

# **Enforcement: I received a Violation Notice. Now what?**

**Michigan Department of Environmental  
Quality, Air Quality Division**



# Who will you hear from?

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Enforcement Specialist

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camillerij@michigan.gov



Jenifer Dixon

OEA Air Specialist



# Webinar Set Up

- All lines will be muted
- Questions can be sent to us via the question/chat box
- We will record and post the webinar online





***Enforcement is tool  
to achieve  
compliance, but not  
goal in and of itself***

***Compliance is goal***

# Introduction

Today I will be discussing:

- How Air Quality Division responds if violations are discovered
- What to do if you receive Violation Notice
- Which violations trigger enforcement
- Who is involved in an enforcement action
- State and federal enforcement roles
- Enforcement process. What typical enforcement meeting is like

# Today's Goals

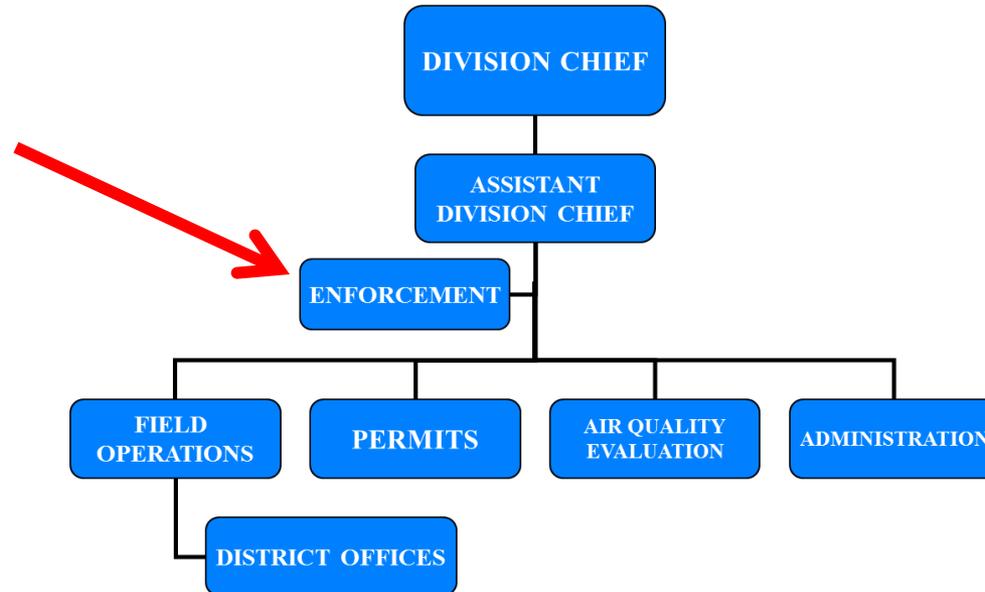
- Gain better understanding of DEQ's Enforcement Process
- Be able to answer questions like:
  - What if I receive a Violation Notice?
  - What is typical enforcement meeting like?
  - What is role of DEQ vs U.S. EPA?

# Air Quality Division made up of many programs

- **Permitting**
- **Monitoring and Evaluation**
- **Toxics**
- **Inspections**
- **Enforcement**



# Enforcement Unit



**AQD Enforcement Chief:** Tom Hess

**AQD Enforcement Staff:** Malcolm Mead O'Brien,  
Jenine Camilleri, Jason Wolf, Mike Kovalchik,  
Rachel McLeod

# District Offices

**Upper Peninsula District Office**  
1504 West Washington Street  
Marquette, MI 49855  
906-228-4853

**Cadillac District Office**  
120 West Chapin Street  
Cadillac, MI 49601-2158  
231-775-3960

**Gaylord Field Office**  
2100 West M-32  
Gaylord, MI 49735-9282  
989-731-4920

**Saginaw Bay District Office**  
401 Ketchum Street, Suite B  
Bay City, MI 48708-5430  
989-894-6200

**Grand Rapids District Office**  
State Office Building, 5th Floor  
350 Ottawa Avenue NW, Unit 10  
Grand Rapids, MI 49503-2341  
616-356-0500

