



DEQ POLICY AND PROCEDURES

SUBJECT: COMPLIANCE AND ENFORCEMENT
Date: May 30, 2001
Revised: January 7, 2008

Number: 04-003
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This document is intended to provide guidance to staff to foster consistent application of the DEQ's compliance and enforcement processes and procedures. This document is not intended to convey any rights to any person nor itself create any duties or responsibilities under law. This document and matters addressed herein are subject to revision.

ISSUE:

An important tool the Department of Environmental Quality (DEQ) has in meeting its mission is its compliance and enforcement activities. This includes inspections, reporting, monitoring, and informal and formal compliance notifications, and escalated enforcement activities. The purpose of this policy is to assure that the DEQ effectively identifies and investigates potential violations of the statutes, rules, permits, licenses and orders that it administers, and that the identified violations are responded to in a consistent and effective manner.

The DEQ has four divisions, one bureau, and two offices (hereafter "divisions") that have regulatory program responsibilities. These divisions administer numerous state and delegated federal environmental programs that require ongoing compliance and enforcement activities and, on occasion, the initiation of escalated enforcement actions. Through the years, each division has developed its own compliance and enforcement process to meet its specific regulatory needs. The DEQ's varied compliance and enforcement processes, procedures, documents, and associated nomenclature create a challenge to communicate internally and externally about DEQ compliance and enforcement policies, practices, activities and successes.

This policy establishes some basic principles applicable to the DEQ's compliance and enforcement programs. It also provides guidance and direction for divisions in key areas that need to have consistent departmental processes and procedures to ensure a reliable, predictable, and effective compliance and enforcement program.

It is important to view enforcement as one tool available to achieve compliance. Enforcement in and of itself is not a goal—compliance is the goal.

POLICY:

All DEQ compliance and enforcement programs shall be administered in accordance with this policy to ensure that these basic principles are followed.

1. **Compliance and enforcement actions must be timely:** To be most effective, an action must occur promptly after the violation takes place or is discovered. A timely action not only sends a clear message to violators, but also limits the environmental harm that a given violation may cause.

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2. **Compliance and enforcement actions must be appropriate to the violations alleged:** In deciding which compliance and enforcement action is the most appropriate response for a violation, consideration needs to be given to a number of factors. These factors include, but are not limited to, the violation's effect on program integrity; the severity and duration of the violation; any public health risk or resource damage caused by the violation; the compliance history of the violator; and the willfulness, negligence, and recalcitrance of the violator.

3. **Compliance and enforcement actions must be consistent for like violations:** Compliance and enforcement actions of the DEQ must not be construed as arbitrary, capricious, or as an abuse of discretion. To this end it is important that compliance and enforcement actions be consistent and fair. Like violations of a given statute, rule, permit or license should end in a similar result where the circumstances are the same or comparable. However, consistency does not mean identical and often no two cases are identical.

A consistent compliance and enforcement program provides the regulated community with the benefit of knowing what to expect from the DEQ when violations occur. A consistent approach also ensures a level playing field for all regulated entities. Cases requiring an action that differs or appears to differ from past actions for like or similar violations need to be documented with material facts that account for the difference in the level of action taken. In most instances the procedures set forth below will be followed; however, it is impossible to articulate every reason or possibility where it may be appropriate to use a different procedure that is within the scope of DEQ's discretion.

4. **Compliance and enforcement actions in response to repeat or continuing violations must be progressive in nature:** To ensure that violations are resolved as quickly and efficiently as possible, the DEQ will use a progressive compliance program. Failures to comply with previous compliance and enforcement actions must subject the violator to progressively stronger actions.

5. **Compliance and enforcement actions must be responsive to division program priorities and needs:** Compliance and enforcement actions should ensure that program and regulatory responsibilities are successfully carried out. Compliance and enforcement should not be considered as a program unto itself, but should reflect larger program priorities that are set forth in annual work plans.

COMPLIANCE ASSISTANCE:

Although this policy sets standards for carrying out compliance and enforcement responsibilities, it does not lessen each division's responsibility to foster compliance through compliance assistance activities. The DEQ believes that both activities--assistance and enforcement--have a justified place in DEQ efforts. By using both compliance and enforcement and assistance tools, the goal of protecting and enhancing Michigan's environmental quality and public health should be met.

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IMPLEMENTATION OF POLICY:

This policy identifies some basic elements that must be contained in each division's compliance and enforcement program. These elements are listed in sections found in **Appendix A**, in the order they normally occur in the compliance and enforcement process of divisions. The sections in order are as follows:

1. Compliance Evaluations
2. Compliance and Enforcement Process
3. Settlement Issues
4. Compliance Coordination, Tracking, and Measurement
5. Coordination and Management of Multimedia Cases

Divisions shall develop and implement necessary policies, procedures, and guidance for each section. Divisions have the latitude to tailor their compliance and enforcement program to meet the needs of the statutory requirements it is charged with administrating; however, this policy sets forth the minimum standards that must be met for each section.

Periodically, DEQ management will find it necessary to provide direction on how this policy applies to given situations, provide details on initiatives, or set priorities. Divisions shall ensure that these directives are maintained with this policy and that appropriate changes are made to division programs, policies, and procedures to implement the directives. Revisions to this policy shall be implemented by the divisions within six (6) months of the effective date of the revision.

Approved: _____ Date: _____

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SECTION 1: COMPLIANCE EVALUATIONS

The success of a strong compliance and enforcement process is judged by the degree to which violations are detected and by the timeliness of achieving compliance. Based on the information obtained from compliance evaluations, the DEQ is in the best position to determine what actions will have the greatest impact in ensuring that the environment and public health is protected. Every entity the DEQ oversees could benefit from frequent contact with the DEQ. With frequent contacts the DEQ could offer timely compliance assistance and solve problems before they become significant compliance or escalated enforcement issues. However, the DEQ does not have the resources to provide that level of overview. Therefore, compliance evaluation efforts must be planned to ensure the maximum impact on maintaining a strong rate of compliance.

