

# Enforcement

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Air Quality Workshop

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# Enforcement Process

What happens if we discover a violation at your facility?

# Enforcement Levels

- Level 1
  - Usually reserved for major and SM 80 sources.
    - HPV (EPA defined)
    - Non-HPV (state defined)
    - A penalty is usually required
    - Usually calls for a settlement conference

# Level 1 Violations

- Examples of Level 1 Violations:
  - Failure to obtain a PSD/NSR permit
  - NSPS or major source NESHAP emission violations  $\geq 7$  days
  - Failure to conduct test at NSPS or major NESHAP source
  - Constructing without a construction permit
  - Failure to install and/or properly operate required controls

# Level 2 Violations

- Level 2 – less severe violations.
  - May be major, SM, or minor sources
- Examples of Level 2 Violations
  - Failure to apply for a minor source operating permit within 180 days of starting operations
  - Emission violations that continue < 7 days
  - Failure to submit complete/accurate emission inventories

# Level 3 Violations

- Level 3 – least severe
  - May be major, SM, or minor sources
- Examples of Level 3 violations
  - Failure to install required monitoring device at a minor source
  - Late submittal of reports required by a permit, NSPS, or NESHAP
  - Late application for a minor source operating permit, where application is submitted prior to DEQ's knowledge.

# How Will We Notify You of a Violation?

- Level 3 Letter
  - Minor violations.
  - Usually does not require a response from the facility.

# How Will We Notify You of a Violation?

- Alternate Enforcement Letter
  - Used in conjunction with FCE/PCE report that found violations
  - Will typically require a compliance plan
  - May request facility to contact DEQ to schedule a meeting
  - May be used for all violation levels

# How Will We Notify You of a Violation?

- Notice of Violation
  - Used with violations found from report reviews and complaints, or when facility disputes AEL.
  - Will require submittal of a compliance plan
  - May request a meeting

# How Are Cases Settled?

- Administrative Compliance Order (ACO)
  - Unilateral order to resolve violations
  - Usually a last resort, if someone is uncooperative
  - Facility may dispute the ACO
  - In the event of a dispute, the case goes to an Administrative Law Judge for a ruling, with the final decision made by the DEQ Executive Director.

# How Are Cases Settled?

- Consent Order (CO)
  - Mutually agreed upon order to address/resolve Level 1 violations
  - Also used to address complaints where a violation is confirmed.
  - Allows both sides to negotiate
  - Usually requires a settlement conference

# Settlement Conference

- What happens in a settlement conference?
  - Meeting will be at DEQ office
  - DEQ usually has in attendance: the inspector, the inspector's manager, and a DEQ attorney
  - You are encouraged to bring: any legal counsel, technical staff, consultants, and anyone else who is able to help.
  - These meetings are usually very cordial, so do not worry.

# Settlement Conference

- What happens in a settlement conference?
  - We discuss the alleged violations and the company's response.
  - DEQ attorney will explain any penalty, the CO process, and any options for reducing the proposed penalty.

# Self-Disclosures

If you discover a violation at your facility, DEQ encourages you to self-disclose it to us as soon as possible.

# Self-Disclosures

- OAC 252:4-9-5 Consideration for self-reporting of noncompliance
  - **(a) Conditions for not seeking administrative and civil penalties.** Except in the case of habitual noncompliance or as otherwise provided in this section, in evaluating an enforcement action for a regulated entity's failure to comply with DEQ rules, **the DEQ will not seek an administrative or civil penalty when the following circumstances are present:**

# Self-Disclosures

OAC 252:4-9-5 Consideration for self-reporting of noncompliance

**(a) Conditions for not seeking administrative and civil penalties.**

- 1) The regulated entity **voluntarily, promptly and fully discloses** the apparent failure to comply with applicable state environmental statutes or rules to the appropriate DEQ Division **in writing before the Division learns of it or is likely to learn of it imminently;**

# Self-Disclosures

- 2) The failure is **not deliberate or intentional**;
- 3) The failure does **not indicate a lack or reasonable question of the basic good faith attempt** to understand and comply with the applicable state environmental statutes or rules through environmental management systems **appropriate to the size and nature of the activities of the regulated entity**;
- 4) The regulated entity, **upon discovery, took or began to take immediate and reasonable action to correct the failure** (i.e., to cease any continuing or repeated violation);

# Self-Disclosures

- 5) The regulated entity **has taken, or has agreed in writing** with the appropriate Division **to take, remedial action as may be necessary to prevent the recurrence of such failure**. Any action the regulated entity agrees to take must be completed.
  
- 6) The **regulated entity has addressed, or has agreed in writing** with the appropriate Division **to address, any environmental impacts** of the failure in an acceptable manner;

# Self-Disclosures

- 7) The regulated entity has not realized and will not realize a **demonstrable and significant economic or competitive advantage as a result of non-compliance**; and
- 8) The regulated entity **cooperates with the DEQ** as the DEQ performs its duties and provides such information as the DEQ reasonably requests to confirm the entity's compliance with these conditions.