**Lansing District Office**  
525 West Allegan  
Constitution Hall, 1S  
P.O. Box 30242  
Lansing, MI 48909-7742  
517-284-6651

**SE Michigan District Office**  
27700 Donald Court  
Warren, MI 48092-2793  
586-753-3700

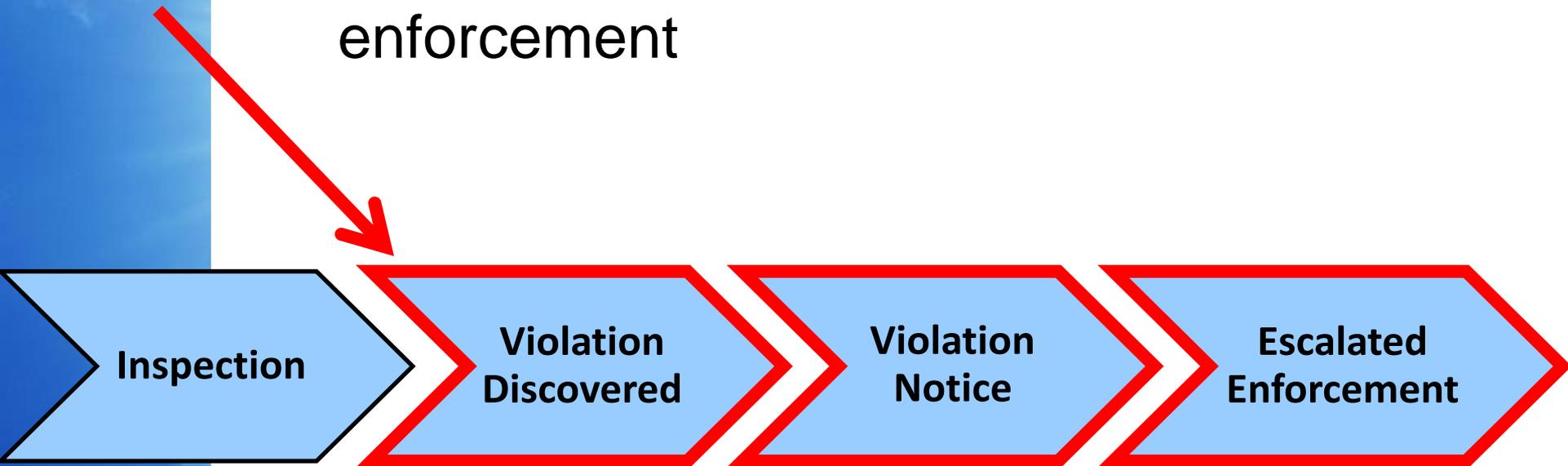
**Kalamazoo District Office**  
7953 Adobe Road  
Kalamazoo, MI 49009-5025  
269-567-3500

**Jackson District Office**  
301 East Louis Glick Highway  
Jackson, MI 49201-1556  
517-780-7690

**Detroit Field Office**  
Cadillac Place  
3058 West Grand Boulevard,  
Suite 2-300  
Detroit, MI 48202-6058  
313-456-4700

# Today's Scope

- Civil enforcement actions, not criminal actions
- Actions taken by DEQ once a violation discovered and referred for formal enforcement



# Air Pollution Control Laws and Rules

Natural  
Resource and  
Environmental  
Protection Act  
(NREPA), Part  
55

- Authority to develop air rules
  - Enforcement Provisions
- Consent Order  
(Section 5528)
- Civil Penalty  
(Section 5529)

# Broad Enforcement Authority

## Enforce Air Quality Laws and Rules (CAA)

Exceeding major source thresholds without a Title V Permit

Monitoring, testing, or reporting requirements

Asbestos Regulations

Compliance with federal emission limits

# Broad Enforcement Authority

- Enforce State Only Violations
  - Examples
    - Nuisance due to dust/odors (901)
    - Toxics Violations