A. SETTING COMPLIANCE EVALUATION PRIORITIES

A compliance evaluation is any effort designed to ascertain the compliance status of a facility or person. Compliance evaluations include, but are not limited to, inspections, file reviews, evaluation of required submittals, evaluation of sampling or monitoring data, and permit or license application reviews. Compliance evaluation priorities should be set to provide for the best use of limited resources. In setting compliance evaluation priorities, the following factors should be considered:

1. Resources are available for follow-up actions or escalated enforcement.
2. DEQ planning targets and division program means.
3. Violations with a high potential for public health impact or resource damage are the highest priority of the DEQ.
4. A geographic and program balance.
5. Statutory requirements.
6. Grant and program delegation requirements.
7. Compliance history.
8. Special enforcement initiatives.

A list of planned compliance evaluations shall be prepared annually. Procedures should ensure that all regulated entities are evaluated on a set frequency and that scheduled evaluations are consistent with program priorities and targets. When appropriate, representatives from Indian tribes and local authorities should be invited to participate in compliance evaluations.

B. EVALUATION PROCEDURES

Compliance evaluation procedures shall establish the criteria for conducting evaluations and must address the following issues:

1. Evaluation types.

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2. The situation in which each type of evaluation is to be used.
3. The statutory or program foundation for the evaluation.
4. The intended scope of the evaluation.
5. Anticipated staff resources necessary to perform the evaluation.
6. Any forms or checklists associated with the evaluation.
7. Any special equipment or supplies needed to perform the evaluation.
8. The final report format of the evaluation.

As appropriate, the procedure must also cover such issues as:

Pre-evaluation

- Gaining access to sites.
- File reviews of previous evaluation reports and pertinent information.
- Review of legal requirements or performance standards that are to be evaluated.
- How and when to make site contacts.

Evaluation

- Sampling procedures.
- Evidence collection.
- Chain-of-custody requirements.
- Completion of required forms, reports, and checklists.

Post-evaluation

- Post-evaluation consultations.
- Site compliance status determination.
- File documentation.
- Database documentation.
- Written notification of inspection results to site personnel.
- When and what type of follow-up evaluations are needed.

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SECTION 2: COMPLIANCE AND ENFORCEMENT PROCESS

The DEQ's standard environmental compliance and enforcement process may be defined as a progressive sequence of actions taken to compel compliance with environmental statutes and regulations. Although the compliance and enforcement process is progressive, the DEQ may initiate or take action at any point in the process as the facts and circumstances warrant in conjunction with the authority provided by the applicable statutes and regulations or as required by an applicable enforcement response policy for a federally delegated program.

The compliance and enforcement process is initiated when the first compliance communication is issued by the DEQ. The process provides reasonable opportunities to resolve violations in a consistent and progressively escalated manner. Although some circumstances may require immediate escalation, there is a general presumption that the process will start at the lowest stage. However, specific factors or circumstances, such as seriousness of the violation, resources damaged or impaired, previous compliance history, agency program needs, or an applicable federal enforcement response policy for a delegated program may all serve to escalate the initial level of enforcement action.

Each division shall have written compliance and enforcement procedures that:

1. Incorporate the nomenclature and compliance and enforcement process described below.
2. Identify staff responsibilities and authorities.
3. Specify how violations will be identified and prioritized for action.
4. Establish time frames for response.
5. Establish appropriate responses to violations.
6. Establish criteria for referral of cases for escalated enforcement.
7. Provide for the handling of criminal violations and for referrals to the Department of Attorney General (DAG).
8. Provide guidance to staff on when and under what conditions a violation should be considered for referral for criminal action versus being referred for administrative or civil enforcement or when and under what conditions a parallel proceeding should be considered.
9. Describe how division management will provide appropriate oversight and review.

To facilitate a reliable, predictable, and effective department-wide compliance and enforcement program, all divisions shall incorporate the DEQ compliance and enforcement process and nomenclature described below within their written compliance and enforcement procedures.

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A. NOMENCLATURE

➤ Compliance Communication (discretionary):

A Compliance Communication is an informal means of communication used by DEQ staff via telephone, e-mail, letter or in person to communicate to a regulated entity that there are compliance issues or violations that need attention. Typically, a Compliance Communication is used to address violations or issues that are relatively minor in nature, few in number and can be resolved promptly with limited DEQ oversight. Compliance Communications should be documented in writing in the DEQ's files and will:

- Be specifically identified as a "Compliance Communication";
- Include a brief description of the compliance issue or violation(s) and a specified date for compliance;
- Include a summary of any instructions or directives given by DEQ staff to the regulated entity; and
- Be signed and dated by the DEQ staff person who provided the communication.

➤ Violation Notice¹:

A Violation Notice (see Attachment 1) is a formal means of notifying the recipient of a significant or priority violation or when previous attempts to gain voluntary compliance have failed to correct the compliance issue or violation. The Violation Notice formally notifies the recipient of the violation and provides the DEQ with a means for tracking its resolution. The Violation Notice places the recipient on notice that a violation(s) has been identified and provides the recipient with an opportunity to correct the violation in a timely manner. If the recipient fails to comply with a Violation Notice, the DEQ may escalate the enforcement action.

The Violation Notice, at a minimum, will:

- Reference any previous Compliance Communications (if appropriate);
- Identify the legal authority under which the compliance evaluation was conducted, the type of compliance evaluation performed or what was evaluated (i.e., inspection, record review, etc.), and the scope of the evaluation (e.g., evaluation of compliance with the statute, administrative

¹ A "VIOLATION NOTICE" HAS HISTORICALLY BEEN CALLED A LETTER OF WARNING IN THE WASTE AND HAZARDOUS MATERIALS DIVISION; NOTICE OF VIOLATION IN THE LAND AND WATER MANAGEMENT DIVISION; NOTICE LETTER OR NOTICE OF NONCOMPLIANCE IN THE WATER BUREAU; LETTER OF VIOLATION IN THE AIR QUALITY DIVISION; AND NOTICE OF NONCOMPLIANCE IN THE OFFICE OF GEOLOGICAL SURVEY.

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- rules, permit or license by specific reference).
- Clearly indicate any limitations on the scope of the evaluation (e.g., that the inspection was limited to a portion of the facility; that only a financial assurance record review was conducted; that an evaluation of monitoring results from calendar years 2006 and 2007 to date was performed, etc.).
- Describe the method(s) used to discover the violation;
- Describe in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted;
- Describe the act or omission that created the violation;
- Cite the date(s) or approximate period of time during which the violation occurred and whether the violation is ongoing;
- Specify the action(s) necessary to return the regulated entity to compliance or request submittal of a compliance program to resolve the violation(s);
- Provide the regulated entity with an opportunity to submit factual information to refute the DEQ's findings;
- Specify a deadline for response;
- Be signed by a supervisor or other DEQ staff person designated by the division.

