ 2,000.00	\$ 1,000.00
H o	\$ 10,000.00	\$ 5,000.00	\$ 2,500.00	\$ 1,000.00	0

X-axis = Severity of the violation

V s = Significant violation
 V i = Intermediate violations
 V m = Moderate violations
 V r = Minor violations
 V d = *De minimus* violations

Y-axis = Harm to Environment or Health

H d = Documented Harm
 P h = High Potential for harm
 P m = Moderate Potential for harm
 P l = Low Potential for harm
 H o = No harm



Civil Penalty Calculation

I. Economic Benefit:

Result of BEN run	Avoided cost of Incin. Op less than \$5k	\$	-
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II. Gravity:

1.	Actual or Possible Harm			
	a. Level of violation	Throw out-too old	\$	-
	b. Toxicity of pollutant	19.78lb/hr(45%+) .36GAC(44%+	\$	-
	c. Sensitivity of environment	Attainment		\$5,000
	d. Length of time of violation	\$5000 for 0 to 1 months 19 separate times		\$5,000
2.	Importance to the Regulatory Scheme			
	a. Failure to report	1 malfunction \$15,000.00	\$	15,000.00
	b. Intermittent or improper operation/maintenance control equipment	19 separate times	\$	10,000.00
3.	Size of the Violator	50% Rule		\$42,778
		(Iterate 50% of Preliminary Deterrence Amount)		
1,2 & 3.	Initial Gravity Total		\$	77,777.78
	Inflation adjustment: Add 10% to Gravity		\$	7,777.78
	Total Gravity:			\$85,555.56
	Preliminary Deterrence Amount (Economic Benefit + Gravity)		\$	85,555.56
4.	Adjusting the Gravity Component			
	Degree of cooperation	30%	\$	25,666.67
	Total adjustments		\$	(25,666.67)
	(Preliminary Deterrence Amount - Adjustments to Gravity)		\$	59,888.89
	Proposed Settlement Amount			\$60,000.00

Penalty Factors

- Economic Benefit Component
 - Delayed Costs
 - Avoided Costs
 - Adjustments Considerations:
 - Significance of economic benefit (insignificant = < \$500.)
 - Compelling public concern
 - Litigation Risks

Penalty Factors

- Gravity Component

- Statutory Considerations Include:

- Size of Business
 - Economic Impact of Penalty on Business
 - Violator's Compliance History
 - Good Faith Efforts to Comply
 - Duration of Violation
 - Payment by Violator of Penalties Assessed for Same Violation
 - Seriousness of Violation

Penalty Factors

- Seriousness of Violation
 - Risk to Surrounding Area
 - Specific Circumstances
 - Risk considerations include:
 - Deviations from requirements
 - Likelihood of a release
 - Sensitivity of environment around facility

Penalty Factors

- Specific Circumstances of Violation

- Amount and toxicity of pollutant
- Potential for hazard exposure to emergency personnel or community
- Relative proximity of surrounding population
- Evacuation potential
- Effect of noncompliance on community safety
- Actual problems encountered by first responders or community to violation

Penalty Factors

- Duration of Violation

- Assumed to be continuous from first provable date of violation until compliance is demonstrated

Months	Penalty
0-12	\$500/month
13-24	\$1000/month
25-36	\$1500/month
37-48	\$2000/month
49-60	\$3000/month
60+	\$5000/month

Penalty Factors

■ Size of Violator

- Based on net worth of entire (parent) company, not just violating facility
- If net worth not available, penalty can consider gross revenues
- If revenue used, can use discretion in considering number of years of revenue
- Consideration can be given to penalty reduction where the gravity is low

Penalty Factors

■ Net Worth	v.	Penalty Adjustments
	(for example)	
Under \$250,000		\$250
\$251,000 - \$500,000		\$500
\$501,000 - \$750,000		\$750
\$751,000 - \$1,000,000		\$1,000
\$1,000,001 - \$5 mm		\$2,000
\$5,000,001 - \$20 mm		\$3,500
\$20,000,001 - \$40 mm		\$5,000
\$40,000,001 - \$70 mm		\$7,000
\$70,000,001 - \$100 mm		\$10,000
\$100 mm +		\$15,000

