Compliance & Enforcement Proceedings

The purpose of a standardized compliance and enforcement program is to ensure predictable, reliable, and efficient escalated enforcement actions.

The first step in most compliance cases is a Notice of Noncompliance (NONC). District staff sends a NONC to a permittee after an inspection if violations are documented. Other units in the Office of Geological Survey (OGS) may also send a NONC if violations are verified. The permittee is usually granted 30 days to voluntarily resolve violations cited in an NONC.

If violations identified in an NONC are not resolved by the deadline specified in the NONC, OGS may issue a Second NONC. The purpose of the Second NONC is to provide the permittee with a second chance to voluntarily resolve the alleged violations.

If violations identified in the First or Second NONC are not resolved, OGS Staff will issue a Notice of Referral. The Notice of Referral informs the permittee that the unresolved violations have been referred to the Compliance & Enforcement (C&E) Unit.

The C&E Unit issues a Notice of Violation (NOV) to the permittee via certified mail. After a NOV has been issued, there must be formal resolution to the violations identified in the NOV. Formal resolution to the violations can occur through the administrative process, civil process or criminal process.

Serious violations involving clear criminal intent may be referred directly for criminal action without a NONC or NOV. Also, for violations that pose a significant threat to public health and safety, the Supervisor of Wells may immediately issue an Emergency Order to correct the violation.

Administrative Process

The Administrative Process can follow one of two paths. The first path occurs when a permittee is willing to voluntarily resolve alleged violations. The second path, an Administrative Hearing, occurs when a permittee fails to voluntarily resolve the alleged violations.

Voluntary Compliance

If the permittee resolves the violations cited in a NOV before an Opportunity to Show Compliance (OPTSC) meeting, then the matter will be resolved.

If the violations are not resolved at the time of the OPTSC meeting, then the permittee will be offered an opportunity to enter into a voluntary consent agreement with the Department of Environmental Quality (DEQ). A voluntary consent agreement formally resolves violations and sets deadlines for coming into full compliance with the alleged violations. Consent agreements may include an administrative penalty. Consent agreements include provisions for stipulated penalties in the event that the permittee fails to comply with deadlines specified in the consent agreement.
Administrative Hearings

After receiving a NOV, the permittee will have an opportunity to demonstrate that violations have been resolved. In accordance with the Administrative Procedures Act (APA), 1969 P.A. 306, as amended, an evidentiary hearing shall be held. Therefore, an informal OPTSC meeting is scheduled. Within 15 days after the OPTSC, the meeting chairperson will issue a Compliance Determination Memorandum. This memorandum concludes whether the permittee was found to be in compliance or in violation at the time of the OPTSC. If the permittee is found to be in compliance, the case may be closed. If the permittee is found to be in violation, the Administrative Hearings Process will continue.

The next step in the Administrative Hearings Process will depend on the nature of the violation. For all violations that do not involve the “claiming” of a conformance bond or a revocation of a permit, the Supervisor of Wells may issue a Notice of Determination (NOD) and Administrative Order, without a formal hearing, that requires the permittee to resolve the violations by a specified deadline and pay an administrative penalty up to $1,000 per day per violation.

For violations that involve the claiming of a conformance bond or revocation of a permit, a formal administrative hearing is required before an administrative law judge and the Supervisor of Wells. This formal hearing must conform to the Administrative Procedures Act, Section 92. The formal administrative hearing will result in a Findings of Fact and Notice of Determination and may result in an Administrative Order. An Administrative Order, if issued, will require the permittee to resolve the violations by a specified deadline and pay an administrative penalty up to $1,000 per day, per violation.

Administrative penalties and stipulated penalties are a necessary part of any compliance and enforcement program. Penalties serve as a deterrent to violators and promote compliance. Administrative penalties are assessed based upon the OGS Escalated Enforcement and Administrative Penalty Policy.

Failure to comply with a Notice of Determination, Consent Order, or Consent Agreement is a misdemeanor under Section 61521 of Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended, and may be referred to the Office of Criminal Investigation (OCI) of the DEQ. Refer to the Criminal Process below.

Civil Process

At any point in time, a case may be referred to the Department of Attorney General (DAG). Violations referred to the DAG may include those that involve permittees that are located outside Michigan, those that involve cost recovery, or those that involve failure to comply with administrative orders or agreements. Civil cases are held in a circuit court before a judge. A civil case may result in a court order that requires resolution to violations and the payment of a civil fine up to $1,000 per day per violation.

Failure to comply with a civil order is a misdemeanor under Section 61521 of Part 615 and will result in a referral to the OCI. Furthermore, failure to comply with a civil order could constitute contempt of court. Refer to the Criminal Process below.

Criminal Process

At any point in time, violations may be referred to the OCI if there appeared to be criminal intent. The criminal investigation may result in the filing of misdemeanor or felony charges. If criminal charges are filed, a criminal hearing will be held before a judge or jury. A criminal conviction may result in a court order that requires the resolution of violations and the payment of a criminal fine up to $1,000 per day per misdemeanor count or $3,000 per day per felony count.