The Violation Notice should be written in an informative manner and should not be overly formalistic, accusatory or threatening.

If a sufficient response to the Violation Notice is received and the violation has been, or is being, corrected in a timely manner, no further enforcement action is usually necessary. However, some federal enforcement response policies for delegated programs require that certain types of violations be referred for the assessment of a monetary penalty even if the violation has already been corrected.

➤ Second Violation Notice (discretionary):

Failure to adequately and timely respond to the first Violation Notice or failure to respond at all may result in either issuance of a second Violation Notice (see Attachment 2) or initiation of escalated enforcement proceedings. If a second Violation Notice is issued, at a minimum, it will:

- Reference the first Violation Notice;
- Advise of failure to adequately respond to the first Violation Notice;
- Reiterate the action(s) necessary to be undertaken to return to compliance or again request submittal of a compliance program to address the violation(s);
- Identify any additional violations noted since issuance of the first Violation Notice and describe the action(s) that need to be undertaken to return to compliance or request submittal of a compliance program to address the violation(s);

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- Specify a deadline for response;
- Specify the potential consequences for violating the law, rule, permit, or license and/or for not taking appropriate action(s) to resolve or address the violation(s); and
- Be signed by a supervisor or other DEQ staff person designated by the division.

Each division's compliance and enforcement procedures should include guidance that enables a trained employee to determine under what circumstances it is appropriate to send out a second violation notice.

➤ Enforcement Notice:

A case is usually referred for escalated enforcement because preceding administrative actions have been unsuccessful; however, seriousness of the violation, resources damaged or impaired, previous compliance history, agency program needs, or the applicable federal enforcement response policy for a delegated program may also result in a referral for escalated enforcement.

After a case has been referred, a formal Enforcement Notice (see Attachment 3) should be sent to the violator. At a minimum, the Enforcement Notice will:

- Advise that the case has been referred for escalated enforcement;
- Reference any previously issued Violation Notices;
- Specify the nature of the unresolved violation(s);
- Provide the violator with a final opportunity to: (1) demonstrate compliance; (2) present factual information in writing that should be considered regarding the violations; or, if appropriate, (3) meet and discuss options for satisfactorily resolving the violation(s);
- Specify a deadline for response;
- Specify the consequences for failure to adequately respond and/or resolve or address the violations; and
- Be signed by a supervisor or other DEQ staff person designated by the division.

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ATTACHMENT 1

[Date]

[Person or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear Mr./Mrs. _____:

SUBJECT: Violation Notice

The Violation Notice should:

- Reference any previous DEQ Compliance Communications (if appropriate);
- Describe the method used to discover the violation;
- Identify the legal authority under which the compliance evaluation was conducted, the type of compliance evaluation performed or what was evaluated and clearly indicate any limitations on the scope of the evaluation (if any).
- Describe in narrative form what provisions of the law, rule, permit, or license were violated with a reference to the specific law or rule citation or specific permit or license provision also noted;
- Describe the act or omission that created the violation;
- Cite the date(s) that the violation occurred or specify the period of time during which the violation occurred, and whether the violation is ongoing;
- Specify the action(s) that needs to be undertaken to return the regulated entity to compliance or request submittal of a compliance program to address the violation(s);
- Provide the regulated entity with an opportunity to submit factual information to refute the DEQ's findings; and
- Specify a deadline for response.

We anticipate and appreciate your cooperation in resolving this matter. If you have any questions, please feel free to contact me.

Sincerely,

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ATTACHMENT 2

[Date]

[Person or Facility Name]
[Address]
[City, Township, Village], Michigan [ZIP Code]

Dear Mr./Mrs. _____:

SUBJECT: Second Violation Notice

The second Violation Notice should:

- Reference the first Violation Notice;
- Advise of the failure to adequately respond to the first Violation Notice;
- Reiterate the action(s) that needs to be undertaken to return to compliance, identify deficiencies in the initial submittal which require a modification to the compliance program, or again request submittal of a compliance program to address the violation(s);
- Identify any additional violations noted since issuance of the first Violation Notice and describe the action(s) that need to be undertaken to return to compliance or request submittal of a compliance program to address the additional violation(s);
- Specify a deadline for response;
- Specify the potential consequences for violating the law, rule, permit, license, or order and/or for not taking appropriate action(s) to resolve or address the violation(s); and
- Be signed by a supervisor or other DEQ staff person designated by the division.

Please be advised that issuance of this Violation Notice does not preclude or limit the DEQ's ability to initiate any other enforcement action under state or federal law as appropriate.

If you have any questions, please feel free to contact me at the telephone number listed below.

Sincerely,

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ATTACHMENT 3

CERTIFIED MAIL

ENFORCEMENT NOTICE

In the matter of:

[Facility Name or Regulated Entity]
 [Address]
 [City, Township, Village of _____], Michigan [ZIP Code]

ATTENTION: [Owner/Operator], [Title]

The Enforcement Notice should follow this format and:

- Advise that the case has been referred for escalated enforcement;
- Reference any previously issued Violation Notices;
- Specify the nature of the unresolved violations;
- Provide the opportunity to: (1) demonstrate compliance; (2) present factual information in writing that should be considered regarding the violations; or, if appropriate, (3) meet and discuss options for satisfactorily resolving the violation(s);
- Specify a deadline for response; and
- Be signed by a supervisor or other DEQ staff person designated by the division.