# Goals of Enforcement

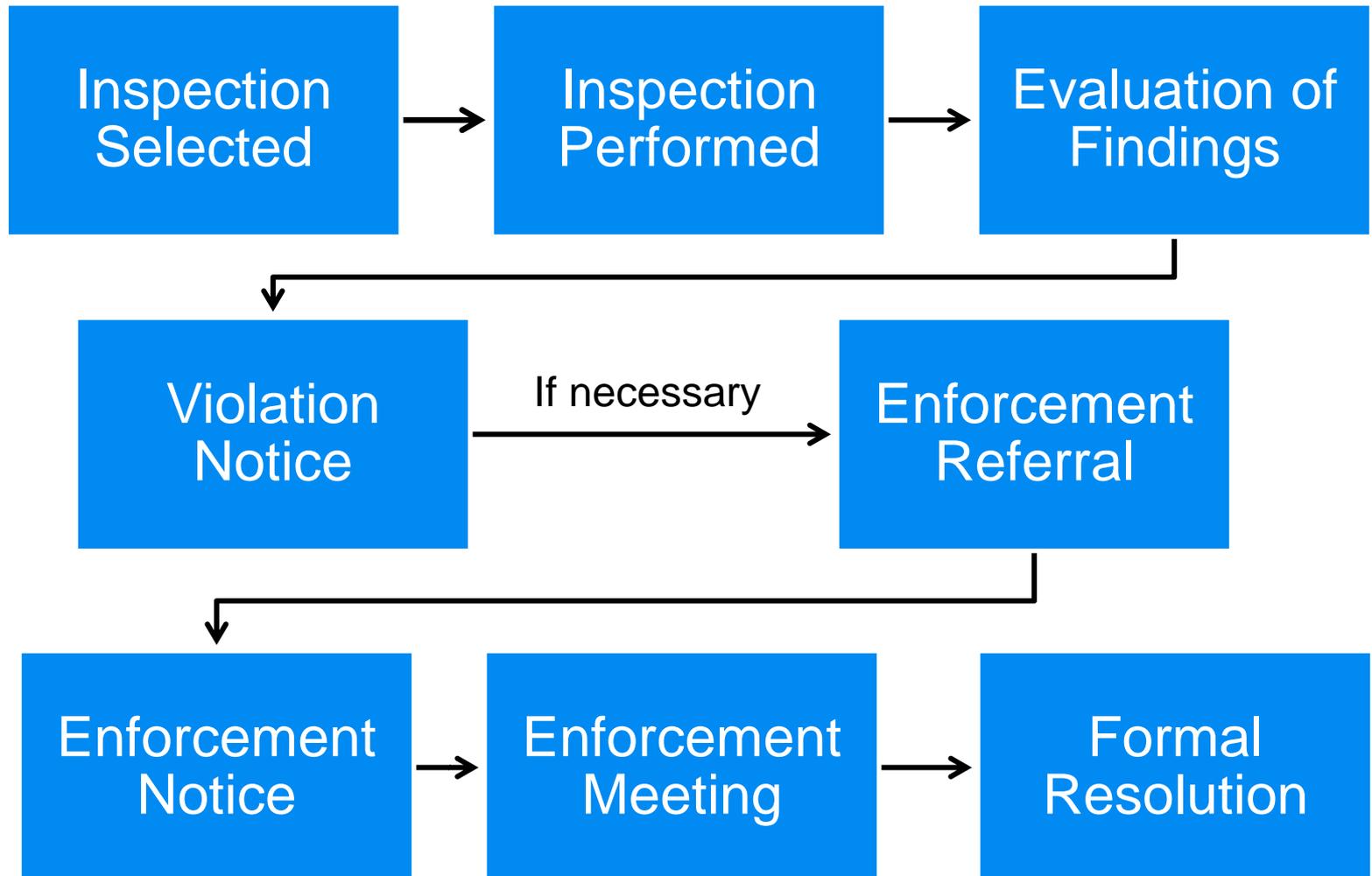
- Levels playing field
- Creates deterrent effect to regulated community
- Ensures rules/regulations are met
- Compels compliance



# A lot to think about



# Inspection and Enforcement Process



# Inspections



- Follow EPA Compliance Monitoring Strategy and State Targets
- Who?
  - Any Facility
  - Unannounced
  - Scheduled
  - Inspector Initiated