# Self-Disclosures

OAC 252:4-9-5 Consideration for self-reporting of noncompliance

**(b) Partial qualification.** Notwithstanding the failure of a regulated entity to meet all of the conditions in subsection (a) of this section, the DEQ will consider the nature and extent of such actions of the regulated entity in mitigation of any administrative or civil penalty otherwise appropriate. If the regulated entity meets all conditions in subsection (a) of this section except item seven (7) relating to significant economic or competitive advantage, the DEQ will seek an administrative or civil penalty to the extent of the economic or competitive advantage gained.

# Self-Disclosures

Translation: Even if you do not meet all eight conditions in Subsection (a), we will take into account the good faith actions you will take or have taken to fix the problem and minimize emissions, and factor that into determining the amount of the penalty, if any.

# Self-Disclosures

- What do we do when we receive your self-disclosure?
  - Acknowledgement Letter – lets you know we received it and are reviewing it.
  - We may conduct an inspection or request more information.

# Self-Disclosures

- What do we do when we receive your self-disclosure?
  - Determination Letter
    - Tells you whether or not you received full credit for your self disclosure (did you meet all eight criteria?)
    - Will give further instructions, if any, such as to call and schedule a meeting.
    - If no further action is necessary, the Determination Letter will close the case.

# Self-Disclosures

- **DEQ's Voluntary Disclosure/Self-Reporting of Noncompliance Form**

<http://www.deq.state.ok.us/aqdnew>

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Air Quality

**No Ozone or  
Watch In Effect**

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[Monitoring & Alerting](#)

# <http://www.deq.state.ok.us/aqdnew/ComplianceEnforcement>

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- [DEQ Standard Operating Procedures \(SOP\) for Enforcement](#)
- [High Priority Violator Policy - 2014](#)
- [Federally Reportable Violation Policy - 2014](#)
- [Alternate Enforcement Procedure](#)
- [AQD Penalty Guidance - 2014](#)
- [Title 27A. Environment and Natural Resources \(Including the Oklahoma Clean Air Act - Article V\)](#)
- [Clean Air Act - Stationary Source Compliance Monitoring Strategy - July 2014](#)
- [EPA's Applicability Determination Index](#)
- [EPA's Air Toxics Rules and Implementation web page](#)
- [EPA's Enforcement and Compliance History Online \(ECHO\) web page](#)
- [Portable Emission Analyzer Guidance](#)
- [Voluntary Disclosure / Self-Reporting of Noncompliance Form](#)

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AIR QUALITY DIVISION  
 OKLAHOMA DEPARTMENT OF  
 ENVIRONMENTAL QUALITY  
 P. O. BOX 1677  
 OKLAHOMA CITY, OK 73101-1677

ATTN: Mr. Eddie Terrill, Director  
 c/o: Voluntary Self-reporting Coordinator



O K L A H O M A  
 DEPARTMENT OF ENVIRONMENTAL QUALITY

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### VOLUNTARY DISCLOSURE / SELF-REPORTING OF NONCOMPLIANCE

NOTE: The following information is hereby voluntarily disclosed/self-reported pursuant to and in accordance with OAC 252:4-9-5(a) & (b), which sets forth the conditions under which the DEQ either (a) will not seek, or (b) will mitigate an administrative or civil penalty when addressing self-reported violations. In order to receive full penalty mitigation, full disclosure of each violation is required. This form represents the minimum information that is required by the Division to begin a penalty mitigation assessment. The AQD will utilize the EPA's BEN model to determine the economic benefit realized due to the violation(s), if any, for any High Priority or Level 1 violation.

#### FACILITY INFORMATION

COMPANY NAME					
FACILITY NAME					
MAILING ADDRESS					
CITY		State		Zip	
STREET ADDRESS (i.e., PHYSICAL LOCATION)					
CITY		State		Zip	
CONTACT PERSON		Title		Phone	
		Fax #		E-mail	
APPLICABLE AIR QUALITY PERMIT NUMBER(S)/DATE ISSUED					
Has the facility or the company received one or more Notices of Violation (NOVs) or Alternative Enforcement Options from the Air Quality Division within the last three (3) years? If yes, provide the facility name and include details of each action (NOV# and violation description).					

# The Bottom Line?

- Our goal is compliance. If we can help you stay in compliance, that benefits everyone.
- We want to work with you as much as we can, however:
  - Sometimes a penalty may be necessary.
  - Communication is the key. If you have any questions, please give us a call.

# If You Ever Have Questions

Our website has a [contact list](#) to help you know who can best help answer your questions.

Please feel free to call with any questions that come up.

<http://www.deq.state.ok.us/aqdnew>

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DEQ believes that a strong compliance/enforcement program is one of our highest priorities and is necessary to an effective regulatory system.

[Air Rules](#)

The AQD Compliance/Enforcement sections are responsible for conducting inspections of air pollution sources, responding to citizens complaints, observing and evaluating emission tests, tracking and evaluating excess emissions/malfunctions and the implementation of a host of federal requirements.

[Education](#)

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Below are links to a variety of technical and policy documents that are relevant to our administration of the compliance/enforcement program. Please check back often for updates and information regarding this important aspect of our air quality program.

[Contact AQD](#)

- [DEQ Standard Operating Procedures \(SOP\) for Enforcement](#)
- [High Priority Violator Policy - 2014](#)
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# Questions?