Be advised that failure to timely and adequately resolve or address the violation(s) cited in this Enforcement Notice may result in further enforcement proceedings including, but not limited to, referral of the matter to the Department of Attorney General for commencement of civil litigation. Be further advised that this Enforcement Notice does not preclude or limit the Department of Environmental Quality's ability to initiate any other enforcement action under state or federal law as appropriate.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Date: _____

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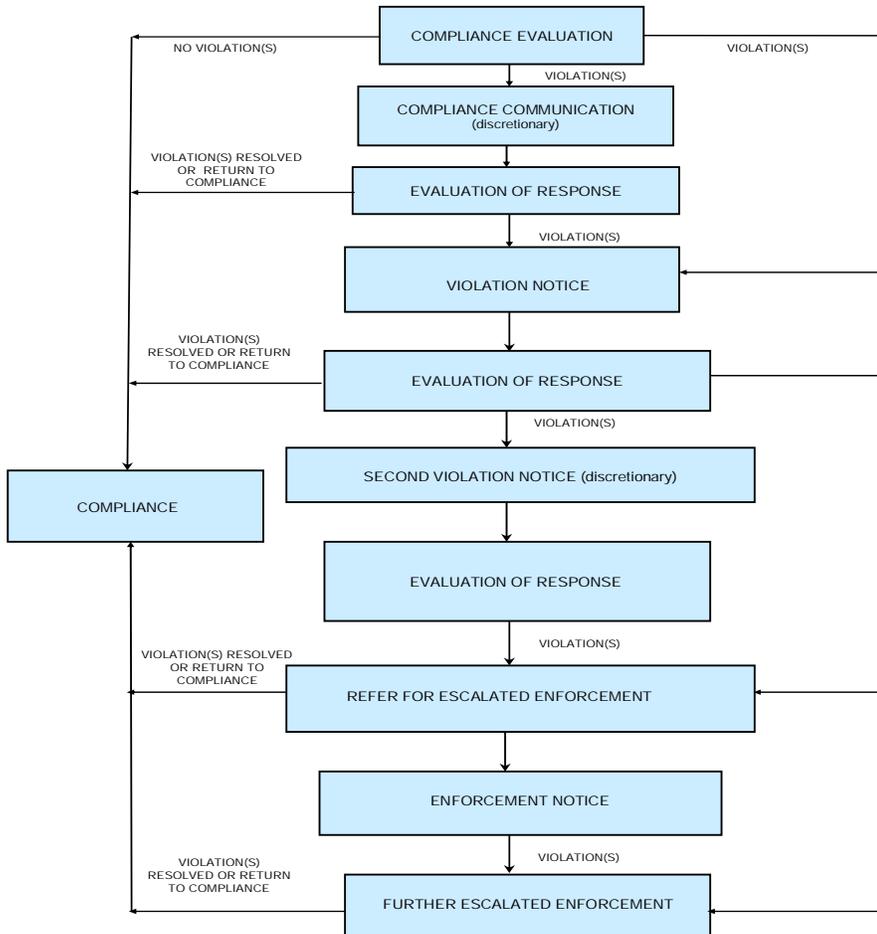
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B. STANDARD COMPLIANCE AND ENFORCEMENT PROCESS



NOTES: 1. At each evaluation point, staff determines if the facts and circumstances warrant pursuing further enforcement.
2. Cases that are referred for criminal prosecution are not subject to this process.

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C. VIOLATION RESPONSE

The compliance and enforcement procedures for each division should provide guidance that enables a trained employee to determine an appropriate response to an identified violation. The procedure should focus on standard violations or classes of violations that commonly occur in the program being administered. Violations are to be evaluated using factors such as:

1. Frequency and duration of the violation.
2. Extent or deviation of the violation from the requirement (magnitude of the violation).
3. Harm to the public health, the environment, or the integrity of the regulatory program.
4. Compliance history of the violator.

For divisions which administer delegated federal programs and the United States Environmental Protection Agency (U.S. EPA) has developed enforcement guidance, the divisions may reference and adopt that guidance.

D. CRIMINAL VIOLATIONS

Employees of the DEQ will encounter situations where a crime may have been committed that may warrant a criminal investigation and ultimately prosecution. Potential criminal violations shall be referred to the Office of Criminal Investigations in accordance with DEQ Policy No. 09-002. Each division's compliance and enforcement procedures shall ensure that criminal investigations referred to the OCI are properly communicated in accordance with the division's referral procedures for criminal cases. Division's compliance and enforcement procedures should also ensure that referrals for criminal investigation are evaluated and/or discussed in accordance with DEQ Policy No. 04-004, Parallel Proceedings, and DEQ Policy No. 04-005, District Enforcement Review Discussions.

The OCI shall develop and maintain a priority system for conducting and completing criminal investigations. In setting priorities the OCI shall work cooperatively with divisions to ensure that division program priorities are met.

E. REFERRALS TO THE ATTORNEY GENERAL

DEQ staff works closely with staff of the DAG in situations where the DEQ requires legal advice or representation. In order to make the most efficient use of staff time, divisions shall establish clear lines of communication and authority for discussing and referring matters to the DAG. These procedures shall be consistent with DEQ Policy No. 09-002.

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SECTION 3: SETTLEMENT ISSUES

A. CIVIL PENALTIES

In addressing violations it is necessary to consider whether the violations alleged warrant fines and penalties. This determination needs to be made early in the compliance and enforcement process. The application of penalties needs to be consistent and documented. Penalties are to be calculated based on the factual elements of each case and are intended to eliminate any economic benefit gained from the violation and to create deterrence from future violations. The procedures for penalty calculations shall address the following issues:

1. Criteria for determining when a penalty is appropriate.
2. Criteria for determining the penalty amount.
3. Criteria for the calculation, review, and approval of proposed penalties.
4. Standard procedures for documenting penalty calculations.

Generally, penalties should be considered when one or more of these conditions exist:

1. The violation exceeds a set threshold or an agreement the DEQ has made with the U.S. EPA through the program planning process or delegation agreement.
2. The violation results in harm or impairment of the environment or public health.
3. Failure to receive a penalty could negatively impact the integrity of the regulatory program.
4. The violation is willful.
5. The violation is due to negligence.
6. The violation is in direct disregard to a directive of the DEQ.
7. Compliance efforts to resolve the violation have not been successful and escalated enforcement was needed.
8. The violation is of an Administrative Consent Order, a Unilateral Director's Order, or a Judicial Order.

Division chiefs should have knowledge of all proposed penalties being negotiated in their division and in no case should a penalty in excess of \$50,000 be proposed without prior consultation with the division chief. For proposed penalties in excess of \$500,000 the Deputy Director needs to be consulted. When a proposed penalty is in excess of \$20,000, it is expected that the proposed penalty shall be presented to the other party in person during a settlement meeting.