# Inspection Process

- Pre and Post Inspection Meeting
- Share preliminary findings of compliance status and Inspection Report
- If violations,  
send Violation  
Notice promptly



# When Can Enforcement Arise?

- Field staff observe violations during inspections, responding to complaints
- Data testing, monitoring, recordkeeping and reporting
- Fail to meet permit requirements
- Fail to meet deadlines to come into compliance



# Ways Violations are Documented

- Photographs
- Complaints
- Reports
  - Inspection Reports
  - Deviation Reports
  - Monitoring Reports
- Data analysis
- Manifests,  
Disposal Records
- Permit Evaluations



# Violation Notice

- Summarizes inspection findings
- Lists alleged violations and rules/permit requirements

## Example

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During the inspection, staff observed the following:

<b>Process Description</b>	<b>Rule/Permit Condition Violated</b>	<b>Comments</b>
Diesel Fired Boiler	Federal Boiler MACT, 40 CFR Part 63, Subpart DDDDD	Notification not submitted in a timely manner

# Violation Notice

- Provides deadline for response
  - Opportunity to present additional information
  - Request for response within a specific timeframe

## Example

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Please initiate actions necessary to correct the cited violation and submit a written response to this Violation Notice by June 15, 2016 (which coincides with 21 calendar days from the date of this letter).

# Violation Notice Response

The written response should include:

1. The dates the violation occurred;
2. An explanation of the causes and duration of the violation;
3. Whether the violation is ongoing;
4. A summary of the actions that have been taken and are proposed to be taken to correct the and the dates by which these actions will take place;
5. What steps are being taken to prevent a reoccurrence.

# Refer for Enforcement?

## What We Look For?

Is it a High Priority Violation under EPA's policy?

If not, are there other reasons to refer it?

# High Priority Violations

- HPV policy applies to two categories of sources:
  - Title V Major Sources
  - Stationary sources part of Compliance Monitoring Strategy plan
    - Synthetic Minor Sources
    - Area Sources for Hazardous Air Pollutants



# High Priority Violations

## Criteria 1: New Source Review Permit

- PTE over major source thresholds?
- Synthetic minor source actual emissions over major source thresholds?
- Example: Company increased production and exceeded major source thresholds



# High Priority Violations

**Criterion 2-4:** Violate federal emission limits or standard for 7 days or more

- PSD BACT limit.
- SIP limit
- NSPS or NESHAP limit
- Example: Stack test violation



# High Priority Violations

**Criteria 5:** Violate federal recordkeeping, monitoring, testing, reporting requirements that substantially interferes with determining compliance

- Example: Facility can't produce or re-create production or emission records



# Refer for Enforcement?

## What if it's not an HPV?

- Other violations may lead to enforcement:
  - Public health risk?
  - Environmental concerns?
  - Nuisance (901)?
  - Asbestos?
  - Repeat violation?
  - Uncooperative or unresponsive?



# State & Federal Relationship

- EPA has oversight authority and can do independent inspections and enforcement
- Can have:
  - Joint actions by MDEQ and EPA
  - Independent action by either EPA or MDEQ
  - If MDEQ proceeds with independent action and can't reach settlement, EPA may proceed to resolution



# Relationship with EPA Region 5

- Regularly discuss enforcement efforts and report High Priority Violations
- Follow EPA enforcement policies
- Resolve violations in timely manner



# Formal Resolution Options

- Administrative Consent Order
- Civil Judicial Order
  - Consent judgement
  - Court Order (litigation)
- Criminal Judicial Order
  - Civil and Criminal Order-Parallel Proceeding



# Consent Order

- 90% of violations are resolved through an administrative consent order

**Consent Order**

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings )  
against COMPANY, a corporation organized )  
under the laws of the State of Michigan and )  
doing business at street, City, County, State )  
of Michigan )