Sample Penalty Calculations

I. Economic Benefit:

II. Gravity:

1. Actual or Possible Harm

a.	Level of violation	0
b.	Toxicity of pollutant	0
c.	Sensitivity of environment	\$5000
d.	Duration of violation	\$5000

Sample Penalty Calculations

2.	Importance of Regulatory Scheme	
	a. Failure to report	\$15,000
	b. Intermittent or improper operation/maintenance	\$10,000
3.	Size of the Violator	\$77,777
4.	Inflation Adjustment	<u>\$ 7,778</u>
	Total Gravity	\$85,555
5.	Adjustment – 30%	(\$26,555)
	PROPOSED SETTLEMENT	\$60,000

Penalty Adjustments

- Violators Degree of Willfulness or Negligence
- Violator's Cooperation or Responsiveness to Remediation
- Compliance History of Violator
- Financial Ability to Pay Penalty
- Litigation Risk
- Voluntary performance of non-mandatory remediations or improvements before violation

Penalty Adjustments

- Adjustments to Gravity Component
- Promote flexibility while maintaining consistency
- Factors:
 - Degree of willfulness or negligence
 - Degree of cooperation
 - History of noncompliance
 - Environmental damage

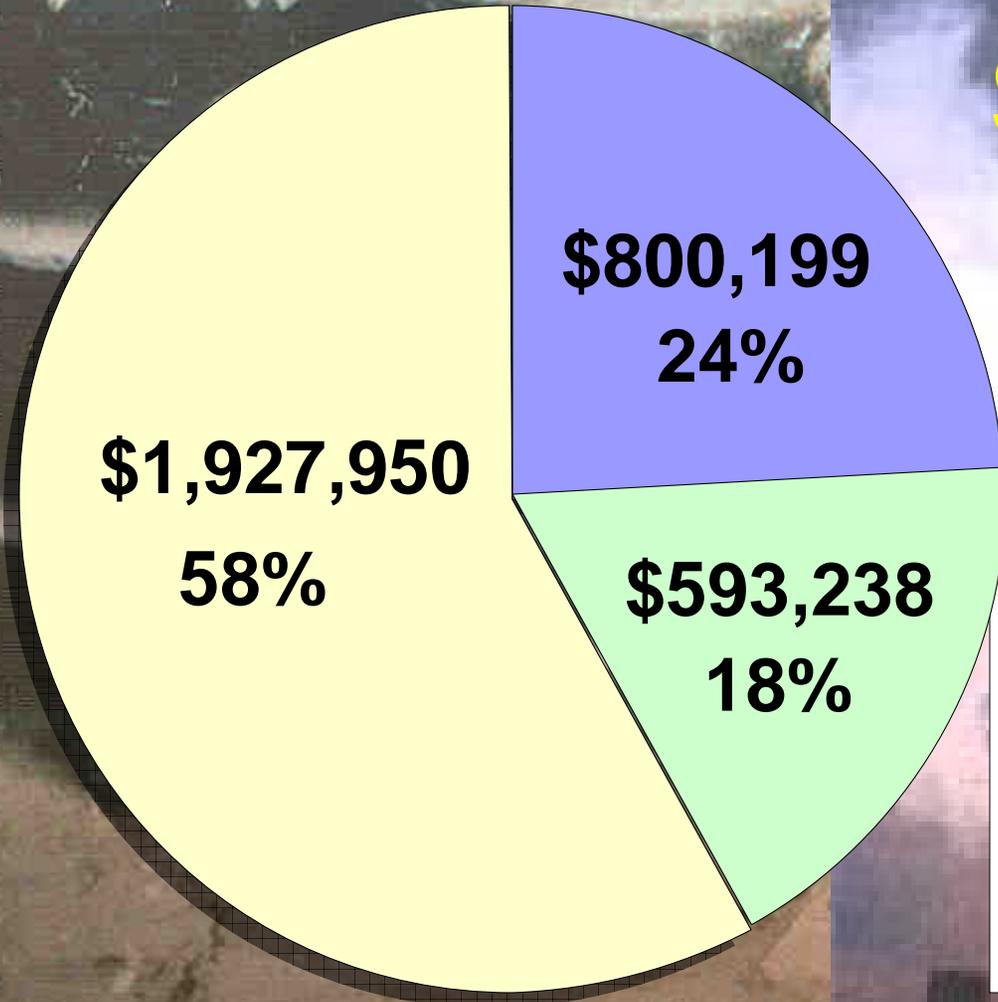
Penalty can be increased or decreased for gravity factors.