Penalty calculation procedures should be specific to each division and consider the following factors:

1. The magnitude and duration of the violation.

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2. The impact or potential for impact that the violation poses to the environment, public health, or program integrity.
3. The monetary benefit to be gained by the violation.

The penalty procedure shall include a penalty matrix that staff can use to calculate penalties. Divisions that administer programs with different statutory penalty amounts may need to develop penalty guidance and matrices for each program.

EXAMPLE PENALTY MATRIX

DEGREE OF HARM TO THE ENVIRONMENT/PUBLIC HEALTH			
V I O L A T I O N M A G N I T U D E	HIGH IMPACT	MEDIUM IMPACT	LOW IMPACT
	PENALTY RANGE \$25,000 TO \$16,000	PENALTY RANGE \$20,000 TO \$10,500	PENALTY RANGE \$14,500 TO \$8,000
	HIGH MAGNITUDE	HIGH MAGNITUDE	HIGH MAGNITUDE
	HIGH IMPACT	MEDIUM IMPACT	LOW IMPACT
	PENALTY RANGE \$20,000 TO \$10,500	PENALTY RANGE \$15,000 TO \$5,000	PENALTY RANGE \$9,500 TO \$2,500
	MEDIUM MAGNITUDE	MEDIUM MAGNITUDE	MEDIUM MAGNITUDE
	HIGH IMPACT	MEDIUM IMPACT	LOW IMPACT
	PENALTY RANGE \$14,500 TO \$8,000	PENALTY RANGE \$9,500 TO \$2,500	PENALTY RANGE \$4,000 TO \$500
	LOW MAGNITUDE	LOW MAGNITUDE	LOW MAGNITUDE

Each violation will be compared to the matrix and assessed the appropriate penalty amount. If a violation were for multiple days, the assessed penalty could then be multiplied by the number of days of violation.

Multiple days of violation can be addressed by creating a second matrix that sets a penalty amount for the duration of violations and adding that amount to the base penalty amount or by other alternative means.

The calculated penalty amount may be adjusted up or down with justification, but should remain in the established penalty range. Factors that would warrant penalty adjustment include:

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1. Compliance history.
2. Recalcitrance of the violator.
3. Willfulness of the violator.
4. Strength of the case.
5. The violation is of the terms of an Administrative or Judicial Order and is not addressed by agreed-to stipulated penalties.
6. The violation resulted in serious impact or an imminent and substantial endangerment to public health or the environment.

The final calculated proposed penalty should be sufficient enough to eliminate any substantial economic benefit that would give a violator a clear advantage over its business competitors. Divisions should use the final calculated proposed penalty to begin settlement negotiations. In all cases, the proposed penalty should be reasonable so as to facilitate resolution of the violation and provide for improvements to environmental protection. The negotiated or final penalty assessed should be justified by the circumstances and should be able to withstand scrutiny when similar circumstances arise.

B. STIPULATED PENALTIES

Stipulated penalties are specified in settlement agreements and address potential future violations of certain terms of the settlement agreement. Stipulated penalties may be applied for failures to meet scheduled dates, to perform specified actions, or to meet environmental performance criteria or other requirements established in the agreement. The amount and terms of stipulated penalties are specified in settlement agreements and can be collected if the terms of the agreement are violated.

The primary goal of stipulated penalties is to act as a deterrent to violating the terms and conditions of the settlement agreement. To have this effect, stipulated penalties must be established at an amount high enough to represent a true penalty for not complying with the agreement.

Persons violating the terms and conditions of a settlement agreement are, by definition, "repeat offenders" and should be subject to penalties that are higher on a per-diem basis than any initial civil penalties that may have been imposed. Stipulated penalties for particularly egregious violations may even be considerably higher. Any clearly definable event in a settlement agreement may be established in the agreement as subject to stipulated penalties. Stipulated penalties are most useful in ensuring that activities specified in a settlement agreement are proceeding on schedule and that interim progress toward a final goal is being made. Settlement agreement language for stipulated penalties must be clearly written to require specific performance milestones by specific dates. Automatic provisions for having stipulated penalties accrue and payable to the state should be clearly incorporated into the settlement document. Settlement documents are to be clearly written to

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avoid disputes regarding the application of stipulated penalties. The final amount of stipulated penalties to be assessed may be subject to negotiation.

C. ADMINISTRATIVE PENALTIES

If a division has authority to issue administrative penalties they shall have procedures for determining the penalty amount, assessing the penalty, and the collection of the penalty.

D. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

When requested, the DEQ may consider the use of a supplemental environmental project (SEP) as a part of a settlement agreement.

As a part of the settlement agreement with the DEQ, the alleged violator may request to incorporate a SEP, underwritten by the alleged violator, in lieu of payment of a portion of the monetary penalty. SEPs are neither required by nor prohibited by regulations administered by the DEQ.

A SEP shall be developed in accordance with DEQ Policy No. 04-002.

E. JUDICIAL VS ADMINISTRATIVE ORDERS

Sometimes it is necessary to settle violations by the entry of a settlement agreement. The following guidance is provided to assist divisions in determining which type of agreement, judicial or administrative, to enter.

A settlement agreement is a legally enforceable document that binds the DEQ and a person for the purpose of resolving the alleged violation(s) of laws or regulations administered by the DEQ. A settlement agreement usually contains provisions requiring the person to correct the violation, take steps to ensure the violation is not repeated, repair environmental damage and/or pay a monetary compensatory damage amount, or pay a penalty to deter future noncompliance. A settlement agreement may be in the form of a Judicial Order (court-approved consent decree) or an Administrative Consent Order (an agreement without the involvement of the court).

Because of the additional work required by staff of the DEQ and the DAG with a Judicial Order, Administrative Consent Orders should be used for the vast majority of settlement agreements. An advantage to a Judicial Order is that it provides an additional tool to ensure compliance with the settlement agreement. As a result, if one of the following three situations occurs, then a judicial settlement is probably appropriate.

1. Settlements that will have a high degree of public concern.

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Examples are:

- a) when public input from citizens, legislators, public officials, environmental groups, or others rise to the level where it may significantly impact compliance with the terms and conditions of a settlement and the oversight of a court is needed; or
 - b) when there is a major disagreement with the U.S. EPA over fines, penalties, or other corrective actions for particular violations.
2. Settlements that will be complex, financially significant, or otherwise unusual.

