

CHAPTER ONE

ENFORCEMENT POLICY

This Civil Enforcement Manual (Manual) establishes integrated enforcement policies and procedures across all media and for all Department programs.¹

I. ENFORCEMENT MISSION AND GOALS

The Department's enforcement mission is to assure compliance with Virginia's environmental requirements in all of its enforcement actions and to encourage environmental stewardship. This mission supports DEQ's statutory policy "to protect the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens."²

To carry out its enforcement mission, the Department has established the following goals:

- To take enforcement actions that are timely and appropriate, consistent and certain, and reasonable, fair and effective;
- To bring parties into compliance and stop continuing or repeated violations;
- To remediate the environmental impact of violations;
- To recover civil charges and penalties where appropriate, including amounts sufficient to remove the economic benefit of noncompliance;
- To deter future violations;
- To conduct enforcement actions courteously and professionally;
- To assist the regulated community in achieving and maintaining compliance with environmental requirements, and to promote environmental stewardship; and
- To earn public confidence and promote public participation in the Department's enforcement program.

II. ENFORCEMENT PHILOSOPHY

DEQ's enforcement program acts to protect human health and the environment and to assure the integrity of the Department's regulatory programs. It promotes the understanding that the common good lies in environmental compliance and stewardship, and that noncompliance is more costly than compliance. DEQ uses the full range of enforcement methods and selects the

¹ The sole exception is Air Check Virginia, Northern Virginia's Vehicle Emissions Inspection Program, which is limited to DEQ's Northern Regional Office and has its own uniquely tailored enforcement procedures.

² Va. Code [§ 10.1-1183](#). See also Va. Const. [Article XI, Section 1](#):

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be ... the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

most appropriate enforcement method for each action. DEQ ordinarily begins each enforcement action with the least adversarial method that is appropriate to the case.

The Virginia Code directs that DEQ's enforcement program be timely, or "expeditious."³ The response to violations should be swift and certain, and escalate rapidly for those who remain noncompliant. The program should also be efficient. Appropriate enforcement means that the enforcement action addresses each violation and that the enforcement response is proportional to the violation. Timely and appropriate enforcement sends messages of deterrence and fairness, both to the regulated party and throughout the community.

The Virginia Code also directs that DEQ's enforcement program be "consistent" and "comprehensive."⁴ Consistency means that all members of the regulated community (public and private) and the public at large can expect similar responses to comparable violations – given similar impacts on human health and the environment – regardless of the region or media in which they occur. Still, DEQ recognizes that each case is fact-specific. While consistency is always a factor in an enforcement action, it does not mean adherence to past decisions that may no longer be appropriate. To be comprehensive, the enforcement program should include every DEQ media program in which enforcement has a part, and should monitor cases to ensure a full return to compliance, including any remediation, and termination of the enforcement action.

DEQ believes that reasonableness and fairness result when enforcement is pursued appropriately and consistently within the bounds of law and regulations. DEQ is open to arguments made in good faith – based on fact, law, or policy – that there has been no violation, that one situation is distinguishable from another, or that the civil charge should be reduced or abated.

The DEQ enforcement program must meet these standards to fulfill its statutory obligations and to earn credibility with the regulated community and the public. DEQ's enforcement program is continually subject to review, oversight and public scrutiny to confirm that it is effectively carrying out its mission and goals.

III. IDENTIFYING VIOLATIONS AND THEIR PRIORITY

Enforceable environmental requirements are established through laws, regulations, permits, and administrative or judicial orders. Possible violations of environmental requirements are identified by many means, such as inspections, record reviews, self-reporting, and information supplied by citizens or others. DEQ compliance or response staff assess information about possible violations and usually formulate the Department's first response.

All environmental violations are subject to enforcement; however, DEQ classifies violations based upon their seriousness (i.e., duration, magnitude, culpability) and their impact or threat of impact on human health, the environment, and the regulatory program. Because many of its programs are based on federal requirements, DEQ has adopted EPA's terminology for

³ Va. Code [§ 10.1-1183 \(10\)](#).

⁴ Va. Code [§ 10.1-1183 \(10\), \(12\)](#).

classifying noncompliance in programs that EPA has authorized. Staff also use these systems of classifying violations to set priorities for enforcement actions. This does not imply that lower priority violations are not subject to enforcement. It only indicates that DEQ addresses enforcement matters based on their environmental and programmatic significance.