AQD No. X  
SRN: X

**STIPULATION FOR ENTRY OF FINAL ORDER BY CONSENT**

This proceeding resulted from allegations by the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (AQD) against Company, a Michigan corporation located at Road in the City, County of Macomb, State of Michigan, with State Registration Number (SRN) X. The MDEQ alleges that the Company is in violation of Mich Admin Code Rule 336.1910, Mich Admin Code 336.1702.d, Permit to Install (PTI) No. 169-X General Condition 15; Special Condition FG-COATING IV.2; Special Condition FG-COATING IV.3; Special Condition FG-COATING VI, and Special Condition FG-COATING VI.7 and PTI No. 151-X Special Condition FG-FACILITY 1.3 and 1.4. Specifically, the MDEQ alleges that Company failed to maintain volatile organic compound (VOCs) and hazardous air pollutant (HAPs) emission calculations for the metal parts coating lines, maintain temperature records of the catalytic oxidizer, maintain the overspray dry filter on one coating spray booth and properly maintain the catalytic oxidizer as specified in Violation Notice dated September 25, 2014. The Company and MDEQ stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

The Company and MDEQ stipulate as follows:

1. The Natural Resources and Environmental Protection Act, 1994 PA 451 (Act 451), MCL 324.101 *et seq.* is an act that controls pollution to protect the environment and natural resources in this State.
2. Article II, Pollution Control, Part 55 of Act 451 (Part 55), MCL 324.5501 *et seq.* provides for air pollution control regulations in this State.

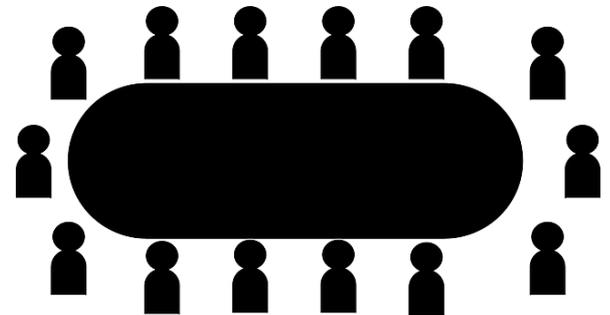
# Consent Order

- Required to offer enforcement meeting and consent order by state statute (Section 5528 NREPA)
- Company agrees to resolve violation through settlement, not ordered by a judge



# Enforcement Meeting

- Purpose to determine if interested in settlement
- Discuss allegations and evidence
- Focus on Compliance Plan
- May or may not discuss penalty amount



# Preparing for Enforcement Meeting

- Know the regulations
- Correct Swiftly
- Respond Timely & Do Not Ignore
- Present New Evidence If Available



# Consent Order Negotiations

- Allegations
- Compliance plan
- Penalties (Initial & Stipulated)
- Length of order



# Consent Order

- Hold 30-day public comment period
  - Share with EPA during comment period
  - Public may request a hearing
- After public notice comment period
  - Respond to comments, if any
  - Signed by Company, AQD Chief and Michigan Dept of Attorney General

# Consent Order Provisions

- Stipulations – Authorities, Background, Parties, Allegations
- Compliance Plan
  - Corrective Actions and Controls
  - Reporting Requirements
  - Records Retention
- Fines, Costs, and Penalties
- General Provisions
- Termination
- Signatories

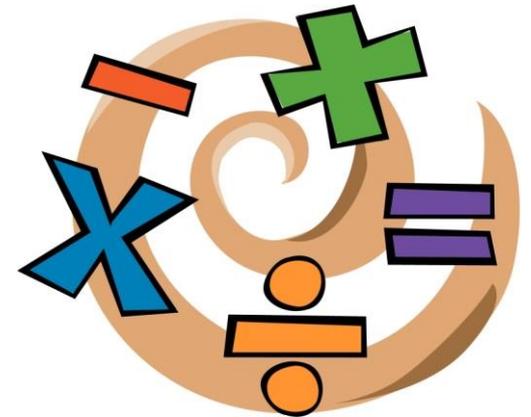
# Civil Penalties

- Penalties go to General Fund
- Depending on violations, follow state authority in NREPA or federal penalty policies