Factors to be considered in determining if this situation exists include:

- a) a multi-year corrective project or extensive remediation program attributable to the lengthy duration and/or magnitude of the violation(s);
- b) a complex or unusually large SEP;
- c) an unusually large fine, penalty, or financial assurance or expenditure;
- d) an unusually large number of violations;
- e) a recent history (within the past five years) of noncompliance with the laws, regulations, or previous settlements;
- f) when facts are present to reasonably expect that the violator does not have the wherewithal or the intent to comply with a settlement agreement, notwithstanding the violator's indications to the contrary.

If more than one of the items listed above are being considered or are factors in the settlement negotiations, then a judicial settlement is probably appropriate as an added tool to ensure compliance with the settlement agreement.

3. When the alleged violator requests a judicial settlement and the DEQ agrees.

There may be instances in which the person seeks a judicial settlement in lieu of an Administrative Order. If the person articulates a good reason as to why a judicial settlement should be pursued in lieu of an Administrative Order, then barring a significant impact on the compliance program, it should be pursued judicially.

When a settlement agreement involves a "Covenant Not to Sue" and/or contribution protection, the DAG has final approval under the law as to whether to pursue a matter in court.

Once both parties agree that a judicial settlement is the appropriate mechanism for the settlement agreement, unless a matter has already been filed in court, then staff

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should follow the steps outlined in DEQ Policy No. 09-002. An enforcement lawsuit that has been filed prior to any contemplated or anticipated settlement should be settled judicially rather than administratively, if a settlement is subsequently reached.

F. PRESS RELEASES

Press releases can be an effective method to inform the regulated community and the public of DEQ compliance efforts, and serve as a deterrent for illegal environmental activity. To ensure that noteworthy compliance actions initiated by the DEQ, with or without DAG involvement, are publicized, divisions are to take into account the criteria listed below when evaluating whether or not the action warrants a press release. Meeting one criterion alone may not necessarily justify a press release.

1. The violation created a known public health threat or long-term damage to the environment.
2. The person knowingly violated the law and/or deliberately disregarded a direction/order given by DEQ staff.
3. The violation was the focus of significant local attention.
4. The resolution of the violation resulted from a decision by a judge or jury trial.
5. The violation was a felony.
6. There is involvement of the DAG (should be limited to major involvement, not just signing a document as to form).
7. The DEQ action is a Cease and Desist Order.
8. The violation resulted in arrests, filing of major civil suits or settlements with substantial penalties, recovered costs, or restitution for damages (not just a notice of violation).
9. The violation and subsequent DEQ action has the potential to serve as a deterrent to an identified sector that has the likelihood of the same violation and/or will serve to educate the public in a significant way.

A violation such as failure to obtain a permit or license, when a permit or license would have been issued if applied for, may not be sufficient alone to warrant a press release (except where the violator willfully failed to seek a permit or license).

During settlement discussions, the regulated entity should be advised early on that the DEQ may issue a press release. The content of press releases is non-negotiable.

To assist the DEQ Press Secretary in processing requests for press releases, division staff should:

- a) Draft the release with all pertinent facts:
 - Violation(s).

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- Name of violator.
 - Location of offense.
 - Unique or interesting facts about the case.
 - Duration of offense.
 - Amount of fines/penalties/jail time.
 - Response activities to be performed to regain compliance.
- b) Include a quote from the Director (and/or Attorney General with approval), as appropriate.
- c) Use approved structure and format.
- d) Forward a draft copy of the release to the Press Secretary and the Deputy Director for consideration.

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SECTION 4: COMPLIANCE COORDINATION, TRACKING, AND MEASUREMENTS

A. COMPLIANCE TRACKING

Each division shall have an electronic database for the tracking of compliance activities. The database must enable a division to track the following information for each entity evaluated for compliance.

Evaluations
• Dates conducted
• Types of evaluations conducted
• Compliance status at each evaluation
Compliance Activities
• Dates compliance actions taken
• Types of compliance actions taken
• Status of each compliance action

The tracking system should also allow divisions to produce the compliance measures report identified in the next section of this policy.

B. COMPLIANCE MEASURES

It is important that the DEQ is able to assess the effectiveness of its compliance and enforcement programs. It is also important that this information be readily available to the public. Divisions shall develop measurements that demonstrate program achievement and assist in program management. Measurements should also allow divisions to determine rates of compliance as required by the DEQ's planning process. Divisions shall set a reporting frequency and a management review process.

At a minimum the following measures, where applicable to the program, shall be compiled on a quarterly basis.

1.	Number of known entities (facilities, sources, complaints, or other form of activity) subject to regulation, oversight, or evaluation.
2.	Number of entities that have an evaluation planned by division policy, procedures, or program commitments.
3.	Number of entities with a planned evaluation that were evaluated.
4.	Number of evaluated entities, planned or otherwise, that were determined to be in noncompliance.
5.	Number of evaluated entities whose noncompliance meets a division's Significant Noncompliance criteria (if applicable).

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6.	Number of non-compliant entities that returned to compliance before an escalated enforcement action was taken.
7.	Number of non-compliant entities where an escalated enforcement action was taken.
8.	Number of Judicial Orders still in effect.
9.	Number of Administrative Consent Orders that are still in effect.
10.	Number of Director's /Supervisor of Wells Final Orders that are still in effect.
11.	Number of Demand Letters/Orders for Administrative Penalties issued.
12.	Number of referrals that are pending with the OCI.
13.	Number of referrals to the OCI that have a final disposition.
14.	Number of referrals that are pending with the DAG.
15.	Number of referrals to the DAG that have a final disposition.
16.	Total amount (in dollars) of fines and penalties agreed to or ordered (include civil, criminal, administrative, and SEPs).
17.	Total amount (in dollars) of environmental damages agreed to or ordered.
18.	Total amount (in dollars) of DEQ cost agreed to or ordered.
19.	Number of final settlement agreements or orders that contain a SEP.
20.	Total amount (in dollars) of fines and penalties off set by a SEP.
21.	Total number of permit applications backlogged.
22.	Total number of permit applications received.
23.	Total number of permits issued.
24.	Total number of permits denied.
25.	Total number of permit decisions made on time.

C. COMPLIANCE COORDINATION

It is important that compliance and enforcement staff within each division effectively communicate and work in a cooperative manner. This can be accomplished through regular meetings between regulatory divisions who will assign a representative to attend these meetings.