IV. OVERVIEW OF ENFORCEMENT ACTIONS

DEQ uses a variety of methods to enforce environmental requirements and to bring parties into compliance. These methods are categorized as "informal" and "formal." Informal measures are the least adversarial and include notifying a facility owner or operator of alleged violations verbally or in writing (e.g., through telephone conversations, informal meetings, or letters) and seeking correction without further Department action. DEQ encourages meetings and other informal contacts to bring facilities into compliance expeditiously and to reach a mutual understanding. Less adversarial informal methods are appropriate for violations without a high level of environmental or regulatory impact, where parties do not have a history of noncompliance. For more serious violations or for parties with a history of noncompliance, DEQ uses notices of alleged violation (warning letters and notices of violation) to presage formal enforcement. In limited circumstances, DEQ may use a letter of agreement (an informal measure) to memorialize an understanding with a party following a notice of alleged violation.

Formal enforcement methods involve additional administrative or judicial process and usually result in an order or agreement that is separately enforceable. Formal administrative enforcement measures include Consent Orders (or Consent Special Orders), Executive Compliance Agreements, Case Decisions, 1186 Special Orders, Formal Hearing Orders, and Emergency Orders. Judicial actions are undertaken by the Office of the Attorney General (civil and criminal), the U.S. Attorney's Office (criminal) and the local Office of the Commonwealth's Attorney (criminal). In certain cases in EPA-authorized programs, DEQ may also refer the case to EPA for federal administrative or judicial action. Final orders, whether judicial or administrative, may assess appropriate civil charges or civil penalties.

The Virginia Code grants authority for additional measures to support enforcement actions. These include inspection warrants and requests for information by DEQ.

V. INCENTIVES FOR IDENTIFYING AND RESOLVING VIOLATIONS

DEQ encourages the regulated community to be proactive in identifying and resolving potential noncompliance. DEQ encourages proactive compliance through information sharing, technical assistance, incentives, compliance assistance programs, and environmental management systems. These normally take place outside the enforcement process; however, DEQ encourages all enforcement staff to be alert to these opportunities and promote their use. Within the enforcement process, there are separate provisions for the Process for Early Dispute Resolution; a limited privilege and immunity for violations found, disclosed and promptly corrected as a result of voluntary environmental assessments; and the opportunity to mitigate civil charges through appropriate supplemental environmental projects.

VI. CENTRAL OFFICE AND REGIONAL OFFICE COORDINATION

The Central Office Division of Enforcement (DE) and each of the Regional Offices play key roles in implementing DEQ's enforcement mission and goals. Open communication and mutual support are essential.

DEQ enforcement is decentralized, and most enforcement occurs in the DEQ Regional Offices. The DEQ regions are the primary contacts for the regulated community and the public. In most cases, regional staff are the first to deal with suspected noncompliance and are responsible for initiating, negotiating and concluding enforcement actions, and assuring that parties comply with agreements and orders and return to compliance. The Regional Offices work directly with permittees, attorneys, consultants, and others to resolve issues of noncompliance, and to promote proactive compliance and environmental stewardship. Regional enforcement staff also provide guidance and assistance to DEQ permitting, compliance and other staff. The Regional Offices develop, issue and monitor enforcement documents, such as Enforcement Recommendations and Plans and Consent Orders, in accordance with this Manual.

DE coordinates statewide implementation of DEQ's enforcement programs through:

- developing enforcement policies, guidance, procedures, plans and similar documents (in coordination with the Regions);
- providing or arranging for training, and providing information and forums to coordinate enforcement activities;
- developing reports and tracking mechanisms;
- conducting adversarial administrative actions (in coordination with the Regions);
- serving as liaison to the Office of the Attorney General and preparing referral documents for cases sent to that office;
- coordinating enforcement and grant activities with EPA;
- reviewing or auditing enforcement implementation; and
- promoting proactive compliance and environmental stewardship.

DE and the Regional Offices ensure consistent applications of state laws and regulations. In individual enforcement actions, DE staff provide case-by-case advice and concurrence to the Regional Offices in accordance with this Manual. DE may also take the lead in individual enforcement actions when a case involves related sites in multiple regions (with Regional Office concurrence) or when directed by the DEQ Director. DE staff advise on all multi-media cases.

DE's Criminal Investigation Unit (CIU) coordinates and investigates all allegations of criminal activity with the assistance of Regional and Central Office Staff. CIU prioritizes the investigation and processing of potential criminal cases based upon factors including, but not limited to, knowledge of the regulatory requirements, the intent or willfulness of the alleged criminal activity, patterns of behavior of the regulated party, the environmental impact of the alleged violation, and any economic benefit realized as a result of the alleged violation.