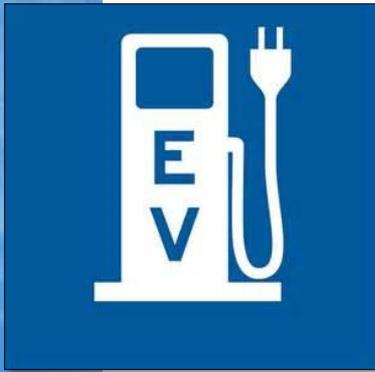


# Civil Penalties

- Federal penalty formula
  - Magnitude (harm to environment/public health)
  - Duration
  - Importance to program
  - Cooperation/Correct Violations
  - Monetary savings gained



# Supplemental Environmental Project



- Must benefit local community/environment
- Examples:
  - Diesel retrofits
  - Electric vehicle charging station
  - Community emergency hotline



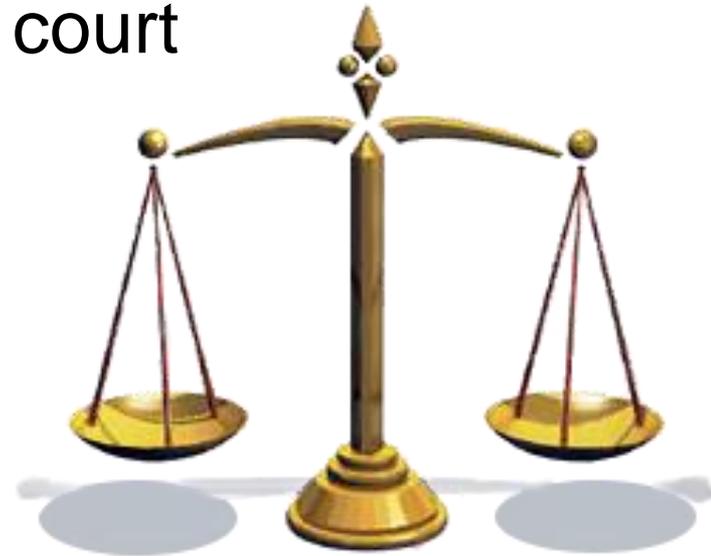
# Supplemental Environmental Project

- Not allowed if:
  - No nexus to violations
  - Already required, planned or in budget
  - Considerably slows down negotiations



# Going to Court

- **Court Order-Litigation**
  - Michigan Department of Attorney General Office brings case
  - Penalties are usually much higher
  - Judgement entered in court
  - Appeals/disputes are reviewed by a judge



# Going to Court

- **Consent Judgment**
  - Case referred to DAG Office
  - No litigation, voluntary and legally enforceable
  - Judgement entered in court
  - Appeals/disputes are reviewed by a judge

# Criminal Lawsuit

- Charged with crime and prosecuted
- Fines and penalties can be assessed
- Prison terms



# Case Examples

- Asbestos NESHAP violations
  - Renovating school and failed to properly abate and wet material
  - \$10K for property owner, \$20K for general contractor, \$5K for subcontractor



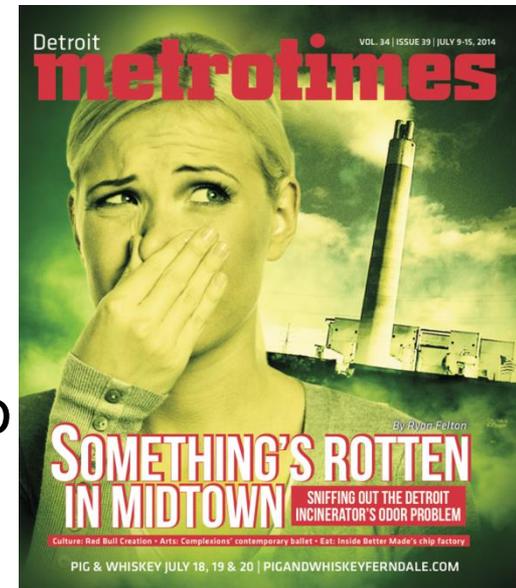
# Case Examples

- NESHAP emission limit violations
  - Company increased production and failed to install controls
  - Exceeded 12 month rolling average emission limit for HAPs for multiple years
  - Compliance Plan: Obtain Title V permit and install regenerative thermal oxidizer
  - \$124K penalty