The purpose of the Compliance and Enforcement Chiefs Meetings (C&E Meetings) is to:

1. Champion the DEQ's compliance and enforcement efforts and processes.
2. Provide for the exchange of compliance and enforcement ideas, views, and experiences among the DEQ's program divisions and offices.
3. Foster cooperation and coordination in compliance and enforcement activities.
4. Develop recommendations to the DEQ management on compliance and enforcement issues.

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The C&E Meetings will routinely consider the following items:

1. Multi-division/multimedia case coordination.
2. Coordination of civil and criminal enforcement actions.
3. Review of judicial/administrative case decisions that may have an impact on the DEQ's compliance and enforcement processes.
4. Receive case reviews of important cases that divisions are processing or have completed.
5. Identify/recommend special training needs of compliance and enforcement staff.
6. Develop methods to provide coordinated tracking and reporting of compliance and enforcement activities.
7. Coordination of DEQ interaction with the U.S. EPA on enforcement and compliance issues.
8. Receive information on new laws and rules that impact compliance and enforcement activities.
9. Develop and/or share tools that assist in the DEQ's compliance and enforcement activities.
10. Tracking the disbursement of cost, damages, and penalties in the DEQ's accounting system.
11. Evaluation of DEQ and U.S. EPA enforcement and compliance policy and procedures.

Each compliance and enforcement representative is responsible to ensure that compliance and enforcement staffs in their division, as well as division management, are kept informed about the information shared at the C&E Meetings.

When possible, the C&E Meetings will be held from 9:00 a.m. to noon on the fourth Wednesday of each month. The meetings will be chaired by the Office of Civil Enforcement Coordination (OCEC) Chief.

It is important that the information discussed at the monthly C&E Meetings gets out to the district offices. This is essential since the field staffs are on the front lines and take the lead role to ensure compliance with permits and regulations. To facilitate this communication the following shall apply:

1. Each field operations supervisor (FOS) has an open invitation to attend the C&E Meetings. Attendance is optional, based on approval of the division chief.
2. FOS will receive any updates on meetings and issues covered at C&E Meetings, as applicable, from their respective C&E chief.
3. When C&E Meetings have agenda items that are relevant to FOS those items will be grouped and given a specific time so that FOS can make appropriate plans to attend the meeting for these items.

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4. FOS, collectively or singularly, can request to have items placed on the C&E Meeting agenda.
5. FOS attendance at C&E Meetings will only be required when their involvement is essential to completing an assignment or developing guidance/policy.
6. As appropriate, the OCEC Chief will attend FOS meetings to discuss specific compliance and enforcement issues.

Even though this process should further the communication between the field and compliance and enforcement staffs, personal contact and interaction between these two groups is essential. Therefore, division chiefs are to ensure that this happens on a regular basis within their divisions.

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SECTION 5: COORDINATION AND MANAGEMENT OF MULTIMEDIA CASES

Staff of the DEQ often initiate or become involved in enforcement actions that may involve violations of various provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), or other statutes administered by the DEQ. Communication and coordination between the DEQ divisions should occur early on in the process to ensure that all violations are appropriately addressed, and to avoid potential claim splitting.

Multimedia enforcement constitutes a comprehensive approach to case development and enforcement usually against a single facility where all of the processes at that facility are inspected and examined as a whole to determine compliance with all environmental statutes. There are many benefits to conducting multimedia enforcement efforts. Environmental contamination is, by nature, unconstrained by statutory boundaries so effective coordination and communication between divisions are critical. Multimedia enforcement can result in:

- Improved detection and resolution of environmental violations. Cross-statutory inspections and analysis of violations afford the most effective method of identifying the extent of environmental problems. This leads to comprehensive enforcement activities.
- Achievement of optimal enforcement results. Multimedia enforcement actions increase the potential for achieving broad environmental benefits as part of an overall settlement. In addition, penalties will more accurately reflect the full extent of the gravity of harm and economic benefit gained by noncompliance. A penalty that reflects the full range of violations also provides an increased opportunity for supplemental environmental project proposals.
- More effective enforcement. Targeting facilities or companies with significant, pervasive violations can eliminate the root cause of an environmental problem. This may not be possible through an enforcement action brought pursuant to one statutory authority.
- More efficient use of resources. Multimedia actions reduce and streamline the resource burden otherwise required by the numerous single-statute cases brought to resolve a complex environmental problem.
- Fundamentally change the regulated community's perceptions and behavior regarding environmental compliance. Broad-based actions and subsequent results can assist the regulated community's meaningful implementation of environmental management systems. Furthermore, publicity of far-reaching multimedia cases can assist in general deterrence.

The existence of multiple violations involving different provisions of the NREPA administered by more than one division does not automatically require that a case be managed as a multimedia case. The facts and circumstances of each case will be

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different and each case must be analyzed and discussed internally between the divisions before deciding on a course of action or strategy.

Following is a flowchart illustrating DEQ's coordination and management of multimedia cases. This process is intended to foster communication and coordination between divisions that will result in more effective multimedia enforcement.

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Footnotes to Flowchart:

1. **Monthly District Enforcement Review Meetings**

DEQ Policy Number 04-005, District Enforcement Review Discussions, requires the Multimedia Coordinator (MMC) to schedule and chair monthly district enforcement review meetings. During these meetings, it is the MMC's responsibility to ensure that all high priority and significant new violations, new enforcement case referrals, and the status of any ongoing multimedia enforcement cases are discussed. There should also be discussion and agreement on which cases, if any, to be scheduled for a District Strategy Meeting. The MMC is responsible for scheduling the District Strategy Meetings and in doing so, should allow each division sufficient time to discuss the facts of the case with their respective compliance and enforcement (C&E) Unit/Section and FOS prior to the meeting.

The District Environmental Conservation Officer (ECO), or their assigned representative, will attend each monthly enforcement review meeting. At these meetings, the ECO will provide a status update for each pending district criminal case that has been referred and discuss any district cases that have been initiated by the OCI - unless confidential.

District Supervisors (or their designee) will attend the monthly district enforcement review meetings and discuss any new significant or high priority violations, new enforcement case referrals, and the status of any cases that have violations of different statutes administered by other divisions where their division is the lead.

