

ENFORCEMENT POLICY 2900

STATEMENT OF POLICY

2902.0

Enforcement is the keystone to an effective environmental regulatory program. The Division can only fulfill its mission of protecting public health and the environment by ensuring compliance with environmental statutes, regulations and permits.

A variety of enforcement tools are available to the Division, ranging from informal actions like verbal or written warnings to formal actions, including notices of violation, administrative Orders, administrative and civil penalties, injunctions and criminal penalties. The type of enforcement tool selected for any given case will correspond to Division protocol and consequently to the nature and seriousness of the violation and the nature and compliance history of the violator. Progressively more aggressive enforcement tools will be subsequently applied as necessary to achieve compliance. Penalties serve to deter future violation and to maintain an even "playing field" so that violators do not gain a competitive advantage over businesses that comply.

The overall purpose of enforcement is to achieve compliance. Toward that end, the Division encourages regulated entities to police themselves. The Division may waive penalties where violations are found by the regulated entity, voluntarily disclosed and promptly corrected. Penalties may also be waived if a regulated facility has entered into a formal agreement with the Division pursuant to Nevada's Environmental Audit Law and associated regulations and the conditions of the agreement are met.

The Division's enforcement policies and procedures are intended to ensure that compliance is achieved efficiently, that necessary documentation is maintained and that our enforcement actions are judged to be fair and consistent.

GENERAL POLICIES

2904.0

1. Each of the Division's Bureaus with statutory authority for enforcement shall adopt a written enforcement policy that specifies procedures for the following:
 - a. notifying facility owner/operators of violations found, their options for administrative settlement of penalties, if applicable, and their rights to appeal notices of violation;
 - b. determining whether informal or formal enforcement shall be used;
 - c. determining whether a penalty will be sought and the amount of the penalty that is commensurate with the nature of the violation and compliance history of the violator;
 - d. determining whether to refer the case for civil or criminal prosecution;
 - e. providing notification of enforcement actions to appropriate parties;
 - f. documenting return to compliance following issuance of either formal or informal enforcement action;
 - g. maintaining case files that document enforcement decisions and maintain enforcement records, including but not limited to, inspection reports, notices of violation,

correspondence, penalty calculations and adjustments, court documents and receipts for penalties paid (except Air penalties paid to the SEC);

- h. maintaining an electronic tracking system for enforcement cases so that the status of active cases can be tracked and a listing of the outcome of historical cases can be retrieved;
 - i. establishing appropriate management controls to ensure procedures are followed and that enforcement actions are completed in a timely manner; and
 - j. establishing a confidentiality policy to ensure enforcement cases are not jeopardized by the release of enforcement and settlement information prior to closure. Penalty calculations and the communications involving a proposed settlement should all be treated as confidential until the case is resolved.
2. The Bureau enforcement policies must be signed and dated by the Bureau Chief and be made available to Bureau staff and the public. The Bureau Chief is responsible for instituting necessary management controls to ensure that enforcement policies are followed.
3. Approval by the Administrator is required prior to referral of any case for criminal investigation or prosecution.
4. The appropriate Deputy Attorney General shall be involved in the initial stages of any case that is expected to lead to litigation or appeal.
5. At its discretion, the Division may: allow deferred payment for up to 90 days; allow payment in installments, typically extending no longer than 1 year; allow a Supplemental Environmental Project to mitigate the penalty; or adjust the settlement offer or penalty as necessary. Any adjustment must be appropriately documented in the case file and be approved by the Bureau Chief.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

2906.0

1. Supplemental Environmental Projects (SEPs) are defined by US EPA as "environmentally beneficial projects which a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform." The Division's approach to SEPs is intended to be similar to US EPA's Revised SEP Policy, May 1995.
2. The Division has discretion to settle enforcement cases out of court, including the discretion to include a SEP as part of the settlement.
3. The Bureau Chief, under the guidance of the Administrator, shall determine the acceptability of a proposed SEP. In general, the following types of projects may qualify, provided all other requirements of this policy are met:
 - a. Public Health. A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation.
 - b. Pollution Prevention. A pollution prevention project is one which reduces the generation of pollution through "source reduction", ie. prior to generation of the pollutant or waste.

- c. Pollution Reduction. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment.
 - d. Environmental Restoration and Protection. An environmental restoration project is one which goes beyond repairing damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected.
 - e. Assessments and Audits. This category includes pollution prevention assessments, site assessments, environmental management system audits and, where the defendant/respondent is a small business, compliance audits. The resulting recommendations from the assessment/audit must be implemented to qualify as an acceptable SEP.
 - f. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to other members of the regulated community. The project must be focused on the same regulatory requirements which were violated.
4. Environmental Justice. The Division encourages SEPs that benefit low-income and/or minority populations.
 5. The following are types of projects that are not acceptable as SEPs:
 - a. A project which is unrelated to environmental protection;
 - b. A project which the defendant/respondent is already legally required to perform;
 - c. A project for corrective or preventive measures that would otherwise be required to prevent recurrence of the violation;
 - d. A project that provides the Division with additional resources to perform an activity for which the Legislature has specifically appropriated funds;
 6. The value of the SEP shall equal at least 125% of the penalty to be mitigated. For example, if the calculated penalty is \$10,000, then a SEP with a value of at least \$12,500 is required for 100% mitigation of the penalty.
 7. To implement the SEP, a settlement agreement shall be established between the Division and the defendant. The scope of work, associated cost estimate and schedule of performance must be specified. Criteria to determine successful completion of the SEP and consequences for failure to comply with the settlement agreement shall also be included.
 - a. The Division will determine what costs are allowed in assessing the value of the SEP. Only costs directly related to accomplishment of the SEP will be considered.
 - b. The Division should not directly manage or control funds that are set aside or escrowed for performance of a SEP. However, a SEP may be accomplished by deposit of funds in the Department's Gifts and Donations account provided the funds are accounted for separately and designated for SEP-eligible conservation, restoration or remediation projects.
 - c. The Division should provide oversight to ensure that the SEP is implemented in

accordance with the settlement agreement.

8. There are three ways for the defendant to demonstrate that the full value of the SEP has been achieved. The method to be used shall be described in the settlement agreement. The defendant may either:
 - a. Demonstrate satisfactory completion of the scope of work as described in the approved settlement agreement without regard to actual cost;
 - b. Submit invoices for qualified expenses after completion of the SEP that add up to the SEP amount or greater; or
 - c. Deposit the full value of the SEP in the Department's Gifts and Donations account.
9. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement or an enforcement action.

ENVIRONMENTAL AUDITS

2908.0

1. Any agreement with a regulated facility pursuant to Nevada's Environmental Audit law must be approved by the Administrator.
2. The Bureau Chief shall approve and document any waiver of penalties for violations governed by an executed agreement entered into pursuant to Nevada's Environmental Audit law.

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PERMIT POLICY FOR FACILITIES IN NONCOMPLIANCE 3000

STATEMENT OF POLICY

3002.0

No permits are to be issued, modified or renewed for facilities which have unresolved Division enforcement actions without the Bureau Chief's approval. This applies also to facilities which are owned, operated or managed by persons having unresolved enforcement actions at other facilities under their control.

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