Results of Enforcement Referrals

Year	Fines	Cost	Cleanups
2001	\$4.4 mm	\$0.5 mm	\$11.2 mm
2002	\$5.8 mm	\$1.8 mm	\$8.8 mm
2003	\$3.8 mm	\$0.3 mm	\$8.1 mm
2004	\$2.7mm	\$0.2 mm	\$10.1 mm

2003 AIR DIVISION

Total Settlement Amount



\$3,321,387

Number of Employees

-  Small <100
-  Medium 100-500
-  Large >500

Supplemental Environmental Projects (SEP's)

- A discretionary program
- Proposals must be selected and approved by MDEQ
- Projects allow violators to use a portion of penalties to improve and participate in their own community

Supplemental Environmental Projects

- What a SEP is:
A voluntary environmentally beneficial project undertaken by a violator as part of a Settlement Agreement, but which the violator is not otherwise obligated to perform.

- What a SEP is not:
 - a. a negotiation tool for court or administrative proceedings
 - b. a benefit to the violator
 - c. a donation to a charity

Compliance and Enforcement Program

Total Compliance Inspections

Complaints Received

Violation letters issued

Referrals to OCI

Escalated enforcement actions initiated

Unilateral Orders issued

Red Tags issued

Administrative Consent Orders issued

Number of well sites addressed in Consent Orders

Consent Order Penalties

Compliance and Enforcement Program

- Civil Referral's to AG
- Civil/Judicial Settlements entered
- Associated Civil/Judicial Penalties
- Total Stipulated Penalties Assessed through both civil/admin actions
- Total SEP expenditures (both civil/admin actions)
- Remediation costs awarded
- Remediation costs received
- Total Penalties Collected (civil/judicial and admin)

**Michigan DEQ's
Compliance and Enforcement Program for
_____ Division
FY'03**

Total Compliance Inspections	Complaints Received	Complaint Inspections
Violation Letters Issued	Referrals to the Office of Criminal Investigations	Escalated Enforcement Actions Initiated
Unilateral Orders Issued (2)	Red Tags Issued	Administrative Consent Orders Entered
Number of Well Sites Addressed in Entered Consent Orders	Associated Consent Order Penalties	Civil Referrals to AGs (3)
Civil/Judicial Settlements Entered	Associated Civil/Judicial Penalties	Total Stipulated Penalties Assessed Through Both Civil and Administrative Actions
Total SEP Monetary Expenditure Amounts in both Civil and Administrative Settlements (4)	Remediation Costs Awarded	Remediation Costs Received
Total Penalties Collected for Both Civil/Judicial and Administrative Actions		

1N/A--not applicable to regulatory program.

2Unilateral Orders--includes cease and desist orders, orders to restore, administrative penalty orders, and corrective action orders.

3Civil Referrals--does not include defendant actions.

4SEP's--out of pocket cost to violator to perform supplemental environmental projects which are included in some administrative, civil settlements to offset penalties or natural resource damage claims and to provide for environmental enhancements that may be otherwise be provided by law.

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Future Measureables

Possible future ways to measure environmental enforcement and/or improvement

- Tons of pollution controlled/reduced
- Acres of wetland restored
- Dollars spent on pollution control equipment

Michigan Department of Environmental Quality

- For additional information, please visit the MDEQ website:

www.michigan.gov/deq