# Consent Judgement

- 901 Nuisance violations
  - Ongoing complaints from residents of garbage odors from incinerator
  - Numerous Violation Notices issued
  - Focus on compliance schedule to reduce odors in shortest time frame
  - \$350K penalty
  - Supplemental Environmental Project for community



# AQD Source Information Online

DEQ / ABOUT THE DEQ

**DEQ Online Services**

- The Department of Environmental Quality is a regulatory agency. Its purpose is environmental protection, which is facilitated through many interactive and data driven environmental online services.
- **Air Quality Forecast**
- **Air Quality Index**
- **Air Quality Source Information**
- Air Toxics Workgroup
- Beach Monitoring System
- Brownfield Redevelopment Assessments
- Combined Sewer Overflow (CSO) and Sanitary Sewer Overflow (SSO) Information
- DEQ Forms
- DEQ Site Registry
- Dam Safety Consultants Registry
- Data Miner
- Digital Geology Library Catalog
- Electronic Ballast Water Management Practices Report Form
- Environmental Mapper
- Fish Contaminant Monitoring Program Database
- Flood & Low Flow Discharge Reporting System
- GLIN Great Lakes BeachCast
- GeoWebFace
- GeoWebFace
- GeoWebFace - online Geologic Maps and Data
- Groundwater Mapping Project
- Inventory of Facilities
- Leaking Underground Storage Tank Sites
- MISWIM
- MiWaters



# Enforcement

## How to get additional info

DEQ | [Contacts](#) | [Permits](#) | [Online Services](#) | [Programs](#) | [Locations](#) | [MI.gov](#)

DEQ | [Contacts](#) | [Permits](#) | [Online Services](#) | [Programs](#) | [Locations](#) | [MI.gov](#)

# DEQ Department of Environmental Quality

ABOUT THE DEQ | AIR | LAND | WASTE | WATER | SUSTAINABILITY

AIR

News & Info

**Compliance**

Emissions

Permits

Monitoring

SIP & Attainment

DEQ / AIR / COMPLIANCE

### Air Quality Enforcement Unit

Contact: [Tom Hess](#), Air Quality Division, 517-284-6767  
Agency: Environmental Quality

The major functions of this unit are to:

- Initiate appropriate enforcement action to bring a facility into compliance with the State and federal air pollution regulations in response to referrals from AQD District and Permit staff, and the Environmental Protection Agency.
- Provide support and technical assistance to the State Attorney General (AG) on all air pollution enforcement issues referred by the Division for escalated enforcement action. This includes but is not limited to court actions brought against the AQD, administrative orders, and contested case hearings.
- Coordinate formal administrative actions such as contested case hearings, administrative complaints, and revocation of permits to install. Draft (or assist the AG in drafting) all enforcement documents including notices of violation, consent orders, consent judgments, complaints, responses to legal briefs and, administrative orders.
- Provide technical assistance and training to Division staff, the regulated community and the general public on enforcement related issues.

[AQD Proposed Consent Order Public Notice Documents](#)

of all high priority violators in the State.

PM2.5 Minor Source Baseline Dates Updated  
DEQ Celebrates 50th Anniversary of the Michigan Air Pollution Act

Federal Air Laws  
Air Toxics Laws & Rules

# Wrap Up

- What we went over today
  - How AQD responds to violations staff discover
  - What you should do if you receive a Violation Notice
  - What happens if violations are referred to Enforcement Unit
  - Where you can find compliance and enforcement information



# What's Coming Up?

**Complaints: Odors, Open burning, and  
Dust –  
Oh my!**

Wednesday June 15, 2016

**Michigan Environmental Compliance  
Conference**

June 21 and 22, 2016

**Please join us!**

# Wrap Up



- Recording
- Materials
- Continuing Education
- Evaluation

# Michigan Department of Environmental Quality

800-662-9278

[www.michigan.gov/deq](http://www.michigan.gov/deq)



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