2. **(First) District Strategy Meeting**

For each case with violations of different statutes administered by multiple program divisions, the MMC and appropriate district supervisors should discuss and agree upon the relative priority of the case for all divisions involved and an appropriate course of action; strategy for case development or resolution, including a schedule for completing any necessary activities; and a lead division. This discussion should be scheduled separate from the monthly district enforcement review meetings.

District supervisors should consult with their respective C&E Unit/Section and FOS prior to agreeing to a course of action or strategy regarding a potential multimedia enforcement case so that they can represent their respective division's position on the case. Once a strategy or course of action is agreed to, each district supervisor is responsible for ensuring that their staff completes any necessary activities according to the agreed upon schedule.

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The MMC should attempt to resolve any dispute or disagreement about a case's priority, enforcement strategy or schedule through discussions with the appropriate division FOS, C&E chief(s), and district supervisor(s) as appropriate. If further efforts to resolve the dispute or disagreement are necessary, the MMC may request that the OCEC Chief facilitate the discussions. If the MMC and the OCEC Chief are unable to satisfactorily resolve the dispute, the OCEC Chief will escalate the matter to the Deputy Director for final resolution.

3. **Managed Independently by Each Division**

If it is concluded at the district strategy meeting that a case with violations of different statutes administered by multiple program divisions will be managed independently (or continue to be managed independently) by each respective division, district supervisors still have an obligation to regularly communicate with the MMC and the other divisions regarding the status of their respective case. This can be accomplished at the monthly district enforcement review meeting. If the facts and circumstances significantly change in a case, it is the district supervisor's responsibility to schedule interim enforcement strategy discussions with the other district supervisors and the MMC to reaffirm the course of action and/or strategy. Prior to interim enforcement strategy discussions, it is each district supervisor's responsibility to consult with their respective C&E unit/section and FOS as appropriate.

4. **Coordinated as Department Multimedia Case**

If it is decided at the district strategy discussions that a case will be developed and coordinated as a department multimedia case, the district supervisor of the lead division will be responsible for periodically following up with the other district supervisor(s) to ensure that the case is proceeding accordingly to the agreed upon strategy and/or schedule. Interim strategy discussions between the MMC and applicable district supervisors should be scheduled as necessary and as the facts and status of the case warrant.

District supervisors are responsible for ensuring that their portion of the case is progressing according to the agreed-upon schedule for case development or resolution.

5. **Joint Multimedia Violation Notice**

If a case will be managed as a department multimedia case, a multimedia violation notice should be sent specifying the violations identified by each division. These violations may be identified as a result of a joint multimedia inspection or evaluations performed in follow-up to an initial single media inspection. Each division has the responsibility of identifying the issues and violations that should be included in the violation notice and should consult with

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their respective C&E unit/section or FOS as appropriate.

Each division is responsible for evaluating the sufficiency of any response received to the multimedia violation notice and providing comments to the lead division in a timely manner.

6. **(Second) District Strategy Meeting**

After receiving comments from each division regarding the sufficiency of any response to the multimedia violation notice, the lead division will convene another district strategy meeting to discuss and agree upon a go forward course of action or strategy and a schedule. District supervisors should consult with their respective C&E unit/section and FOS prior to agreeing to any course of action or strategy.

District supervisors are responsible for ensuring that their staff completes any necessary activities identified during the strategy meeting according to the agreed upon schedule.

The MMC should attempt to resolve any dispute or disagreement about a case's priority, enforcement strategy or schedule through discussions with the appropriate division FOS, C&E chief(s), and district supervisor(s) as appropriate. If further efforts to resolve the dispute or disagreement are necessary, the MMC may request that the OCEC Chief facilitate the discussions. If the MMC and the OCEC Chief are unable to satisfactorily resolve the dispute, the OCEC Chief will escalate the matter to the Deputy Director for final resolution.

7. **Escalated Enforcement Referral**

If it becomes necessary to refer a multimedia case for escalated administrative or civil enforcement, each district supervisor is responsible for completing an enforcement referral and providing it to both the MMC and their division C&E and FOS, as appropriate, within the timeframe established at the District Strategy Meeting. Upon receipt of the necessary referrals, the MMC will prepare a memorandum addressed to the OCEC Chief that identifies the case's relative priority; identifies the lead division coordinating the case development; provides recommendations for each division; and summarizes the relevant case issues. The case should be identified as a multimedia enforcement case in the subject line of the memorandum and a copy of each division enforcement referral should be attached. A copy of the memorandum and attachments should also be provided to the appropriate C&E chiefs, FOS, assistant division chiefs and division chiefs, as applicable.

8. **Joint Enforcement Strategy Meeting**

Upon receipt of the multimedia referral memorandum for escalated civil or administrative enforcement from an MMC, the OCEC Chief will schedule a

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strategy meeting with the appropriate C&E chiefs, district supervisors, and the MMC to discuss and agree on an appropriate enforcement strategy with associated deadlines and to assign a division to be the lead for coordinating enforcement matters between divisions, the DAG and OCEC as necessary.

District Supervisors shall ensure that their staff provides any necessary support for the multimedia case after it has been referred regardless of which division is assigned as the lead for coordinating enforcement matters and as necessary to meet the established deadlines.

The C&E chief for the lead division is responsible for ensuring that the case proceeds according to the agreed-upon deadlines established in the enforcement strategy meeting and scheduling interim strategy meetings as necessary. The OCEC Chief will facilitate and oversee this process as necessary.

Any dispute or disagreement about the decisions made at the Joint Enforcement Strategy Meeting should be resolved by the OCEC Chief in discussions with the appropriate division C&E chief(s), MMC, and district supervisor(s) as appropriate. If the OCEC Chief is unable to satisfactorily resolve the dispute, the OCEC Chief will escalate the matter to the Deputy Director for final resolution.

9. **Referral to the DAG**

The C&E chief (or their staff) for the lead division will be responsible for preparing the referral to the DAG in accordance with DEQ Policy 09-002, Referrals of Matters to the Attorney General. The other C&E chiefs shall provide the necessary staff support to ensure that their violations and issues are appropriately addressed and included in the referral, any subsequent settlement documents, or litigation. After a case has been referred to the DAG, and as necessary thereafter, the lead division's C&E chief is responsible for ensuring that there is effective coordination and communication between the divisions.